

(1955) 12 BOM CK 0031
In the Bombay High Court
Case No : A.F.O.D. No. 407 of 1955

Diva Kaluji

APPELLANT

Vs

Silver Cotton Mills Ltd.

RESPONDENT

Date of Decision : 15-12-1955

Acts Referred:

Evidence Act, 1872 — Section 3, 45

Workmens Compensation Act, 1923 — Section 10, 11, 3

Citation : AIR 1956 Bom 424 : (1956) 1 LLJ 740

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

Bench : Division Bench

Advocate : V.M. Tarkunde, for the Appellant; Vithalbhai B. Patel, for the Respondent

Judgement

1. This is an appeal against the decision of the Commissioner for Workmen's compensation rejecting the claim of the applicant to compensation as the widow of one Kaluji Shivaji who was a weaver in the employ of the respondent. The evidence shows that Kaluji was working on the first shift on 6-6-1953 which started at 7-30 a.m. and that he collapsed at about 3-30 p. m. in the weaving department where he was working. He was removed to the hospital, some stimulants were given to him, he became conscious, went home and on that very night at about 12 O'clock he died.

Dr. Vaidya, who has given evidence on behalf of the applicant, gave his expert opinion that if a weaver works about 8 hours in a textile Mill in Ahmedabad in the weaving department in the month of June and collapses unconscious and dies within about 6 hours, it is likely that he must have died of heart failure. He further added that "unconsciousness is a sign of a disease and work is likely to accelerate death of a person suffering from heart disease".

2. Now, the real question that we have to decide is whether there was any evidence on which it could be held that the deceased was suffering from heart disease. Mr. Patel on behalf of the respondent has strenuously argued that there

is no evidence on the record at all which would justify such a conclusion and, therefore, the Commissioner was right when he held that the deceased did not die of any injury by accident arising out of his employment.

It is not always easy to have direct evidence with regard to a material issue which has got to be established. In this case there is no evidence of any post mortem examination and, therefore, we are not in a position to say definitely as to what the deceased died of. But there are occasions when the Court is compelled to draw inferences which naturally and inevitably arise from such evidence as there is on the record. The mere paucity of evidence should not relieve the Court of its obligation to come to a conclusion on necessary and material issues.

As far as the record stands, we have here a case of a normal healthy worker working eight hours on a hot day in Ahmedabad in the weaving department of a textile mill. He collapses and is taken to the hospital and we have the certificate of the police surgeon which is to the effect that Kaluji was feeling giddy, complained of being unconscious and clinical examination revealed nothing abnormal.

Therefore, this certificate clearly establishes that the giddiness and the collapse of Kaluji was not due to any disease which was capable of being discovered by clinical examination. Then we have the further fact that on that very day this workman dies at about midnight. Again, there is no evidence to suggest that this death was due to any disease which could be diagnosed or which could be disclosed or which could be disclosed on a mere superficial examination.

On these facts can it be said that the inference which Dr. Vaidya has drawn is an inference which cannot naturally and normally arise from what has been established on record? In our opinion it is the most natural inference to draw that when a man suddenly collapses and dies very soon after and the doctor is not in a position to suggest any reason for this sudden collapse and the death ensuing that he was suffering from heart trouble which cannot be discovered on a mere clinical examination.

We see no reason why the Commissioner should not have accepted the evidence of Dr. Vaidya on this point. It is true, as Mr. Patel has pointed out, that Dr. Vaidya did not examine the patient and his evidence was based on probabilities. But an expert is entitled to answer all hypothetical questions put to him. The only safeguard which we must apply is that the hypotheses are correctly put to the expert and on perusing the evidence, of Dr. Vaidya we are satisfied that the hypotheses put to him were correct and established and on that hypotheses the expert came to the conclusion that the workman must have died of heart failure.

If this is the only evidence on record and the other evidence was not available, in our opinion the Commissioner should have drawn the natural inference that the workman died of heart failure. If that be the true position, then the matter does not present any difficulty, if Kaluji was suffering from heart disease, then the fact

that he worked for eight hours on a hot day must obviously have caused strain and accelerated his death.

In our opinion, therefore, the applicant has established that the deceased died of injury by accident arising out of and in the course of his employment.

3. The other contention raised by Mr. Patel is that the Commissioner was in error in condoning the delay in filing the application. As the death took place on 6-6-1953, u/s 10, Workmen's Compensation Act the application had to be filed within one year. In fact the application has been filed on 2-11-1954. The reason given by the Commissioner for condoning delay is that negotiations between the parties were going on.

Mr. Patel says that this finding is not based on any evidence, that there were no negotiations and, therefore, the delay should not have been condoned on that ground. It is perfectly true that whether there is sufficient cause for condoning the delay or not is a question of law. But the facts found by the Commissioner on which he comes to the conclusion that the delay should be condoned must be accepted by this Court. It is on the facts found that a question of law arises whether there was sufficient cause.

The fact found by the Commissioner is that there were negotiations between the parties. That finding would ordinarily be binding upon us. But it is open to Mr. Patel to satisfy us that there was no evidence to justify the finding of fact. What he relies on is that in two letters addressed by the Mills to the Workers' Union, which had taken up the cause of the poor workman, the Mills had denied their liability to pay any compensation.

It is pointed out that the last letter was written on 6-4-1954 and therefore, it is urged that there was no justification in filing till application on 2-11-1954 for compensation. But there is evidence on record of the Joint Secretary of the Ahmedabad Mill Mazdoor Mandal who has deposed to the fact that in June, July and August 1954 he went to the Mills and saw the manager and the manager told him to see the managing agents.

It was in September 1954 that he saw the managing agents and they refused to give compensation. Therefore, apart from the correspondence if the evidence of this witness is to be believed, oral negotiations were going on till September 1954, and the Secretary of the Ahmedabad

Mill Mazdoor Mandal was perfectly justified in trying to obtain whatever compensation he could on behalf of the applicant from the Mills without filing an application under the Workmen's Compensation Act.

It is only when all hopes of getting any redress from the mills disappeared that a question had to be considered with regard to the preferring of an application. In our opinion, under the circumstances the filing of the application on 2-11-1954 would not be considered so belated as to compel the Commissioner not to condone the delay in this case.

4. The result is that the appeal must succeed. There is no dispute as to the amount of compensation viz. Rs. 3500. Therefore, the order of the Commissioner is set aside and the matter will go back to the Commissioner and he will distribute this sum to the dependants of the deceased according to law. The appellant to get the costs of the appeal and the costs of the proceedings before the Commissioner.

5. Appeal allowed.