

(2009) 04 GUJ CK 0058
In the Gujarat High Court

Case No : First Appeal No. 5709 of 2008 with Civil Application No. 14427 of 2008

Mysore Ammonias Supply Corporation APPELLANT

Vs

Kashiben Jashbhai Patel and Others RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2010) ACJ 1087 : (2009) 123 FLR 368 : (2009) 2 GLR 1768

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : K.M. Patel and Varun K. Patel, for the Appellant; None for Defendant Nos. 1 to 3, 3.2.1, 3.2.2, 3.2.3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned Senior Advocate Mr. K. M. Patel with learned Advocate Mr. Varun K. Patel appearing on behalf of the appellant.

2. The appellant has challenged judgment passed by Workmen's Compensation Commissioner, Vadodara in Workmen's Compensation Application No. 44 of 1991 dated 23rd April, 1998 Exh. 76. The Commissioner has awarded Rs. 63,920/- with penalty Rs. 31,960/- in favour of respondent-claimant.

3. Learned Senior Advocate Mr. Patel vehemently raised contention before this Court that employee having died on account of "Aortic Aneurysm with rupture of Aneurysm with cardio-respiratory failure" as per the case pleaded, but not admitted by appellant, has not considered by Commissioner and Commissioner has committed gross error in coming to conclusion that injury was caused on account of accident "arising out of and in the course of his employment" as contemplated by Section 3 of the Workmen's Compensation Act. Learned Senior Advocate Mr. Patel also raised contention that there was no causal connection between nature of employment and cause of death, and therefore, question of compensation is not required to be paid by appellant to claimant. He further

submitted that Commissioner has committed gross error by presuming causal connection between death and nature of employment without any legal medical evidence. He also raised contention that Commissioner has also committed error in relying upon xerox/original copy of medicine bill and papers relating to medical treatment and death certificate without being proved by examining necessary witnesses. Therefore, learned Senior Advocate Mr. Patel submitted that Commissioner has not properly appreciated evidence on record and committed gross error in awarding compensation with penalty in favour of respondents-claimants.

4. I have considered the submissions made by learned Senior Advocate Mr. Patel and I have also perused judgment passed by Commissioner.

5. The short facts of case of claimant is that widow of deceased and applicant Nos. 2 and 3 are sons of deceased. The deceased was serving as trailer driver-cum-mechanic since number of years with appellant. He was serving his duty efficiently and loyally. The deceased was having monthly salary of Rs. 2,731/-. Over and above, he was getting allowances. The deceased was given duty of transport supervisor since last five years. On dated 16th June, 1991, Tanker No. GQB-5154 belonging to appellant met with an accident at Gwalior. After receiving news of accident, deceased had gone Gwalior with Pravinbhai, in-charge of transport department, on 17th June, 1991 to bring the stuck off vehicle. After reaching at Gwalior, deceased had worked hard to repair vehicle, for which, he sustained mental and physical strain, and therefore, deceased became sick at village Mohana at Gwalior. Thereafter, deceased was immediately shifted to hospital for treatment by Pravinbhai and he had been accompanied to deceased. The deceased was given treatment there and his physical condition worsened than improving. Therefore, deceased had informed that he is not able to work more in spite of he was compelled to do work for his duty and compelled to bring the vehicle to Vadodara. On 29th June, 1991, they brought vehicle at Vadodara, during that time, the physical condition of deceased was worsened further, therefore, he was admitted to Gayatri Nursing Home for treatment. After taking preliminary treatment from the Doctor, he was advised to shift Mumbai for serious illness and they were preparing to shift to Mumbai. During that time, deceased died on 8th July, 1991.

6. On the basis of these facts, deceased left Baroda on 17th June, 1991 and he died on 8th July, 1991 and vehicle came to Baroda on 29th June, 1991. These three dates are relevant.

7. The appellant has filed reply Exh. 41 before Commissioner, and thereafter, Commissioner has examined matter on merits. Kashiben, widow of deceased Jasbhai was examined at Exh. 48 and on behalf of appellant, Dineshbhai Ambalal Panchal was examined at Exh. 71 and documents have been produced by appellant i.e. xerox copy of policy of vehicle No. GQB-5154 vide Mark-42/1. The claimant has produced documentary evidence vide Mark-47/1 to 47/15 as referred in Para 4. Thereafter, Insurance Company has not examined any of

witness in his favour, but produced xerox copy of policy of vehicle. Thereafter, closing purshis has been filed by respective Advocates and considering written arguments of both the sides, Commissioner has framed issues in Para 12 and issue Nos. 1 to 5 have been decided together in Para 14.

8. It is necessary to note that in Para 14, Commissioner has considered oral and documentary evidence placed on record by respective parties and following facts have been considered to be undisputed facts, which is quoted as under:

14. On carefully perusing the oral and documentary evidence placed on record, there is no dispute by and between the parties on the following facts.

- The deceased Jashbhai was servicing as trailer driver-cum-mechanic with opponent No. 1. The tanker No. GQB-5154 met with an accident at Gwalior on dated 16-6-1991.

- On dated 17-6-1991, deceased Jashbhai had gone to Gwalior with transport incharge Mr. Pravinbhai to bring back the tanker from Gwalior by repairing.

- On dated 29-6-1991, the deceased and Pravinbhai had came to Vadodara by getting repaired the tanker, and when deceased was at Gwalior at that time, his health worsened, therefore, Mr. Pravinbhai had taken him to dispensary for treatment at Gwalior.

- The deceased died on 8-7-1991.

9. The Commissioner has considered nexus with a duty of deceased and accident of death occurred with deceased. The physical strain and stress have direct connection to the death of employee. That aspect has been considered in Para 16, which is quoted as under:

16. It is important to note that, the nature of work of deceased was trailer driver-cum-mechanic. The deceased along with transport in-charge Pravinbhai had gone to Gwalior to take the stuck off vehicle No. GQB-5154. They went on 17-6-1991 to Gwalior and returned back with vehicle on 29-6-1991. The deceased became sick at Gwalior, and he had taken treatment at Mohana. The nature of work of deceased is mechanism and has to work hard for the repairing vehicle and driving from farther place at Vadodara. The prudent man can believe that, nature of work of deceased having mental and physical strain and stress. As per case of opponent No. 1-Mysore Ammonia, the employee was suffering from hidden disease, therefore, not disclosed, I am not agree with this submission, because, if the deceased was having hidden disease, he shall never do such type of hard work for repairing and carrying the vehicle from one part of the country to the other part from the farther place. The deceased became sick for the heavy restrengthenous work and he sustained strain and stress of heavy work and he sustained strain and stress of heavy work of repairing and carrying the vehicle at Vadodara, it has apparently nexus with duty of deceased.

10. The contentions raised by learned Senior Advocate Mr. Patel that medical

evidence is remained as it is without examining the Doctor. The reason has been explained in Para 17 by claimant as discussed by Commissioner, because, Doctor had migrated to U.S.A. for ever and unable to come back. That was the reason, and therefore, Doctor has not been examined. Therefore, this aspect has been taken into account by Commissioner. The contention in respect of deceased employee is covered by E.S.I. Act, therefore, application is filed before Workmen's Compensation Commissioner is not maintainable. This aspect has been considered by Commissioner in Para 18 which is quoted as under:

18. The applicants have pleaded and deposed vide Exh. 48 that, deceased was having monthly salary of Rs. 2731/- besides other allowance. The applicants have produced salary slip vide Mark : 47/9. On perusing the same, the pay-slip for the month of 6 of 1991 and salary of deceased Rs. 2731/- p.m. The opponent No. 1 had produced xerox copy of two letters and contended that, the unit of Opponent No. 1 is governed by Employees' State Insurance Act, (hereinafter E.S.I. Act). Therefore, as per provision of E.S.I. Act, this provision is barred. I have carefully gone through the letters of E.S.I., as per letters vide Mark : 75/1(1), it was written by Inspector of E.S.I. Corporation, that letter is pertaining for the year 4 of 1996 to 2 of 1997 that wages paid to the employees mentioned in the said letters, but contribution had not been deduction. As per letter 75/1(2), the contribution for 9/83 and 8 of 1985 and 1 of 1985 had not been paid. In this case, the incident is of 7 of 1991. It is the duty of the opponent: 1 to show and establish that, benefit of E.S.I. Act was extended to the employee/deceased as per provision of E.S.I. Act. The maximum salary limit was Rs. 1,600/- p.m. at the relevant time of incident, if the salary and remuneration of employee exceeding Rs. 1,600/- p.m., then benefits and provision of E.S.I. Act would not be applicable for those employees. If the salary of employee is less than Rs. 1600/- p.m., as it was maximum ceiling limit of E.S.I., then employee shall be considered as "insured person". If person "employee" is not a "insured person", then contribution of E.S.I., is not payable. In this case, the salary of the deceased Rs. 2731/- p.m., as per salary slip produced vide Mark : 47/9. The employee had crossed the salary limit prescribed under the provision of E.S.I. Act, therefore, obviously, under the provision of E.S.I. Act, he would not be considered as "insured person". It is also not the case of the opponent No. 1 that, deceased was "insured person" and his contribution was deducted. It is, therefore, opponent No. 1 covered by E.S.I. Act, it does not mean that, this petition is barred under E.S.I. Act. When the deceased was not "insured person" and crossed the salary limit Rs. 1,600/- p.m. as prescribed by the statute of E.S.I. Act, at the relevant point of time of incidence, then he was not the employee under the provision of E.S.I. Act. When the deceased was not the "insured person" under the provision of E.S.I. Act, then provision of W.C. Act is applicable. The incident is of 7 of 1991 and as per provision of W.C. Act, maximum salary limit was Rs. 1,000/- p.m. In this case, the deceased was having salary Rs. 2731/- p.m. besides allowance. As per provision of W.C. Act, when the salary of a person is exceeding Rs. 1,000/- p.m., then it would be

considered Rs. 1,000/- p.m., hence, I consider the deceased was drawing salary of Rs. 1,000/- p.m.

- The applicant had not pleaded anything about the age of deceased in petition and lumpsum claimed Rs. 1.00 lac. The Applicant: 1 by her deposition, produced original School Leaving Certificate of deceased vide Mark : 47/8. On perusing the same, the birth date of deceased is 22/5/43, the incident had occurred on 8-7-1991, therefore, on the date of incident, the deceased was having 48 hours, 1 month and 16 days of age. Therefore, I hold that, the deceased was having 48 years of age on the date of incident. The salary of deceased was Rs. 1,000/- p.m. It is a fatal case, as per provision of W.C. Act, 40% of salary would be considered for the purpose of computation of compensation. As per age of deceased, relevant factor 159-80 would be applicable. The detailed calculation is as under:

Salary : Rs. 1,000/- p.m. Factor : 159-80 x 1000 = 1,59,800/- 40%
Entitlement : Rs. 63,920/-

Therefore, applicants are entitled to get compensation of Rs. 63,920/-.

11. In view of contention of that employee was insured and E.S.I. Act is applicable, therefore, Claim Petition is not maintainable before the Workmen's Compensation Commissioner.

12. According to learned Senior Advocate Mr. Patel, Commissioner is failed to appreciate that ceiling of Rs. 1,600/- for coverage under E.S.I. Act was removed w.e.f. 1st February, 1991 vide E.S.I. (Amendment) Act, 1989 (Act No. 29 of 1989). The death in present case occurred on 8th July, 1991. Therefore, on the date of death, deceased was covered under the provisions of E.S.I. Act, and therefore, Commissioner has committed gross error in coming to conclusion that he was not covered under the provisions of E.S.I. Act. Rs. 1,600/- "wages" monthly which has been amended w.e.f. 1st February, 1991 do not excess Rs. 3,000/- per month and consider salary of deceased at the time of death, it was below Rs. 3,000/-. But, question is that whether any contribution has been paid by employer to E.S.I. Corporation or not. That fact has not been placed on record by employer. Therefore, in absence of that, it cannot consider that E.S.I. Act is applicable to deceased when accident is occurred. The substitution in ceiling made on 1st February, 1991 is quoted as under:

22. Substituted for "one thousand and six hundred rupees a month" by the Employees' State Insurance (Amendment) Act, 1989, w.e.f. 1-2-1991. Earlier these words were substituted by the Employees' State Insurance (Amendment) Act, 1984, w.e.f. 27-1-1985. "Notified Wage Ceiling : Wages (excluding remuneration for overtime) do not exceed Rs. 3,000 p.m.

13. After considering the decision which has been cited by both sides, has been rightly examined on facts of each case by Commissioner, and thereafter, an observation has been made in Para 22 which is quoted as under:

22. As discussed above in detail, considering the oral and documentary evidence as well as rival contention of learned Advocates for the parties, it is an admitted fact that, the deceased was sent out for an official duty and there he fell sick due to heavy work of repairing and he caused physical and mental strain and stress and taken treatment at Gwalior. Looking to the observation certainly applying the facts and circumstances of the present case, the deceased workman was performing his duty as driver right from Vadodara to Gwalior and during stay at Gwalior, and after getting repaired vehicle he brought back to Vadodara, such type of work certainly aggravate the disease, then, the death can certainly be attributed to the employment causing which he receives on account of strains and stress of the work performed by the deceased, proved over-exerted. Therefore, Opponent : 1 Company is liable for the compensation. The salary of applicant was considered Rs. 1,000/- p.m. and his age of 48 years. Therefore, considering the relevant factor 159-80 and its fatal case, therefore, applicants are entitled to get compensation of Rs. 63,920/- from the Opponent : 1 - The deceased was the junior employee of the Company and ignoring his workmanship and length of service, Company did not take any care for compensation to his dependents. Therefore, Opponent : 1 Company is liable for the penalty of Rs. 31,960/-. In this case, the Opponent : 1 is responsible to pay the penalty and interest to the applicants. Hence, I decide issue No. 4 in affirmative and Issue No. 5 accordingly. Hence, following final order.

14. In view of observations made by Commissioner in his judgment, after considering contentions raised by appellant before Commissioner, according to my opinion, the finding of fact which has been recorded by Commissioner on the basis of evidence on record and also considering the facts that on 17th June, 1991, he has gone to Gwalior with Pravinbhai, in-charge of transport department and then, they bring the vehicle at Baroda on 29th June, 1991 and after immediately, come to Baroda, he was ill and admitted in hospital, and thereafter, shifted to Mumbai where he died on 8th July, 1991. Therefore, considering this fact which suggests and proved that there was a strain and stress at Gwalior while working as a Mechanic to bring the vehicle at Baroda. It is necessary to note one important aspect that before Commissioner, one witness Dineshbhai Ambalal Panchal was examined vide Exh. 71. But, why Pravinbhai who was accompanied with deceased from Baroda to Gwalior and Gwalior to Baroda was not examined? Otherwise, all details may come on record that what strain and stress has been received by deceased to bring vehicle from Gwalior to Baroda. So, important witness Pravinbhai, in-charge of transport department was not examined as he was able to disclose correct facts on record before Commissioner and he must have to establish direct nexus with the duties having strain and stress, which ultimately resulted into death.

15. Therefore, according to my opinion, the reasoning which has been given by Commissioner cannot consider to be a baseless or perverse. On the contrary, entire matter has been examined by Commissioner on the basis of facts which are on record and the finding given by Commissioner cannot be interfered by this

Court in appeal. Therefore, contentions raised by learned senior Advocate Mr. Patel cannot be accepted. Hence, same are rejected.

16. Accordingly, there is no substance in present appeal. Hence, the present appeal is dismissed.

17. When the appeal is dismissed by this Court today, no order is required to be passed in Civil Application. Hence, Civil Application is disposed of.