

from any error in the exercise of his jurisdiction. I, therefore, find no substance in the submission so made. Consequently, this appeal is dismissed. Since the respondents are not represented before me, there shall be no order as to costs.

S.C.K.

*Before D. V. Sehgal, J.*

HARJINDER KAUR and others,—Appellants.

*versus*

EMPLOYEES' STATE INSURANCE CORPORATION, AMRITSAR,—Respondent.

F.A.O. No. 362 of 1982.

May 1, 1987.

*Employees' State Insurance Act (XXXIV of 1948)—Sections 2(a), 51-A, 85-B, Regulation 31-A—Employment injury—Meaning of—Death of bus driver due to heart failure while sleeping in the bus—Such injury—Whether employment injury—Payment of benefits withheld by Corporation—Liability to pay interest on such amount.*

*Held*, that the moment it is proved that the accident arose in the course of an insured person's employment, it is to be presumed, in the absence of evidence to the contrary, that the accident has arisen out of that employment. The learned trial Judge was, therefore, wrong in requiring proof from the appellants that, in spite of the fact that the death of the injured took place in the course of his employment, it had arisen out of that employment. No doubt, this presumption is rebuttable but there is no evidence worth the name on the record which may be styled as evidence to the contrary. There is no evidence that he was suffering from any heart ailment prior to the date of his death. It is clear that had he been at his residence or in the City of Amritsar and his wife and other attendants had been around him, the moment he suffered the heart attack medical aid would have been provided to him and it is quite possible that he would have survived this attack. The very fact that no medical aid could be afforded because he was sleeping in the bus all alone while on duty makes it clear that the death arose out of his employment. (Para 6).

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*Held*, that the award of interest is justified for the reason that the respondent-Corporation is entitled to recover amounts of arrears of contributions under the Act along with damages/interest. It should have, therefore, a corresponding obligation to pay interest on the outstanding dues payable by it to the insured employees and their dependants. (Para 8).

*First Appeal from the order of the Court of Shri Shamsher Singh Sohal, P.C.S. Judge, Employees State Insurance Court, Amritsar, dated 15th May, 1982, dismissing the application.*

V. P. Sarda, Advocate with S. S. Chopra, Advocate, for the Appellant.

Krishan Lal Kapur, Advocate, for the Respondent.

**JUDGMENT**

*D. V. Sehgal, J.*—(1) This appeal under section 82 of the Employees' State Insurance Act, 1948 (for short 'the Act'), is directed against the order dated 15th May, 1982 passed by the Judge, Employees State Insurance Court, Amritsar, whereby he dismissed an application filed by the appellants under section 75 read with section 2(6-A) of the Act for declaration that Gian Singh died during the course of employment and the appellants, being his dependants, are entitled to the payment of benefits under section 52 of the Act. Appellant No. 1 is the widow, appellants Nos. 2, 3 and 4 are minor daughters and appellants Nos. 5 and 6 are the minor sons of Gian Singh deceased.

(2) Gian Singh was employed as a driver with the Punjab Roadways, Amritsar. He was covered under the provisions of section 2(9) of the Act and was allotted Insurance No. 12/2050892 by the local office of the Employees' State Insurance Corporation, the respondent. He was thus entitled to all the benefits provided by the various provisions of the Act. On 7th January, 1978 he drove bus No. PUE-273 to village Ranian where he had to pass the night intervening 7th and 8th of January, 1978. He was also accompanied by Prem Singh conductor on that date. At night time he slept inside the bus at Ranian. He was found dead on the morning of 8th January, 1978. The incident of his death was duly reported at Police Station, Lopoke.

His post-mortem examination conducted by Dr. Gurdeep Kumar at the Civil Hospital at Amritsar on 8th January, 1978 mentions the cause of his death as 'heart failure'. The claim of the appellants is that the cause of death of Gian Singh was an employment injury as he had died while on duty and as such a request was made for the grant of benefits under the Act to the appellants who are the dependants of Gian Singh deceased.

(3) The learned trial Judge has held that all the above facts stated in the petition by the appellants are proved. Gian Singh died in the course of his employment while on duty at night sleeping in the bus at village Ranian. He, however, held that there is no material on the record to hold that his death has arisen out of his employment. According to him, the association of death of the deceased with his employment is not established. Therefore, he dismissed their application.

(4) I have heard the learned counsel for the parties. I find that this appeal deserves to be allowed. Section 2(8) of the Act defines 'employment injury' thus—

“ ‘Employment injury’ means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.”

(5) Section 51-A, which was added by Amendment Act No. 44 of 1966 provides thus—

“51-A. *Presumption as to accident arising in course of employment:*

For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.”

(6) Thus, the moment it is proved that the accident arose in the course of an insured person's employment, it is to be presumed, in

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the absence of evidence to the contrary, that the accident has arisen out of that employment. The learned trial Judge was, therefore, wrong in requiring proof from the appellants that, in spite of the fact that the death of Gian Singh took place in the course of his employment, it had arisen out of that employment. No doubt, this presumption is rebuttable but there is no evidence worth the name on the record which may be styled as evidence to the contrary. The learned counsel for the respondent invited my attention to Ex. R.W. 1/1 — a letter issued by the Medical Superintendent, E.S.I. Hospital, Amritsar, stating that a perusal of the post-mortem examination and reports of the Chemical Examiner, Punjab, and a Pathologist of the Medical College, Amritsar, indicates that the death of Gian Singh was due to natural cause and hence not due to any employment injury. The author of this letter has not been examined. It has not been spelt out why it is not an employment injury and how it can be styled as being due to natural cause. Gian Singh died of heart failure inside the bus. He drove the bus from Amritsar to Ranian and then slept inside the bus for the night. There is no evidence that he was suffering from any heart ailment prior to the date of his death. It is clear that had he been at his residence or in the city of Amritsar and his wife and other attendants had been around him, the moment he suffered the heart attack medical aid would have been provided to him and it is quite possible that he would have survived this attack. The very fact that no medical aid could be afforded because he was sleeping in the bus all alone while on duty makes it clear that the death arose out of his employment.

(7) I must record my anguish here with regard to the manner in which the claim of the dependants of Gian Singh deceased has been resisted by the respondent-Corporation. Under the provisions of the Act and the Regulations Gian Singh was making contribution out of his meagre salary for his employment insurance. The claim was resisted by the respondent-Corporation on hypertechnical grounds and it sought support for its defence from a letter the contents of which are not even admissible in evidence. The dependants of workmen who are insured under the Act can illafford a protracted litigation. It is the duty of the Corporation to come out voluntarily to the help of the dependants of an insured employee who dies in the course of his employment and whose death arise out of such employment.

(8) I, therefore, allow this appeal with costs, set aside the order of the learned trial Judge and hold that the appellants are entitled

to the benefits under the Act because of the death of their breadwinner Gian Singh who died in the course of his employment and whose death had arisen out of that employment. The costs are assessed at Rs. 500, which shall be paid by the respondent-Corporation to the appellants. The appellants shall also be entitled to interest at the rate of 12 per cent per annum on the outstanding dues admissible to them under the provisions of the Act from the date of their claim application till the date of payment of the same. The award of this interest is justified for the reason that the respondent-Corporation is entitled to recover amounts of arrears of contributions under the Act along with damages/interest under section 85-B and Regulation No. 31-A of the Regulations made under the Act. It should have, therefore a corresponding obligation to pay interest on the outstanding dues payable by it to the insured employees and their dependants.

S.C.K.

*Before M. M. Punchhi, J.*

RAKESH KUMARI,—*Petitioner.*

*versus*

PUNJAB SCHOOL EDUCATION BOARD,—*Respondent.*

*Civil Writ Petition No. 6068 of 1986.*

May 7, 1987.

*Punjab School Education Board (Higher Secondary Examination) Regulation, 1982—Regulation 14(1)—Regulation providing one year gap between two examinations—Candidate filing admission form—Date of passing examination mentioned in the form correctly—One year period not expired—Candidate not eligible—Form accepted—Candidate appeared in the examination—Result of candidate withheld—Regulation giving power to Board to cancel the result of the candidate not eligible—Effect of—Candidate whether entitled to declaration of result.*

*Held.* that she was ineligible to appear in the examination. She filled the admission form clearly declaring that she had fully understood the syllabus, rules and regulations as also the instructions concerned with the examination. Such a declaration cannot be allowed to be treated as casual. She is presumed to have known