
(1986) 02 GUJ CK 0015
In the Gujarat High Court
Case No : First Appeal No. 1160 of 1982

Amri Naran and Another

APPELLANT

Vs

Saukem Emp. Co. Op. Society Ltd.

RESPONDENT

Date of Decision : 28-02-1986

Acts Referred:

Factories Act, 1948 — Section 2

Workmens Compensation Act, 1923 — Section 11A, 2(1), 3

Citation : (1987) ACJ 451 : (1987) 54 FLR 130 : (1986) 2 GLR 1221 : (1993) 3 LLJ 92

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : B.T. Buch, for the Appellant; Y.B. Bhatt, for K.S. Nanavaty, for the Respondent

Final Decision : Allowed

Judgement

Ravani, J.—While in employment with the respondent Co-operative Society, deceased workman Naran Kara died. According to the appellants, "the workman died due to an injury on account of the accident which arose" out of and during the course of employment. As the respondent Society did not need to the request made by the applicants for payment of compensation, they filed an application for compensation under the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"). The application has been dismissed by the Commissioner for Workmen's Compensation (hereinafter referred to as "the Commissioner"). Hence this appeal.

2. The deceased workman was in the employment of the respondent Society. His work was to look after the buffaloes and to milk the buffaloes which were being kept in the Dairy Farm of the respondent-Society. In the early morning of January 15, 1981, when the deceased workman had gone to the Dairy Farm to attend to his duties, he stumbled down and fell on a stone. Thereafter he died. On these allegations the dependents of the deceased workman i.e. Bai Amri

Naran, widow of the deceased, and Moti Naran, the daughter of the deceased, filed application for compensation. It was alleged that the monthly wages of the deceased workman were Rs. 277.50 and that the respondent- employer had failed to make payment of compensation amount without justification. Therefore, it was claimed that the applicants were entitled to claim compensation of Rs. 18,000/- and were also entitled to claim penalty of Rs. 9,000/- together with interest and cost.

3. The application was resisted by the respondent-Society inter alia on the ground that the deceased workman was a daily wage earner and his work was connected with buffaloes. It was admitted that the deceased workman did die while he was at the Dairy Farm. But it was contended that he died on account of weakness resulting from old age and due to sickness from which he was suffering. According to the respondent, the deceased workman felt giddiness and suffered a natural death and the death was on account of heart-failure. In short, the defence of the respondent-Society was that there was no causal connection with the death and the accident. It was also contended that the provisions of the Act would not apply to the case inasmuch as no "manufacturing activity" was being carried on by the respondent-Society and the provisions of Bombay Shops and Establishments Act were not applicable.

4. At one stage an attempt was made by the applicants to join Saurashtra Chemicals Company Ltd. as party respondent. It was contended in the application that the respondent-Saukem Employees Co-operative Society Ltd. was in reality, under the supervision, management and control of the Saurashtra Chemicals Company Ltd. Therefore, the workmen employed by the respondent Society should be held to be the workmen of Saurashtra Chemicals Company Ltd. This application, was rejected by the learned Commissioner. It appears that the applicants did not carry the matter further and acquiesced in the decision rendered by the learned Commissioner.

5. The applicants as well as the opponents led evidence before the learned Commissioner. After hearing the parties and after appreciation of evidence, the learned Commissioner held that the provisions of the Act were not applicable to the facts and circumstances of the case and therefore the application was liable to be rejected. Hence the present appeal by the original applicants-the dependents of the deceased workman.

6. The learned counsel for the appellants submitted that on admitted and proved facts, the provisions of Section 2(1)(n) read with Item No. 2 and Item No. 29 of Schedule II of the Act would be applicable. Section 2(1)(n) defines "workman". According to this definition of "workman", if any person is employed as "workman" in any such capacity as is specified in Schedule II and whose employment is not of a casual nature and who is not employed otherwise than for the purposes of the employer's trade or business, will be a workman.

7. The learned Commissioner came to the conclusion that the deceased was not

working in any premises or within the precincts whereof a manufacturing process as defined in Clause (k) of Section 2 of the Factories Act, was being carried on or in any kind of work whatever incidental to or concerned with any such manufacturing process or with the article made (whether or not employment in any such work is within the premises or precincts). The learned Commissioner further held that even though the electric motor pump is installed in the Dairy Farm and water is being lifted with the help of electric motor pump for the purposes of irrigation of fodder and for the purposes of filling in the trough for cattle, the activity carried on by the respondent-Society would not be covered by the aforesaid definition of "manufacturing process". It is difficult to agree with this conclusion arrived at by the learned Commissioner.

8. In the deposition of Bhima Arjan Gohel (Exh. 19), it is clearly stated that the respondent Society has a farm (wadi) wherein fodder is being grown for buffaloes. It is also stated that electric motor pump is installed for lifting water and the water is being filled in the trough. On this point there is no cross-examination. Further, from this evidence it also appears that drinking water is being collected from Birla Company (i.e. Saurashtra Chemicals Company Ltd.). There were about 28 buffaloes, out of which 20 buffaloes were yielding milk. There were eight cows, out of which four were yielding milk and there were five bullocks. Every day in the morning average 50 to 55 liters of milk was being produced while in the evening about 40 litres of milk was produced. This milk is being sold in the shop of the Co-operative Society. In cross-examination of this witness it is only asked as to who makes the payment of the electricity bill. It is immaterial whether the electricity bill is paid by the respondent- Society or by anyone else. This would not destroy the fact that electric motor pump is installed and the same is being used for the purposes of growing fodder and for the purposes of lifting water from well and collecting the same in the trough for buffaloes.

9. Similar is the evidence of Amra Lakha Mori (Exh. 24), who has also in terms stated that in the farm electric motor is installed for the purpose of lifting water and for providing the same to the buffaloes. According to the evidence of this witness, there are 125 buffaloes belonging to the respondent-Society. This evidence is also not challenged in the cross-examination. In above view of the matter, simply because milk is not being processed (of course in chemical sense) in the Dairy Farm, it cannot be said that there is no "manufacturing process" whatsoever. It is an admitted position [even by the witness of the respondent-Society, i.e. Rajendra Natvarlal Kothari (Exh.26)] that workmen have been employed for milking the buffaloes in the Dairy Farm and milk is being distributed to every customer and shareholder from the booth fixed for the purpose of such distribution. The admission is evident if one reads the evidence of Rajendra Natvarlal Kothari (Exh. 26), who has been examined by the respondent-Society.

10. In view of this admitted position, if one reads the definition of

"manufacturing process", it is clear that when buffaloes are milked and the milk is filled in different pots and taken to shops for distribution, this process would be covered by the phrase "otherwise treating or adapting any article or substance with a view to use, sale, transport or disposal or delivery". The words treating" or "adapting" occurring in Clause (i) of the definition of "manufacturing process" should be given broadest possible meaning so as to cover the activities and process by which milk is filled in different pots. Such processing takes place with a view to disposal or delivery, through the Shop of the Society or milk booth specially created for the purpose. Moreover, in the instant case, in the farm electric pump is used for lifting water. This would be covered by Clause (ii) of the definition of "manufacturing process". Thus, it is clear that the learned Commissioner has misread the evidence and he tried to take into consideration the material evidence. Hence, he has committed a grave error of law and has come to a wrong conclusion with regard to the activity, being carried on in the Dairy Farm.

11. Moreover, Item No. (xxix) of Schedule II will also be applicable in the present case. It reads as follows:

"employed in farming by tractors or other contrivances driven by steam or other mechanical power or by electricity"

As per the evidence discussed here-inabove it is clear that in the Dairy Farm, electric contrivances are used for the purpose of lifting water from the well as well as for growing fodder and using the same for the cattle. Simply because the tractors are not being used in the farm, it cannot be said that the activity carried on at the farm would not be covered within the aforesaid item. It may be noted that it is not necessary that the workman should have been employed in the particular or specified activity mentioned in different items of Schedule II. The workman should have been employed to perform any duty which should have connection with the particular or specified activity mentioned in any of the items of the Schedule. Once it is shown that any activity specified in any of the items of the Schedule is carried out by the employer, and if the workman is employed in such activity or in any other activity which may have connection with any such specified activity, that workman would be covered by the provisions of the Act. Maintenance of buffaloes and milking the buffaloes kept in the farm has definite and direct connection with the farming which is carried on with mechanical and/or electrical contrivances. In this context, the by-laws of the Society which are produced at Exh. 35 may be read. By-law No. 3(a) which refers to the objects of the Society, reads as follows:

"To sell to its members as well as to other consumers articles of consumption bought by it Or manufactured by it either by itself or by taking on lease or in combination with others."

This object clearly shows that the respondent-Society has been formed with an object to manufacture certain commodities. It appears that the learned

Commissioner has not referred to this provision of by-law. He has proceeded on the footing that milk is not being processed at all in the premises and therefore, there is no manufacturing activity. With respect, this approach is erroneous. The provisions of the Act are required to be read liberally so as to give maximum coverage to the workmen employed in different types of establishments.

12. The learned counsel for the appellants has relied upon the decision of the Allahabad High Court in the case of Sulhar v. "Yashpal, reported in 1981 LIC 196. Therein it is held that the Act being beneficial legislation has to be construed as to fulfil its object. The word "farming" is not defined in the Act. It is held that "Farming" should be widely construed and must not be confined to the activity of actually tilling the land or sowing the crop. It is further held that any farmer who is engaged in agricultural pursuits and is using tractors or other contrivances which are driven by steam or other mechanical power, or by electricity, would be covered in case he engages a workman in these pursuits. "Farming" means carrying on these activities appropriate to the land recognisable as farm land. It was a case pertaining to sugarcane crushing. It was held that crushing of sugarcane is directly connected with farming.

13. Similarly in the case of Bhopal Sugar Industries Limited and Another Vs. Sumitra Bai Battan and Others, , a Division Bench of the Madhya Pradesh High Court has held that a workman engaged in supervising and controlling flow of water from electric pump for irrigating sugarcane field would also be covered by the provisions of the Act though he may not have been directly employed for the purpose of running the tractor or operating electric or other contrivances mentioned in the section. All that is required is that the work which he does should have some nexus or connection with the tractor or other contrivances mentioned in the section.

14. In the instant case, as stated here-inabove, electric motor pumps have been installed in the farm, land for the purpose of lifting water and this water was being collected in the trough for buffaloes and other animals. The duty of the deceased workman was to look after the buffaloes. Therefore, there was sufficient nexus between the farming activity and the duty for which the workman was engaged. Hence, the Finding arrived at by the learned Commissioner that the deceased workman was not a "workman" within the meaning of the Act and therefore the application was required to be rejected, has no merits and it has got to be reversed.

15. The learned counsel for the respondent-Society submitted that the deceased workman was not covered by the substantive definition of "workman" contained in Section 2(1)(n) of the Act. It is his contention that the deceased was a daily wage earner and therefore a casual, worker and hence not covered by the definition of "workman" given in the Act. The contention cannot be accepted. But apart from this, if one looks at the written statement filed by the respondent-Society, it is clear that this contention has not been raised in the written statement. On the contrary in the written statement it is stated that the daily

wages of the deceased workman were Rs. 9.25 and he was entitled to claim wages for the days for which he would have worked. It is no-where stated in the written statement that the deceased workman was not employed for the purpose of trade and business of the respondent-Society. If a workman is to be taken out of the scope of Section 2(1)(n) of the Act, two things are required to be proved:

- (1) that employment was of a casual nature, and
- (2) that he was employed otherwise than for the purpose of employer's trade or business.

Such a case is not put forth in the written statement. It is nowhere pleaded that milking of buffaloes was not part of the trade and business of the respondent-Society. No evidence on this line is led. Therefore, the contention sought to be raised on the basis of the provisions of Section 2(1)(n) of the Act has got to be rejected.

16. In the instant case it is amply proved, rather it is admitted, that the deceased workman was employed for the purpose of milking the buffaloes and for looking after them. In the written statement as well as in the evidence led on behalf of the respondent-Society, it is an admitted position that maintaining buffaloes was the main business and object of the respondent-Society. As stated hereinabove and as held by a Division Bench of the Kerala High Court in the case of Kochu Velu v. Purakkattu Joseph, reported in 1980 LIC 902, two requirements, namely, employment of a casual nature as also employment otherwise than for the purpose of the employer's trade or business are required to be proved for justifying the exclusion of a person from the definition of workman. These two factors are to be taken cumulatively. In case one of them is absent, the workman cannot be excluded from the purview of the definition. If it is shown that workman is employed on monthly wages not exceeding Rs. 500/- in any capacity as specified in Schedule II, his case cannot be taken out of the purview of the Act simply by showing that he was employed as a daily wage earner.

17. Moreover, in the instant case, the contention that the deceased workman was a daily wage earner has no factual foundation. One Rajendra Natvarlal Kothari, Exh. 26, has been examined by the respondent-Society. He was working as Supervisor of the Dairy Farm. During the course of chief examination, in para 11, he has stated that the wife of the deceased was paid wages of seven days in lieu of sick leave. This clearly indicates that the deceased workman was not a daily wage earner. Had he been a daily wage earner, he would not have been entitled to sick leave at all. It is further stated by this witness in cross-examination that the deceased workman was entitled to 15 days earned leave every year. This also indicates that the deceased was not a daily wage earner. How can a daily wage earner be entitled to "earned leave"?

18. The learned counsel for the respondent-Society submitted that the wages of the deceased workman are not determinable. This contention cannot be accepted. Section 5 of the Act makes provision regarding the method of

calculating wages. In the instant case, it is an admitted position that the respondent-Society maintained registers of workmen employed by it. This is clear from the evidence of Rajendra Kothari (Exh.26), who has even referred to the register of workmen employed by the Society. As admitted by him, the deceased workman was entitled to even 15 days earned leave every year. It is also admitted by him that his daily wages were Rs. 9.25. Therefore, multiplying this figure of Rs. 9.25 by 30, it would come to Rs. 277.50 per month. Deducting the four days' wages being weekly holidays in a month, the monthly wages would come to Rs. 240.50. On this basis the dependents of the workman would be entitled to claim an amount of Rs. 18,000/-, as the monthly wages of the workman is between Rs. 200 and Rs. 300/-. Schedule IV has been amended in the year 1984 which prescribes compensation payable in certain cases. But as per the Schedule then in force, the workman would be entitled to claim Rs. 18,000/- only.

19. The learned counsel for the respondent-Society submitted that the workman had died natural death and it cannot be said that he has died due to an injury resulting from an accident arising out of and during the course of employment. The submission cannot be accepted for the simple reason that even in the reply (Exh.28) to the notice dated April 6, 1981 given by the respondent, it is admitted that the deceased workman was working in the Dairy Farm for the last about seven years and that he was old, sick and infirm. It is further stated that while going to milk the buffaloes, he felt giddiness and fell down and died a natural death. As per the case put forth by the applicants", the workman had gone to the Dairy Farm early in the morning on the day of the incident and while going to milk the buffaloes he had stumbled and had fallen down and thereafter he died. From the evidence on record it is clear that the workman has died after he had joined duty and he has died during the course of employment. Therefore, the short question is, was there an accident which arose out of employment and due to that accident, did the workman die? In other words, is there any nexus or connection between the cause of death and the accident ? As stated above, the workman was old, sick and infirm. This is admitted by the respondent-Society even in the reply given to the notice issued on behalf of the applicants. The deceased workman was required to look after the buffaloes and to milk them. For this purpose he was required to go to the Farm early in the morning. This work is surely bound to cause stress and strain on the workman. As held by the Division Bench of this High Court in the case of Sadgunaben v. E. S. I. C., reported in 22 GLR 773, once the nexus is established between the cause of accident and nature of employment, it can be said that the accident arose out of employment. If an old man suffering from some sickness or infirmity is required to milk the buffaloes by getting up early in the morning, he is bound to experience physical stress and strain on his body and on account of this stress and strain if he stumbles down and if he dies on account of the fall or on account of latent disease from which he is suffering, then it has got to be held that the stress and strain of the work which he had performed had accelerated the death of the

workman. Once it is established (and in the case it has been established) that the duty which, the employee was required to perform accelerated the cause of death, the case will be covered by the aforesaid decision of the Division Bench of this Court and also a decision of this Court in the case of *Amubibi v. Nagri Mills Co. Ltd*, reported in 18 GLR 681. In above view of the matter, the contention that the death of the workman has not resulted on account of an accident arising out of and during the course of employment has got to be rejected.

20. The learned counsel for the appellants submits that the employer was liable to pay compensation as soon as it fell due. According to him, the employer was not justified in refusing to make the payment of compensation. It is clear from the record of the case that before filing the application for compensation, a notice (Exh.27) dated March 16, 1981 was issued. The notice was replied to by the respondent on April 6, 1981 (Exh.28). Therein it is clearly admitted that the deceased workman was working in the Dairy Farm for last about seven years. It is also admitted that as he was sick and infirm and as he was old, while going to milk the buffaloes, he felt giddiness and fell down and died a natural death. Despite this admitted position, at the stage of trial of the case, the employer has set up various technical and factual defences and has tried to resist the claim on untenable grounds, Thus the legitimate claim of the widow of the deceased and the daughter of the deceased has been delayed for more than five years. There was no justification whatsoever for the employer to deny the legitimate compensation amount. At any rate, even if the respondent-Society felt that the claim of compensation was doubtful, the Society ought to have deposited the entire amount or ought to have shown readiness to deposit the entire amount with the Commissioner. No such steps have been taken by the employer. Therefore, it is very clear that the provisions of Section 4-A are attracted in this case. Hence, the respondent-employer is liable to pay penalty to the extent of Rs. 9,000/-, i.e. 50% of the amount payable as compensation. It may be noted by retaining the amount of compensation with it for a period of more than five years the employer has earned an amount of interest which would be far in excess of the amount of penalty. Hence, this is a case of awarding of maximum penalty.

21. The learned counsel for the respondent-Society submitted that an amount of Rs. 1,000/- was paid by the employer to the dependents of the deceased workman and therefore, no cost should be awarded or at any rate, a set off of Rs. 1,000/- should be given. The aforesaid amount has not been paid towards compensation. Therefore, the question of giving set off does not arise.

22. In the result, the appeal is allowed. The judgment and order dated Feb. 26, 1982 passed in Workman's Compensation Case No. 7 of 1981 by the Commissioner for Workmen's Compensation (Civil Judge, Senior Division) Porbandar, is reversed and set aside. The respondent-employer is directed to pay an amount of Rs. 27,000/-, i.e. Rs. 18,000/- by way of compensation and Rs. 9,000/- as and by way of penalty, together with interest at the rate of 6% per

annum from the date of application till payment. The appeal is allowed with cost throughout. It is further directed that the aforesaid amount shall be deposited with the Commissioner for Workmen's Compensation within a period of one month from the date of receipt of the writ of this Court by the Commissioner, for being paid to the appellants-original applicants. On receipt of the writ by the Commissioner, he shall immediately inform the respondent and its advocate about the aforesaid direction.