

HARIJAN MANGRI SIDDAKKA AND ORS.
v.
ORIENTAL INSURANCE CO. LTD. AND ANR.
(Civil Appeal No. 4437 of 2008)

JULY 16, 2008

[DR. ARIJIT PASAYAT AND HARJIT SINGH BEDI, JJ.]

Workmen's Compensation Act, 1923 – S.30(1) – Loading of mud in trailer of tractor – Huge quantity of mud collapsed from quarry – Resulting in death of workmen – Claim for compensation – Held: Claimants required to show that there was use of motor vehicle at time of accident and there was casual connection between death of the workmen and use of the vehicle – On facts, since factual position not analyzed in great detail, matter remitted to High Court to deal with the matter afresh.

The Appellants filed claim petition claiming compensation in respect of certain workmen who had lost their lives. According to the Appellants, the deceased persons were employed as workmen in a tractor-trailer and when the trailer was being loaded with mud from quarry, a huge quantity of mud had collapsed from the quarry resulting in death of the workmen. The Commissioner for Workmen's Compensation held that the accident had taken place during and in the course of employment of the deceased persons and since the vehicle was being used for purposes of loading, the insurance company, with which the vehicle was insured, was liable to indemnify the award passed. On appeal under s.30(1) of the Workmen's Compensation Act, 1923, the High Court held that there was no actual use of the vehicle and, therefore, there was no casual connection between death of the workmen and use of the vehicle. Hence the present appeals.

A **Allowing the appeal and remitting the matter to High Court, the Court**

B **HELD: There is practically no discussion on the factual scenario as to whether there was any connection between the death and the use of the vehicle. It would depend upon the factual scenario in each case and there cannot be any strait jacket formula to be applied. The expression "use" in the Statute is with reference to "use of the motor vehicle". Whether there was a use of the motor vehicle has to be factually analysed. Since in this case**
C **the factual position has not been examined in detail, it would be appropriate for the High Court to deal with the matter afresh. [Paras 4-5] [1101-F,G,H; 1102-A]**

D **CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4437 of 2008**

From the Judgment and final Order dated 16.11.2005 of the High Court of Karnataka at Bangalore in M.F.A. No. 487/2004 (W.C.) c/w M.F.A. No. 483/2004 (W.C.)

E **Kiran Suri for the Appellants.**

S.N. Bhat for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

F **2. Challenge in this appeal is to the order passed by a learned Single Judge of the Karnataka High Court disposing of an appeal filed under Section 30(1) of Workmen's Compensation Act, 1928 (in short the 'Act'). The appellants lodged claim petition claiming compensation in respect of certain persons**
G **who had lost their lives. According to the appellants the deceased persons were employed as workmen/labourer in a tractor and trailer combination which was the subject matter of insurance. When the trailer was being loaded with mud from the quarry, huge quantity of mud had collapsed from the quarry**
H **smothering the workmen to death. The Commissioner for**

Workmen's Compensation (in short the 'Commissioner') held that the accident had taken place during and in the course of the employment and since the vehicle has been used for purposes of loading, the Oriental Insurance Company Ltd. were liable to indemnify the award made. The Insurer challenged the correctness of the award taking the stand that the liability of the insurer arises on account of death on a bodily injury arising out of the use of the vehicle and in the present case the admitted circumstances indicate that there was no proximate connection between the use of the vehicle and the actual cause of death which was overlooked by the Commissioner. Stand of the appellants was that the insurer is not correct in submitting that there was no use of the vehicle at the time of accident. It was pointed out that though the death occurred at a place away from the vehicle or the fact that the mud which was being loaded on to the trailer from the quarry had killed the workmen, is immaterial since the policy of the Insurance is intended to cover the risk of workmen employed in the vehicle. The High Court found that there was no actual use of the vehicle and therefore there was no casual connection between the cause of death and the use of the vehicle.

3. Learned counsel for the appellant submitted that no reason has been indicated by the High Court to hold that there was no casual connection between the death and the use of the vehicle. Reference is made to certain judgments of the High Court where the view expressed by learned Single Judge was not accepted.

4. We find that there is practically no discussion on the factual scenario as to whether there was any connection between the death and the use of the vehicle. It would depend upon the factual scenario in each case and there cannot be any strait jacket formula to be applied.

5. The expression "use" in the Statute is with reference to "use of the motor vehicle". Whether there was a use of the motor vehicle has to be factually analysed. Since in this case the

A factual position has not been examined in detail, it would be appropriate for the High Court to deal the matter afresh. Accordingly, we set aside the impugned judgment and remit the matter to the High Court.

B 6. We make it clear that we have not expressed any opinion on the merits of the case. Appeal is allowed to the aforesaid extent. No costs.

B.B.B.

Appeal allowed.