
(1955) 07 CAL CK 0044
In the Calcutta High Court
Case No : A.F.O.O. No. 242 of 1954

Bhagabanti

APPELLANT

Vs

General Manager, Eastern Railways

RESPONDENT

Date of Decision : 19-07-1955

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : AIR 1955 Cal 597 : 60 CWN 249 : (1955) 2 LLJ 522

Hon'ble Judges : Chakravartti, C.J.;Lahiri, J

Bench : Division Bench

Advocate : Nalini Kanta Mukherjee, for Mahendra Kumar Ghose, for the Appellant;Ajoy Kumar Basu, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—Mr. Mukherjee who has appeared for the appellant in this case realised that on the facts appearing from the evidence he had a difficult task to perform and accordingly he tried to obtain a decision in favour of his client by relying upon a pure question of law. What that question is, I shall state presently.

2. The facts are that one Bhagabanti applied to the Commissioner for Workmen's Compensation for compensation on account of the death of her husband, one Bideshi Rajbhor, who was alleged to have died by an accident arising out of and in the course of his employment under the respondent. Bidoshi was employed as a gang coolie under the Railway. He had been ill for some time, but had rejoined work after about a month's absence.

On 10-7-1953, he went to work at about 8 a. m., but when his wife went to reach him his food at about midday, she found him lying dead near the railway lines within the yard of the Burnpur Railway Station. According to her, there was blood on the face of the dead body and also on the ground near about the place where it lay. The case made by her in her application for compensation was that her husband had died by a puncture of his liver and other internal organs as a

result of a serious stroke received from a shovel with which he was working and of a consequent fall on the railway lines.

The manner in which the accident had happened was said to be that the shovel had slipped from the railway lines and the plates while the deceased was working with it. The daily wages of the deceased were said to have been Rs. 65/- per month and on that basis a claim for a sum of Rs. 2,100/- was made.

3. The Railways did not deny that the deceased had been employed as a workmen under them, but they denied that he had died by an accident arising out of and in the course of his employment. According to them, the death had been due to natural causes.

4. The claimant called two witnesses, neither of whom had actually seen the accident. The Railways called three, but as regards the manner to which the accident had taken place, they were in the same position. The only difference between the witnesses other than the medical witness called by the Railways was that while the witnesses for the claimant said that there was some blood on the dead body, the witnesses for the Railways, denied the presence of any blood. The medical witness said further that in his opinion the death had been a natural death.

5. The facts established by the evidence were thus extremely meagre. All that was proved was that the deceased had been a workman employed under the Railway, that on the day in question he had come to work and that before he had returned home, he was found lying dead at about midday within the yard of the Railway which was not outside his place of employment.

The only other material fact proved was that the deceased had recently been ill and on leave for about a month on account of illness and that when he had returned, he had been given light duty, On the day in question he had been given the duty of cutting grass from the railway lines.

6. The Commissioner has held that on these few facts it is not possible to find that the deceased had died by an accident arising out of and in the course of his employment so as to entitle his dependants to compensation from his employers. There was no evidence whatsoever of the specific case made in the application for compensation and no one said that the deceased had been working with a shovel or that any shovel had struck him.

Indeed, if the evidence of the mate who apparently had seen the deceased alive last is to be believed, the deceased was on the duty of cutting grass on the date of his death and therefore could have had little to do with a shovel. It appears to have been argued before the Commissioner that the deceased might have sustained a fall on the railway lines and ruptured some internal organ and that he might have fallen down as a result of the strain caused by the performance of his duties.

The Commissioner has found it impossible to proceed on any such basis because,

in his opinion, to do so would be to proceed on pure speculation.

7. Before us Mr. Mukherjee contended that the case, had been mistried, inasmuch as the claimant had brought it to a stage at which the onus had shifted decidedly to the respondent which the learned Commissioner had overlooked. Apparently, Mr. Mukherjee was trying to lead the case towards decisions in which it has been held that where a workman is known to have been suffering from some disease which had impaired his health and he sustains some injury or falls dead in the course of the performance of his duties, the proper view to take is that the injury or death was caused partly by the disease and partly by accident, unless the employer succeeded in excluding accident by evidence called by him.

On that basis it is contended by Mr. Mukherjee that given that the deceased was a workman and employed under the respondent, given that he had come to work on the day in question, given that he was given work on that date and lastly given that he was found lying dead with the place of his employment before the working hours of the day were over, it was for the respondent to prove that his death had not been caused by some accident arising out of and in the course of his employment.

In support of that proposition Mr. Mukherjee relied upon certain much-cited cases, namely, --"Oates v. Earl Fitzwilliam Collieries Co." 32 BWCC 82 (A); -- "Partridge Jones and Paton Ltd. v. James" (1933) 148 LTR 553 (B); -- "Moore v. Tredegar Iron & Coal Co., Ltd." 31 BWCC. 359 (C).

8. The principles laid down in those cases are now well established. The most important of them is the second case which is a decision of the House of Lords and which in a sense may be said to have given a new direction to the decisions under the English Act, as Mr. Mukherjee rightly contended. But, in my view, even that new direction does not point to the direction of the facts of this case. In the cases cited by Mr. Mukherjee, the workman was invariably suffering from some serious disease which had impaired some vital organ of his body or his whole constitution and it was also found that at the time when he collapsed, he was actually in the midst of work.

Two facts are common to those cases -- one of them being an existing and wasting disease and the other being some strain actually brought about by the exertions made in the course of employment. If those two facts are present, it had generally been held to be immaterial whether the exertion was caused by the performance of normal duties or by the performance of some duty out of the ordinary, but there, has always been some medical evidence to the effect that the physical condition of the deceased was such that any strain on his system was calculated to make a fatal difference,

It has only been in such cases that the Courts in England have held that once the claimants have proved that the physical condition of the deceased had deteriorated by reason of a serious disease to which his constitution was subject

and also that at the time of the collapse or immediately before it, the deceased was actually engaged in the performance of his work and further that the physical condition was such that the strain of work was bound to tell upon it, the onus shifts on the employer to prove that the strain of the employment had not contributed to the death or the collapse in any manner and that the workman would have died even without the strain.

9. It seems to me quite impossible to say that the principles laid down in the cases to which I have just referred are attracted by the facts of the present case. It is true that, according to the evidence, the deceased had been ill for some time before his death and that he had been on sick leave for about a month before he rejoined his work, but there is nothing to show that the illness was not anything but a temporary indisposition and certainly nothing that at the time of his death he was suffering from any disease of any kind.

Nor is there any evidence to show whether he was actually engaged in work at the time when he had fallen down near the railway lines. The medical evidence, which has played so large a part in influencing the decisions of the English Courts in similar cases was practically valueless, inasmuch as beyond making a bald statement that the death had been a natural death, the doctor said nothing.

No "post mortem" examination was held and necessarily there was no evidence as to the physical condition of the deceased and no means of knowing whether the condition was such that the strain of labour might prove fatal or at least might accelerate death. Inasmuch as there is nothing to show that the deceased was suffering from any disease at the material time, nor anything to show that at the time the collapse came, he was actually under the strain of work, it is impossible to say that the claimant had discharged her primary onus and that the onus had shifted to the respondent. The pure point of law taken by Mr. Mukherjee accordingly fails.

10. As there was no other point argued and none seems to arise from the facts, of the case, this appeal must fail. It is accordingly dismissed, but we do not make any order as to costs.

Lahiri, J.

11. I agree.