

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 5847 OF 2014

[Arising out of SLP (Cri.) No.27614 OF 2011]

Manju Sarkar & Ors.... **Appellant(s)****versus****Mabish Miah and ors.**... **Respondent(s)****J U D G M E N T****C. NAGAPPAN, J.**

1. Leave granted.
2. This appeal is directed against the judgment and order dated 16.3.2009 passed by the Guwahati High Court, Agartala Bench, in MFC (W.C.) 03 of 2009 dismissing the appeal of the appellants herein against the order dated 12.12.2008 of the Commissioner for Workmen's Compensation West Tripura, Agartala, whereby the appellants were denied compensation for the demise of employee Sajal Sarkar.

3. The facts in brief are stated as follows: Respondents 1 and 2 are the joint owners of the truck vehicle bearing Registration No.TR 01-B-1689 and they had taken policy of insurance for the said truck with respondent No.3. Sajal Sarkar, the husband of the appellant No.1 was driver of the said truck vehicle under the employment of respondents Nos.1 and 2 on 14.5.2005 and he drove the truck and reached Dharmanagar from Agartala and at that time he noticed some mechanical trouble in the truck and he got down to make arrangement for repair of the vehicle but on the intervening night of 14/15-5-2005 at about 1.00 - 1.30 a.m. he met with a road accident and sustained grievous injuries in Assam Agartala road in between S.T. Para and Kherengjuri under Churaibari Police Station limit and he was taken to Dharmanagar hospital where he succumbed to the injuries in the early hours on 15.5.2005. The helper of the truck Bikram Deb who was waiting in the truck, went in search of Sajal Sarkar in the morning on 15.5.2005 and after coming to know of the accident, he went to hospital and

confirmed the death of driver Sajal Sarkar and thereafter went to Churaibari Police Station and gave a complaint on which a case under FIR No.28/05 for the alleged offences under Section 279 and 304 (A) IPC was registered. The appellant No.1 the widow along with appellant No.2, her minor daughter and appellant No.3, the mother-in-law, filed a suit under the Workmen's Compensation Act, 1923 in T.S. W.C. 39 of 2005 before the Commissioner, Workmen's Compensation, West Tripura at Agartala contending that Sajal Sarkar met with a road accident in the course of his employment under respondent Nos.1 and 2 resulting in his death and the respondents were liable to pay compensation of Rs. 7 lakhs along with interest as per the provisions of the Act. The Commissioner dismissed the suit on contest. The appellants challenged the same by filing appeal in MFA(WC) 03 of 2009 and the High Court dismissed the appeal. Aggrieved by the same the appellants have preferred the present appeal.

4. The learned counsel for the appellants contended that Sajal Sarkar met with a road accident resulting in his death during the course of his employment as truck driver under respondent Nos.1 and 2 and the Courts below have failed to note the principle of notional extension at both the entry and exit by time and space and apply the same to the present case and the appellants are entitled to compensation.

5. Per contra the learned counsel for the respondents contended that Sajal Sarkar parked the truck in the godown complex of FCI Churaibari and considering the delay of loading goods, he left the truck and went away towards an unknown destination in connection with his personal affairs, saying to helper Bikram Deb that he would return by night, and the appellants have not proved that there was mechanical trouble in the truck on the way to Churaibari FCI godown as pleaded by them and Sajal Sarkar did not suffer the injuries in the course of his employment and, therefore,

the appellants are not entitled to receive any compensation under the Act, as rightly held by the Courts below.

6. We have carefully considered the rival contentions and perused the records. The case of the appellants is that on 14.5.2005 Sajal Sarkar was driving the truck vehicle under the employment of respondents 1 and 2 from Agartala to Churaibari FCI godown and when he reached Dharmanagar he got down to make arrangement for repairing the mechanical trouble in the truck and in the same night he met with a road accident and sustained injuries which led to his death in the hospital and since death has occurred in the course of employment, they are entitled to compensation from the respondents. Respondent Nos.1 and 2 in their joint written statement filed before the Commissioner have stated that one Gopal Sharma was the permanent driver of their truck vehicle and on 13.5.2005 in the absence of their permanent driver they entrusted their truck to Sajal Sarkar to drive to Churaibari FCI godown and on the same day the truck entered the godown complex of FCI at Churaibari and

Sajal Sarkar left the truck handing over the key to Bikram Deb, helper of the truck and thereafter Sajal Sarkar ceased to be in their employment and on 17.5.2005 the permanent driver Gopal Sharma drove the truck from Churaibari to Agartala and hence they are not liable to pay any compensation for the death of Sajal Sarkar and in any event their vehicle is insured with Respondent No.3 and it is liable to pay compensation.

7. From the pleadings it is clear that Sajal Sarkar was employed by respondent Nos.1 and 2 to drive their truck at the relevant time. Though respondent Nos. 1 and 2 had stated in the counter that Sajal Sarkar was entrusted to drive the truck on 13.5.2005 and on the same day the said truck entered the godown complex of FCI at Churaibari, this statement about the date does not appear to be correct. It is categorically stated in the claim petition that Sajal Sarkar drove the truck vehicle on 14.5.2005 and the said fact is corroborated by the averments in the First Information

Report as well as final report which specifically states that the truck reached the FCI godown at Churaibari on 14.5.2005.

8. Further case of respondent Nos.1 and 2 is that Sajal Sarkar was employed by them to drive the truck vehicle from Agartala to Dharmanagar FCI godown at Churaibari and on the truck reaching the godown, Sajal Sarkar ceased to be in their employment. This also appears to be an after thought and factually incorrect. As per the averments in the First Information Report lodged by helper Bikram Deb the truck reached Churaibari FCI godown on 14.5.2005 and Sajal Sarkar was to return back to Agartala with the truck laden with rice bags. According to the complainant, on reaching FCI godown in the afternoon on 14.5.2005, considering the delay of loading goods, Sajal Sarkar left the place by leaving the truck in his care and told him that he would return in the night and since he did not return during the night, he searched him the next morning and after coming to know about the accident and death, he lodged the complaint. If Sajal Sarkar was actually employed only for the trip from

Agartala to FCI godown Churaibari there was no need for him to inform the helper that he would come back in the night to the godown for the return trip and in the same way there was no obligation on the part of the helper Bikram Deb to search for Sajal Sarkar the next day morning leading to lodging of the complaint. These circumstances clinch the issue and prove that Sajal Sarkar was employed to drive the truck from Agartala to FCI godown Churaibari and return back to Agartala with the truck laden with the rice bags. It is also relevant to point out that respondent Nos.1 and 2 neither examined themselves in the trial nor examined helper Bikram Deb or permanent driver Gopal Sharma to substantiate their plea.

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9. According to the appellants, Sajal Sarkar on reaching Dharmanagar noticed some mechanical trouble in the truck and he got down to make arrangement for repairing the same and in the night he met with an accident. Churaibari FCI godown is located in Dharmanagar. The Courts below have rejected the claim petition on the ground that there is

contradiction in the claimants case since there was no mention of mechanical defect in the truck in the First Information Report. What is relevant is as to whether Sajal Sarkar continued to be in course of employment under respondent Nos.1 and 2 at the time of sustaining injuries in the accident culminating in his death. Sajal Sarkar was at Churaibari, Dharmanagar only on account of his employment as driver of the truck and there he met with the road accident.

10. This Court has in the celebrated decision in **General Manager B.E.S.T. Undertaking, Bombay vs. Mrs. Agnes**

(AIR 1964 SC 193] laid down as follows:

“Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the “down tool” signal is given or when the workman leaves the actual workshop where he is working. There is

a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and, egress to and from the place of employment.”

11. As rightly contended by learned counsel appearing for the appellants there is a notional extension in the present case also and we would, therefore, hold that Sajal Sarkar met with the road accident in the course of his employment under respondent Nos.1 and 2. The Courts below have misdirected themselves while dealing with this question and the finding rendered by them is perverse and unsustainable.

12. In the claim petition the appellants have stated that Sajal Sarkar at the time of death was aged about 22 years and used to get monthly wages of Rs. 4,500/- at the time of accident. The first appellant herein examined herself as PW1 in the trial and has reiterated the age and income of the deceased. Three documents were marked on her side. Her

testimony deserves acceptance. As per Section 4 clause 1(a) of the Act where death results from the injury, 50% of the monthly wages of the deceased multiplied by the relevant factor would be the amount of compensation. In the present case the compensation would be a sum of Rs.2250 being 50% of the monthly wages multiplied by factor 221.37, which comes to Rs.4,98,082.50 and a further sum of Rs.10,000/- could be awarded towards funeral expenses as per Section 4 Clause (4). In the circumstances of the case we deem it just and proper to award interest at the rate of 9% per annum on the compensation from the date of claim petition.

13. A contention was raised by the learned counsel for the Respondent No.3 Insurance Company that they are not liable to pay the interest component and reliance was placed on the decision of **New India Assurances Co. Ltd. Vs. Harshad Bhai Amrut Bhai Modhiya and another** [(2006) 5 SCC 192] In the facts of the case on which the said decision arose, the contract of insurance entered into between the

parties contained a proviso that the insurance granted is not extended to include any interest. In the present case there is nothing on record to show that respondent No.3 Insurance Company either pleaded about existence of such a clause in the contract of insurance or led any evidence to the said effect and hence the said decision will not help respondent No.3 in any way and the contention raised is devoid of merit.

14. In the result the appeal is allowed and the judgment and order of the Courts below are set aside and the claim petition is allowed and there shall be a Decree directing the respondents to pay a sum of Rs.5,08,082.50 as compensation together with interest at the rate of 9 per cent per annum from the date of claim petition, with costs.

.....J.
(T.S. Thakur)

.....J.
(C. Nagappan)

New Delhi;
June 30, 2014