

(2007) 08 MAD CK 0104
In the Madras High Court
Case No : C.M.A. No. 596 of 2002

G.T.P. Granite Ltd.-Unit II

APPELLANT

Vs

Smt. Sathya, Thiru Kandan and Smt. Veerayee

RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(8)
Workmens Compensation Act, 1923 — Section 3, 3(1)

Citation : (2008) ACJ 1238 : (2007) 5 CTC 498 : (2008) 116 FLR 487 : (2008) 1 LLJ 749 : (2007) 6 MLJ 1730

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : John, for the Appellant; C. Prakasam, for the Respondent

Final Decision : Allowed

Judgement

R. Sudhakar, J.—The employer, appellant challenges the order of the Commissioner for Workmen's Compensation, (Deputy

Commissioner for Workmen's Compensation), Salem has filed the above CMA.

2. The brief facts as stated in the claim petition is as follows:

One Venkatachalam aged about 31 years, was employed by the appellant as helper. On 06.02.1999, the deceased Venkatachalam was

proceeding from his house located at Thekkampatty village to the appellant's granite unit No. II to attend the night shift work from 11 p.m. to 7

a.m. While he was walking near the Karumbalai privu bus stop at about 10.15 p.m, he was hit by an unknown motor vehicle. The motor vehicle

ran over the said Venkatachalam and caused serious injuries and he died on the spot.

3. The claimants, respondents in this appeal are the wife and parents of the

deceased Venkatachalam, who claimed a sum of Rs. 2,50,000/- under the provisions of the Workmen's Compensation Act. No amount was claimed under the provisions of the Motor Vehicles Act. Before the Deputy Commissioner for labour, appellant filed their counter denying their liability stating that the accident did not take place at the place of work and the death was not in the course of employment. It was contended that even as per the pleadings of the claimants no liability arises under the provisions of the Workmen's Compensation Act.

4. The substantial question of law that arises for consideration is as to whether the deceased employee suffered an injury in an accident in the course of and out of his employment?

5. The Tribunal in paragraph 16 of the award placing reliance on the evidence of P.Ws. 1 and 2 and Exs. P1 to 4, came to the conclusion that while the deceased was coming to work for night shift on 06.02.1999 and he died in the road accident and therefore the death was in the course of employment.

Consequently, the appellant employer was held liable to compensate the claimant as per the award. Aggrieved by the same, the appeal is filed.

6. The evidence of P.W. 2, Dharmalingam, who is a coworker was that on 06.02.1999 he was accompanying the deceased while going to work.

According to Ex. P.1/F.I.R, the place of accident is Karumpalai bus stop Junction.

7. learned Counsel for the appellant relied upon the decision of Regional Director, E.S.I. Corporation and Anr. v. Francis De Costa and Anr.

reported in 1996 (6) Supreme 0678 SC and contended that the place of accident is relevant to claim for compensation under the provisions of

Workmen's compensation Act.

8. In the above said reported case, the accident occurred at a place 1 Km away from the factory site, when the employee was on the way to

work. The case of the claimant is that the accident and consequent injury had occurred out of and in the course of employment. Section 2(8) of the

E.S.I. Act reads as follows:

2.(8) "employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course

of his employment, being an insurable employment, whether the accident occurs

or the occupational disease is contracted within or outside the territorial limits of India;" The above Section 2(8) of E.S.I. Act was interpreted in the case Francis De Costa by analysing various Indian and English Court decisions and the Apex Court held in paragraph 27 as follows:

We are of the view that in the facts of this case, it cannot be said that the injury suffered by the workman one kilometre away from the factory while he was on his way to the factory was caused by an accident arising out of and in the course of his employment

The Supreme Court referred to the earlier decision reported in AIR 1985 SC 811 of said decision reads as follows:

The meaning of the words"" in the course of his employment"" appearing in Section 3(1) of the Workmen's Compensation Act, 1923, was examined by this Court in the case of Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, There, the appellant, a salt manufacturing company, employed workmen both temporary and permanent. The salt-works was situated near a creek opposite to the town of Porbander. The salt-works could be reached by at least two ways from the town, one an overland route nearly nearly 6 to 7 miles long and the other via a creek which had to be crossed by a boat. In the evening of 12.6.1952, a boat carrying some of the workmen, capsized due to bad weather and overloading. As a result of this, some of the workmen were drowned. One of the questions that came up for consideration was whether the accident had taken place in the course of the employment of the workers. S. Jafer Imam J., speaking for the Court, held:

As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded.

After laying down the principle broadly, S. Jafer Imam, J., went on to observe that there might be some reasonable extension in both time and place to this principle. A workman might be regarded as in the course of his employment even though he had not reached or had left his employer's premises in some special cases. The facts and circumstances of each case would have to be examined very carefully in order to determine whether the accident arose out of and in the course of the

employment of a workman, keeping in view at all times this theory of notional extension. But, examining the facts of the case, in particular, after noticing the fact that the workman used a boat, which was also used as public ferry for which they had to pay the boatman's dues, S. Jafer Imam, J., observed: It is well settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends up to point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable.

9. The Supreme Court in *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another*, in a case of death of a lorry cleaner, even

though he was in employment held that in a case for compensation under the Workmen Compensation Act, the key issue to be decided is whether

that the death or injury, occurred out of and in the course of employment. The principles as laid down by the Apex Court are as follows:

21)(1) There must be a casual connection between the injury and the accident and the accident and the work done the course of employment.

(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of

the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.

Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not

be foreseen or comprehended. A finding of fact, thus, has to be arrived at, inter alia, having regard to the nature of the work and the situation in

which the deceased was placed.

22) There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or

conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising

jurisdiction.

10. The Commissioner for Workmen's Compensation has held that the employee died due to accident which happened in the course of

employment, as the accident occurred on, the way to employment. Section 3(1) of the Workmen's Compensation reads thus:

3. Employer's liability for compensation:

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay

compensation in accordance with the provisions of this Chapter:

The term "arising out of and in the course of employment" in Section 3(1) of the Workman's Compensation Act, is pari material to the term as

found in Section 2(8) of the Employees' State Insurance Act, 1948. The claim for compensation under the Workmen's Compensation Act and

that of the benefit under the provisions of the Employees' State Insurance Act are determined by a common factor, in that an employee or the

claimant as the case may be, in order to succeed in a claim will have to prove that the injury for which compensation is claimed, was due to an

accident that arose out of and in the course of employment. Both the conditions will have to be fulfilled before such claim can be accepted. In

Francis De Costa case cited above, the Apex Court while discussing the scope of the term "arising out of...his employment", observed in paras 6

and 7 as follows:

6. In our judgment, by using the words "arising out of...his employment", the legislature gave a restrictive meaning to "employment injury". The injury must be of such an extent as can be attributed to an accident or an occupational disease arising out of his employment "Out of", in this context, must mean caused by employment. Of course, the phrase out of has an exclusive meaning also. If a man is described to be out of his employment/it means he is without a job. The other meaning of the phrase "out of" is influenced, inspired, or caused by: out of pity; out of respect for him" (Webster's Comprehensive Dictionary-International Edition-1984). In the context of Section 2(8), the words "out of" indicate that the injury must be caused by an accident which had its origin in the employment. A mere road accident, while an employee is on his way to his place of employment cannot be said to have its origin in his employment in the -factory. The phrase "out of the employment" was construed in the case of South Maitland Railways Pty. Ltd. v. James 67 CLR 496 where construing the phrase "out of the employment", Starke, J., held "the words out of require that the injury had its origin in the employment".

7. Unless the employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act. The words "accident...arising out of...his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment.

In the present case, the evidence on record clearly shows that the deceased in this case died in an accident near a bus stop and admittedly not within the premises of the appellant unit. The evidence of P.W. 2, a co-worker is that they were going to work together and the accident happened on the way. There is no material to suggest that the deceased was travelling at the instance of the appellant and it was in the course of employment. The deceased in this case had not reported to duty and the accident happened even before that. Assuming for a moment that the deceased had already reported to duty, there is no evidence let in to show as to why he was at the bus stop, far away from the premises of the appellant at the time of accident. The employee is not required to be at the place of accident at

the time of accident if he had reported to work. Therefore, the evidence, oral and documentary placed on record does not support the case of death in an accident arising out and in the course of employment.

Since there is no evidence or material to support the claimant's plea that the deceased died in the accident that arose out of and in the course of his

employment, the Commissioner for Workmen's Compensation erred in holding so. Even as per the pleading of the claimant about the nature of

accident, the claim cannot be accepted. The findings of the Commissioner for Workmen's Compensation are not supported by the evidence on

record and the reasonings are totally untenable. Tested on the parameters laid down by the Apex Court as has been extracted above, the case of

the claimant cannot be accepted. The Commissioner for Workmen's Compensation exceeded his jurisdiction by invoking the provisions of the

Workmen's Compensation Act, as the provisions of Section 3 of the Workmen's Compensation Act is not attracted to this case. The decision in

Sakuntala Bai Pandey v. National Thermal Power Corporation Ltd. reported in 1997 (1) LLN 1026 relied on by the Commissioner for

Workmen's Compensation Act is a case of compassionate appointment and does not apply to the facts of the present case. In the result, the

question of law is answered in favour of the appellant.

11. The order of the Deputy Commissioner of labour is set aside. However, as pleaded by the counsel for the respondents since 50% of the

amount has already been withdrawn, the claimants need not refund the same. On an application being made by the appellant, the Deputy

Commissioner of Labour shall refund the balance amount with accrued interest. The Civil Miscellaneous Appeal is allowed. No cost.