

**Asstt. Engineer (Dsd West) RSEB Vs. Commissioner, Workmen's Compensation Act and Ors.**

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**Court :** Rajasthan

**Decided On :** Jul-27-1999

**Reported in :** 2(2000)ACC717; 2000(1)WLC102

**Judge :** Mohd. Yamin, J.

**Appellant :** Asstt. Engineer (Dsd West) RSEB

**Respondent :** Commissioner, Workmen's Compensation Act and Ors.

**Judgement :**

**Mohd. Yamin, J.**

1. In this Misc. Appeal Rajasthan State Electricity Board, Bhilwara has assailed the judgment of Workmen's Compensation Commissioner, Bhilwara dated 25.2.1994 by which he allowed the claim petition of the respondents and awarded a compensation of Rs. 96,070.60.

2. Deceased Bal Gopal sharma, whose legal representatives-respondents are, was a Meter Reader with the Electricity Board. He died on 21.2.1988 at village Bavalas where he had gone for the purpose of meter reading. Claimant respondents filed a claim before the Workmen's Compensation Commissioner, Bhilwara which was resisted by the appellant on the ground that Bal Gopal

Sharma was not a workman with the meaning of Workmen's Compensation Act and that he died on Sunday while he was not discharging the duties. However, the Compensation Commissioner rejecting all the contentions of the appellant, granted compensation alongwith interest and penalty.

3. I have heard the learned Counsel for both the parties at length.

4. The first contention of the learned Counsel for the appellant is that Bal Gopal Sharma was not a workman within the meaning of Section 2(1)(n) of the Workmen's Compensation Act. Alternatively the argument is that even if he is treated to be as workman, his death did not occur during the course of employment by accident. As such the employer was not liable to pay compensation.

5. On the other hand, learned Counsel for the respondents controverted these arguments and submitted that the Rajasthan High Court in S.B. Civil Misc. Appeal No. 306/94, Asstt. Engineer, RSEB v. Commissioner, Workmen's Compensation, Bhilwara and Ors. decided on 25.5.1994, allowed a claim of legal representatives of deceased and on the basis of this judgment the appeal should be dismissed.

6. I have given my anxious consideration to the contentions of the parties.

7. The first question arises whether Bal Gopal Sharma was a workman within the definition of Workmen's Compensation Act? Schedule-II is appended to the Act which gives a list of persons who are included in the definition of workmen. Learned Counsel for the respondents was not able to show as to how a Meter Reader will be treated as a workman. However, item No. (xix) mentions that a person employed, otherwise than in a clerical capacity, in the generating transforming, transmitting or distribution of electrical energy or in generation or supply of gas, is a workman. This item was added to the Schedule w.e.f. 15.9.1995. Thus, it is clear that on the date of accident this item did not exist. Learned Commissioner was of the view that a Meter Reader is a workman under the Workmen's Compensation Act as he is included in Schedule-II. On the date of incident Bal Gopal Sharma was not a workman as item No. XIX in Schedule-II did not exist on that date.

8. Even if it is held that Bal Gopal Sharma was a workman, the provisions of Section 3 of the Act are not attracted to this case. Provision is very clear when it says that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter-II of the Workmen's Compensation Act. The words 'arising out of and in the course of employment' were considered in : (1970)ILLJ16SC , Mackinnon Mackenzie and Co. Private Ltd. v. Ibrahim Mahommad Issak, which has been relied by the learned Counsel for the appellant. It was held by the Supreme Court that the words 'arising out of and in the course of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. There must be a causal relationship between the accident and the employment. If the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed unless of course the workman has exposed himself to an added peril by his own imprudent act. It has been further held in this citation that the burden of proof that death was caused by the accident is on the person who alleges. The Commissioner must be surmise, conjecture or guess. He may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn but the evidence must be such as would induce a reasonable man to draw it.

9. Learned Counsel for the appellant submitted that in the case in hand the death is not a result of any accident arising out of and in the course of employment. He drew my attention to the post mortem report Ex. D/5 which mentions that the cause of death of Mr. Bal Gopal Sharma son of Murlidhar Sharma, 32 years, Hindu Male of Bhilwara is asphyxia because of suffocation due to impaction of foreign body in his air passage. Admittedly, the dead body of Bal Gopal Sharma was found in village Bava las on Sunday. Learned Counsel for the appellant submitted that there is no evidence on record that there was very high pressure of the work on the deceased so that he was required to work on Sunday and then secondly the post mortem report proves the death which was not the result of any

accident arising out of employment. He cited a judgment of this Court reported in 1973 ACJ page 476 Ram Lal Jawahar Lal v. Leela Bai and Ors. in which workman died due to pneumonia. It was held that there was no causal relation between the nature of his employment and contracting the pneumonia, therefore, the employer was not held liable for compensation.

10. The words 'arising out of employment' were considered in Kamla Bai v. Divisional Superintendent, Central Railway, Nagpur 1971 ACJ page 170, cited by Counsel for appellant. It was held that it means that there should be some causal connection between the death of the workman and his employment. In this case the engine driver died of heart attack. There was no evidence of any particular strain of duty and it was held that the death could not be said to have arisen out of employment. Another citation 1981 ACJ page 188, The Divisional Controller, Gujarat State Road Transport Corporation v. Bal Jiviben Arjan and Anr. has been cited by the learned Counsel for the appellant in which the facts were that while on duty the workman got a heart attack and later succumbed to the same. There was no history of any previous heart disease and there was no evidence that usual work involved any strenuous duties. It was held that the accident did not arise out of employment because there was no causal connection between the death and employment.

11. After having gone through all these judgments and after going through the evidence in the case in hand, I find that there is no evidence that there was any strain on the mind of Bal Gopal Sharma so as to make a causal connection between the death and the employment. The citation relied by the learned Counsel for the respondents i.e. Assistant Engineer, RSEB v. Commissioner Workmen's Compensation, Bhihmra (supra), is based completely on different facts than the present case. In the citation the deceased was a Line Man who died while discharging duties. The only contention in the said citation was that the deceased had not been sent by any authority of the RSEB and the accident occurred at about 8.00 p.m. Here, the case is completely different on facts. Deceased went to village Bavalas for meter reading. There is no evidence that the accident occurred arising out of and in the course of. employment. No causal relationship between the nature of his employment and death has been proved.

12. Consequently, the appeal is allowed and the order of learned Commissioner, Workmen's Compensation Act, Bhilwara is set aside. The amount deposited with the Commissioner be refunded to the appellant after expiry of the period of limitation of appeal/revision. No order as to costs.

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