

Divisional Manager, Eastern Railway and anr. Vs. Sona Devi

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Court : Jharkhand

Decided On : Jan-06-2003

Reported in : [2004(2)JCR621(Jhr)]

Judge : Gurusharan Sharma and; Amareshwar Sahay, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 3(1), 3(2) and 30

Appeal No. : AFOO No. 149 of 1999 (R)

Appellant : Divisional Manager, Eastern Railway and anr.

Respondent : Sona Devi

Advocate for Def. : None

Advocate for Pet/Ap. : D.N. Chatterjee, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

1. Admittedly, Karu, husband of Sona Devi, the sole respondent herein was employed as a Gang man in Dhanbad Division of Eastern Railways. On 28.9.1986, he made complain of stomach pain and reported sick. A sick Memo, Exhibit M-1 was, therefore, given to him on the same day. He was admitted in Gajendih Hospital, from where he as referred to Dhanbad railway hospital for

treatment. In course of treatment, he died on 30th September, 1986. According to the death certificate, Exhibit M, cause of his death was peptic perforation and Cardio respiratory failure. At railway hospital, Dhanbad, Karu was surgically operated for Peptic perforation.

2. His widow, Sona Devi filed W.C. Case No. 3 of 1990 for compensation under the provisions of the Workmen's Compensation Act, 1923 (hereinafter to be referred to as 'the Act'). She claimed total amount of compensation at Rs. 56,592.96 under the Act.

3. The Railway contested the claim on the ground that the workman concerned did not die by an accident arising out of and in course of his employment and, therefore, present proceeding was not maintainable and his widow was not entitled to any compensation under the Act.

4. The Presiding Officer, Labour Court, Hazaribagh, allowed the prayer of the claimant and by impugned order dated 13.2.1999 held that the claimant was entitled to a sum of Rs. 56,592.96 as compensation under the Act. The Divisional Manager, Eastern Railways has, therefore, filed the present Appeal under Section 30 of the Act.

5. Mr. D.N. Chatterjee, learned counsel for appellants submitted that unless the happening of actual accident was first established, which directly resulted in injury to the workman, there, was no question of payment of any compensation under Section 3(1) of the Act. In the present case there was no complain of any occupational disease, covered by Section 3(2) of the Act and, therefore, acceleration of death by such disease or exertion was wholly irrelevant to the present issue.

6. Section 3(1) of the Act provides that if personal injury is caused to a workman by accident, arising out of and in the course of his employment, his employer is liable to pay compensation in accordance with the provisions of the Act. Hence, the statute provided three basic pre-conditions for the employer's liability to pay compensation under the Act. Firstly, there must be an accident in the sense of actual physical happening or occurrence of untoward event of mishap, which was

not expected. Secondly, such an accident must directly result in a personal injury to the workman and thirdly, the accident must arise out of and in the course of the employment of the workman.

7. In the present case, we find that the workman concerned did not die owing to injury by accident, rather he died of peptic perforation, the disease he was suffering from before.

8. Herein, admittedly there was no question of any occupational disease or applicability of Section 3(2) of the Act.

9. Since there was no accident at all in course of the employment of the deceased workman, the very foundation of the claim under Section 3(1) of the Act is eroded.

10. Accordingly in the face of the evidence and the factors of this case, we hold that death of Karu cannot be considered owing to any physical or occupational injury, under Section 3 of the Act and the Schedule III thereof. So the claimant was not entitled to any compensation under the Act and consequently the impugned order/award passed by the Presiding Officer, Labour Court, Hazaribagh, are set aside and W.C. Case No. 3 of 1990 stands dismissed.

11. In the result, this Appeal is allowed, but without costs.