

(2014) 10 P&H CK 0034

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 6784 of 2011 (O and M)

Jainender Gurukul
Senior Secondary
School

APPELLANT

Vs

Surjeet Kaur and
Others

RESPONDENT

Date of Decision: Oct. 17, 2014

Citation: (2015) ACJ 2617 : (2015) 178 PLR 100

Hon'ble Judges: Navita Singh, J

Bench: Single Bench

Advocate: J.S. Bedi, Advocate for the Appellant; Vikram Bali, Advocate for the Respondent;

Final Decision: Allowed

Judgement

Navita Singh, J.

1. This appeal is preferred against the award passed by the Commissioner under the Workmen's Compensation Act, 1923 (for short -Act) awarding compensation to the tune of Rs. 3,73,800/- with interest. The backdrop of the matter is that Ram Singh, husband of respondent No. 1 and father of the other respondents, was employed by the appellant as a Peon. On 10.02.2009, he had gone out of the school in connection with official work. He was travelling on a motorcycle and he was found dead on the bridge of river Ghaggar. A criminal case was got registered.
2. The employer of the deceased pleaded that no case was made out as the deceased had gone out of the school on his own towards Nada Sahib.
3. The Commissioner held that it was proved that the deceased had gone towards Nada Sahib for getting a gas cylinder filled for the school mess. He was, therefore, on official duty and the accident had occurred while he was in the course of employment. Theory of notional extension was applied and compensation was awarded.

4. Learned counsel for the appellant argued that a number of facts were overlooked by the Commissioner and many of those were not properly appreciated. He, first of all, submitted that there was movement register of the school, copy of which was produced as Ex. M3 on record. According to that, the deceased had gone for two tasks on the relevant date. He had left the school at 10:05 a.m. and had been sent to the office of District Education Officer for depositing some award and then he was to go to State Bank of Patiala in Sector 8. Both the places were in Panchkula. The entry in the movement register for 10.02.2009 stipulates to that effect and bears the signatures of the deceased as also of the Principal of the appellant school. Learned counsel then referred to the statement of Surjeet Kaur widow of the deceased, who appeared as AW4 and admitted in her cross-examination that the movement register Ex. M3 bore the signatures of her husband and she also identified his signatures on the bio-data submitted to the school by her husband and on the appointment letter. There was, thus, no dispute that the signatures on the movement register were of the deceased. The entries are absolutely categorical that he was to go to the office of DEO in Sector 7 and to the Bank in Sector 8, Panchkula. The Commissioner totally ignored the entry in the movement register.

5. Learned counsel for the appellant then argued that it was introduced in the evidence for the first time that the deceased had gone to get the gas cylinder filled for the school though the respondents had not pleaded to that effect. The petition shows that it was simply mentioned that the deceased had gone out of school premises to deposit LIC premium of some staff member and he went on the motorcycle, but was later on found dead. Nothing at all was mentioned that he had gone out of the school as per the entry in the movement register. A new story was set up. There was no whisper that he had taken any gas cylinder with him for getting it filled. In evidence, however, for the first time, this aspect was introduced by the witnesses Surjeet Kaur (AW4), Mukhtiar Singh (AW1), Balbir Singh (AW2) and Jasbir Singh (AW3).

6. Mukhtiar Singh (AW1) is a tutored witness, who stated that Ram Singh had gone out of the school at about 11:15 a.m. with a cylinder on the motorcycle, whereas according to the movement register, Ram Singh had left just after 10:00 a.m. This witness stated that Ram Singh had told him that he was going towards the gas agency and had directly gone there. Balbir Singh (AW2) stated that he had seen Ram Singh on the road and on the motorcycle there was one cylinder tied. Jasbir Singh is the author of the FIR Ex. C1. In the said document, the witness made no mention to the police about any gas cylinder having been found on the motorcycle of the deceased or lying near him. When he came in the witness box as AW3, he stated that the deceased had a gas cylinder tied on his motorcycle. This witness admitted that the FIR was got registered by him and all facts were stated correctly. The witness made an improvement over the first version given to the police and it appears that all the witnesses cooked up the story about the gas cylinder on the asking of the respondents. Even otherwise, it is an afterthought because no such

thing was pleaded in the petition.

7. Learned counsel for the appellant rightly pointed out that the movement register shows that every entry, while leaving the school for official purposes, was made meticulously by Ram Singh deceased and he used to write each work for which he was leaving the school. However, why then on the fateful day, he did not make any entry about going out of the school for filling the gas cylinder, is not explained. In the entry of the relevant date, there is mention only about the visit to DEO office and State Bank of Patiala. In the entry on 30.01.2009, there is specific mention that Ram Singh had taken black pepper for grinding to the Chakki in Majri and also the quantity of the pepper was three kilograms. On 20.01.2009, the entry made by Ram Singh was for going to DPEO office in Sector 7 and State Bank of India in Sector 10 and also Central Cooperative Bank, Sector 2, Panchkula. There is yet another entry on 08.01.2009 in which it is mentioned that Ram Singh was going to the Chakki for getting wheat ground in Sector 2 and to Roop Gas Agency. The quantity of wheat was mentioned as one "katta". It is, therefore, absolutely not understandable that the person, who was so precise and meticulous in making entries in the movement register to the extent of even mentioning quantity of the articles taken by him, how he would not make an entry in the movement register that he was leaving the school for getting the gas cylinder filled for the school mess. As already mentioned above, the story about the gas cylinder has been introduced by the claimants only to explain the presence of the deceased towards Nada Sahib side, which is quite opposite to Sector 7 and 8 where deceased was actually supposed to go.

8. Even if the plea is believed that he was carrying a gas cylinder, it would mean that he was carrying his own cylinder for getting it filled and was not going on behalf of the school, as there was no entry in the movement register. If he combined his personal work with the official one and took a detour to a place which did not fall on his way to the offices he was to go to, theory of added peril will apply and presence of the deceased towards Nada Sahib side would, by no stretch of imagination, be in the course of employment.

9. The theory of notional extension was wrongly applied by the Commissioner because deceased had gone to a place which had no connection with the work for which he was sent. If a person goes out for work of the office or in the course of his employment, but then goes towards an entirely different place, theory of notional extension cannot be applied. There has to be a reasonable connection both in time and place. There has also to be a reasonable connection between the work done by him at the actual place where he was sent and the work done where he was not supposed to go. A little diversion may not matter, but going entirely to the opposite side would not in any way cover the journey in the course of employment.

10. In such circumstances, the deceased was on a public road as any other member of the general public and not an employee of the appellant. Reliance in this regard may be placed on [Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others](#), .

11. The Hon"ble Supreme Court also held in [Mackinnon Mackenzie and Co. \(P\) Ltd. Vs. Ibrahim Mahmmed Issak,](#) that if the accident occurred on account of a risk, which was not incidental to the employment, the claim cannot succeed. If the workman exposes himself to an added peril by his own imprudence, no law can come to his rescue.

12. Learned counsel for the respondents, on the other hand, argued that the Commissioner made no mistake in granting compensation to the respondents because the theory of notional extension was rightly applied. He submitted that deceased was a Peon and the respondents being the surviving family were poor people, who were compensated for the death of Ram Singh. These arguments would not hold any ground because the law does not work on sympathy. It may be mentioned at the cost of repetition that theory of notional extension was wrongly applied by the Commissioner and many of the major facts and evidence were overlooked while passing the award. It is clear from the evidence that Ram Singh had not died in the course of his employment and, therefore, the employer could not be made liable to compensate his heirs. The appeal is allowed. The impugned award is set aside and the petition filed by the respondents is dismissed.