

RASHIDA HAROON KUPURADE

v.

DIV. MANAGER, ORIENTAL INSURANCE CO. LTD. &
ORS.

(Civil Appeal No. 1638 of 2010)

FEBRUARY 8, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Workmen's Compensation Act, 1923:

s. 3 – Vehicular accident – Death of victim after six months – Compensation award passed by Commissioner for Workmen's Compensation holding the insurer liable set aside by High Court holding that the employer was liable and not the insurer – HELD: High Court has committed an error in holding that notwithstanding the fact that there was no connection with the accident and the death of the workman, the owner of the vehicle in question was still liable to pay compensation under the provisions of the Act – In view of s.3, compensation would be payable by employer only if the injury is caused to a workman by accident arising out of and in the course of his employment – There has to be an accident in order to attract the provisions of s. 3 and such accident must have occurred in the course of the workman's employment – In the instant case, there is no nexus between the accident and the death of the workman since the accident had occurred six months prior to his death. In such circumstances, the order of the High Court is set aside as far as the observations relating to the employer are concerned – Insurance – Liability of insurer.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1638 of 2010.

From the Judgment & Order dated 4.8.2005 of the High

A Court of Karnataka at Bangalore in MFA No. 3340 of 2004 (WC).

R.S. Hedge, Chandra Prakash, Rahul Tyagi, J.K. Nayar, Ashwani Garg, Komal Kishore R. Joshi, P.P. Singh for the Appellant.

B Ramesh Chandra Mishra, Dr. Meera Agarwal for the Respondents.

The Order of the Court was delivered

O R D E R

C 1. Delay condoned.

2. Leave granted.

D 3. Despite notice having been served on the respondent Nos. 2 to 5, none of them have chosen to appear to oppose the appeal, when it is taken up for consideration. Learned counsel has, however, entered appearance on behalf of the respondent No.1/insurance company.

E 4. The appeal is directed against an order passed by the Karnataka High Court in Misc.First Appeal No.3340 of 2004, under Section 30(1) of the Workmen's Compensation Act, 1923, (hereinafter referred to as 'the Act') for setting aside the order dated 31st December, 2003, passed by the Commissioner for Workmen's Compensation, Sub-Division-I, Belgaum, in Case No.WCA/FSR/1/03. By the said judgment, F the appeal of the insurance company challenging the compensation awarded by the Commissioner for Workmen's Compensation was partly allowed, upon the finding that since the deceased workman had died of natural causes, namely, a heart attack, the insurance company could not be fastened with G the liability of making payment of the said award since there was no nexus between the death of the workman and the accident, which had occurred about six months prior to his death. However, while disposing of the appeal, the High Court observed that at best, the relationship of employer and H employee as between the deceased and the insured not being

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in dispute and the death having occurred during and in the course of employment, liability could be fastened on the employer and not the insurance company. Leave was, therefore, given to the claimants to recover the compensation amount from the owner of the vehicle. This appeal has been filed by the owner of the vehicle against the said observations and directions given by the High Court. A B

5. It has been submitted on behalf of the appellant/owner of the vehicle that the provisions of Section 3 of the Act had been wrongly interpreted by the High Court in observing that the liability for the death of the workman, even if it had no connection with the accident in question, was with the owner of the vehicle. It has been submitted by Mr. Hegde that Section 3, which sets out the employer's liability for compensation indicates in Sub-Section (1) that if personal injuries are 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, which deals with workmen's compensation. Certain exceptions have been carved out in the proviso to the effect that there had to be some link between the accident and the death of the employee in order to attract the provisions of Section 3 as far as the owner of the vehicle is concerned. C D E

6. On behalf of the respondent/insurance company, it has been sought to be reiterated that since there was no nexus between the accident and the death of the employee, the High Court had correctly held that the liability of making payment under the Award was not with the insurance company. F

7. Having considered the submissions made on behalf of the respective parties, we are inclined to agree with the submissions made on behalf of the appellant that the High Court has committed an error in holding that notwithstanding the fact that there was no connection with the accident and the death of the workman, the owner of the vehicle in question was still liable to pay compensation under the provisions of the Act. G H

A 8. In order to better appreciate the submissions made on behalf of the parties, Section 3(1) of the above Act is extracted hereinbelow:-

B “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:.....”

C 9. It will be clear from the wording of the above Section that compensation would be payable only if the injury is caused to a workman by accident arising out of and in the course of his employment. There has to be an accident in order to attract the provisions of Section 3 and such accident must have occurred in the course of the workman’s employment. As indicated hereinabove, in the instant case, there is no nexus between the accident and the death of the workman since the accident had occurred six months prior to his death.

D 10. In such circumstances, we are unable to sustain the order of the High Court and we have no option but to set aside the same as far as the observations relating to the appellant herein are concerned.

E 11. The appeal, therefore, succeeds. The observations made in the impugned judgment regarding the liability of the appellant herein to make payment in respect of the Award passed by the Commissioner, Workmen’s Compensation are set aside. The other parts of the judgment are upheld. The appeal is allowed.

F 12. There will be no orders as to costs.

G 13. This order will not prevent the heirs of the deceased workman from taking recourse to any other legal remedy, if available to them.

H R.P.

Appeal allowed.