REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 956 OF 2009
(Arising out of SLP (C) 25750/2005)

Malikarjuna G. Hiremath ...Appellant

Versus

The Branch Manager, The Oriental
Insurance Co. Ltd. and Anr. ...Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court allowing the Miscellaneous First Appeal filed under Section 30(1) of the Workmen Compensation Act, 1923 (in short the 'Act') filed by respondent No.1 (hereinafter referred to as the 'insurer'). The

insurer had challenged the award passed by the Commissioner for Workmen Compensation (hereinafter referred to as the 'Commissioner') in respect of the death of a driver.

3. Background facts in a nutshell are as follows:

The appellant was the owner of the vehicle of which the deceased was employed as a driver. Respondent No.2 filed a Claim Petition inter-alia stating as follows:

Her husband Veeresh Kumar (hereinafter referred to as the 'deceased') was working as a driver in a truck bearing No.KA 34 1183. He left Siraguppa to go to Gurugunta Amreshwara Temple alongwith certain passengers as per the directions of the present appellant. When the vehicle reached Gurugunta, the deceased went to the pond and while taking bath at a pit, he had slipped and fell down and had drowned and breathed his last. The Claim Petition was filed taking the stand that the death of the deceased had occurred during the course of and within the employment under the appellant. The vehicle was the subject matter of insurance with the insurer and, therefore, it was claimed that the insurer was liable to pay the

compensation as the risk of the driver was covered under the policy. The Commissioner, Bellary by his order dated 11.7.2002 allowed the petition and determined the compensation payable at Rs.2,20,046/- with 12% interest. It was held that the insurer was liable to pay the compensation. Insurer filed an appeal before the High Court. As noted above, the stand taken by both the insurer and the appellant was that there was no connection between the accident causing death of the workman and the vehicle and, therefore, neither the insurer nor the insured had any liability to pay any compensation. The High Court allowed the appeal filed by the insurer holding that there was no casual connection and therefore the insurance company was not liable. Further, the High Court granted the liberty to recover the compensation awarded from the appellant.

4. In support of the appeal, learned counsel for the appellant submitted that the death had not been occasioned during and in course of employment. It is also not in dispute that the vehicle was the subject of insurance and the risk of the driver was covered under the policy. The High Court accepted that the driver did not die as a result of an accident involving the vehicle. But the vehicle was taken by the deceased in the course of employment at the behest of the present appellant to the temple. The ultimate question

according to the High Court was when the driver was taking a bath at the pond and gone there, the death had occurred out of an accident arisen out of and in the course of his employment. The High Court noted that there was no casual connection between the accident causing the death and the vehicle. The High Court also noted that since there was no such casual connection, the insurer would not be liable in terms of the policy as the vehicle which was the subject matter of insurance was not involved in the accident and the insurer had no liability.

5. Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. After having held that there was no casual connection between the death and the employment of the workman and after exonerating the insurer, the High Court should not have directed claimant to recover the amount from the present appellant.

6. Learned counsel for the insurer submitted that it has no liability in view of what is stated in Section 147 (1)(b) (i) of Motor Vehicles Act, 1988 (in short 'M.V. Act').

7. There is no appearance on behalf of respondent No.2.

8. Section 3(1) of the Act which is relevant for the purpose of this case reads as follows:-

> **"**3. EMPLOYER'S LIABILITY FOR COMPENSATION. **-** (1) 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 this Chapter :
>
> Provided that the employer shall not be so liable - (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;
>
> (b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to - (i) the workman having been at the time thereof under the influence of drink or drugs, or
>
> (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
>
> (iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

9. Under Section 3(1) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a natural death because of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

10. The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In Fenton v. Thorley & Co. Ltd. (1903) AC 448, it was observed that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane A.C. in Trim Joint District, School Board of Management v. Kelly (1914) A.C. 676 as follows:

> "I think that the context shows that in using the word "designed" Lord Macnaghten was referring to designed by the sufferer".

11. The above position was highlighted by this Court in Jyothi Ademma v. Plant Engineer, Nellore and Anr. (2006 (5) SCC 513).

12. This Court in ESI Corpn. v. Francis De Costa (1996 (6) SCC 1) referred to, with approval, the decision of Lord Wright in Dover Navigation Co. Ltd. v. Isabella Craig (1940 AC 190) wherein it was held: (All ER p. 563)

> "Nothing could be simpler than the words 'arising out of and in the course of the employment'. It is clear that there are two conditions to be fulfilled. What arises 'in the course' of the employment is to be distinguished from what arises 'out of the employment'. The former words relate to time conditioned by reference to the man's service, the latter to causality. Not every accident which occurs to a man during the time when he is on his employment—that is, directly or indirectly engaged on what he is employed to do—gives a claim to compensation, unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified."

13. We are not oblivious that an accident may cause an internal injury as was held in Fenton (Pauper) v. J. Thorley & Co. Ltd. (1903 AC 443) by the Court of Appeal:

> "I come, therefore, to the conclusion that the expression 'accident' is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed."

Lord Lindley opined:

> "The word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word 'accident' is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish careless from other unintended and unexpected events."

14. There are a large number of English and American decisions, some of which have been taken note of in ESI Corpn.'s case (supra) in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are:

(1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment.

(*2*) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(*3*) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.

15. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.

16. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:

(*1*) stress and strain arising during the course of employment,
(*2*) nature of employment,
(*3*) injury aggravated due to stress and strain.

17. In G.M., B.E.S.T. Undertaking v. Agnes (1964 (3) SCR 930) referring to the decision of the Court of Appeal in Jenkins v. Elder Dempster Lines Ltd. (1953 (2) All ER 1133) this Court opined therein that a wider test, namely, that there should be a nexus between accident and employment was laid down. It also followed the decision of this Court in Saurashtra Salt Mfg. Co. *v.* Bai Valu Raja (AIR 1958 SC 881)

18. In Mackinnon Mackenzie & Co. (P) Ltd. v. Ibrahim Mohd. Issak (1969 (2) SCC 607), this Court held:

> "*5*. To come within the Act the injury by accident must arise both out of and in the course of employment. The words 'in the course of the employment' mean 'in the course of the work which the workman is employed to do and which is incidental to it'. The words 'arising out 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'. In other words there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such—to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently 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."

19. The above position was again highlighted in Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Anr. (2007 (11) SCC 668).

20. It is the specific case of the claimants that on 30.11.2000 the deceased who was driving the vehicle on the direction of the insured had gone to Gurugunta from Siraguppa. There he had gone to a temple and was sitting on the steps of the pond in the temple and he slipped and fell into the water and died due to drowning. This according to us is not sufficient in view of the legal principles delineated above to fasten liability on either the insurer or the insured. The High Court was not justified in holding that the present appellant was liable to pay compensation.

21. The appeal is allowed with no order as to costs.

…….J.
(Dr. ARIJIT PASAYAT)

…….J.

(ASOK KUMAR GANGULY)

New Delhi,
February 12, 2009