

(2016) 08 SHI CK 0057

In the High Court Of Himachal Pradesh

Case No : FAO (ECA) No. 498 of 2015.

National Insurance Company Limited - Appellant @HASH Smt. Dhani Devi and Others

Date of Decision : 09-08-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 4(1)

Citation : (2016) AAC 2292 : (2017) 2 ACC 426 : (2016) 151 FLR 458 : (2016) 4 LLJ 285 : (2016) 3 SimLC 1717

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Appellant; Mr. J.R. Poswal, Advocate, for the Respondent Nos. 1 to 4; Ex Parte, for the Respondent Nos. 5 and 6

Final Decision : Partly Allowed

Judgement

Mr. Rajiv Sharma, J. - This appeal has been instituted against Order dated 30.7.2015 rendered by the learned Civil Judge (Senior Division), Shimla exercising the powers of Commissioner, under the Employees Compensation Act, 1923, in W/C Case No. 07/02 of 2011/2009.

2. "Key facts" necessary for the adjudication of the present appeal are that the respondents No. 1 to 4 have filed a petition under Section 22 of the Workmen Compensation Act seeking compensation of Rs. 10.00 Lakh. According to the averments made in the petition, respondents No. 1 to 4 are the legal representatives of deceased Devinder Kumar. Respondents No. 5 and 6 are transporters having a fleet of taxi/cars and luxury coach buses attached with Hotel Taj at Sector 17-D, Chandigarh. Deceased Devinder Kumar was engaged as a driver by respondents No. 5 and 6 with effect from 21.12.2007. Initially his wages were Rs. 4,000/- per month. Later same were enhanced to Rs. 5,000/- per month. On 4.2.2009, Devinder Kmar was asked by the respondents No. 5 and 6 to drop passengers at Srinagar (Jammu & Kashmir) in Innova car bearing No. CH-02-1611. He went to Srinagar. On 12.2.2009, while coming back from Jammu & Kashmir, deceased Devinder Kumar fell ill at Pathankot. He informed

respondent No. 5 about his serious illness. Respondent No. 5 was at Amritsar. He immediately rushed to the spot along with Driver Karam Chand. On reaching the spot and seeing the serious condition of the deceased, respondent No. 5 directed Karam Chand to take the deceased to Chandigarh. Deceased was shifted to Chandigarh. He died on 13.2.2009. According to the averments made in the petition, deceased died during the course of employment with respondents No. 5 and 6. His date of birth was 19.7.1984.

3. Petition was contested by respondents No. 5 and 6. According to their reply, death of Devinder Kumar was neither during the employment nor he died because of occupational disease. He died a natural death. He was not a regular employee. Post mortem of deceased was not conducted.

4. Appellant insurance company also contested the petition. Appellant has denied, for want of knowledge, that the deceased was working as a Driver with respondents No. 5 and 6.

5. Issues were framed by the learned Commissioner on 23.7.2012. He awarded a sum of Rs. 9,57,296/- to respondents No. 1 to 3.

6. Mr. Jagdish Thakur, Advocate, has vehemently argued that the deceased died a natural death. Deceased was not in possession of a valid and effective licence. He then contended that the wages of the deceased could not have been taken as Rs. 5,000/- in the absence of any documentary evidence. According to him, wages were to be taken at Rs. 4,000/- instead of Rs. 5,000/- since accident has taken place prior to the amendment dated 31.5.2010 vide Notification No. SO 1258(E). He also contended that no interest was liable to be paid by the Insurance Company.

7. Respondents No. 1 to 6 were duly served, however, there was no representation on their behalf. They were ordered to be proceeded against ex parte on 9.5.2016. Application for setting aside ex parte order was moved on behalf of respondents No. 1 to 4. Same was allowed on 4.7.2016 qua respondents No. 1 to 4. Mr. J.R. Posal, Advocate, appearing for respondents No. 1 to 4 has supported Order dated 30.7.2015.

8. I have heard the learned counsel for the parties and also gone through the Order and the record carefully.

9. PW-1 Hem Raj deposed that the deceased was his brother. He was working as a Driver with respondents No. 5 and 6. He used to drive Innova car. He was engaged as a Driver with respondents No. 5 and 6 from December 2007. Initially he was getting Rs. 4,000/- which was later enhanced to Rs. 5,000/-. In the month of February, 2009, deceased went to Srinagar. When he was coming back from Srinagar, he fell ill at Pathankot. He informed respondents No. 5 and 6. Respondent No. 5 sent Karam Chand to bring Devinder Kumar to Chandigarh. Age of deceased was 23 years.

10. Statement of PW-1 was duly corroborated by PW-2 Laiq Ram.

11. Tara Singh has appeared as RW-1. He deposed that he was owner of Innova car bearing No. CH-02-1611. He had engaged Devinder Kumar as driver on daily wage basis. He used to pay Rs. 250/- per day as wages. On 4.2.2009, he sent Devinder Kumar to drop passengers at Srinagar. After dropping passengers at Srinagar, Devinder Kumar was coming back to Chandigarh. He informed him, on the way at Pathankot about his illness. He asked Devinder Kumar to stop there and he along with Karam Chand went to Pathankot. They took him to Government hospital at Chandigarh. Doctor checked him and declared him dead.

12. It is duly proved that the deceased was an employee of respondents No. 5 and 6. There was employee-employer relationship between deceased Devinder Kumar and respondents No. 5 and 6. Devinder Kumar had gone to Srinagar to drop passengers. When he was coming back from Srinagar, he fell ill at Pathankot. Respondent No. 5 was duly informed. Karam Chand was sent to bring Devinder Kumar to Government Hospital. Devinder Kumar died at Chandigarh on 13.2.2009. Deceased died during the course of employment. Devinder Kumar had gone to Srinagar in the winter season. Winters in Srinagar during the months of January-February are severe. Learned Commissioner below has rightly come to the conclusion that the deceased died due to occupational decease. Vehicle in question was duly insured with the appellant validity of insurance policy was from 23.4.2008 to 22.4.2009. Deceased died on 13.2.2009, during the currency of the insurance policy. Learned Commissioner has taken monthly income of the deceased at Rs. 5,000/- per month and thereafter has applied factor of 216.91. However, fact of the matter is that since accident has taken place on 13.2.2009, wages of the deceased were to be taken at Rs. 4,000/-, instead of Rs. 5,000/-.

13. The accident has admittedly taken place on 22.12.2009. The explanation (II) under section 4 (1) of Employee's Compensation Act, 1923 has been omitted with effect from 18.1.2010. Thus, the income of the deceased was to be calculated as per the existing explanation (II), which was in vogue at the time of accident. Thus, the income of the deceased was to be computed at Rs. 4,000/- instead of Rs. 5,000/- per month. Learned Commissioner has overlooked this important aspect of the matter while computing the income of the deceased.

14. Their Lordships of the Hon''ble Supreme Court in Kerala State Electricity Board v. Valsala K., 2000 ACJ 5 (SC) have held that sections 4 and 4-A of the Workmen's Compensation Act, 1923 as amended in 1995 would not apply retrospectively. Their Lordships have held as under:

"[4] A two Judge Bench of this Court in The New India Assurance Company Limited v. V.K. Neelakandan, Civil Appeal Nos. 16904-16906 of 1996, decided on 6-11-1996, however, took the view that Workmen's Compensation Act, being a special legislation for the benefit of the workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two Judge Bench in Neelakandan's case (supra) , however, did not take notice of the

judgment of the larger Bench in Pratap Narain Singh Deo's case (AIR 1976 SC 222 : 1976 Lab IC 222) as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in Pratap Narain Singh Deo's case, the view expressed by the two Judge Bench in Neelakandan's case is not correct.

[7] Insofar as these special leave petitions are concerned, we find that the accident took place long time back. Compensation became payable to the workmen, as it is not disputed that the accidents occurred during the course of employment, as per the law prior to the amendment made in 1995. Keeping in view the peculiar facts and circumstances of these cases, pettiness of the amounts involved in each of the cases and the time that has since elapsed, we are not inclined to interfere with the impugned orders, decided on the basis of the 1995 amendment, in exercise of our jurisdiction under Article 136 of the Constitution of India and, therefore, dismiss the special leave petitions, but, after clarifying the law, as noticed above."

15. Learned Single Judge of Jharkhand at Ranchi High Court in Project Officer, Basudeopur Colliery v. Dhaneswari Devi, 2014 ACJ 1325 has held that the calculation of compensation amount should be made under the provision existing on the date of incident relying upon Kerala State Electricity Board v. Valsala K., 2000 ACJ 5 (SC). Learned Single Judge has held as under:

"[3] It is further pointed out that the original claim of the claimant was also under the same calculation, but the learned Presiding Officer, Labour Court, Dhanbad has wrongly calculated the amount under the amended provision and therefore, the aforesaid finding of the learned Presiding Officer, Labour Court is liable to be set aside and the amount payable to the claimant shall be calculated in view of the existing provision as contained under section 4 at the relevant point of time. In this context learned Counsel appearing for the appellant has relied upon the judgment in Kerala State Electricity Board and another v. Walsala Kr. and another, 1999 AIR (SC) 3502 In paragraph-5 their lordships have held as follows:-

5. Our attention has also been drawn to a judgment of the Full bench of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi, 1998 80 FLR 72 wherein the Full Bench precisely considered the same question and examined both the above noted judgments. It took the view that the injured workmen becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen's Compensation Act and it is the amount of compensation payable on the date of the accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant. The decision of the Full Bench of the Kerala High Court, to the extent it is in accord with the judgment of the larger Bench of this Court in Pratap Singh Narain Singh Deo v. Srinivas Sabata and another lays down the correct law and we approve it."

16. Mr. Jagdish Thakur has also argued that interest was not to be paid by the Insurance Company but he has not pointed out any clause of Insurance Policy excluding the provision of interest.

17. Learned Single Judge of Madhya Pradesh High Court (Indore Bench) in Rani Kour and others v. Jagtar Singh and another, 2012 ACJ 2072 has held that where insurance company has not expressly stipulated non-liability for payment of interest in the policy, it is liable to pay the interest on the amount of compensation. Learned Single Judge has held as under:

"[14] Learned Advocate Mr. Sandip Shah appearing for respondent No. 1-original plaintiff in all the appeals referred to the documentary evidences as well as the pleadings in detail and submitted that the operations were performed on the left eye by defendant No. 3 and thereafter the operation was performed for removal of the left eye-ball by defendant No. 5 and again for cataract in the right eye the operation was performed by defendant No. 5. He submitted that if the chronology of events and the dates are considered, it is evident that there was sepsis in his left eye when the operation was performed. He submitted that with the same condition the operation could not have been performed. The submission with regard to endogenous infection in some other part of the body is misconceived as the pathological reports clearly state that the plaintiff was normal. He submitted that, thus, at the time of treating the patient when there was an injury and the blood had clotted, both defendant Nos. 3 and 4 tried to hush up, played mischief keeping the respondent-plaintiff in the dark which led to deterioration in not only the left eye but also affected his right eye. Learned Advocate Mr. Sandip Shah, therefore, submitted that if the pleadings in the form of written statement as well as the depositions are considered, it clearly suggests negligence in performance of the duty by all concerned including defendant Nos. 3 and 5. The Civil Hospital would be liable vicariously for the act of negligence by defendant No. 3.

[15] He, therefore, submitted that when the person has lost vision of both the eyes because of any such carelessness or negligence, it cannot be a ground for further scrutiny on any technical grounds raised on the medical opinion. He submitted that the evidence on record as discussed at length in the impugned judgment clearly suggests that there was negligence on the part of original defendant No. 3-Dr. Bhikubhai Patel as well as defendant No. 5-Dr. Jagdishbhai Shah and both the doctors have failed in discharge of their duty exhibiting reasonable care and standard expected of a person in the medical profession. He, therefore, submitted that the appeals may be dismissed."

18. Their Lordships of the Hon"ble Supreme Court in Manju Sarkar and others v. Mabish Miah and others, (2014) 14 SCC 21 have held that in the absence of clause of contract of insurance excluding provision for interest, the insurance company is liable to pay interest. Their Lordships have held as under:

"13. A contention was raised by the learned counsel for the Respondent No. 3

Insurance Company that they are not liable to pay the interest component and reliance was placed on the decision of *New India Assurances Co. Ltd. v. Harshad Bhai Amrut Bhai Modhiya and another* [(2006) 5 SCC 192] In the facts of the case on which the said decision arose, the contract of insurance entered into between the parties contained a proviso that the insurance granted is not extended to include any interest. In the present case there is nothing on record to show that respondent No. 3 Insurance Company either pleaded about existence of such a clause in the contract of insurance or led any evidence to the said effect and hence the said decision will not help respondent No. 3 in any way and the contention raised is devoid of merit."

19. The amount of interest has to be paid from the date of accident and not from the date of award.

20. Their Lordships of the Hon"ble Supreme Court in *Saberabibi Yakubbhai Shaikh and others v. National Insurance Company Limited and others*, (2014) 2 SCC 298 have held that appellants were entitled to 12% interest from date of accident. Their Lordships have held as under:

"[8] We have perused the aforesaid judgment. We are of the considered opinion that the aforesaid judgment relied upon by the learned counsel for the appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment relied upon by the High Court and observed that the judgments in the case of *National Insurance Co. Ltd. v. Mubasir Ahmed*, 2007 2 SCC 349 and *Oriental Insurance Co. Ltd. v. Mohd. Nasir*, 2009 6 SCC 280 were per incuriam having been rendered without considering the earlier decision in *Pratap Narain Singh Deo v. Srinivas Sabata*, 1976 1 SCC 289. In the aforesaid judgment, upon consideration of the entire matter, a four-judge Bench of this Court had held that the compensation has to be paid from the date of the accident.

[9] Following the aforesaid judgments, this Court in *Oriental Insurance Company Limited v. Siby George and others* reiterated the legal position and held as follows:

"11. The Court then referred to a Full Bench decision of the Kerala High Court in *United India Insurance Co. Ltd. v. Alavi* and approved it insofar as it followed the decision in *Pratap Narain Singh Deo*.

12. The decision in *Pratap Narain Singh Deo* was by a four-judge Bench and in *Valsala K.* by a three-judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in *Mubasir Ahmed* and *Mohd. Nasir*, each of which was heard by two Judges. But the earlier decisions in *Pratap Narain Singh Deo* and *Valsala K.* were not brought to the notice of the Court in the two later decisions in *Mubasir Ahmed* and *Mohd. Nasir*.

13. In the light of the decisions in *Pratap Narain Singh Deo* and *Valsala K.*, it is not open to contend that the payment of compensation would fall due only after

the Commissioner's order or with reference to the date on which the claim application is made. The decisions in Mubasir Ahmed and Mohd. Nasir insofar as they took a contrary view to the earlier decisions in Pratap Narain Singh Deo and Valsala K. do not express the correct view and do not make binding precedents."

[10] In view of the aforesaid settled proposition of law, the appeal is allowed and the judgment and order of the High Court is set aside. The appellants shall be entitled to interest at the rate of 12% from the date of the accident."

21. Their Lordships of the Hon'ble Supreme Court in Kerala State Electricity Board v. Valsala K. 2000 ACJ 5 have held that the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim. Their Lordships have held as under:

"[3] A four Judge Bench of this Court in Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : (AIR 1976 SC 222 : 1976 Lab IC 222) speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation, is the date of the accident and not the date of adjudication of the claim.

[4] A two Judge Bench of this Court in The New India Assurance Company Limited v. V.K. Neelakandan, Civil Appeal Nos. 16904- 16906 of 1996, decided on 6-11-1996, however, took the view that Workmen's Compensation Act, being a special legislation for the benefit of the workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two Judge Bench in Neelakandan's case (supra) , however, did not take notice of the judgment of the larger Bench in Pratap Narain Singh Deo's case (AIR 1976 SC 222 : 1976 Lab IC 222) as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in Pratap Narain Singh Deo's case, the view expressed by the two Judge Bench in Neelakandan's case is not correct.

[7] Insofar as these special leave petitions are concerned, we find that the accident took place long time back. Compensation became payable to the workmen, as it is not disputed that the accidents occurred during the course of employment, as per the law prior to the amendment made in 1995. Keeping in view the peculiar facts and circumstances of these cases, pettiness of the amounts involved in each of the cases and the time that has since elapsed, we are not inclined to interfere with the impugned orders, decided on the basis of the 1995 amendment, in exercise of our jurisdiction under Article 136 of the Constitution of India and, therefore, dismiss the special leave petitions, but, after clarifying the law, as noticed above."

22. In the case of Broach Municipality v. Raiben Chimanlal and others, reported in 1989 Lab. I.C. 73, the learned Single Judge has held that where the workman

was working as driver in the appellant-Municipality and was driving the tractor attached with a trailer in which dirt and filth was being collected from different parts of the town and was being dumped in a particular place in the town from morning 7 AM up to about 3:00 PM every day and it was proved in the case that on the date of incident, the workman was on duty from 7:00 AM onwards, in these circumstances, the Court has observed that it can be inferred that strain of work would contribute and aggravate the heart disease. It has been held as follows:

"3. In this appeal it is contended on behalf of the appellant-Municipality that the nature of the duty to be performed by the deceased workman was not such that it can be the cause or contributing factor for aggravation of the disease. Therefore, it cannot be said that the workman died due to accident which arose out of and during the course of employment. The contention cannot be accepted for the simple reason that as found by the learned Commissioner for Workmens Compensation, the workman was working as Driver and was driving the tractor attached with a trailer in which dirt and filth was being collected from different parts of the town and was being dumped in a particular place in the town. The deceased workman was required to do this work from morning 7 a.m. up to about 3 p.m. every day. It is proved in the case that on the date of incident, the workman was on duty from 7 a.m. onwards. Simply because the work did not require continuous driving for all the duty hours, it cannot be said that the driving of a tractor would not be a contributory or aggravating cause for the cardiac failure or for myocardial infraction. Academically it may be said that heart-attack may also be sudden one. But ordinarily, it has got to be inferred that strain of work would contribute and/or aggravate the heart disease. In this connection reference may be made to the decision of this High Court in the case of *Amubibi v. Nagri Mills Co. Ltd.* (18 G.L.R. 681) rendered by D.A. Desai, J. (as he then was). In that case also the workman had died due to heart failure. He was working in a textile mill. Therein it is observed as follows:

"Leaving aside any technical consideration, common course of human conduct or common sense knowledge tells us that coronary insufficiency is generally the consequence of strain, extra work, fatigue. In the case of workman working on a loom in an artificial atmosphere of humidity (formerly called sweated labour) he is shown to have died on account of coronary insufficiency. Heart failure would be preceded by some sort of heart ailment, may be heart attack. In any event, if strain of work causes insufficiency that strain itself would be cause of death and it would be personal injury suffered by an employee in course of his employment."

The aforesaid observations would squarely apply to the facts and circumstances or the present case also. The deceased workman was performing his duty as a driver; from 7 o'clock in the morning. He worked up to 2 o'clock. By no stretch of reasoning it can be said that his work did not involve stress and strain. He was required to drive the tractor with trailer and had to move from place to place in

the town for collecting the dirt and refuse. Then he was required to unload the same in a particular place in the town. Such type of work would certainly aggravate the disease. If the performance of duty during the course of employment aggravates the disease, then the death can certainly be attributed to the employment injury which he receives on account of strains of the work performed by him. Furthermore, the seat of the driver of a tractor remains incessantly trembling and there will be vibrations in the body of the driver which would also definitely aggravate the heart-disease. In this view of the matter, the learned Commissioner for Workmen's Compensation has correctly applied the Principle laid down by this High Court in the aforesaid decision."

23. In the case of United India Insurance Co. Ltd. v. C.S. Gopalakrishnan and another, reported in 1989 Lab. I.C. 1906, the Division Bench of the Kerala High Court has held that though it is necessary that there should be a casual connection between the employment and the death in the unexpected way in order to bring the accident within Section 3, it is not necessary that it should be established that the workman died as a result of an exceptional strain or some exceptional work that he did on the day in question. If the nature of the work and the hours of work caused great strain to the employee and that strain caused the unexpected death, it can be said that the workman died as a result of an accident. It has been held as follows:

"10. Though it is necessary that there should be a casual connection between the employment and the death in the unexpected way in order to bring the accident within Section 3, it is not necessary that it should be established that the workman died as a result of exceptional strain or some exceptional work that he did on the day in question. If the nature of the work and the hours of work caused great strain to the employee and that strain caused the unexpected death, it can be said that the workman died as a result of an accident which has arisen in the course of his employment.

18. of course, in this case, there may have been no clear evidence as to the fact whether the death occurred directly due to the strain and stress of the work the deceased was doing on the day previous to the fatal incident. But, considering the circumstances proved in the case, it is only natural and probable to infer that the workman was put to great strain and stress in discharging his duties. From the evidence discussed by the Commissioner, it is clear that the workman was asked to do work for more hours than what he was statutorily bound to do.

23. Taking the evidence adduced in the case and the circumstances involved in the case, we feel that it has been established in the case that there was a casual connection between the death of the deceased and the work done in the course of his employment. We are of the opinion that from the evidence it is possible to infer that the strain of the work contributed to the fatal accident. Though the workman died due to heart failure, we are certain that it is not necessary that the workman was actually working at the time of his death and that the death must occur while he was working or had just ceased to work. Further, we find

that the evidence shows a great probability which satisfies in a reasonable manner that the strenuous work contributed to the fatal accident. This finding of the Commissioner is not unreasonable which requires interference by this Court."

24. In the case of General Superintendent Talcher Thermal Station v. Smt. Bijuli Naik, reported in 1994 Lab. I.C. 1379, the learned Single Judge of the Orissa High Court has held that the deceased suffering coronary thrombosis and dying of the same had close connection with his strenuous work in the factory and employer was liable to pay compensation. It has been held as follows:

"7. In the other Supreme Court case, 1963 II LLJ 615 also the question of notional extension of employer's premises was under consideration. In that case, the employee after finishing his work for the day at 7.45 p.m. at Jogeshwari Bus Depot boarded another bus in order to go to his residence at Santa Cruz and the said bus collided with a stationary lorry parked at an awkward angle as a result of which he was thrown out on the road and was injured and died at the hospital. The Supreme Court held in that case that the accident occurred during the course of his employment and, therefore, his wife was entitled to compensation. In the said case, the Apex Court observed that the question when does an employment begin and when does it cease depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. This being the ratio and the employee in the instant case having died at the factory gate while coming to join his duty for the general shift at 8.00 a.m. a couple of minutes before 8.00 a.m. the theory of notional extension must apply. But the crucial question that arises for consideration is whether the nature of work which the deceased was doing can be said to have any connection with the coronary thrombosis which the deceased suffered and on account of which he ultimately succumbed. The doctor in his evidence has stated that strenuous physical work may cause coronary thrombosis and even for 3 or 4 months prior to the death, the deceased had been coming to him complaining of chest pain and the doctor had treated him five days prior to the occurrence for chest pain. The claimant, the widow of the deceased, in her evidence had stated that on Saturday evening the deceased came back from office and complained of chest pain and the Commissioner on consideration of other evidence has held that the deceased was doing strenuous physical work in the factory. In this state of affairs, the ultimate conclusion that the deceased suffered from coronary thrombosis and ultimately died of the same has a close connection with his strenuous work in the factory, cannot be said to be erroneous in any manner and in the facts and circumstances of the case, the Commissioner rightly came to the conclusion that the injury suffered by the deceased has a direct connection with the employment in

question. In this view of the matter, I find hardly any justification for interference by this Court with the impugned order of the Commissioner. This appeal accordingly fails and is dismissed but in the circumstances, without any order as to costs."

25. In the case of *Mines Manager v. Waheedul Haque Abbasi*, reported in 1994 ACJ 334, the learned Single Judge of the Madhya Pradesh High Court has held that the death of workman due to heart failure while on duty is an accident, certain manifestations of heart condition from the effect of strain or over exertion of work constitute an accidental injury within the Act. It has been held as follows:

"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 v. Nagri Mills Co. Ltd.*, (1977-II LLJ-510) (Guj), 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."

26. In the case of *Param Pal Singh through father v. National Insurance Company* and another reported in (2013) 3 SCC 409, their lordships of the Hon'ble Supreme Court have held that the deceased being professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. It has been held as follows:

"21. On behalf of the first respondent its Divisional Manager filed his proof

affidavit while on behalf of the second respondent one Anil Sharma was examined. As far as the employment of the deceased was concerned, the Commissioner has noted that the FIR which was marked as Exhibit AW1/1 disclose that the second driver Bhure Singh himself admitted therein that the deceased was the senior driver who was driving the vehicle at the time of his death. As regards the said piece of evidence contained in AW1/1 nothing was brought out in his evidence either by way of trip sheet or attendance register or payment of wages register or any other document to show that the deceased was not in the employment of the second respondent at any point of time or on the fateful day. The Commissioner also noted that there was no cross-examination of WW1/A Santokh Singh on that issue. On the other hand RW.1 Anil Sharma in his cross-examination admitted that a sum of Rs. 10,000/- was given to the family of the deceased for cremation purposes. Therefore, the issue relating to the employment of the deceased by the second respondent as found to have been established before the Commissioner cannot be assailed.

29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business."

27. In the case of Rani Kour and others v. Jagtar Singh and another, reported in 2012 (Vol.3) ACJ 2072, the learned Single Judge of the Madhya Pradesh High Court, Indore Bench, has held that Commissioner was justified in holding that heart attack to the driver was due to service strain. It has been held as follows:

"[7] Here in the present case, there was pleading in this behalf in para 1 of the claim petition. The deceased Manoharsingh was working as a driver in a truck which was going to Borali Badnawar village from Borowa to unload molasses. From the evidence it has come on record that on 12.4.2006 the deceased came from Punjab and he stayed for five minutes at his home and thereafter due to pressure of work he again left for Borali for unloading of molasses of Oasis Distillery. Rani Kour, AW 1, wife of the deceased, and Ramesh, cleaner of the

vehicle, in their statement have very categorically stated that deceased had gone to Punjab. As per autopsy report, the death was due to heart attack. The Commissioner after appreciating the evidence of Rani Kour, appellant No. 1, and Ramesh, cleaner, arrived at a finding that heart attack was due to service strain and held that deceased had suffered massive heart attack. The record shows that heart attack was caused while doing his job. The learned Commissioner gave a finding that appellants by cogent evidence have proved that deceased had died while he was working in the vehicle and cardiac arrest has occurred because of stress and strain.

[9] On perusal of the material available on record this court is of the view that the learned Commissioner has not committed any legal error in awarding compensation to the appellants. The finding recorded by the Commissioner is based on application of evidence on record which required no interference. No substantial question of law is involved in the cross-objection filed by the respondent No. 2. Cross-objection has no merit and is accordingly dismissed."

28. In the case of Oriental insurance Co. Ltd. v. Sumanbai and others, reported in 2014 ACJ 2354 (Vol.4), the learned Single Judge of the Madhya Pradesh High Court, Indore Bench, has held that driver while driving the truck developed chest pain and he was taken to hospital where he was declared dead. The Commissioner found that death occurred during the course of employment and directed the employer and insurance company to pay compensation. The learned Single Judge has held that the Commissioner was justified in awarding compensation against the employer and Insurance Company since the death arose out of and in the course of employment. It has been held as follows:

"[11] In a recent and latest decision reported in Param Pal Singh v. National Insurance Co. Ltd., 2013 ACJ 526 (SC), their Lordships analysed the entire case-law relating to the expression "injury caused by an accident arising in and out of employment" in the context of section 3 of the Workmen's Compensation Act. It is also a case of professional truck driver who suffered heart attack while in employment, i.e., when driving the truck, like the case in hand, and was immediately taken to hospital but in vain. After reviewing the two judgments and various English authorities it was held as under:

"Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was causal connection of the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45-year-old driver meets with his unexpected death, maybe due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1,152 km away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume

that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business."

[12] Having regard to the evidence placed on record there stands established and proved that the deceased was actually driving the truck and that in the course of such driving activity he had a heart attack. In such circumstances, we are convinced that the conclusion of the Commissioner for Workmen's Compensation that death of the deceased was in an accident arising out of and in the course of his employment with the respondent No. 7 was perfectly justified and this appeal deserves to be dismissed and is hereby dismissed with costs throughout. Counsel's fee Rs. 5,000 if certified."

29. In the case of Managing Director, Karnataka State Road Trans. Corpn. and another v. Jayalakshmi and others, reported in 2014 ACJ 2490 (Vol. 4), the learned Single Judge of the Karnataka High Court, has held that driver who was forced to attend duty for 36 to 40 hours with a short gap of 6-7 hours aggravated his pre-existing heart condition and the stress and strain of work led to sudden heart failure. It has been held as follows:

"[13] In the matter on hand, admittedly the workman was driver working in Karnataka State Road Transport Corporation. The Conductor of the bus PW-2, who had slept along with the deceased workman at the time of incident in the bus, has specifically deposed before the Commissioner that the deceased informed the officials of the appellant Corporation in the morning of 6.10.2006 at the time of reporting for duty itself that he is having chest pain and that he is not able to drive the bus; despite the same, the officials of the appellant Corporation insisted the driver that he should drive the vehicle on that day because of lack of drivers strength on that particular day. The officials of the appellant Corporation insisted that the deceased shall complete the trip. Because of such pressure by the officials, the deceased went on duty during the relevant day. The very fact, that the deceased was made to drive the bus from morning till evening of 6.10.2006 on Route No. 99 and that he was again instructed to drive the bus from the evening of 6.10.2006 till next day as aforementioned on the route Arasikere-Shimoga-Mysore-Arasikere, clearly reveals that the death has occurred while he was on duty. It is not open for the driver to leave the bus at Shimoga bus station and come back to his home at Arasikere which is about more than 150 kilometers from Shimoga. Since the deceased was entrusted with the bus and as he was directed by the higher officials to drive back the bus from Shimoga to Mysore at 4 a.m. on the next day i.e., 7.10.2006, the argument of the learned counsel for appellants that the death was not while the deceased was on duty, cannot be accepted. The work was entrusted to the deceased at 8 a.m. on 6.10.2006 and it was to continue till the next day evening (i.e., approximately

for about 36- 40 hours) though there was a short gap of about 6 to 7 hours at Shimoga. As is clear from the evidence of PW-2, the deceased was suffering from headache, chest pain when he reached Shimoga from Mysore on the night of 6.10.2006. Immediately he went to medical shop and purchased some pills and consumed the same for relief from headache. Unfortunately, the deceased suffered massive heart attack while asleep in the bus during the night intervening between 6.10.2006 and 7.10.2006. Hence the Commissioner for Workmen's Compensation is justified in concluding that the death was direct result of continuous and heavy work entrusted to the deceased and that the deceased died during the course of duty. It is the specific evidence of PW-2 that in the morning of 6.10.2006 itself the deceased had complained that he is suffering from chest pain. Despite the same, the officials of the Corporation forced the deceased to drive the bus because of dearth of drivers' strength on that day. Such evidence of PW-2 Conductor is not even controverted in the cross-examination. On the other hand in the cross-examination PW-2 has denied the suggestion of the appellant Corporation that the work undertaken by the deceased was not strenuous. From the aforementioned uncontroverted evidence of PW-2, it is clear that the deceased was suffering from stress & strain because of heavy pressure of work on that day.

[14] In the matter on hand, the stress and strain suffered by the deceased did mainly contribute to or accelerate the injury. If the deceased were to take rest on 6.10.2006 without attending the work, probably he would have saved his life. But he was forced to work since morning of 6.10.2006. When he reached Shimoga during night of 6.10.2006, he was completely exhausted and immediately he took some pills. Unfortunately, he lost his life while in sleep. Thus the case on hand is the finest example relating to direct connection between injury and employment and loss of life due to strain of ordinary work. The stress & strain did contribute to and accelerate the injury (see the judgment in the case of *Jyothi Ademma v. Plant Engineer, Nellore*, 2006 5 SCC 513).

[15] In the cross-examination, it is also brought out that since two weeks prior to his death, the deceased was suffering from chest pain. The post-mortem report amply makes it clear that the death was due to cardiac failure as a result of coronary insufficiency consequent to chronic coronary artery disease. Therefore the circumstances as brought out by the claimants clearly reveal that the death was caused as a result of failure of the heart which is because of strain and stress of the work. Stress and strain has resulted in sudden heart failure and the death has occurred during the course of employment. The preexisting heart condition of the deceased was aggravated by the strain of work of the deceased and the same has resulted in his death.

[16] Sri D'Sa sought to contend that the deceased driver died naturally i.e., due to heart attack. But the material on record amply reveals that the workman was forcibly engaged to work on particular day which accelerated his death. From the evidence available on record, it is clear that the workman had died of heart

attack; there being a pre-existing heart condition which was aggravated by the strain of the work of the deceased and the same has resulted in his death. The death of the workman was not due to the disease from which he was suffering, but on account of factors coupled with employment. Aforementioned facts have led the Commissioner to conclude that the death occurred as consequence of and in the course of employment. Hence the Commissioner for Workmen's Compensation is justified in awarding compensation. Accordingly, no interference is called for. The question of law is answered accordingly. Appeal fails and the same stands dismissed. The amount in deposit shall be disbursed in favour of the respondents."

30. In the case of Kalyan Roller Flour Mills Pvt. Ltd. v. U. Neelamma and others, reported in 2014 (Vol.3) ACJ 1661, the learned Single Judge of the Andhra Pradesh High Court has held that the contention that deceased never complained of any chest pain and discomfort while working as driver and he suffered heart attack after reaching home, therefore, there is no nexus between the accident and the employment, held that the incident of the deceased suffering from chest pain due to strenuous work is closely connected with the nature of employment and there is close nexus between death of the deceased and his employment. It has been held as follows:

"[10] Learned counsel placed strong reliance upon a decision of this Court in Depot Manager, APSRTC v. Gurrupu Anjamma, 1999 6 ALD 101 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.

[11] Learned counsel for the respondents also relied upon a latest decision of the Supreme Court in Param Pal Singh v. National Insurance Co., (2013) 2 ALD(SC) 61 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 v. Divisional Manager, Southern Rialway (Personal Branch), Divisional Office, Madras, (2004) 1 LLJ 49 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.

[12] 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 (5 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."

31. Thus, the claimants would be entitled to Rs. 4000-2000 = Rs. 2000 x 216.91 = Rs. 433820/- along with interest @ 12% per annum from the date of death i.e. 13.2.2009 till its realization.

32. Accordingly, in view of the analysis and discussion made herein above, the appeal is partly allowed. Claimants are held entitled to a sum of Rs. 4,33,820/- along with interest @ 12% per annum from the date of death i.e. 13.2.2009 till its realization. Pending application(s), if any, also stands disposed of. No costs.