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M.A.No.830/2005

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
SINGLE BENCH
BEFORE JUSTICE S.K.AWASTHI
MISCELLANEOUS APPEAL No.830/2005

Gajendra Singh

Versus

S.G.Motors

Shri O.P.Singhal, learned counsel for the appellant.

None for the respondent.

O R D E R
(.03.2017)

This is an appeal filed by the appellant/claimant under Section 30 of the Workmen's Compensation Act, 1923 (for brevity, the 'Act') against the award dated 22.06.2005 in C.O.C. No.50/B/W.C.Act/99(F), passed by the Commissioner, Workmen's Compensation Act-cum-Labour Court No.1, Gwalior. The claim case was filed by the appellant/claimant for grant of compensation on account of accidental death of his son Inder Singh during the course of employment under respondent S.G.Motors, Jhansi Road, Gwalior.

2. The brief facts of the case are that the deceased-Inder Singh was working as a Clerk in S.G.Motors, Jhansi Road, Gwalior in the year 1997. On 10/11.6.1997 Inder Singh died while on duty. On this date, he fell down in the well and

M.A.No.830/2005

had lost his life.

3. The appellant/claimant gave a notice to the respondent for payment of compensation on account of accidental death of his son Inder Singh. When the compensation amount was not paid to him, he filed a claim case in the Court of Commissioner, Workmen's Compensation Act (Labour Court No.1), Gwalior, in the year 1999. The respondent contested the case on the ground that the deceased was not a workman as defined under Section 2(1)(n) of Schedule II of the Act as well as the death of the son of the appellant by jumping into the well was not accident but suicide and there was no relation between employment and cause of death.

4. After hearing both the parties, the application filed on behalf of the appellant was dismissed by the Commissioner, Workmen's Compensation Act for the reason that the death of Inder Singh had occurred while the deceased was working as a Clerk. Therefore, he is not covered in the definition of the 'Workman' under Section 2(1)(n) of the Act. Aggrieved by dismissal of the claim application by the Commissioner, Gwalior, the present appeal has been filed by the appellant/claimant under Section 30 of the Act.

5. This appeal involves two questions for determination. Firstly, whether the death of Inder Singh was caused during the course of Employment and, secondly, whether deceased

M.A.No.830/2005

Inder Singh is a 'workman' within the ambit of the provisions of Workmens Compensation Act, 1923 and if so, whether the claimant is entitled to recover any compensation ?

6. Learned counsel for the appellant/claimant submits that as the Inquest Report clearly indicates that deceased Inder Singh was found floating in the well situated in the premises of the respondent, his death was due to the accident, which arose during the course of employment. Therefore, the respondent is liable to pay the compensation for the death of Inder Singh.

7. Learned counsel for the respondent supported the order passed by the Commissioner and contended that nowhere in the claim petition it is stated that the death was due to the accident. As per the Inquest Report, Inder Singh committed suicide by jumping into the well. Therefore, the Commissioner has rightly dismissed the claim petition of the appellant/claimant.

8. Learned counsel for the appellant placed reliance on the judgment of the Hon'ble Apex Court in the case of **State of Rajasthan vs. Ram Prasad and another, 2001 ACJ 647**, wherein the Hon'ble Apex Court has observed as under:-

"The accident, it is stated, took place on account of lightning. The contention put forth on behalf of the appellant is that the mishap of death of Smt. Gita due to lightning is an act of God and, therefore, it is not liable to pay compensation. This contention has been

M.A.No.830/2005

rejected not only by the Commissioner for Workmen's Compensation but also by the learned Single Judge in appeal and thereafter by a Division Bench in a further appeal. The view taken is that the concept of the liability under the Act is wide enough to cover a case of this nature inasmuch as death had taken place arising as a result of accident in the course of employment. It is, no doubt true that accident must have a causal connection with the employment and arise out of it. If the workman is injured as a result of natural force such as lightning though in itself has no connection with employment, she can recover compensation by showing that such employment exposed her to such injury. In this case the finding is that the said Smt. Gita was working on the site and would not have been exposed to such hazard of lightning striking her had she not been working so".

9. Learned counsel for the appellant further relied on the judgment in the case of **Branch Manager, New India Assurance Co.Ltd. vs. Siddappa and others, 2004 ACJ 1639**, wherein Karnataka High Court has held as under:-

10. In view of this, the undisputed facts in the present case would be that as on the date when the incident had occurred the deceased was on duty. He had gone out to answer the call of nature and while taking water from the well he slipped and fell down into the well and was drowned. Three things emerge from this: One is that he was on duty at that point of time; secondly, answering the call of nature during the course of employment was one of the exigencies of the employment and thirdly, there was a causal connection between the employment and the cause of death. In view of the factual aspect of the matter, as narrated in the claim petition as well as stated in the testimonial evidence of the first claimant, there cannot be any iota of doubt

M.A.No.830/2005

that the deceased died while he was on duty and the said accident arose and in the course of the employment.

10. In the case of **Rani Kour vs. Jagtar Singh, 2012 ACJ 2072 (MP)**, the Single Judge of this Court has held that Commissioner was justified in holding that heart attack to the driver was due to service strain. It has been held as follows:-

"7. Here in the present case, there was pleading in this behalf in para 1 of the claim petition. The deceased Manohar Singh was working as a driver in a truck which was going to Borali Badnawar village from Borowa to unload molasses. From the evidence it has come on record that on 12.4.2006 the deceased came from Punjab and he stayed for five minutes at his home and thereafter due to pressure of work he again left for Borali for unloading of molasses of oasis Distillery. Ranu Kour AW1, wife of the deceased, and Ramesh, cleaner of the vehicle, in their statement have very categorically stated that deceased had gone to Punjab. As per autopsy report, the death was due to heart attack. The Commissioner after appreciating the evidence of Rani Kour, appellant No.1, and Ramesh, cleaner, arrived at a finding that heart attack was due to service strain and held that deceased had suffered massive heart attack. The record shows that heart attack was caused while doing his job. The learned Commissioner gave a finding that appellants by cogent evidence have proved that deceased had died while he was working in the vehicle and cardiac arrest has occurred because of stress and strain."

11. The facts of the case in hand are similar to

M.A.No.830/2005

these cases. In the instant case, the deceased died when he was working in the premises of the employer, so the answer to the first question is that the death of Inder Singh has occurred during the course of the employment.

12. Adverting to the second question, the word 'workman' is defined in Section 2 (1) (n) of the Act. For the purpose of this appeal, the definition in section 2(1)(n)(ii) of the Act is the relevant provision. As per the said definition, any person employed in any such capacity as is specified in Schedule II of the Act is a workman. It therefore becomes necessary to consider various clauses in Schedule II of the Act to find out whether the deceased was a workman within the ambit of the provisions of the above Act.

13. As per Schedule II of the Act, following persons are workmen within the meaning of Section 2(1)(n) and subject to the provision of that section, that is to say, any person who is--

"(i) employed, otherwise than in a clerical capacity or on a railway, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or

(ii) xx xx xx

(iii) xx xx xx"

A reading of the above provision shows that the Workmen's Compensation Act excludes the employees doing clerical or supervisory work.

M.A.No.830/2005

14. The appellant contended in the claim petition filed under Section 10 of the Act deceased Inder Singh, son of the appellant, was employed as a clerk, therefore, it is clear that the deceased was not working as 'workman' within the ambit of the provisions of the Act. Hence, the impugned order passed by the Commissioner is just and proper and no interference is called for. Thus, the second question is answered accordingly.

16. In the result, present appeal fails and is accordingly dismissed. No order as to the cost of this appeal.

(S.K.Awasthi)
Judge

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