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**(2008) 11 GUJ CK 0006**  
**In the Gujarat High Court**

**Case No :** First Appeal No. 5059 of 2008 and Civil Application No. 12414 of 2008

Bhavnagar Municipal Corporation

APPELLANT

Vs

Bhanuben Maganbhai Havalia

RESPONDENT

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**Date of Decision :** 19-11-2008

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 3(1)

Limitation Act, 1963 — Section 5

Workmens Compensation Act, 1923 — Section 12(2), 17, 2, 28, 3

**Citation :** (2009) 1 GLR 597

**Hon'ble Judges :** H.K. Rathod, J

**Bench :** Single Bench

**Advocate :** H.S. Munshaw, for the Appellant; Kishor M. Paul, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

H.K. Rathod, J.—Heard learned Advocate Mr. H.S. Munshaw for the appellant-Bhavnagar Municipal Corporation and learned Advocate Mr. Kishor M. Paul for respondent claimant.

2. Through this appeal, appellant-Corporation has challenged order passed by Workmen's Compensation Commissioner, Bhavnagar Exh. 38 in W.C. (Fatal) Case No. 4 of 2005 dated 28-8-2008 wherein Commissioner has granted compensation of Rs. 2,99,559-00 in favour of claimant with simple interest thereon at the rate of 9 percent per annum from 22-9-2004 and also to pay amount of penalty at the rate of 25 percent of Rs. 74,890-00 to applicant within thirty days from the date of order.

3. Facts of case of applicant were to the effect that husband of applicant Maganbhai Havalia was serving as permanent safai kamdar in establishment of appellant in conservancy department. Claimant is also performing duty as safai kamdar in the appellant establishment. After getting the presence marked, claimant was going in district allotted for safai work. After the sweeping work of an hour, for taking the garbage through tractor, workmen from the conservancy

department would come and in this manner work has to be done. After the tractor driver and safai kamdars came, presence was to be marked and after garbage is collected, till sent for duty, safai kamdars those who have reached have to remain present in the conservancy centre of Bhavnagar Municipal Corporation. Husband of the claimant Maganbhai Harjibhai Havalia was working as permanent safai kamdar in the establishment of appellant. His period of duty was from 6-30 a.m. to 1-30 p.m. On 22-9-2004, claimant and her husband both had gone for duty at 6-00 a.m. Claimant was having duty to serve in the district, and therefore, after getting her presence marked, she had gone for performing her duty whereas husband of claimant was waiting for collection of garbage in Ward Office near Garasia Boarding. This being the arrangement, before the presence of husband of claimant could be marked, in view of sudden chest pain, he sat down. Fact was brought to the notice of other safai kamdars working in conservancy. Husband of claimant was immediately brought to their house in rickshaw, and thereafter, ambulance was called and he was shifted in Government hospital for treatment where he died due to heart attack. Based upon aforesaid facts, since her husband died while he had gone for performing duty from home and before he is sent for work after getting his presence marked, he received heart attack and expired and in this manner, accident had taken place while resuming duty, and therefore, aforesaid W.C. (Fatal) Case was filed. At the time of accident, age of the deceased was 47 years, salary was Rs. 4674-00 and at the rate of factor 169-74, prayer was made for compensation of Rs. 3,11,240-00 with interest and penalty from appellant Corporation. Learned Commissioner granted compensation of Rs. 2,99,559-00 with interest thereon at 9 percent per annum from date of accident and penalty at the rate of 25 percent as stated above against which this appeal has been filed by appellant-Corporation.

4. Learned Advocate Mr. H.S. Munshaw for appellant submitted that deceased was not on duty at the time of alleged accident and nature of duty of deceased has nothing to do with his illness and cause of death. He submitted that the Commissioner should have held that deceased expired before joining duty. Relying upon judgment of Apex Court in Civil Appeal No. 6201 of 2004 dated 11-7-2006 reported in 2006 (3) CLR 438 , in case of Jyothi Ademma v. Plant Engineer Nellore and Anr. he submitted that only if the employment is contributory cause or accelerated death, then only it can be said to be death arose from employment and employer is liable to pay compensation, but in this case, none of said ingredients were available to death cause of deceased, and therefore, compensation ought not to have been awarded by learned Commissioner. He further submitted that as the deceased had not resumed duty and had passed away much prior to that due to heart attack, there cannot be any compensation under the Act. He submitted that deceased was having habit of smoking bidi. He relied on the deposition of the witness for claimant at Exh. 27 wherein it was deposed in examination-in-chief that the witness knows that Maganbhai Harjibhai has died. When Maganbhai died, at that time, witness was

on duty. At that time, deceased had pain and deceased were taking tea at the office. In view of pain to deceased, other two to three persons had gone to leave him at home and witness had gone for work. Drawing attention to that part of evidence of witness for claimant, he submitted that before joining duty, deceased had expired and on 22-9-2004, deceased was not at all present on duty. He relied upon decision of Karnataka High Court in case of Divisional Controller, North West Karnataka Road Trans. Corpn. and Another Vs. Drakshayani and Others, as well as Apex Court decision in case of Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, in support of his submissions. He also submitted that Commissioner has committed an error in imposing penalty at the rate of 25 percent u/s 4A of the Act. Except these submissions, no other submission was made by learned Advocate Mr. H.S. Munshaw before this Court.

5. As against that, learned Advocate Mr. Paul appearing for respondent claimant has submitted that appellant has not raised any substantial question of law as per Section 30 of the Act, and therefore, appeal is not maintainable. He submitted that deceased was waiting for tractor at 6-30 a.m. For collection of garbage and duty as a sweeper to collect garbage and it was an accident arising out of and in the course of employment and job of deceased was involving stress and strain, and therefore, learned Commissioner has rightly granted compensation in favour of respondent-claimant. He also submitted that deceased had gone from home for performing duty and before he could be sent for duty after marking his presence, he received heart attack and died, and therefore, learned Commissioner has rightly granted compensation to claimant and has rightly imposed penalty since no compensation was immediately paid by appellant to respondent-claimant.

6. I have considered submissions made by learned Advocates for both sides. I have also perused impugned order passed by learned Commissioner under the W.C. Act. Issues were framed by learned Commissioner under the W.C. Act at Exh. 9 and Commissioner answered issue No. 4 in affirmative by holding that there was relationship of workman and employer between deceased and opponent. Issue No. 2 was answered in affirmative by holding that deceased died while on duty and based upon such findings, awarded compensation. Relationship of workman and employer was not denied by appellant before the learned Commissioner. Learned Commissioner under the Workmen's Compensation Act also held that deceased has died while on duty and held that at the time of accident, age of the deceased was 47 years and monthly salary was Rs. 3674-00, and therefore, entitled for compensation of Rs. 2,99,559-00 with interest thereon at the rate of 9 percent per annum from the date of accident with 25 percent penalty on the amount of compensation which is under challenge in this appeal.

7. Before the learned Commissioner under the W.C. Act, vide Exh. 12, affidavit of respondent-claimant Bhanuben Maganbhai was filed and vide Exh. 13, list of

documents was produced, wherein, vide Exh. 14, death certificate of deceased was produced. Vide Exh. 15, pay slip of deceased for the last month September, 2004 was produced. P.M. report of deceased is produced at Exh. 16. Vide Exh. 18, notice issued by claimant to appellant for payment of compensation is produced and vide Exh. 19, acknowledgment thereof is produced.

8. Before the Commissioner under W.C. Act, vide Exh. 11, list of documents was produced on behalf of appellant wherein service book of deceased is produced at Exh. 23. Vide Exh. 24, copy of presence statement for Sept. 2004 has been produced. Vide Exh. 25, copy of muster for September, 2004 has been produced. Vide Exh. 29, affidavit of Himatbhai M. Parmar working in appellant establishment is filed and vide Exh. 30, it was declared that evidence has been over.

9. Commissioner under the W.C. Act has considered the cross-examination of the witness for appellant establishment at Exh. 29 and held that from his cross-examination, it is established that the deceased was performing duties as permanent safai kamdar in conservancy department of appellant establishment. His duty was commencing from 6-30 a.m. And his presence was being marked in conservancy department and as per the practice of the appellant establishment, those workmen who are resuming, after getting their presence marked, they are being sent by appellant establishment at the respective place when driver of tractor comes with tractor and in this manner, first of all, presence is being marked. In this manner, present claimant and her husband i.e. Deceased had appeared in the office of the appellant establishment for getting presence marked at 6-30 a.m. where respondent-claimant had, after marking her presence, gone for her duty of safai work whereas the husband of respondent-claimant i.e. Deceased had to wait for tractor coming for loading of garbage collected. Presence of such workmen was being marked subsequently, therefore, deceased Maganbhai was sitting near conservancy department where he realized chest pain and was then taken to his home in rickshaw and then from home, he was shifted to Sir T. Hospital where he expired. Thus, from the cross-examination of the witness for appellant at Exh. 29, it has become clear that deceased was permanent safai kamdar of appellant establishment and he had been near the office of conservancy department waiting for tractor and yet his presence was not marked but had in fact resumed physically. For proving that deceased Maganbhai was present in Conservancy Department, affidavit Exh. 12 has also been produced on behalf of claimant and co-worker Sitarambhai who was performing duty with deceased was examined on oath at Exh. 27 and documentary evidence supporting facts stated by said two witnesses was also produced. No evidence was produced by appellant establishment controverting those facts. Deceased was having duty to collect garbage from city and to load same in tractor and then to unload same elsewhere and in this duty, due to physical stress and strain in performing such duty, deceased had heart attack while on duty which has been established as has been held by Commissioner. In light of these facts, Commissioner considered decision of the Division Bench of

this Court in L.P.A. No. 172 of 1971 in case of Dudhiben Dharamshibhai and Ors. v. New Jehangir Vakil Mills Ltd. Bhavnagar wherein worker was standing 10 ft. away from entry gate five minutes earlier before starting of shift and workman was fatally knocked down. Question arising in light of those facts was whether dependent entitled to get compensation and whether fatal accident arose in the course of employment. Whether theory of notional extension of employment is applicable or not was considered by Division Bench of this Court and it was held that in the facts and circumstances, employer is liable as both conditions arising out of employment laid down in Section 3(1) of the Act had been fulfilled.

10. Commissioner also considered another decision of the Division Bench of this Court in case of New India Assurance Co. Ltd. v. Jivram Jetha Bambhania (deceased) through his heirs Gitaben and Ors. where an employer was going to the residence of employee and taking employee on his vehicle and proceeding towards the work place, but on way, accident had taken place and it was held that the law would hold that the accident took place in the course of employment.

11. Commissioner also considered decision of this Court in Deviben Dudabhai v. Manager Liberty Talkies Porbandar and Anr. reported in 1994 Lab.IC 2570 as under:

(A) Workmen's Compensation Act (VIII of 1923), Section 3 - Compensation - Claim for Death of a workman due to heart attack - Sudden manifestation of heart condition from the effect of strain or over exertion at work - Constitutes an accidental injury within meaning of the Act.

Where the deceased workman, a door-keeper in theatre worked for 15 hrs. a day except for a lunch break of an hour for a long spell of 15 years and died of heart attack and there was pre-existing disease of tuberculosis which was accelerated and aggravated by the strain and extension of the work, which the deceased was doing and had culminated in his health and the evidence on record proved the fact that he was doing work of two persons, it could be said that the failure of heart had a direct nexus with the employment. Therefore, it could be said that the injury sustained by the deceased had arisen out of and in the course of his employment and it was compensable in accordance with the provisions of Section 3. (Paras 9, 25 and 27)

(B) Workmen's Compensation Act (VIII of 1923), Section 3 - Compensation - Claim for, by widow of deceased - Death of a workman due to heart attack in course of employment - Death need not be in factory or industrial premises.

Workmen's Compensation - Death of a workman due to heart attack in course of employment - Death need not be in factory or industrial premises.

It is not mandatory that the death due to injury should result only in the factory or the industrial premises. It is also not necessary that the death should be the result of one accident. The workman may be suffering gradually due to working the employment and if the cumulative effect of slight injuries is death, then also

such an injury is compensable. In the instant case, personal injury was suffered, it was no less accidental because it occurred on a series of occasion instead of one. Therefore, in such a situation the employer would be liable to pay the compensation; as such an injury was caused to the workman by the accident which arose out of and in the course of an employment. (Para 30)

(C) Workmen's Compensation Act (VIII of 1923), Sections 4, 7, 8, 17, 28 - Compensation - Claim for by widow of deceased - Default in payment on part of employer - Plea of settlement between employer and heirs of deceased - Not supported by an affidavit - No particulars of alleged settlement stated by employer - No reasonable explanation given as to why alleged settlement was not brought to the notice of Court - Non-compliance with provisions of Sections 8, 17, 28 - Claimants are entitled to an amount of compensation awarded plus Rs. 8400/- by way of 50 percent penalty with interest at rate of 6%.

Workmen's Compensation - Claim for by widow of deceased - Default in payment on part of employer - Plea of settlement between employment and heirs of deceased.

12. Thereafter, Commissioner under the W. C. Act also considered decision of this Court in case of Oriental Fire and General Ins. Co. Ltd. v. Sunderbai Ramji and Anr. reported in 1992 Lab.IC 1020 as under:

(A) Workmen's Compensation Act (VIII of 1923) - Section 3 - Compensation-Entitlement - Accident arising out of and in the course of employment - Factors which must be established.

In order to succeed in a compensation application u/s 3 of the Act, three following factors must be established.

- (i) that there must be an injury;
- (ii) that it should be caused in an accident; and
- (iii) it should be caused in the course of employment.

(B) Workmen's Compensation Act (VIII of 1923) - Section 3 - Words - Accident and Injury - Meaning of Heart attack suffered by worker doing laborious work - Injury was a nexus with employment - Employer liable to pay compensation.

Words and Phrases - Words - Accident and Injury in Workmen's Compensation Act - Meaning of.

The expression "accident" has not been defined in the Act. However, Law Lexicon states the word "accident" generally means some unexpected event happening without design even though there may be negligence on the part of the workman. It is used in the popular and ordinary sense and means a mishap or an untoward even not expected or designed. What the Workmen's Compensation Act, 1923 really intends to convey is what might be expressed as an accidental injury. Accident and injury are distinct. In cases where accident is an event

happening extremely to a man but accident may be an event happening internally to a man and in such cases, accidental injury coincides. Such cases could be high lighted, or listed, like failure of heart, haemorrhage of brain etc., while the workman is doing his normal work. The connection between the injury and the employment may be furnished by strain of work, if the strain had attributed or aggravated or hastened the injury. In any event, if strain of work causes inefficiency, that strain itself would be the cause of death and it would be personal injury suffered by and employee in the course of his employment. 1977 (18) GLR 68 : 1989 Lab. IC 73 relied on. (Para 12)

In the instant case, the deceased had chest pain in the morning after he put in three hours laborious work. Therefore, he had to take rest. Again he resumed his duty as a disciplined labourer and again he felt chest pain, fainted and became almost unconscious. He was immediately shifted in an ambulance to hospital. This circumstance would undoubtedly permit to safely infer that the death of the deceased was attributable to the accidental employment injury. The strain of work which the deceased had undertaken would attribute and aggravate such a disease or injury and as such employer is liable to pay compensation. (Para 12)

(C) Workmen's Compensation Act (VIII of 1923) Section 2(b) - "Compensation" under the "Act" - Is not a Civil Court - Technical rule of C.P.C. and Evidence Act - Not binding on him. (Para 10).

13. Commissioner under the W.C. Act also considered decision of Andhra Pradesh High Court in case of Union of India reported by Divisional Manager, South Central Railway Vijaywada and Ors. v. S. Mariyamma and Ors. reported in 2004 (3) CLR 404 as under:

I. Accident - What does it signify? Deceased workman, undergoing training at a different place, died due to heart attack - Commissioner awarded compensation to his widow and sons - Award challenged - Held Railways provided residential accommodation while on training but no boarding facility - No apparent contribution by workman for developing chest pain during night - Chest pain cannot be termed as something expected or designed event - It was an accident as contemplated u/s 3 of the W.C. Act - Workmen's Compensation Act, 1923 - Section 3.

II. Death : Arising out of and during employment - Workman deputed to training at a different place - Held that in such a case training hours alone cannot be treated as period of work - Workman has to undergo more stress during course of training - Developing of chest pain during night time is unexpected event - cannot be treated as designed Workman had not done anything peculiar to work entrusted to him - Workman is held to have died due to accident arising out of and in the course of his employment - Workmen's Compensation Act, 1923 - Sections 3, 4.

III. Compensation - Liability to pay interest:- Relevant date from which payable - Held that compensation payable to workman as soon as accident occurred -

Relevant date of claim - Thus awarding of interest from the date of accident, by the Commissioner not unjustified - Workmen's Compensation Act, 1923 - Sections 3, 4.

14. The Commissioner also considered decision of Karnataka High Court in case of Chandramathi v. Employees' State Insurance Corporation reported in 2004 (1) CLR 234 as under:

I. Accident : What it signifies? - Insured workman Purushothaman died of heart attack in the course of his employment - E.S.I. Court rejected claim for compensation by his legal heirs/appellants - Hence, this appeal - Held that heart attack was caused due to arduous and strenuous nature of work - Accident and subsequent death arose out of employment - Appellants entitled to compensation - Impugned order set aside - Employees State Insurance Act, 1948 - Section 3(1).

II. Interpretation : Term "accident" - Object behind legislation is to protect weaker section on principles of social justice - Liberal construction - Basic ingredient of "accident" would be unexpectedness - Employees State Insurance Act, 1948 - Section 3(1).

15. Decision of Kerala High Court in Oriental Insurance Co. Ltd. v. Thankappa reported in 2005 (3) CLR 446 was also considered by learned Commissioner as under:

Compensation : Bus conductor died due to drowning when he went for a bath before joining duty - Commissioner awarded compensation as it was held that death was due to injury caused out of and in the course of employment - Award of compensation challenged - Held that deceased conductor with his colleague was in the bus as they were to join duty at 3-30 a.m. - Before commencing duty in early morning he had to attend the human needs - It shall be taken as one arising out of his employment - Workmen's Compensation Act, 1923 - Section 3.

16. The Commissioner has come to conclusion on the basis of the evidence of widow and evidence of appellant Exh. 29 that there was a relationship between appellant and workman as an employer and employee. In respect to Issue No. 2, according to appellant, the deceased was absent on the date of accident 22nd September 2004. In support of the contention, appellant has produced a record vide Exh. 24 - Presence Register of September, 2004 and Exh. 25 - Muster Roll of September, 2004 and Exh. 26 a "Vardhi" Book of Contractor of September, 2004 and also Daily Report of Contractor. In all, these documents which are produced by appellant where deceased remained absent as noted by appellant. Exh. 29 one Himatbhai M. Parmar was examined on behalf of appellant, and according to him, on the date of accident 22nd September, 2004, the deceased was remained absent accordingly his absence was noted by appellant. Vide Exh. 29, one Himatbhai M. Parmar was examined on behalf of appellant and according to him on the date of accident 22nd September, 2004, the deceased was remained absent. Accordingly, his absence was noted in muster roll and presence register.



17. As against that, the case of applicant was that appellant is working in Conservancy Department, Garasiya Boarding, Nava Para, where two rooms were there for facility for safai kamdar to be remained presence and to wait for tractor by officer concerned. The method of distributing the works amongst the safai karmachari by appellant was that initially, as safai kamdar who had swept the particular area, their presence were marked earlier and accordingly, they were given work to particular area to collect the garbage which was collected by another group of safai karmachari, and accordingly, in second half, another group was sent by marking the presence for collecting the garbage from particular area. But, both types of safai karmachari has to report at 6-00 a.m. at Garasiya Boarding, Nava Para, Conservancy Department. The wife of deceased was working as sweeper in a particular area. As against his husband was working to collect the garbage from particular area. That is how, at the time when deceased was reported for work waited for tractor with officer and his presence was not marked though he was remained present on the date of accident. The presence was marked only when a work was distributed to safai karmachari. The deceased was appointed on 19th July, 2002, therefore, according to aforesaid practice and method adopted by appellant for distributing the works between two kind of safai karmachari; one who has to sweep the particular area and another group/ lot of safai karmachari has to collect the garbage and loaded upon the tractor. Therefore, naturally, the accident has occurred prior to distribution of work to the deceased. Therefore, his presence may not be marked and noted in presence register, but, that does not mean that deceased was not remained present on the date of accident in Conservancy Department.

18. According to evidence of widow, both had started on 22nd September, 2004 at about 6-00 a.m. for reporting at work and after her husband has reported at Conservancy Department, she left the place after marking her presence as work was already allotted to widow by department. Vide Exh. 27, Sitarambhai Bhagwanbhai was examined as a witness of claimant. He was working with the establishment and his duty hours are from 5-45 a.m. to 2-00 p.m. After he reported for work, the tractors were coming where he was boarded for work. But, presence is to be marked as and when work has been allotted to safai kamdar. He knows deceased Maganbhai and both were working together and at the time when deceased died, Sitarambhai was on duty and while taking tea on the date of accident, deceased was having severe chest pain, and therefore, two to three persons were sent along with deceased for his house, and meanwhile, tractor has come and witness has left the place for his work. The duty hours of Sitarambhai and deceased were the same and deceased died during the course of employment after reporting for work at Conservancy Department. Therefore, by oral evidence of Sitarambhai who was an employee of appellant Exh. 27 on the date of accident, the presence of deceased was established, and thereafter, taking tea, deceased was received chest pain and heart attack. Thereafter, he was taken back to his house and sent in Ambulance at Hospital and died. Therefore, in documents produced by appellant, there may not be presence mark

of deceased, but, that doesn't prove the absence of deceased on the date of accident. The evidence of Sitarambhai Exh. 27 has established the presence of deceased on the date of accident at Conservancy Department, Garasiya Boarding, Nava Para. Therefore, at the time when the accident occurred, another two witnesses : Dhanjibhai Parmar and Kalabhai Jadavbhai both workmen were present. They also stated as stated by Sitarambhai Exh. 27. Therefore, appellant has not produced any evidence contrary to the evidence of Sitarambhai Exh. 27 and widow Exh. 12. Accordingly, presence was not marked in certain documents Exhs. 23 to 26 which itself is not sufficient unless to have independent corroborative evidence to prove absence of deceased on the date and time of accident. One fact is also proved that at the time when accident occurred, deceased was having the heart attack and nature of work performed by deceased to collect the garbage from various places and to be loaded upon the tractor which having the weight, naturally, having the strain and stress of physical condition of the deceased. Therefore, nature of employment suggests a hard duty to be performed by deceased after collecting garbage from various places to be loaded in tractor such having the heavy weight resulted into physical strain. This work has to be performed not by one but continuing upto for eight hours, therefore, naturally, which having a physical strain upon the deceased resulted in accident. Such strain and stress may be accumulated by number of working days of the deceased. Therefore, such pain cannot be treated as design and labourious work continue for more than eight hours is having direct nexus and having cumulative effect may be suffering cardiac due to working as an employment and that is how, the accident occurred which resulted into death of deceased. Therefore, Commissioner has examined this matter after considering the evidence from both the sides. One Himatbhai Parmar was examined vide Exh. 29 on behalf of appellant where he admitted that more than 240 workers were working for sweeping work and as and when the tractors came for collecting garbage, workers were ordered to send after marking their presence, and thereafter, he admitted that it was not possible to mark presence at a time of 240 workers which took sometime, and therefore, initially, the workers who are having sweeping work, their presence were marked and after some time, when tractors came, thereafter, the presence of those who have to be sent for collecting the garbage, their presence were being marked. Therefore, there was some difference of time between marking the presence of two groups of safai kamdar. Exh. 29 - Himatbhai has deposed that presence of deceased was not marked in any documents. Therefore, Commissioner has come to conclusion that marking of presence of 240 workers at a time is not possible, which requires some time and during that period, before the presence of deceased could be marked, a deceased though was present on the date of incident in Conservancy Department, but he died before his presence could be marked in presence register. Therefore, evidence of Himatbhai Exh. 29 cannot be considered to be an evidence rebutting evidence of widow Exh. 12 and Exh. 27 Sitarambhai. Therefore, Commissioner has rightly relied upon the evidence of widow as well as Sitarambhai Exh. 27. It is also necessary to note that place of actual working and

place of marking presence, both are different places as admitted by Himatbhai Exh. 29. Therefore, Commissioner has rightly appreciated entire evidence along with documentary evidence placed before him and come to conclusion that deceased has died during the course of employment. There was a relationship as employer and employee and at the time when the accident occurred, deceased was sitting in Conservancy Department of the appellant along with other workers and before marking the presence, he received heart attack and died.

19. As per Section 3 of the Workmen's Compensation Act, in case, if accident is occurred in the course of his employment or arising out of that has been interpreted by various Courts while applying theory of notional extension of employment which covered period from the place of his residence to the place of working where he has to travel by bus or by any other vehicle. If the deceased employee met with his death while he was going to his place of work and death has arisen during the course of employment, then employer is liable for compensation as per decision of Madras High Court in case of T.N.C.S. Corporation Ltd. v. S. Poomalai, reported in 1995 (I) LLJ 378 (Mad.). The meaning of expression "arising out of employment" has been discussed by Orissa High Court and Rajasthan High Court as under:

(i) The expression "arising out of employment" means that there must be casual relationship between the accident and the employment. If the accident has occurred on account of the risk which is an incident of employment, it has to be held that the accident has arisen out of the employment; Oriental Insurance Co. Ltd. v. Nanguli Singh 1995 LLJ HC ORS (298).

(ii) The words "out of employment" is not limited to mere nature of the employment, but it (arising out of employment) applied to its nature, its conditions and obligations and its incidents. An accident which occurs on account of a risk, which is an incident of employment, then the claim for compensation can succeed provided the workman has not exposed himself to an added peril by his own imprudent act; Executive Engineer 19th Div. R.C.P. Bikaner v. Heeraram 1982 (44) FLR 179 Raj. : 1980 LW Raj. 412.

20. Where the death was accelerated on account of stress and strain of working condition, it is not necessary that there should be a direct connection between cause of death and nature of duties. Even if a casual connection between two can be shown then dependents of deceased would be entitled to claim compensation from employer as per decision in case of Divisional Personal Officer, Western Railway v. Ashiya Begum reported in 1994 LLR 11 (Raj.). Therefore, the Commissioner has rightly appreciated the evidence on record.

21. Learned Advocate Mr. Munshaw relied upon the decision of Apex Court in case of Jyothi Ademma v. Plant Engineer Nellor and Anr. reported in 2006 (3) CLR 438, where, the Apex Court has held that if the employment has a contributory cause, or has accelerated the death then it can be said that death arose out of employment and employer would be liable to pay compensation. He

also relied upon one decision of Jarkhand High Court in case of General Manager, South Eastern Railway and Ors. v. Abdul Wahid reported in 2002 (3) CLR 310 , where, it was held that there being no casual connection with work and injury being suffered on way and in the course of employment, workman not entitled to compensation. He also relied upon the decision of Apex Court in case of Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, and also he relied upon the decision of Karnataka High Court in case of Divisional Controller, North West Karnataka Road Trans. Corpn. and Another Vs. Drakshayani and Others, In the decision of Apex Court, the Apex Court has come to conclusion that without evidence that death due to cardiac arrest has occurred because of strain and stress, the Commissioner would not have jurisdiction to grant compensation. Before Apex Court's case, there was no evidence of any casual connection between accident and injury so as to fulfill requirement of the term out of employment proved by claimant. Similarly, in case of Karnataka High Court, it is held that cause of accident is totally unconnected with employment and its attending hazard. The decision which has been relied upon by learned Advocate Mr. Munshaw in support of his contention, but, he has not pointed out to this Court that how this judgments is applicable to the facts of present case. Ultimately, during the course of employment or out of employment injury is occurred to the workman or not. In this case, by cogent evidence, it has been proved that workman had received severe heart attack at the place of working having casual connection or direct nexus to the nature of employment collecting garbage from various places having the heavy weight to be loaded upon the tractors and such type of work is remained continue for about eight hours which having accumulations physical strain and stress which resulted in receiving heart attack which considered to be an accident during the course of employment, these facts are established by claimant before Commissioner. Therefore, the decision which has. been relied upon by learned Advocate Mr. Munshaw are not applicable to facts of this case, because, he was not able to point out similarity of facts between two; reported case as well as fact of this case.

22. In case of Divisional Controller N.E.K.R.T.C. Bellary Division Bellary v. Marembee and Ors. reported in 2004 (1) CLR 391 (DB) Karnataka High Court, where, driver employed by employer and assigned duty of driver on long distance bus, it must be held that strain and stress of such, journey, contributed to and partly responsible for death of workman. The relevant Paras 11 to 13 are quoted as under:

11. It is well established that it is not necessary for the dependents of the deceased workman to prove that the deceased was engaged in some exceptional work of a particular kind which had caused excess strain on the deceased so as to result in his death. If the work in which the workman was engaged was likely to accelerate death, it could be said that there was proximate nexus between the death and employment. The finding of the Commissioner that there was causal connection between death and work of the deceased cannot therefore be dislodged and moreover, there is no contra evidence placed by the appellant-

Corporation to counter such as a finding.

12. On the evidence available on record in the present case, it has to be held, without demur, that the deceased workman had died of heart attack, there being a pre-existing heart condition which was aggravated by the strain of the work of the deceased which resulted in his death. The fact that the deceased workman's unexplained or apparently natural death had occurred during the course of employment, having established causal connection between the nature of employment and death, the employment was attributable cause accelerate the death. That the death of the workman was not only due to the disease from which he was suffering but on account of factors coupled with employment, has led the Commissioner to conclude that the death occurred as a consequence of and in the course of employment. Therefore, both the conditions entitling the applicants to claim compensation u/s 3 of the Act are fully satisfied. The contentions raised by the appellant-Corporation is one without any merit.

13. u/s 30 of the Act, an appeal will lie only if it raises a substantial question of law and not otherwise. The finding that the deceased was the person who suffered an accidental injury or not, is a pure finding of fact giving rise to no substantial question of law. Therefore, we are of the view, that the question is rightly decided by the Commissioner and no interference is called for with the impugned judgment and award on the ground that the question raised in the appeal is wrongly decided by the Commissioner.

The appeal is dismissed at the stage of admission without notice to the respondents. No order as to costs.

23. The Madras High Court in case of *The Oriental Insurance Company Ltd. Vs. Nagaraj, Balamurugan, Maniammal* [Minors rep. by father and guardian Nagaraj] and *The Management, Bombay Burmah Trading Corporation Ltd.*, has held that appreciation of evidence and finding of fact by Commissioner not to be interfered by High Court as no substantial question of law involved. The relevant Paras 15, 16, 19 to 22 are quoted as under:

15. As held by the Supreme Court in *Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak*,

6. Although, the onus of proving that the injury by accident arose out of and in the course of employment rests upon the applicant, these essentials may be inferred when the facts proved justify the inference. On the one hand, the Commissioner may not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it.

16. It is also relevant to refer to Division Bench of this Court in *Thiru. T. Shanmuga Mudaliar Vs. Smt. Noorjahan, Mohd. Amsad, Apsana Parveen and The*

Divisional Manager, United India Insurance Co. Ltd., The question in the appeal decided by the Division Bench was, whether the death of the workman, driver of a bus, due to heart failure was caused because of the heavy strain of employment. The following observation of the Division Bench at page at 777 of LLJ:

4. The connection between the accident and the employment may be established if the strain had contributed to or accelerated or hastened the accident. It may not be possible at all times to produce direct evidence of the connection between the employment and the injury, but if the probabilities are more in favour of the applicant then the Commissioner is justified in inferring that the accident did in fact arose out of and in the course of the employment.

19. I do not propose to go into the factual details of these cases suffice to note that strain, even normal strain, connected with the employment, was the reason for the death of workman. In the circumstances of the case and nature of work, normal strain contributed to the death. It falls within the purview of "arising out of and in the course of employment" contained in Section 3 of the Act. The provisions of Workmen's Compensation Act should be broadly and liberally construed in order to effectively apply the provisions of the Act.

20. The learned Counsel for the respondent claimant has drawn the attention of the Court to the Statement of Objects and Reasons articulated at the time of moving appeal for Workmen's Compensation Act which ultimately resulted in passing of the Act. The objects and reasons of the Act are stated as follows:

The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible from hardship arising from accident.

21. The aforesaid extract from the State of Objects and Reasons for passing of the Act clearly indicates that:

The general principles of workmen's compensation command almost universal acceptance, and India is now nearly alone amongst civilized countries in being without legislation embodying these principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practice is, by no means, general. The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

22. Liberal construction of the provisions should be adopted for the provisions which govern the nature and determination of the injuries for which compensation may be had. There is no reason for taking a narrow view.

24. The Madras High Court has also considered the same view in another case of

National Insurance Co. Ltd. Bhavani v. A. Saroja and Ors. reported in 2008 (3) CLR 664. The relevant Para 20 is quoted as under:

20. Bearing in mind the above stated, I am of the considered view that the judicial pronouncements made this subject clear. Even an ordinary strain in given circumstances of the case would be enough to cause the injury or death which is found to be in the course of and out of employment, it has to be held that the claimant is entitled for the compensation. The claimant is expected in law to show that the workman suffered injury or death due to strain and stress drawn from the work which in particular circumstance was sufficient to cause injury or death and unlike in a criminal case it is enough to show the preponderance of probabilities which would form a premise that the claimants version is probable. It is not necessary to prove that the injury or death was caused by the stress and strain beyond any doubt but it must be shown and the materials brought before the Court shall be, to the satisfaction of the Court.

25. Learned Advocate Mr. Munshaw raised contention that Commissioner has committed gross error in imposing penalty of 25% upon the appellant without any justification.

26. I have considered the submissions and also considered Section 4(A) which suggests that employer shall have to pay the amount of compensation as soon as it falls due. When the person who received heart attack in the premises of appellant knowing fully well the facts that he subsequently died, even though, no efforts have been made by appellant for payment of compensation to the widow. No necessary steps have been taken within reasonable time, therefore, there was a delay, for that, there is no justification and that aspect has been rightly considered by Commissioner and Commissioner has imposed 25 % penalty to the appellant. For that, Commissioner has given reasons in support of his conclusion and no error has been committed by Commissioner. This provision of penalty has been enacted with a view to deter the employer from taking false pleas and avoiding payment of compensation which becomes payable [Division Forest Officer and Anr. v. Baijanti Bai and Ors. reported in 1995 (1) LLJ 837 (MP)]. Therefore, contention raised by learned Advocate Mr. Munshaw against penalty imposed by Commissioner cannot be accepted and same is rejected.

27. It is necessary to note one important point which has been connected with the root of the appeal as appellant has not raised substantial question of law which is necessary in filing First Appeal challenging the order passed by Workmen's Compensation Commissioner u/s 30 of the Workmen's Compensation Act. Therefore, Section 30 is incorporated as under:

Section 30 : Appeals - (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely-

(a) an order awarding as compensation a lump-sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump-sum;

[(aa) an order awarding interest or penalty u/s 4-A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a deceased workman, or disallowing any claim of a person alleging himself to be such dependent;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

[Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]

(2) The period of limitation for an appeal under this Section shall be sixty days.

(3) The provisions of Section 5 of [the Limitation Act, 1963 (XXXVI of 1963)], shall be applicable to appeals under this Section.

28. As per proviso to Section 30 of the Workmen's Compensation Act, no appeal shall lie against any order unless a substantial question of law is involved in the appeal. Looking to the appeal memo filed by appellant, nowhere, substantial question of law has been raised by appellant. Not only that, but, substantial question of law has not been argued by learned Advocate Mr. Munshaw before this Court. Most of the submissions are based on facts and evidence on record. The finding given by Commissioner cannot be considered to be perverse without any material on record or it is totally contrary to material on record, because, Commissioner has discussed each and every aspects of evidence and each evidence at length, discussed, and thereby, arrived at a factual finding to the effect that there was a relationship of employer and employee between appellant and workman deceased. On 22nd September, 2004, the workman had reported for place of work and his presence was proved by evidence of Sitarambhai Exh. 27 and evidence of widow Exh. 12. When workman has reported for place of marking presence received heart attack while taking tea, thereafter, he shifted to his house, and then through ambulance, he shifted at Hospital. The nature of employment suggests to collect the garbage from various places having heavy



goods to be loaded into tractor and such nature of work is to be performed by workman continuously for eight hours, which having a strain and stress accumulated day-by-day basis, and therefore, on aforesaid evidence, a fact-finding arrived at by Commissioner cannot found at fault with such fact-finding. The appellate Court has no jurisdiction to entertain an appeal unless the same involves a substantial question of law; *Nasim Spring (Pvt.) Ltd. v. Om Jain*, reported in 1990 LLR 93 (MP). The mere difficulty of applying the facts to the law will not amount to a substantial question of law; *Asmath Bedi (dead) v. Marimuthu* reported in 1999 LLR 450 (Mad.). Therefore, in absence of substantial question of law which has not been raised in First Appeal and not argued before this Court by learned Advocate, therefore, appeal challenging the factual aspect cannot be maintained in view of specific proviso to u/s 30 of the Workmen's Compensation Act, 1923. The view taken by Madras High Court in case of *The Management, Boys Town Society Tirumangalam* represented by its Secretary *Boys Town Tirumangalam v. V. Palani and Anr.* reported in 1997 (2) CLR 681. The relevant observation is quoted as under:

6. It has been held in the decision reported in *Ramaswami v. Poongavanam* 1953 (1) MLJ 557 : AIR 1954 Mad. 218 : 66 LW 440 : 1953 MWN 273, that whether a person is a workman or not is a question of fact on which there can be no appeal as per Section 30 of the Workmen's Compensation Act. It has been held in the decision reported in *Smt. Asmath Beebi (Died) v. Smt. Marimuthu* 1990 (1) LLN 891, also as follows:

A question of fact, however substantial, cannot masquerade as a question of law and cannot automatically be treated as a substantial one even if the amount involved is substantial or the argument pressed is vehement. If it is of great public importance or if it arises so frequently as to affect a large class of people or is so basic to the operation of the Act so basic to the operation of the Act itself, one may designate the question of law as substantial. But, where it is covered already by precedents or the law on that aspect is well settled, the mere difficulty of applying the facts to that law cannot make it a substantial question of law.

When we consider these two decisions, I am of opinion that the contention of the learned Counsel appearing for the respondent that the appeal itself is not maintainable since there is no substantial question of law as required u/s 30 of the Workmen's Compensation Act is involve, is well founded and on that ground itself, the appeal is liable to be dismissed.

29. Therefore, in view of aforesaid decision, no contention has been raised by learned Advocate Mr. Munshaw which having great public importance or involve a substantial question of law. Therefore, according to my opinion, there is no substantial question of law as required u/s 30 of the Workmen's Compensation Act is involved is well founded and on that ground itself, the appeal is also liable to be dismissed, so, this appeal fails on both the grounds; one is factual by proper evidence which was established before the Commissioner that deceased

has received heart attack during the course of employment or out of employment and nature of employment having direct connection with physical strain and stress upon the workman and such physical strain and stress accumulated by day-to-day continuous working with the appellant which has been proved by evidence of widow Exh. 12 and evidence of Sitarambhai Exh. 27 and that has been rightly appreciated by the Commissioner and awarded compensation and also rightly awarded penalty and interest upon the appellant. For that, Commissioner has not committed any error which required interference by this Court. So, on both the grounds, appeal fails as substantial question of law is not involved as not raised by appellant before this Court as well as in appeal memo.

30. Therefore, there is no substance in the appeal. Accordingly, present First Appeal is dismissed.

In view of order passed by this Court as above, no order is required to be passed in Civil Application. Hence, Civil Application is also dismissed.