
(2013) 09 AP CK 0076

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 302 of 2003

M/s. Kalyan Roller Floor Mills Pvt. Ltd.

APPELLANT

Vs

U. Neelamma, U. Uma Sekhar and U. Vinod Kumar

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) ACJ 1661 : (2014) 2 ALD 67 : (2014) 2 ALT 445 : (2014) 1 AnWR 838 : (2014) 141 FLR 410 : (2013) 4 LLJ 651 : (2014) LLR 285

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : Challa Gunaranjan, for the Appellant; K. Maheswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzulpurkar, J.—This appeal is preferred by the respondent in W.C. No. 3 of 2001 aggrieved by the award dated 04.12.2002 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Anantapur. The aforesaid compensation case was filed claiming that the first claimant is the widow and claimants 2 and 3 are the minor sons of the deceased, U. Ramanjaneyulu. The deceased is said to be working with the appellant as a driver on the lorry transporting various products from the mill to the destination points, as directed by his superiors. It was stated that the deceased had a driving license marked as Ex. A1 and since 01.07.1999 till his death on 23.01.2000, he was working as such. It is stated that he had taken the lorry load and he was away for about 9 days and the day on which he returned from duty, he suffered a massive heart attack and chest pain and died. While he was taken to the hospital in Guntakal Municipality, the doctors there pronounced him dead by issuing a medical certificate Ex.A2 and the Guntakal Municipality issued death certificate, Ex.A3. The deceased being employed with the appellant is evidenced by certificate of employment, Ex.A4. The claim for compensation, accordingly, was made on the ground that the death of the driver occurred during and in the

course of employment, as immediately after completion of duties when he came home between 12 AM to 1 AM, he suffered chest pain at 2 AM and died thereafter.

2. The appellant - employer contested the said claim, primarily, contending that the said death is not during or in the course of employment and that while working the deceased neither suffered any injury nor complained of chest pain and as such, the employer is no way responsible for its driver dying out of heart attack while at home.

3. The first claimant is examined as A.W.1 and her father was examined as A.W.2 whereas the doctors, who examined the deceased and who gave the medical certificate were examined as A.Ws. 3 and 4 respectively. Exs.A1 to A8 were marked for the claimants and the crucial documents are already referred to in the paragraphs above. Oral evidence of managing director was adduced on behalf of the respondent.

4. After considering the oral and documentary evidence and legal contentions raised by both sides, the learned Commissioner came to the conclusion that the death has occurred at about 4.30 AM due to strain of heavy work, which accelerated to chest pain and ultimate death of the deceased. Hence, it is closely connected with the employment and consequently, held that the employer is liable to pay compensation. The Commissioner, thereafter, assessed the wages of the deceased on the basis of the minimum wages described under G.O.Ms. No. 71 dated 16.04.1991 at Rs. 2,000/- and keeping in view the age of the deceased as 26 years, by applying the relevant factor, quantified the compensation at Rs. 2,15,280/-. Aggrieved thereby, the present appeal is preferred by the employer but denied his liability on various grounds.

5. In this appeal, learned counsel for the appellant has reiterated his contentions that the death is unconnected with the employment and consequently, the liability cast on the appellant on that basis under the Workmen's Compensation Act (for short "the Act") is wholly unsustainable. Learned counsel placed reliance upon a decision of the Supreme Court in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, which was a case arising under a claim of employee under the ESI Act for injuries caused in an accident, which occurred while the employee was riding on his bicycle to his office and had suffered an accident 15 minutes before he reached the destination when he was 1 KM away from his office. The Supreme Court had considered the phrase "in the course of employment" occurring under the ESI Act and came to hold that the accident should have its origin in the employment and the injury caused in an accident while the employee was going to his place of employment cannot be said to be an injury caused during the course of his employment.

6. Learned counsel relied upon a decision of Karnataka High Court in Smt. Ananthamma Vs. The Managing Director, Co-operative Spinning Mills Limited, Raichur, which was a case where an employee working in a factory suffered breathlessness and had taken leave to go to hospital and while waiting at the bus

stop, he suffered another attack of breathlessness and collapsed. It was held that since the deceased had not suffered injury during the course of employment but had died of heart failure while waiting at the bus stop, the same cannot be said to be an injury caused during the course of employment. Another decision in Tuticorin Stevedores Association Vs. Deputy Commissioner for Labour (Commissioner for Workmen's Compensation) and Others, is also relied upon for the proposition that there must be a direct connection between the accident and the death of employee. In that particular case, the employee, who suffered tuberculosis, had taken treatment and was found fit for duty. While working as loadman in the harbor at Tuticorin, he fell down on account of crane sling hitting him and became unconscious and later after admission to hospital, he died after five months. The Court was, therefore, considering whether the death caused is during the course of employment and on finding that the death was not closely connected to the employment, held that compensation on that ground could not have been claimed.

7. On the basis of the aforesaid decisions, learned counsel for the appellant submits that the deceased never complained of any chest pain and discomfort while working as driver in the company transporting goods, on the fateful day he reached home and in the night he suffered heart attack and died thereafter. Learned counsel, therefore, submits that the death had no nexus with the employment and as such, the learned Commissioner committed error in awarding compensation under the Act.

8. Per contra, learned counsel for the respondents placed strong reliance upon the evidence of the Managing Director of the appellant, who was examined. The said Managing Director admitted that the deceased was driver known to him for about 95 days prior to his death. It was also admitted that he had taken loaded lorry on 20.01.2000 to Kolar and came back only on 22.01.2000 but pleaded that after he left duty, he did not know what happened to him. During the cross-examination, he further admitted that the driver used to take factory products viz. Atta, Ravva, Maida, all wheat products, which are all in powder form and edible. He further admitted that the presence of driver and cleaner is necessary at the time of loading the material in the lorry. The aforesaid evidence is relied upon to claim that the nature of occupation of the deceased was such that all products, which are in the form of powder, would be inhaled by the employees. It is also pointed out that as per the first claimant's evidence, the deceased used to go on duty for four days or a week or ten days at a stretch and on the fateful day, he appeared to have come back home at about 12 AM or 1 AM and on the same midnight, he suffered heart attack at about 2 AM when he complained of chest pain and died between 3 AM and 4 AM on the same day. Learned counsel, therefore, submits that the medical evidence also shows that the death had occurred on account of myocardial infraction and could be the result of strenuous work, such as a driver of a lorry and such instances are possible in hard working people.

9. Learned counsel placed strong reliance upon a decision of this Court in *V Depot Manager, APSRTC, Karimnagar Vs. Gurrapu Anjamma*, wherein the conductor of a RTC bus while on duty suffered chest pain and died due to cardiac infraction. In the said case also, this Court considered various decisions and came to the conclusion that the death had occurred out of and during the course of employment. This court also considered various other decisions where strenuous driving of the vehicle was one of the causes, which lead to death and the case of conductor, on hand, was considered in the light of the ratio of various decisions and it was held that the death has occurred during and in the course of employment.

10. Learned counsel for the respondents also relied upon a latest decision of the Supreme Court in *Mst. Param Pal Singh through Father Vs. National Insurance Company and Another*, where various principles laid down under different judgments were reviewed and considered by the Supreme court and it was held that there was close connection to the death of the deceased with that of his employment as truck driver. On facts, it was found that the heavy vehicle driver had driven the vehicle for about 1200 KMs and while he had stopped the vehicle on road side of a nearby hotel, he, thereafter, immediately fainted and was taken to the hospital where he was found brought dead. Thus, the occupation as a heavy vehicle driver was said to be a contributory factor resulting in accelerated death and as such, the death was attributable to and in the course of employment. A Division Bench judgment of the Madras High Court in *P. Kalyani Vs. The Divisional Manager, Southern Railway (Personal Branch)*, is relied upon, which was a case relating to an employee, who was called to attend night duty, was found dead on the platform of the station, which is just before he joined duty. The employer disputed the liability on the ground that the deceased was not on duty and was found lying unconscious on railway platform. The Division Bench considered that the strain caused accelerated or hastened death and it cannot be said that the death was not on account of or in the course of employment.

11. In the light of these rival contentions and the legal position placed on record by the learned counsel on either side, I have examined the evidence, on record, afresh to find that the deceased being driver of the lorry transporting factory products, all of which are in the powder form, is one of the contributory factors, as, admittedly, the driver and cleaner have to be present when the lorry is being loaded or unloaded, which is bound to produce powdered dust. Moreover, the nature of the job required the deceased to be away from home, on duty, driving the lorry for days together, as stated by P.W.1 in her statement. On the fateful day also, immediately after the deceased had returned home from duty, around midnight he suffered chest pain to which he succumbed. As has been found in the latest judgment of the Supreme Court in *PARAM PAL SINGH'S* case (supra), the incident of the deceased suffering from a massive chest pain is closely connected with the nature of employment. The close nexus between the death of the deceased and employment being evident, the learned Commissioner was

right in holding that the death occurred during the course of employment or arising out of employment and as such, was justified in granting compensation to the claimants under the Act. That finding of the Commissioner, therefore, does not deserve any interference. So far as the quantum of compensation is concerned, the same is not in much controversy and even otherwise, the parameters applied by learned Commissioner are sustainable. Hence, no interference is warranted in that respect.

The civil miscellaneous appeal is accordingly dismissed with costs of Rs. 10,000/- (Rupees Ten Thousand only) payable by the appellant to the respondents. As a sequel, the miscellaneous applications, if any, shall stand closed.