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(1955) 12 BOM CK 0009

In the Bombay High Court

Case No : Appeal No. 409 of 1955

Bai Ghisabai Gomsing — APPELLANT

Vs

Rustom Jehangir Mills Company Ltd. — RESPONDENT

Date of Decision : 16-12-1955

Acts Referred:

Citation : (1956) 2 LLJ 151

Hon'ble Judges : M.C. Chagla, C.J;P.V. Dixit, J

Bench : Division Bench

Judgement

Chagla, C.J.—The appellant is the widow of Gomsing Shivsing who was a workmen employed by the respondent mills. On 2 August, 1954 while he was working in the mills he had pain in the chest at about 8 a.m., a stimulant was given to him, he collapsed at 8-45 a.m. and he died while he was being taken to the hospital. The medical certificate is clear and that is that he died of right-sided heard failure. The doctor also deposed to the fact that exertion has adverse effect in cases of heart failure and that the heart disease must have been about ten years old.

2. On these facts it seems to us clear that the workmen died as a result of accident which in this case was the sudden collapse in the course of his employment and the only question which has to go to be considered is whether the accident caused the death was out of his employment. The Commissioner has taken the view that on the evidence he could not hold that the deceased worked on 2 August, 1954 and therefore, according to him, no strain was caused by any work done by him on that day. The evidence on this point is slightly conflicting. Two witnesses have been called by the appellant who were working at the same time as the deceased and they both deposed to the fact that he worked from 8 a.m up to 8-45 a.m. when he collapsed. As against this, the mills called their compounder and he deposed to the fact that it was he who gave a stimulant to the deceased and applied ointment to his chest when he was sent for and this was at about 8 a.m. He was again sent for after half an hour and at that time he

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found the deceased lying on the floor of the godown. The compounder said that even when he went there for the first time he found the deceased sitting on the ground. The learned Commissioner has preferred the evidence of the compounder to the evidence of the two other witnesses and as it involves the appreciation of evidence, we must accept that finding of fact. But in our opinion that finding does not of in any way support of the contention of the mills. What has got to be considered is whether the employment of the deceased had any causal connexion with the ultimate death or to put in a different language, whether that employment in any way accelerated his death. It is not necessary in law that at the time of the death the employee must actually be doing work which causes strain. If it is established that by regularly doing the work which he is called upon to do by his master his employment causes strain which accelerates rates his death, sufficient causal connexion is established and in law the injury would be deemed to have arisen out of the employment. In this case we must look at the nature of the work that the workmen was doing. Mr. Patel on behalf of the mills says that he was a jobber and that work would only involve supervision and that could not cause any strain. Now, there is the evidence of these two witnesses which has not been contradicted and that his work consisted in preparing bales of cloth, taking the bales to the godown in a lorry, stocking the bales in the godown and also removing the bales from the godown when delivery was to be given. Therefore, here we have a man who has been suffering from heart disease for ten years, lifting and removing heavy bales belonging to the mills. It cannot be suggested that the work of that character did not cause strain which would accelerate his death. Mr. Patel has relied on the evidence of one of the witnesses who has described the deceased as his jobber. But even a jobber may have to do heavy work and the evidence seems to suggest that he was a mazdoor supervising other mazdoors and also doing the work of a mazdoor. It is indeed surprising that if the mills contested this evidence as to the nature of the work that the deceased was doing, they should have called no evidence to prove that exactly was the nature of his work. Nothing was easier than for the mills to have produced the muster-roll or any other unimpeachable evidence to prove the exact type of work that the deceased was doing.

3. It is then urged by Mr. Patel that the case sought to be made out by the appellant in the course of her evidence is different from the case that she put forward in her application. Now, applications under the Workmen''s Compensation Act must not be construed with the same strictness as pleadings in a suit. It is true that in her application the applicant gave the cause of death "while working in the pressing department he was injured by the falling of bales which resulted in his death." There is evidence on record to show that at the where the deceased fell there were bales lying and it may be that it was represented to the poor widow that bales had fallen over her husband and that was the cause of his death. But there cannot be any slightest suggestion that in this case the mills were taken by surprise by the case sought to be made out by the appellant in the course of her evidence. The doctor''s certificate and his

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evidence clearly showed that this was a case not of any injury caused by bales falling upon the deceased but this was a simple case of a man suffering from heart disease dying of heart failure and the evidence of the witness called by the appellant also clearly showed that the collapse was not due to any bale falling upon the decease but it was caused by the strain due to the work that he was required to do. Therefore, we are unable to accept Mr. Patel''s contention that the mills were taken by surprise by the manner in which the case was put forward by the appellant in the course of the trial. We must, therefore, while accepting the finding of fact of the Commissioner, hold that he was in error in taking the view that the accident did not arise out of and in the course of the employment.

4. The result, therefore, is that the appeal will be allowed and the order of the Commissioner will be set aside. The amount of compensation is Rs. 35. The matter will go back to the Commissioner and he will distribute this sum to the dependents of the deceased according to law. The appellant to get the costs of the appeal and the costs of the proceedings before the Commissioner.

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