
(1992) 07 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.A. No. 341 of 1986

Mines Manager

APPELLANT

Vs

Waheedul Haque Abbasi

RESPONDENT

Date of Decision : 03-07-1992

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 3, 3(1)

Citation : (1994) ACJ 334 : (1999) 3 LLJ 437

Hon'ble Judges : R.K. Verma, J

Bench : Single Bench

Advocate : Rajendra Menon, for the Appellant; S.K. Rao, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Verma, J.—This is an appeal by the employer Mines Manager filed u/s 30 of the Workmen's Compensation Act against the order dated August 11, 1986 passed by the Commissioner, Workmen's Compensation (Labour Court), Jabalpur, in case No. W.C. (Fatal) 106 of 1985 whereby the respondent, father of the deceased workman Shafiul Haque, has been awarded a sum of Rs. 30,000/- as compensation in respect of the death of the workman.

2. The facts giving rise to this appeal briefly stated, are as follows :

The deceased Shafiul Haque, aged 36 years, was in the employment of the appellant Mines Manager and was working as Traffic Incharge inside the mine on September 4, 1983, where he died of heart failure.

3. On a petition claiming compensation having been filed by the respondent, father of the deceased, under the Workmen's Compensation Act, before the learned Commissioner for Workmen's Compensation, Jabalpur, the learned Commissioner after trial of the case found that the deceased was a workman who died due to personal injuries caused to him by an accident arising out of and in the course of his employment and held the employer liable to pay compensation and determined the amount of compensation in accordance with

the provisions for Workmen's Compensation as Rs. 30,000/- with interest at the rate of 6 per cent annum from the date of accident and directed the same to be paid to the dependants of the deceased.

4. Being aggrieved by the impugned order awarding compensation, the employer has filed this appeal.

5. The learned counsel for the appellant employer has submitted that the learned Commissioner has wrongly held deceased to be a Workman. It has been submitted that the deceased Shafiul Haque, who was working as Traffic Incharge inside the mines, died in the course of his employment on September 4, 1983 and as per the definition of "workman" under the Workmen's Compensation Act, 1923, a workman is any person employed on monthly wages not exceeding one thousand rupees and that the monthly wages of the deceased exceeded rupees one thousand. It was only on July 7, 1984 that the words "on monthly wages not exceeding one thousand rupees" were omitted by Amendment Act No. 22 of 1984 from the definition of workman.

6. To the above argument of the learned counsel for the employer, the reply by the learned counsel for the deceased workman is that the learned Commissioner has found the monthly wages to be Rs. 900.42 only after deducting the underground allowance, overtime allowance, sick allowance and extra allowance. According to the learned counsel, the deductions have been validly made by the learned Commissioner since the said allowances are not liable to be included in wages as defined under the Act.

7. The learned counsel for the respondent employee has further submitted that the amending Act No. 22 of 1984, whereby the limitation put by the words "on monthly wages not exceeding one thousand rupees" has been deleted from the definition of workman, is a piece of welfare legislation and as such it should be given retrospective effect so as to cover the case of the deceased employee, who died on September 4, 1983, prior to the said amendment, within the meaning of workman. Learned counsel has cited a decision of this Court in a motor accident claim case, *Devji v. Anwarkhan* 1989 ACJ 567, in support of his submission.

8. Without going into the question whether the learned Commissioner was justified in excluding the various allowances aforesaid while determining wages of the deceased employee, I think that the limitation of wages of Rs. 1,000/- cannot be allowed to operate to the disadvantage of the deceased employee in pending case of compensation in view of the amending Act No. 22 of 1984 which being a piece of welfare legislation should be given retrospective effect to the benefit of the employee in determining his entitlement to compensation in a pending matter.

9. The learned counsel for the appellant employer has next submitted that the deceased employee died of heart attack in the course of his employment, but there is no causal relationship established between the heart attack and the employment so as to come to a definitive conclusion that the injury was caused

to the workman by accident arising out of his employment. The finding of the learned Commissioner that the death due to heart attack arose out of the employment of the deceased is, therefore, assailed as not maintainable in law.

10. The only medical evidence on record is the post-mortem report in which the opinion recorded by the Assistant Surgeon shows that the cause of death of deceased Shafiul Haque was shock due to rupture of the heart (left ventricle). There is no evidence apart from the post-mortem report that the deceased had any heart disease at any time in the past prior to his death by heart attack in the course of his employment.

11. Death of workman due to heart failure while on duty is an accident within the meaning of Section 3 of the Act. Certain manifestations of heart condition from the effect of strain or overexertion of work constitute an accidental injury within the Act. In the cases of heart failure during the course of employment the claimant dependant cannot be expected to give evidence of strain or overexertion experienced by the deceased while at work in the course of employment leading to the heart attack and death. In the nature of things and in fairness it could only be expected of the employer to give evidence about the previous history of the deceased's health and his health condition in the course of his employment prior to the occurrence of death. There is, however, no evidence led by the employer which could throw light on the question whether the death by heart attack occurred as a result of employment or otherwise. To my mind, if the matter is allowed to be shrouded in mystery because of the paucity of evidence, the employer cannot be given the advantage of it. In the case of *Amubibi Vs. Nagri Mills Co. Ltd.*, where a workman going to work at 3.30 p.m., was found dead on the floor at 5.30 p.m., by coronary insufficiency, it is permissible to infer that the death was due to strain out of work and fatigue in doing the work and that the strain led to the coronary condition. Relying on this decision, I hold that the death of the deceased employee occurred on account of personal injury in an accident arising out of and in the course of his employment. In this view of the matter agreeing with the finding of the learned Commissioner, I uphold the award. This appeal, filed by the employer, is, therefore, dismissed with no order as to costs.