

(1993) 09 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 90 of 1992

Dvl. Personnel Officer, Western Rly. and Another

APPELLANT

Vs

Ashiya Begam

RESPONDENT

Date of Decision : 02-09-1993

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (1995) ACJ 435 : (1994) 2 LLJ 795

Hon'ble Judges : Mohini Kapur, J

Bench : Single Bench

Advocate : Manish Bhandari, for the Appellant; R.N. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Mohini Kapur, J.—The question which arises in this appeal is whether the deceased workman died on account of personal injury caused to him by accident arising out of and is in the course of his employment.

2. The facts in brief are that the husband of the respondent Ashiya Begam namely Vazir Ahmad was employed as a Senior Cook with the appellants and was performing duty in the Running Room. He used to cook on the cooking gas. On April 19, 1984 while working in the Running Room there was an accident on account of the excessive gas inhaled by him and he was admitted to the SMS Hospital, Jaipur for treatment. However, he died on April 27, 1984. It is alleged that the deceased received personal injury by accident arising out of and in the course of his employment which resulted in his death.

3. In reply, the appellants submitted that the deceased died on account of his old disease and not due to any accident arising out of or in the course of his employment. According to the appellants there was no accident in connection with the services of the deceased but the death was on account of hypertension, hemiparasis, left side renal failure, pulmonary arrest according to the certificate issued by the Director.

4. It is an admitted position that the deceased husband of the respondent was working as a Cook in the Running Room and as such his duty was to cook food on fire in the Running Room. It is also an admitted position that according to the death certificate the cause of death was severe hypertension, hemiparasis, left side renal failure and pulmonary arrest. The question to be seen is whether in the circumstances of the case it can be said that the death of the deceased is covered by the provisions of Section 3 of the Workmen's Compensation Act (hereinafter referred to as the Act). The learned Commissioner under the Act looked into the pleadings as well as the evidence produced in the case and held that working on the cooking stove could not be the immediate cause of the death but a situation could arise where hard work on cooking stove can lead to strain and accelerate the death. He did not accept that the deceased was regularly ill or suffering from any disease. He was of the opinion that the deceased died during the course of his employment and the real cause of his death was excessive working on cooking gas. Thus, a sum of Rs. 35,600/- was awarded by way of compensation. However the same has not been paid.

5. The learned counsel for the appellants has contended that the ingredients of Section 3 of the Act have not been made out and also that there is difference between the pleadings and the proof. It is contended that unless it is shown that death occurred due to the injury by accident arising out of and in the course of employment, the employer cannot be made liable for compensation. According to him, all these ingredients have not been proved. The learned Commissioner is also said to have linked the cause of death to brain hemorrhage in giving his finding. The oral evidence as well as the pleadings have been attacked by arguing that the claim petition states that the deceased became sick due to inhalation of excessive gas but then the claimant wife and her son had never gone to the Running Room to know about the circumstances in which the deceased was doing his duty.

6. On the other hand, the learned counsel for the respondent has contended that the death occurred during the course of employment on account of the fact that the working conditions were such which accelerated the death of a person who was suffering from hypertension but the disease was not as such as to claim his life but the strenuous duty and condition of working accelerated his death. It is contended that a casual relationship between the accident and employment is sufficient to establish that the injury was caused in an accident which arose out of and in the course of employment.

7. Both the parties have placed reliance on a number of decisions and they may be looked into. In *Ramlal Jawahir Lal v. Smt. Leela Bai and Ors.* 1973 (27) F.L.R. 154 the deceased was a Munim employed by a firm and he was sent out to realise the outstanding amounts where he contracted pneumonia and expired. It was held that not only the accident causing injury or death should take place in the course of the employment of the workman but it must also arise out of this employment and the accident; must have some casual relation to the

employment and must be due to risk incidental to the nature of the employment. The award granting compensation to the dependents of the deceased was set aside. *Chowgule and Co. Pvt. Ltd. v. Smt. Felicidade Rodrigues* 1970 Lab IC 1584 has been relied upon to substantiate the proposition that the onus is on the claimant to prove that the accident arose out of and in the course of employment. In *Laxmibai Atmaram Vs. Chairman and Trustees, Bombay Port Trust*, it has been discussed that if a workman dies as a natural result of the disease from which he was suffering, then it could not be said that his death is caused out of his employment. But if the employment is a contributory cause, or if the employment has accelerated the death, or if it could be said that the death was due not only to the disease coupled with the employment then the employer would be liable and it cannot be said that the death arose out of the employment of the deceased. Referring to expression "accident" in Section 3 of the Act it was stated that it should be construed in its popular sense. It has been defined as an unlooked for mishap; an untoward event which is not expected or designed. In this case, the workman was employed as watchman for looking after the pumping station belonging to the employer. He died as a result of the strain caused upon his heart by the particular work that he was doing. In *Kamla Bai Vs. Divisional Superintendent, Central Railway, Nagpur*, the deceased, a railway engine driver, expired while on duty and the cause of death was found to be heart failure due to valvular incompetency and atheroma of the arteries. Though it was held that the death would fall within the term of "accident" but it was held that it could not be said that the death by accident arose out of employment i.e. some contributory cause on account of his employment. In *Bal Diva Kaluji v. Silver Cotton Mills Ltd.*; (1956-I-LLJ-740) the deceased, a normal healthy workman, suddenly collapsed while working in the weaving department of a textile mill and died within six hours after such collapse. The expert evidence gave cause of death as heart failure. The expert evidence was based on probabilities and was by a person who did not examine the patient. It was observed as under (pp.741-742):

"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. Further the fact that in the instant case the deceased workman had worked for eight hours on a hot day must have caused the strain and accelerated his death. In the circumstances the death must be held to be due to accident arising out of and in the course of employment"".

8. In *Santan Fernandes Vs. B.P. (India) Ltd., Bombay*, the deceased scullion had to serve food for officers and crew of the ship and for this purpose he was to be in varying degrees of temperature alternately in the discharge of his duties. It was held that the deceased was brought within the zone of special danger within the meaning of Section 3 of the Act and compensation was allowed.

9. In *Hindustan Steel Construction Ltd. v. Nuralsha Khatoon* 1992 (II) LLN 250 a driver of ambulance suddenly developed a severe pain in the chest while changing the tyre of ambulance and because of that he died. It was held that the death was caused by disease coupled with] employment and was not a natural death and the employer was liable for payment of compensation. In *Kalawati Sakharam Ingulkar v. Mahindra Ugine Steel Co. Ltd.*(1988 (II) LLN 62) the injury sustained by the workman by accident arising out of and in the course of employment resulted in death after about six months it was held that the death need not be a direct result of the injury even if it has contributed to accelerate the death and it is enough for the case to fall within Section 3 of the Act. *United India Insurance Co. Ltd. Vs. Yasodhara Amma and Another*, is also a case of a driver of vehicle suffering heart attack which resulted in his death and it was held that it was in the course of his employment and to attract Section 3(1) of the Act, it is not necessary that there should be a personal injury caused to workman by accident. In *United India Insurance Co. Vs. C.S. Gopalakrishnan and Another*, a bus conductor died by a heart attack after working hours when he was sleeping in the bus. It was held that there was casual connection between the death of workman and work done in the course of employment. The nature of his duty contributed to great strain both mentally and physically which resulted in cardiac arrest. In *Director (T and M), D.N.K. Project Vs. Smt. D. Buchitalli*, the employee was a factory worker who had heart disease earlier but after working for four hours inside the factory premises he died of heart failure while coming out of the factory. This heart failure was said to be the result on account of severe stress and strain while doing the work in the factory premises and Section 3(1) of the Act was held to be attracted.

10. On the basis of the decisions which have been seen above it is obvious that the facts of the present case can be said to be similar to the cases to those who were earlier suffering from disease and where death was acceleration account of stress and strain of the working condition, it is not necessary that there should be a direct connection between the cause of death and the nature of duties. Even if a casual connection between the two can be shown then the dependents of the deceased would be entitled to claim compensation from the employer. In the matters like the present one it is not for the Courts to look to the minute details of the pleadings and the evidence which has been produced in the Court but it is to be seen whether on a broad analysis of the material before the Court it can be said that the accident which resulted in any injury was in the course of employment or out of the employment. If it is accepted that the deceased was suffering from high blood pressure from last one year his duties as cook in the Running Room added strain and this strain has a casual relationship with the cause of his death. It was hypertension leading to other complications. This casual connection will not go away merely because the deceased died after a week from the accident. The natural result of the disease is to be considered in a general manner and it cannot be expected that the Doctor would be able to analyse i each step in order to show how the deceased developed the disease

and succumbed to the same. Suddenly becoming unconscious as a result of strain is an unexpected event which can be said to be an accident leading to an injury in the course of employment and arising out of employment due to the working conditions, namely heated kitchen where the cooking was to be done. I am satisfied that the strenuous duties and working condition in which the deceased was working accelerated his death, as such the dependents are entitled to get the compensation.

11. The decision of the learned Commissioner under the Act does not require any inter-i ference. It has already been stated above that the amount of compensation has not been contested by the respondents, hence, this appeal is dismissal with costs.