
(1976) 08 GUJ CK 0003
In the Gujarat High Court
Case No : First Appeal No. 658 of 1967

Amubibi

APPELLANT

Vs

Nagri Mills Co. Ltd.

RESPONDENT

Date of Decision : 10-08-1976

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 30

Citation : (1976) ACJ 507 : (1977) 18 GLR 681 : (1977) 2 LLJ 510

Hon'ble Judges : D.A. Desai, J

Bench : Single Bench

Judgement

D.A. Desai, J.—Law's proverbial delay can be a cause of untold misery, agony and torture to a poor litigant is best illustrated by the facts of this case.

2. Appellant is the original applicant before the Commissioner for Workmen's Compensation, Ahmedabad. She is the widow of one Shaikhamu Shaikmahomed, an unfortunate mill hand who happened to be engaged and employed by the respondent, company. While serving with the respondent he was on duty on 3rd August, 1960 in the second shift which commenced around 3.30. P.M. Shaikhamu left his house at 3.00 P.M. to report for duty at the textile mills of the respondent-company. He entered the weaving department at the time appointed for starting of the second shift, He worked upto 5-30 P.M. when he was found lying in a passage near the weaving loom on which he was working. His colleague at the nearby loom one Ahmadbhai Avadhbhai Ext. 10 saw deceased Shaikhamu lying and he was taken to the dining shed, where on examination he was found to be dead. Dead body was taken to the civil hospital. One Dr. L. H. Acharya Ext. 12 carried out post mortem examination, copy of the post mortem notes is Ext. 12. He preserved viscera and sent it to the Chemical Analyser. In the meantime on receipt of the histopathology report, he gave his opinion as to the cause of death as heart failure due to acute coronary insufficiency. Subsequently he changed his opinion on receipt of the report of the Chemical Analyser and stated that death was due to arsonic poison. Applicant is

the widow of the deceased. She filed application for recovering compensation from the employer-respondent. To say the least the matter was scandalously conducted in the application was made on 3rd December, 1960 and the written statement filed by the respondent was recorded on 27th January, 1961. The matter was adjourned to as many as on 81 occasions commencing from 27th January, 1961 and ending with 19th August, 1967. An application made by the dependent widow for a paltry compensation of Rs. 3,500 before the Commissioner for Workmen's Compensation was kept pending for six years and was adjourned on as many as 81 occasions. This sufficient to bring the judicial process into disrepute. To add to the agony I may also note that evidence was recorded in September, 1962 and thereafter matter was adjourned for five years before final order could be pronounced. To say the least this discloses not only sorry but scandalous state of affairs.

3. The applicant claimed compensation on the ground that deceased Shaikhamuher husband died on account of an injury suffered in an accident arising out of and in course of his employment and, therefore, the employer is liable to pay the compensation.

4. At this stage, it is necessary to note the facts which are not in dispute. Deceased Shaikhamu was a permanent employee of the respondent-company. Presumably, he must be serving with them for a long time. He reported for duty on 3rd August, 1960 at 3-30 P.M. When the second shift starts. He was attached to looms Nos. 125 and 126. He took over from his colleague who was working in the first shift, started operating the looms and the worked upto 5-30 P.M. When at that time his colleague working on the adjoining loom one Ahmadbhai Avadhbhai Ext. 10 saw him lying in the passage near the loom. He was taken to the dining shed where he was declared dead. These facts are not in dispute.

5. First question is whether the applicant has discharged the burden which rests on her to show that deceased Shaikhamu died on account of an injury suffered by him in an accident arising out of and in course of his employment. This was the gravamen of charge of Mr. A. N. Divecha, learned advocate who appeared for the respondent-company. It was urged that there must be some casual connection established between the injury suffered in an accident and the employment of the workman and the risk must be incidental to the nature of employment. In support of this submission he relied on a decision of the Rajasthan High Court in Ramlal Jawahirlal Vs. Smt. Leela Bai and Others, . He also relied on a decision of the Division Bench of the Calcutta High Court in Sarat Chatterjee and Co. (Private), Ltd. Vs. Khairunnessa, . Apart from the authorities, requirement of S. 3 of the Workmen's Compensation Act which speaks of employer's liability for compensation clearly spells out a duty on the person claiming compensation to establish causal connection between the injury and the employment. In other words, accident must arise in course of employment meaning thereby as integral and inseverable part of employment and the risk of injury must be incidental to employment itself. But having and this, it must be

made distinctly clear that word "accident" and "injury" need not be understood in a narrow constricted sense. By "accident" some times we mean some collision something which causes external injury. "Accident" generally must be understood as something unforeseen, uncomprehended or that which could not have been foreseen or comprehended "injury" must be understood to mean that which imperials life or causes pain. Even where an employee is suffering from a disease and if employment causes acceleration of the disease either by strain or fatigue incidental to employment, employer would nonetheless be liable for compensation. This again is well-established by a catena of decisions.

6. Before applying this well-established principle to the facts of this case, let me dispose of one more contention of Mr. Divecha that it is not open to me to interfere with the findings of fact recorded by the learned Commissioner, as the scope of appeal under S. 30 of the workmen's Compensation Act is narrow and well defined. In other words it was urged that no appeal shall lie against an order made by the Commissioner, unless substantial question of law is involved in the appeal. What constitutes "substantial question of law" has always been the subject-matter of controversy in different Courts. In a very recent decision of the Division Bench of this High Court in Letters Patent Appeal No. 158 of 1973, decided on 6th February, 1973, it has been observed that the expression "substantial question of law" used in the proviso to S. 30(1) of the Act would cover a case in which the Commissioner had clearly misdirected himself on a question of law as to whether a notice of claim as required by law had been served on the employer. Examining the question as to whether a finding of fact can be interfered with the Division Bench observed that it is settled legal position that the findings of fact in a case under Workmen's Compensation Act if it has been arrived at on the basis of circumstantial evidence, without considering material circumstances which ought to have been considered or ignoring material circumstances or on mere conjectures or far-fetched inferences, could surely be said to have been vitiated by error of law, and a substantial question of law would involved if such finding results in gross injustice by defeating the workmen's claim which should have been allowed.

7. I would presently point out as to how the learned Commissioner completely misdirected himself by taking into consideration evidence which was wrongly admitted in record and on which he based the whole finding. If that evidence is held not to be properly admitted in record, the finding recorded by the learned Commissioner would fall to the ground. The learned Commissioner has observed that the viscera preserved by Dr. Acharya who carried out post-mortem examination was sent to the Chemical Analyser. He further observed that the Chemical Analyser sent his report. Chemical Analyser's report was found as part of some bunch of documents which was though tendered but not proved by Dr. Acharya. This bunch is marked Ext. 14. This Ext. 14 included other documents. Now, the Chemical Analyser's report only records his opinion. That opinion is recorded in a report submitted by him. Chemical Analyser is an expert. Therefore, his report contained the opinion of an expert. And this opinion of

expert has been admitted in evidence and relied upon by the learned Commissioner without examining the expert. Can these be greater violation of provisions of the Evidence Act, 6 to put it other way, if hide-bound rules of Evidence Act did not apply and in fact should not apply to the proceedings under the Workmen's Compensation Act, was the Commissioner justified in looking at a scrap of paper thrown into the record by a person not authorised to do so and containing opinion of a person whose identity remained undisclosed ? Chemical Analyser reached his conclusion that the viscera of deceased Shaikhamu disclosed presence of arsenic in the quantity of 1.3 grains. He recorded his opinion, based on observation, in a report. That report is brought on record without examining the Chemical Analyser. A very feeble attempt was made to urge that to objection was taken to the Commissioner reading this report. I have already pointed out at the commencement of the judgment how the learned Commissioner has utterly carelessly dealt with this matter. He recorded evidence in 1962 and delivered judgment in 1967. Within these 5 years at that time he looked at the report, it is difficult to gather. But assuming that he did look at the report to the knowledge of the applicant, the applicant was represented by a member of the local trade union. We will have to assume that he was well-versed in the intricate provisions of the Workmen's Compensation Act and the Evidence Act. He knew or was presumed to know that an opinion of an expert is inadmissible, unless expert is examined and gave reasons in support of the opinion. He could be cross-examined and probably in cross-examination he could be thoroughly exposed. I would presently point out some circumstances, which honestly speaking have generated grave doubt in my mind about the truthfulness of the contents of this report. But even leaving aside that doubt for the time being and assuming that the report of the Chemical Analyser can be looked in as piece of evidence, it has to be proved in the same manner in which an opinion of an expert is required to be proved. It can only be done, except of course by consent of parties, in the manner prescribed by law, namely, by first furnishing a copy to the other side. Conclusions therein recorded must be supported by reasons for the conclusion. The report must set out the test carried out to reach a conclusion and then offering himself for cross-examination. What the learned Commissioner has done is something which is unparalleled in a judicial proceeding. He reads the report and he does not care to find out who proved the report. And look at the interesting thing that the evidence discloses. Dr. Acharya who is not the author of the report reads a report made by some other expert whose personal identity remains undisclosed, all throughout the proceedings. And by reading it he says that he has now changed his earlier opinion and has acquired or adopted the opinion of someone who claimed to be Chemical Analyser and carried out same test. I need not illustrate distortion of evidence more brutally than what I have done here. To put it briefly the report of the Chemical Analyser is not proved. Dr. Acharya cannot read it. Dr. Acharya is not the author of the report. He cannot base his conclusion on a report of some other person. He cannot adopted that conclusion as his own because he has not carried out experiment himself. He did not know what tests were carried out. If in law I

can read somebody's letter and give evidence on it, there cannot be a worst case of hearsay evidence. Dr. Acharya's evidence would be good enough as hearsay evidence that deceased died on account of arsenic poisoning. Now, the learned Commissioner has wholly based his judgment on a piece of paper not duly proved having no evidentiary value and non-suited the applicant after keeping the applicant awaiting for six long years. If this case does not permit me to interfere keeping in view the limited jurisdiction under S 30, I think S. 30 should be ignored for all purposes. There could not be better case where substantial question of law has been fully made out. If I do not interfere with the miscarriage of justice I would be failing in my duty.

8. Just for the purpose of record, I may also refer an earlier precedent that occurred in the manner. One Chothaji Becharji who was serving in Shri Arbuda Mills Limited. Reported for duty in the second shift commencing from 3-30 P.M. and worked there till 7-30 P.M., when he went to answer the call of nature. He was found lying in a lavatory unconscious, after his absence came to light and inquiry was made and he was declared dead. Post-mortem examination was done and viscera was preserved in which arsenic poison was recovered to the extent of 1.8 grain. Same defence of the company, namely, that this was a case of suicide. Same judgment by the same learned Commissioner, matter being approached in the same illegal manner. First appeal unfortunately came to be dismissed. The matter came in Letter Patent Appeal before a Division Bench of this High Court and examining both the ambit and scope of S. 30 and right of the Court to interfere with at the Letters Patent Appeal stage it was held that the Court should and must interfere to redress the wrong. I am fortunate that this is first appeal and the finding can be reversed. That precedent should help me to reach the same conclusion as far as the technical contention about the jurisdiction of this Court to interfere with the findings of fact is concerned.

9. Having disposed of all the contentions of Mr. Divecha it is now necessary to take a fresh look at the facts. Respondent-company does not say that on days just preceding the day on which deceased Shaikhamu died at the place of his service, he was absent or he was not keeping well. Even the applicant his widow does not say so. The employee came to the place of service hale and hearty and he worked for a period of two hours when he fell unconscious just at the place where he was working. Dr. Acharya who had the benefit to carry out postmortem examination gave his opinion both from his own personal observation and finding and relying upon the histo-pathologist's report that the probable cause of death was heart failure due to acute coronary insufficiency. This opinion is the opinion of a person who carried out postmortem examination, made his own observation filled in all the details in the notes of postmortem examination and reached and recorded a conclusion. A shifting of position that he adopted subsequently by relying on some or other inadmissible scrap of paper may be ignored.

10. Mr. Divecha further contended that even if the deceased died on account of heart failure due to acute coronary insufficiency, it is a case of natural death, and

there is no material to come to the conclusion that deceased died on account of an injury suffered by him in an accident arising out of and in course of his employment. This argument assumes that every time when an employee claims compensation under the Workmen's Compensation Act, he must show some injury, possibly of tangible character. He must show that the injury was caused on account of some accident, which must again be of tangible nature. He must also show that no other cause of death intervened in the case. In other words, injury was causacausans and not causa sine qua non. I am afraid that is not expected of the workman. The dependent of the workman has shown that workman reached the place of his service. He worked. In Dr. Acharya's estimate he was about 55 years of age. Mr. Divecha urged that at that age people naturally die even after the extended expectancy of life. I have no quarrel with Mr. Divecha that people may die or should die at the age of 55. But the deceased went to the place or his service. Not one question was asked in the cross-examination either of the widow or to the colleague who was working on the adjoining loom as to what happened between these two hours. Unfortunately, deceased is not available to tell us his story. Leaving aside any technical consideration, common course of human conduct or commonsense knowledge tells us that coronary insufficiency is generally the consequence of strain, extra work, fatigue. In the case of workman working on a loom in an artificial atmosphere of humidity (formerly called sweated labour) he is shown to have died on account of coronary insufficiency. Heart failure would be preceded by some sort of heart ailment, may be heart attack. In any event, if strain of work causes insufficiency that strain itself would be cause of death and it would be personal injury suffered by an employee in course of his employment. There is nothing to suggest that the man was unhappy at home, that he had some personal problems, that it caused mental strain. Here is a sweated labour working for eight hours on two looms standing all throughout and found lying unconscious at the place of service and the Doctor's first and honest opinion was heart failure on account of acute coronary insufficiency. It would only mean that deceased died on account of personal injury in an accident arising out of and in course of his employment. No other conclusion is possible. It is not possible to reach any other conclusion. On this conclusion the dependent of the employee is entitled to an award of compensation as claimed in the application.

11. The applicant claimed compensation in the amount of Rs. 3,500. It is denied for last 16 years and for excuses and causes which are thoroughly unjust. Therefore, the amount must be paid by the respondent-company with interest at the rate of 6 per cent per annum from the date of application till realisation. Respondent do also pay costs before the Commissioner and in this Court.

12. The appeal is accordingly allowed. Respondent to pay Rs. 3,500 with running interest at the rate of 6 per cent per annum from the date of application till realisation and costs both before the Commissioner and in this Court. Costs quantified at Rs. 300 before the Commissioner and Rs. 300 before this Court.

13. Order accordingly,