

(2003) 01 KL CK 0104
In the High Court Of Kerala
Case No : M.F.A. No. 1002/96

Chandramathi

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:

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

Citation : (2004) 2 ACC 401 : (2004) ACJ 155 : (2003) 2 ILR (Ker) 306 : (2003) 2 KLT 988 : (2003) 3 LLJ 1122

Hon'ble Judges : A. Lekshmikutty, J

Bench : Single Bench

Advocate : P. Ramakrishnan, for the Appellant; P. Sankarankutty Nair, for the Respondent

Final Decision : Allowed

Judgement

A. Lekshmikutty, J.—The appellants were applicants in E.I.C. No. 17 of 1992 before the respondent, Employees State Insurance Corporation, Thrissur. They are the wife and children of the insured person late P. Purushothaman who had approached the Court for grant of compensation on account of the accident and death of the said Purushothaman in the course of his employment. The nature of the work attended by late Purushothaman was arduous in nature. He was engaged in carrying milk on a bicycle and distributing the same in houses and lodging rooms. On 27th February, 1989 late Purushothaman had an accident fall from his bicycle and sustained some external injuries. He fell down due to chest pain and giddiness. He was taken to the E.S.I. Dispensary, Meenchanda, Kozhikode from where he was referred to Medical College Hospital, Kozhikode. When he reached the Medical College Hospital, chest pain disappeared and as such he was treated as an out-patient in Medical College Hospital. On 14th March, 1989, again chest pain was developed and he was taken to General Hospital and since he was found suffering from massive heart attack, he was referred to Medical College Hospital, Kozhikode. While he was undergoing

treatment, he died at 2.15 a.m. on 22nd March, 1989 on account of Myocardial infraction. The stress and strain of work performed by him was the root cause for development of myocardial infraction resulting in his death. So, as per the appellants, the death of Purushothaman was due to employment injury and the dependents are entitled to get dependents benefits.

2. The respondent resisted the claim denying that Purushothaman fell down from the bicycle due to chest pain and giddiness. As per the accident report, while Purushothaman was turning from one road to the other, one of the wheels of the bicycle jumped into a pit and he along with the bicycle fell down and sustained injury to his hip. He took treatment from Medical College Hospital as in-patient. He was treating for I.V.D.P. for the period from 28th February, 1989 to 13th March, 1989. On 14th March, 1989 he was taken to Beach Hospital, Kozhikode due to chest pain and then he was referred to Medical College Hospital, Kozhikode and treated there till 22nd March, 1989. The diagnosis was acute myocardial infraction hemiplegia (L) cerebral syndrome. This is no way connected with the accident met by him on 27th February, 1989. So, the applicants are not entitled to get any benefit as claimed by them.

3. The evidence in this case consists of oral evidence of P.Ws.1 and 2 and Exts.P1 to P3 on the side of the appellants and Exts.D1 to D3 on the side of the respondent. The court below after appreciation of the evidence rejected the claim. Aggrieved by the said order of the lower court, this appeal is preferred by the applicants.

4. The only question to be considered is whether Purushothaman died due to employment injury and whether the applicants are entitled to get dependents benefit as claimed by them. It is not disputed that late Purushothaman was a milk distributor attached to Calicut Co-operative Milk Supplies Union, Kozhikode and he was a insured employee. He met with an accident also is admitted by the respondent. He was on certified incapacity from 28th February, 1989 to 13th March, 1989. The case of the appellants is that late Purushothaman was suffering from heart disease and the work attended to by him was arduous in nature. He was engaged in carrying milk on bicycle. It is admitted by the respondent that late Purushothaman fell down from his bicycle on 27th February, 1989, but according to the respondent, the accident occurred while he was crossing one road to another, the wheel of the bicycle fell into a pit and sustained injury. But the case of the appellants is that the accident has arisen Out of and in the course of the employment and there is casual connection between the employment injury and the death. According to the appellants, the deceased developed chest pain and he fell down from his bicycle with milk. P.W.2 was present at the time of accident. He gave evidence that the deceased was complaining of chest pain and he fell down from his bicycle with milk which he carried. The nature of the work and hours of the work caused strain to the employee and that strain has caused the unexpected death of the deceased. If there was a casual connection between the death of the workman and his

employment then the appellants are entitled to dependants benefits. If there is strain and stress in the work, it is sufficient to hold that there was casual connection between the death of workman and his employment. The oral evidence of P.W.2 would show that the fall of the deceased was due to chest pain and the evidence also would show that he was treated as an inpatient till 13th March, 1989 and subsequently he was again admitted in the hospital on account of chest pain on 14th March, 1989 and while he was undergoing treatment in Medical College Hospital, he died on 22nd March, 1989.

It is true that the cause of death was myocardial infraction. The evidence of P.W.2 would show that the deceased was carrying milk from 4 a.m. till 8 a.m. and then from 2 p.m. to 6 p.m. He has to ride on the bicycle at least 50 kms. per day. On the date of incident, he has supplied milk in his first trip and in the afternoon he went to the depot for collecting milk to supply for second trip. Then he complained of chest pain and he fell down from the bicycle. It cannot be stated that the work done by the deceased was not arduous. Two most important limbs for the application of Section 3 are that the accident should arise out of and in the course of his employment. In order to say that the accident has arisen out of and in the course of the employment there should be some casual connection between the employment and the death. In order to bring the accident within Section 3, it is not necessary that it should be established that the workman died as a result of an exceptional strain or some exceptional work that he did on the day in question. If the nature of the work and the hours of work caused great strain to the employee and that strain caused the unexpected death it can be said that the workman died as a result of an accident which has arisen in the course of his employment. Here in the instant case, it is admitted by the respondent that the deceased fell down from his bicycle with the milk he carried for supply and he was taken to the hospital. He was treated from 27th February, 1989 to 13th March, 1989. Thereafter, again he was admitted in the hospital on account of chest pain on 14th March, 1989 and while he was under treatment, he died on 22nd March, 1989. The term "arising out of and "in the course of the employment" has to be understood conveying the meaning that the particular cause that resulted in the accident was created or caused by the employment. The illness causing death should have a casual connection with the employment. The meaning of expression in the course of employment should be understood as coloured by the words arising out of. Unless the accident has arisen out of and in the course of employment, it is not possible to hold that the accident will stand covered by Section 3(1) of the Act. The heart ailment suffered by the deceased in the hours of work being done by the deceased which has resulted in his death has a casual relationship with his employment.

5. The object behind the legislation being protection to the weaker section with a view to do social justice, the provisions of Act have to be interpreted liberally so that other things being equal, the leaning of the Court has to be towards the person for whose benefit the legislation is made. Bearing this principle in mind, the expression accident found in Sub-section (1) of Section 3 of the Act has to be

understood as meaning a mishap or untoward event not expected or designed. In other words, the basic and indispensable ingredient of the accident is the unexpectation. The evidence of P.W.2 would show that just before the fall the deceased had complained regarding chest pain. He was subjected to over exertion cannot be disputed. So, there was sudden deterioration of his health which resulted to his death. In such circumstances, it is to be found that deceased Purushothaman died on account of employment injury and the appellants are entitled to dependants benefit. So, I am constrained to set aside the impugned order and remand the case before the lower court for fresh consideration for determining the quantum of compensation to be awarded to the appellants due to the death of Purushothaman. The appeal is allowed as stated above.