

(1994) 12 MAD CK 0019
In the Madras High Court
Case No : C.M.A. No. 312 of 1988

Madras Metropolitan Water Supply and Sewerage Board

APPELLANT

Vs

Smt. Karmal

RESPONDENT

Date of Decision : 09-12-1994

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (1995) ACJ 1207 : (1995) 2 CTC 557 : (1995) 2 MLJ 137

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : P. Sathasivam, for the Appellant; K.T. Palpandian, for the Respondent

Final Decision : Dismissed

Judgement

N. Arumugham, J.—An useful debate upon the concept of the word "accident" is being very much involved in this appeal while challenging

the order passed by the Deputy Commissioner of Labour-I, Madras.6, being the authority to decide the compensation u/s 3 of the Workmen

Compensation Act (hereinafter referred to as the Act), in W.C.Case. No. 39 of 1985 dated 15.4.1987, filed by one Tmt. Karmal, wife of

deceased by name Subramani and thereby awarding the compensation at Rs. 47,086.70.

2. On 12.8.1984, a driver of a pumping station, employed under the Madras Metropolitan Water Supply and Sewerage Board, in Area- IV by

name Subramani was said to have reported to duty at about 6.15 a.m. on 12.8.1984 and at about 7.15 a.m. he was found dead underneath a tree

nearby the office room. This followed his wife the respondent herein filing a claim petition for compensation before the authority referred to. On

recording the oral and documentary evidence, the Deputy Commissioner

concerned accepting the case of the claimant quantified a sum of Rs.

47,086.70 to be paid as the compensation for the death of the said Subramanian by holding that the said employee died due to an accident that

happened during the course of employment on the relevant day and time. By adopting the procedure, this appeal has been preferred and

canvassed.

3. An attempt on the part of the appellant was made in this case to say that the very element of "accident" as defined u/s 3 of the Act has not since

been established and hence the approach adopted by the Deputy Commissioner is beyond the scope of the law and that therefore, it is being

assailed for its legality, propriety and correctness. An incidental attack was also made on behalf of the appellant that the circumstances under which

the workman died, the time and manner raises the presumption that he would have met with his natural end and that therefore, the element of

"accident" is totally lacking in this case to award any compensation. A decision of the Division Bench of the Patna High Court in Superintendent of

Mines Vs. Smt. Lalo Devi, has been relied on in support of the above contentions.

4. More emphasis has been stressed by Mr. Palpandian, learned counsel appearing for the respondent/claimant to justify the compensation award

passed by the Commissioner and that it is totally on par with the law on all fours. While saying so, learned counsel would contend that the word

"accident" contemplated in Section 3 of the Act is necessarily to be given a very comprehensive and wider meaning to construe the culpability of

paying the compensation in a case like this under the Act but not in a narrow manner by giving restricted meaning for the said word. Basing reliance

on the decisions given in a plethora of case laws of Supreme Court and various other High Courts, learned counsel drew my attention to the very

scope and the meaning being opted and provided to the concept of the word "accident" referred to in the Act. But for the reasons and well settled

principles of law on this score, I do not propose to traverse all in detail case by case and ratio by ratio in a seriatim manner.

5. Enough for me at this stage to confine to the established legal ratio to the facts of the instant case. That would suffice to provide a clear answer

to the point raised in this appeal. It is admitted that on the relevant day of 12.8.1984 morning between 6.15 a.m. and 7.30 a.m. deceased

Subramani after reporting to his duty to the appellant was within its precincts, met with his end by breathing his last and therefore, one may not find

any difficulty to hold that the said person breathed his last during the course of his employment. The next thing that remains to be seen as

considered by the learned Deputy Commissioner is whether his death was due to any accident or under any of the concepts provided in the

exceptions to the above section of law. An attempt on behalf of the appellant was made to rely upon Ex.P3 and Ex.P4 the inquest report and post-

mortem certificate. Of course, these two documents though have been marked, the learned Deputy Commissioner has not adverted to the same

while passing the impugned order. But however, that does not itself in my respectful view render any help to improve the case of the appellant for

the simple reason that the contents of Ex.P3 is directly in conflict with Ex.P4 which if to say, the doctor who conducted the autopsy over the dead

body did not give any opinion regarding the cause of death but on the other hand, he has referred to some cardiac blocking during his autopsy

whereas, Ex.P3 the inquest report shows that the deceased Subramani succumbed to death due to epilepsy but unfortunately no inquest statements

given by the said panchayatdars were forthcoming and relied on behalf of the employer as was done under Ex.P3 and Ex.P 4. Ex.R3 and Ex.R4

the Muster Roll and Attendance Register as was rightly observed by the learned Deputy Commissioner deserve no legal credence for their inherent

meddling with and it remains unexplained. Therefore, I am of the firm view that the learned Deputy Commissioner was perfectly correct in rejecting

the said documents and come to the conclusion that the employer, namely, the appellant has miserably failed to discharge his onus of proving that

the deceased Subramani would come under any of the exceptions provided to Section 3 of the Act.

6. Coming to the other important question whether the basic ingredients adumbrated in Section 3 of the Act is made available in this case or not, as

I have adverted to, the decided case laws by now are definitely to the extent of supporting the claim of the respondent, namely, the claimant herein.

The Law Lexicon, for the word ""accident"" provides the meaning as extracted hereunder :

The word "accident" is constantly used in ordinary English, and therefore in law, in two senses, one much wider than the other. Strictly an

occurrence can only be said to be accidental when it is due neither to design nor to negligence. For, if an act be intentional it is clearly no accident;

if it be the result of culpable negligence, then by due care it could have been avoided and the negligent person cannot be allowed to excuse himself

by declaring it an accident. In this narrower sense of the word, an accident must be ""nobody's fault"".

The word ""accident"" generally denotes an event that takes place without one's foresight or expectation; an event which proceeds from an unknown

cause, or is an unusual effect of a known cause, and therefore not expected; chance, casualty, contingency; an event happening without the

concurrence of the will of the person by whose agency it was caused. It differs from mistake in that the latter always supposes the operation of the

will of the agent in producing the event although that will is caused by an erroneous impression on the mind.

An exception in a Charter-Party against ""Accident"" does not include a snow-storm. ""An accident is not an ordinary occurrence, but something

which happens out of the ordinary course of things. A snow-storm, however is one of the ordinary operations of nature, and may be described

rather as an incident than an accident.

In annotating the above meaning ascribed to the word ""accident"", if the scope of the Industrial Law, namely, the scope inherent in Section 3 of the

Workmen's Compensation Act is imported, then, I may hold without any hesitation, as decided by the various High Courts and Their Lordships of

the Supreme Court in very many number of cases that the industrial jurisprudence clearly over-rides and have a over-riding effect upon me

common law doctrine of "torts". In short to say, the meaning for the word "accident" spelt out in Section 3 of the Act has to be given a very wider

meaning and not certainly in a narrower sense. An accident by itself implies that it may happen at any point of time with or without the knowledge

of the person who suffers by it and therefore, it cannot be proved always by direct evidence. The apex Court has clearly laid down the ratio on this

score as was contended by the learned counsel for the respondent. But on the other hand, it has to be implied, presumed for the simple reason that

the principles of the Indian Evidence Act cannot be expected to have a direct and overall clothing for the proof of this concept of "accidents". If

this is the legal ratio and synthesis made established, then, I find no difficulty at all to decide this case only in favour of the respondent herein,

supporting all of my endorsement to the conclusion arrived at by the learned Deputy Commissioner in favour of the claimant.

7. There was no controversy among the Bar over the quantum of compensation awarded to the claimant. The whole controversy seems to be the

very basis of the propriety on which the award has been made and even without adverting to the above legal ratio, the Deputy Commissioner has

clearly held that the death of the husband of the claimant had occurred during the course of employment on the relevant day and time due to the

accident (which accident is purely within the knowledge and ambit of the employer), which has not at all been projected before this Court or the

court below. Therefore, I can say that this is a case of non-est factum. The endeavour taken on behalf of the appellant to show that the deceased

had not reported for duty on that day can be certainly attributed with every motive to dissuade the awarding of the compensation which clearly

establishes the presumption contra. Therefore, having considered the whole thing and the rival contentions submitted, I am constrained to hold that

the decision arrived at by the learned Deputy commissioner in awarding compensation to the poor claimant, namely, the widow of the deceased is

on part with the law and beyond any attack or assailment and that therefore, the impugned order is perfectly justifiable in any view. In other words,

the appeal lacks in merits.

8. In the result, the appeal fails and accordingly it is dismissed. The order of the learned Deputy Commissioner made in W.C.Case. No. 39 of

1985 on 15.4.1987 is confirmed. It was brought to my notice that 50 per cent of the compensation amount awarded has been deposited and

withdrawn by the claimant/respondent before the court below and the rest of 50 per cent has been deposited in the State Bank of India, Mount

Road Branch, Madras. Consequent to my order passed in this appeal, I hereby direct that the respondent/claimant is entitled to withdraw the said

amount of 50 per cent now remaining in the State Bank of India, Mount Road branch, Madras, immediately. However, there shall be no order as

to costs under the circumstances.