

(1994) 11 MAD CK 0084
In the Madras High Court
Case No : C.M.A. No. 986 of 1987

Director General, Combat Vehicles and Research
Establishment, Avadi

APPELLANT

Vs

Deputy Commissioner of Labour II Madras and Another

RESPONDENT

Date of Decision : 29-11-1994

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (1995) ACJ 922 : (1995) 71 FLR 809 : (1995) 1 LW 257

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Judgement

Govardhan, J.—This appeal arises out of the order passed by the Deputy Commissioner of Labour II/Commissioner of Workmen's Compensation-II, in awarding a compensation of Rs. 24,192 in W. C. No. B-1/1506/1987 dated 21-9-1987, filed by the second respondent herein claiming a compensation for the injuries sustained by her husband alleging that he had sustained injuries in an accident on 11-5-1982 during the course of his employment under the appellant herein.

2. The case of the applicant is as follows :

The husband of the applicant Thiru M. Raji was employed under the opposite party and on 11-5-1982 during the course of his employment, he sustained injuries in an accident arising out of the employment and during the course of employment under the opposite party. The husband died on 21-4-1983 subsequently. The applicant has filed claim application before the Commissioner for Workmen's Compensation and the opposite party negatived her claim for compensation by a letter dated 27-1-1986. Hence, the petition.

3. The opposite party resisted the same by contending as follows :

Thiru M. Raji, workman of the opposite party's establishment suffered accident at Thiruvallur railway station on 11-5-1982. According to the report of the Sub-

Inspector of Police, Law and Order, Railway Station Arakonam and the Station, Raji jumped from the running train which was going to Pattabiram Siding at Thiruvallur in order to catch the train proceeding towards Madras. He had lost his legs and four fingers of his right hand due to the accident at Thiruvallur Railway Station and not during the course of employment under the opposite party's establishment. The monthly wages of Mr. Raji was Rs. 573.60. Since the accident did not arise during the course of employment, the applicant is not entitled to claim compensation from the opposite party. The Commissioner for Workmen's Compensation after enquiry has held that the accident happened during the course of employment under the opposite party as a result of which the workman suffered loss of earning capacity to the extent of 80% and awarded compensation of Rs. 24,192 and directed the opposite party to deposit the same within 30 days from the date of receipt of the order.

4. Aggrieved over the said order the opposite party has come forward with this appeal.

5. It is not in dispute that Raji, the workman, the husband of the 2nd respondent herein was an employee under the appellant herein, on the date of accident. It is also not in dispute that on 11-5-1982, 2nd respondent's husband sustained injuries due to the accident that took place at 7.30 a.m. at Thiruvallur Railway Station. On account of the accident, he had lost his left leg and four fingers in his right hand, is also not in dispute. The only question that arises for consideration is whether the accident occurred during the course of employment to enable the 2nd respondent to get compensation from the appellant herein.

6. Learned counsel for the appellant would argue that as per the report of the Sub-Inspector of Police, Law and Order, Railway Police, and the Station Master of Thiruvallur Railway Station, Mr. Raji the workman jumped from the running train which was proceeding towards Thiruvallur and it resulted in his sustaining injury. Learned counsel for the appellant would also argue that when a person jumps from a train and sustains injuries, it cannot be stated that the injury was caused due to accident, and cannot claim damages from the establishment when he is employed.

7. Learned counsel for the respondent would on the other hand argue that it is not a case of negligence on the part of the husband of the 2nd respondent herein in which case the opposite party/appellant is entitled for payment of compensation. It is the case of the respondents that the accident had occurred on 11-5-1982 to the workman while he was proceeding to his work spot and therefore, it must be considered as injury sustained to him during the course of his employment and the order of the Commissioner of Workmen's compensation II should be sustained. The term "accident" in Sec. 3(1) of the Workmen's Compensation Act has not been defined, but it is now settled law that the expression, naturally and generally means some unexpected event happening without design. To decide whether an occurrence is an accident it must be regarded from the point of view of the workman who suffered it and if it is

unexpected and without design on his part, it might be an accident. When a person jumps from a running train, it cannot be stated that sustaining injuries by falling down is an unexpected result of that jumping, under Sec. 3, if personal injury is caused to workman by accident arising out of and in the course of his employment, his employers are liable to pay compensation in accordance with the provisions of the Workmen's Compensation Act. When it cannot be stated that the conduct of the person injured does not come under the expression "accident" or sustaining injury, Sec. 3 cannot be made absolute. It is no doubt true that an employee will have to be considered to be in the course of employment even if he is on his way to the work spot from his house and sustains injuries on account of his design enroute. But that contingency has not arisen in this case since the sustaining of injuries by the husband of the 2nd respondent cannot be said to an unexpected design without design on the part of the husband of the 2nd respondent.

8. Learned counsel for the appellant has cited some of the rulings to show that the 2nd respondent is not entitled to compensation since the injuries were not sustained by accident while he was in service. In the decision reported in *Varkeyachan Vs. Thomman*, , the workman was running errands to fetch tea and then to return with empty tumblers. While he was on the second errand, he sustained, stab injuries which were fatal. It was held by the Kerala High Court that the death in such circumstances will amount to accident. It is only the stabbing of the workman which amounts to an anticipated event by the workman which had resulted in his death. Therefore the injuries sustained by him can be stated to have been sustained an accident in the course of his employment. But it is not so in this case. In the decision reported in *D. Dharamshi v. N. J. Vakil Mills Limited*, (1973) I L. L. J. 194, the Gujarat High Court has held where an employee of the respondent-mill was standing outside the gate first five minutes prior to the start of his shift and was knocked down by a cyclist and he died the dependents can claim compensation and that the case would come within the definition "in the course of employment" and "arising out of employment" because the worker could leave and enter from the gate even a few minutes before the commencement of his work or from a few minutes after his shift is over. In this case the accident had taken in the vicinity of the work spot and it cannot be stated that the sustaining of the injury by the workmen involved in these cases were anticipated by them. Such contingency or stipulation cannot be in our case since any person who chose to jump from a running train should anticipate sustaining injuries in the normal course by a normal person unless it is shown that he is person who cannot understand the consequences of his act or conduct like an insane or mentally retorted person. It is not the case of the 2nd respondent herein that her husband was one such person who could not know the consequences of his conduct of jumping from a running train. Therefore, I am of the opinion that the sustaining of the injury by the husband of the 2nd respondent cannot be attributed to any accident that had occurred to him in order to grant relief under the Workmen's Compensation Act. In that view, I hold

that the order of the Commissioner for Workmen's Compensation II is liable to be set aside and the application by the 2nd respondent herein is liable to be dismissed.

9. In the result, the appeal is allowed setting aside the order of the Deputy Commissioner of Labour II and dismissing the application filed by the 2nd respondent herein (applicant).