

(1959) 02 MP CK 0019

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 67 of 1958

Ajudhee Bai

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 27-02-1959

Acts Referred:

Employees State Insurance Act, 1948 — Section 82

Citation : AIR 1959 MP 338 : (1960) 5 MPLJ 776

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : J.P. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

This is an appeal u/s 82 of the Employees State Insurance Act (Act XXXIV of 1948) from the judgment of the Employees' State Insurance Court, Gwalior, refusing to grant the appellant a life pension calculated according to the formula in the scheme on the ground that her husband had died as a result of "employment injury" as defined in Section 2(8) of the Act.

An appeal u/s 82, it may be noted, is a special appeal that lies only if it involves a substantial question of law. It is urged on behalf of the appellant that the substantial question of law is the interpretation of the phrase "employment injury".

The facts are admitted. The appellant's husband was an employee of the C. I. M. M. Go, Birlanagar and died suddenly in the premises of the Factory on 25-7-57. It appears that he was going to join his duty in his shift but had not begun working, a circumstance which is of no significance, either way. It is also common ground that the death was not the result of an accident, but of heart failure; nor was the heart failure the consequence of a sudden shock or sudden stress or exertion during actual working. The man was just walking into the

factory and as often happens with persons of heart ailment he suddenly collapsed. It is urged and rightly that the phrase "in the course of employment" does not exclude a happening which takes place outside both in time and place., the actual handling of the tools. There is authority in the reported case law (Bhagubai Vs. General Manager, Central Railway, V.T., Bombay, Saurashtra Salt Mfg. Co. Porbandar v. Bai Valsi Raja, (S) AIR 1955 Sau 20 , Varadarajulu Naidu and Others Vs. Masaya Boyan, Smt. Radha Bai v. P. Natesan and Co. Ltd. AIR 1955 NUC 71) for the view that "course of employment" means a casual connection and not necessarily special or temporary coincidence with the actual handling of the tools or working. These cases were under the Workmen's Compensation Act (1923), but the definition of "employment injury" is in this respect on pari materia with the corresponding provision in the Workmen's Compensation Act, 1923. On that ground the appellant has no difficulty.

The appellant's real difficulty is not that her husband did not die in course of employment, but that he did not receive the personal injury either from "an accident or from an occupational disease arising out of the course of employment." Obviously, it was not an accident, A number of cases have been cited such as Vishram Yesu Haldankar v. Dadabhoy Hormasji and Co. AIR 1942 Bom 175 K. Ramabrahmam Vs. The Traffic Manager, , Central Glass Industries Ltd. Vs. Abdul Hossain, In all these cases under the Workmen's Compensation Act there had been an accident and the question was whether the accident was in course of the employment, but that is not the question here.

The other . alternative is occupational disease. Certainly heart failure is not an occupational disease of those working in an establishment like the present one.

It is theoretically possible that heart failure itself may be an accident in course of employment; for example, if in course of employment there is any sudden noise or a sudden shock, or some such event of such intensity that it leads to heart failure which would not otherwise had happened, then it may be argued that here was an accident in course of the employment. That too is not the position here. Nor, in fact, it is pleaded. Here the unfortunate man was going into the factory and suffered a collapse on account of failure of the heart's function. Thus it is neither an accident as usually understood, nor one of the type I have just described as being atleast theoretically possible. Certainly, it is not the result of occupational disease.

I, therefore, find no substance in this appeal and I dismiss it summarily.