

(2020) 09 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 48 Of 2015, IA No.62 Of 2015

Oriental Insurance Company Limited

APPELLANT

Vs

Minti Juddu And Others

RESPONDENT

Date of Decision : 09-09-2020

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2020) 09 J&K CK 0019

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : D.S.Chauhan, Ankesh Chandel

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. This appeal by the Oriental Insurance Company Limited ["the insurer"] filed under Section 30 of the Employees Compensation Act, 1923 ["the Act"] is directed against the award dated 16th September, 2014 passed by the Commissioner under Employee?s Compensation Act (Assistant Labour Commissioner), Jammu ["the Commissioner"] in file No.Death-06/ECAct/2013 titled Smt. Minti Juddu and others v. Parveen Dev Choudhary and another, whereby and whereunder respondent Nos. 1 to 6 ["the claimants"], the legal heirs of the deceased-Sushil Hasda, have been held entitled to a compensation of Rs.5,35,470/- along with interest to the tune of Rs.1,76,705/-, to be paid by the insurer.

2. The Insurer has raised following two substantial questions of law for determination in this appeal:-

i) Whether the learned Commissioner, under Employee?s Compensation Act, 1923 (Assistant Labour Commissioner), Jammu was justified in awarding compensation for the death of the deceased workman, namely, Late Mr. Sushil Hasda, in the absence of any evidence that the deceased met with accident by

reason of any stress or strain of the job?

ii) Whether the learned Commissioner, under Employee's Compensation Act, 1923 (Assistant Labour Commissioner), Jammu, was justified in ignoring the opinion of Department of Forensic Medicine, Government Medical College Hospital, Jammu, which stated the cause of death was "Coronary Artery Disease" Natural Death?

3. With a view to appreciating as to whether the aforesaid questions of law, proposed by the insurer, are substantial questions of law and arise out of the impugned award, it would be necessary to first set out few relevant facts.

The husband of respondent No.1, father of respondent Nos.2 to 5 and son of respondent No.6, namely, Sushil Hasda was working as Sub-Foreman (Electrical) with respondent No.7 at his stone crusher, namely, M/s Tawi Stone Crusher for the last more than 18 years and was drawing a salary of Rs.6,000/- per month. On 30th November, 2011 at 4.30 pm while the deceased-Sushil Hasda was working at the said stone crusher, he suddenly fell unconscious and died on spot. Regarding the accident, inquest proceedings were initiated by the police of Police Station, Satwari and a special report B dated 27th March 2012 was submitted by the Police Post, Chatha. Autopsy was also performed on the dead body of the deceased on 1st December, 2011e in Govt. Medical College Hospital, Jammu. As per the opinion of the doctors conducting autopsy, the cause of death of the deceased was indicated to "Coronary Artery Disease (Natural Death)". The viscera examination made by the Forensic Science Laboratory, Srinagar indicated that there was no poison detected in the viscera. The Department of Pathology, Govt. Medical College, Jammu, which conducted the pathological analysis for histopathological examination of heart and lung, opined as under:-

"Aorta shows focal sub-intimal mononuclear cell inflammatory infiltrate Left circumflex artery and left anterior descending artery shows atheromatous plaque Multiple sections examined from lung shows:

Focal alveolar dilatation, fibrinous exudation and vascular congestion Peribronchial carbon deposition are seen."

4. With the aforesaid medical evidence, respondent Nos. 1 to 6 filed a claim petition before the Commissioner seeking compensation on account of death of the deceased- Sushil Hasda on the ground that the same had occurred out of and in the course of his employment with respondent No.7. The insurer, which had insured respondent No.7 under a policy, which was effective from 3rd March, 2011 to 2nd March, 2012 extending insurance cover to adequate number of workers working under the respondent No.7, was also arrayed as party respondent. The claim petition was contested by the appellant-insurer as well as respondent No.7. The only objection taken by the insurer was that the deceased had died of "Coronary Artery Disease i.e. heart failure" and, therefore, his death had no co-relation with his employment. It was contended that the death of the deceased was not as a result of any accident arising out of and in the course of

his employment. The respondent No.7, however, admitted the claim of the claimants. The Commissioner, on the basis of the pleadings of the parties, framed the following issues for determination:-

"1. Whether the deceased ?Sushil Hasda? falls within the definition of ? employee? as prescribed under the employee?s Compensation Act, 1923? OPP

2) Whether the deceased met with an accident arising out of and during the course of his employment for respondent no.1? OPP

3) What was the age and wages of deceased at the time of accident? OPP

4) Whether respondent no.2 is liable to compensate respondent no.1 for his liabilities or not? OPP

5) Relief."

5. The claimants with a view to discharging their onus and to substantiate their claim, recorded the statement of one of them i.e. claimant-Minti Juddu and one Sh. Nathu Ram, a Foreman (electrical) working with respondent No.7 at Tawi Stone Crusher. The insurer, however, chose not to lead any evidence. The Commissioner, in light of the evidence on record, held all the issues proved in favour of the claimants and concluded that the death of the deceased was as a result of an accident arisen out of and in the course of his employment with respondent No.7. On the basis of the medical evidence on record, the Commissioner found a clear causal connection between the death of the deceased and his employment under respondent No.7. Taking monthly income of the deceased as Rs.6,000/- per month and his age as 42 years, the Commissioner awarded a compensation of Rs.5,35,470/-along with interest @ 12% per annum.

6. The insurer is aggrieved of the award and challenges the same primarily on the ground that the findings of the Commissioner on issue No.2 are not only erroneous but without any evidence on record. In short, the emphasis of the insurer in this appeal is that the impugned award, particularly, the findings recorded on issue No.2 suffer from perversity. It is in this background only the insurer has posed two questions of law for determination.

7. Mr. D.S. Chauhan, learned counsel for the appellant-insurer, urges that in the absence of any evidence on record to indicate that the death of the deceased was due to a disease suffered or aggravated out of and in the course of his employment with respondent No.7, the Commissioner could not have fastened the liability of indemnification on the insurer. He submits that, as per the medical opinion on record, the death of the deceased was due to "coronary artery disease (natural death)" and, therefore, the Commissioner had no justification to connect the death of the deceased with his employment under respondent No.7. Mr. Chauhan places reliance upon several judgments of various High Courts as also of the Supreme Court to hammer his argument.

8. Having heard learned counsel for the parties and perused the record, I am of the view that the appeal on hand sans any substantial question of law, as is required for its maintainability under Section 30 of the Employee's Compensation Act. The questions of law proposed by Mr. Chauhan are pure questions of fact requiring no determination in this appeal. It is not the case of the insurer that the findings of fact returned by the Commissioner, particularly, on issue No.2 are not supported by any evidence on record. The statements of claimant-Minti Juddu, the wife of the deceased and fellow workman, namely, Nathu Ram throw considerable light on what led to the death of the deceased. The oral testimony of the aforesaid two witnesses is fully corroborated by the medical opinion on the record.

9. As noted above, the histopathological examination of heart and lungs has clearly indicated that the deceased suffered coronary artery disease because of smoke and dust deposition in his left artery and lungs. The atheromatous plaque in the left artery and peribronchial carbon deposition in the lungs, as indicated by Dr. Surinder K. Attri, Assistant Professor, Department of Pathology, GMC, Jammu in his report dated 3rd December 2011, are clear indicators that the death of the deceased was due to 'coronary artery disease' suffered or atleast aggravated by the working conditions of the deceased. The deceased had been working at the stone crusher of respondent No.7 for the last 18 years. Even on the date, when he suddenly suffered heart attack and died on spot, he was hale and hearty and performing his routine job. The medical examination, particularly, the report of Dr. Surinder K. Attri dated 3rd December, 2011 clearly indicates the causal connection of the death of the deceased with his employment at the stone crusher owned by respondent No.7, the insured.

10. In view of preponderance of evidence on record, the Commissioner was correct in coming to the conclusion that the death of the deceased had arisen out of and in the course of his employment with respondent No.7, the insured. The plea of Mr. D.S.Chauhan that the findings of the Commissioner on issue No.3 suffer from perversity is totally misconceived. Even if, this Court were to agree with Mr. Chauhan that on analysis of evidence on record, another view is possible, this Court would still be loath to interfere with the findings of fact returned by the Commissioner and take a view different from the one taken by the Commissioner.

11. It needs no emphasis that an appeal under Section 30 of the Employees Compensation Act is maintainable only, if it involves substantial question(s) of law for adjudication. As noticed above and reiterated here, the nature of dispute raised by the appellant-insurer falls within the factual realm and, therefore, cannot be termed as the one raising any substantial question of law. The judgments relied upon by Mr. D.S. Chauhan, particularly, in the cases of *Shakuntala Chandrakant Shresthi v. Prabhakar Maruti Garvali* and another, 2007 ACJ 1 (SC), *Jyoti Ademma v. Plant Engineer, Nellore Thermal Station*, 2006 ACJ 422 (SC) and few other judgments by various High Courts of the Country, would

not change the position in any manner. The cases relied upon by the insurer have been decided on their own facts and do not lay down any general proposition of law that the death of a workman due to heart attack at the work place cannot be as a result of stress and strain of the work and attributable to the employment. The judgments cited by Mr. Chauhan rather lay down a proposition of law that for maintaining a claim petition under the Employee's Compensation Act in respect of death of a workman, it is incumbent upon the claimants to prove by leading adequate evidence with regard to the causal connection between the death/injury and the employment. It is only in these circumstances, the death of the workman can be said to have arisen out of and in the course of his employment.

12. This Court has considered an identical issue in United India Insurance Company Limited v. Narinder Kour and others (MA No.51/2018) decided on 21.08.2020. Relying upon the judgment of Supreme Court in the case of Mst. Parampal Singh Vs. M/s National Insurance Company and another; (2013) 3 SCC 409, this Court in paragraph Nos.25 held thus:-

"25. It may be true that the deceased might be suffering from medical conditions but the fact cannot be denied that his medical condition got aggravated because of continuous driving of the vehicle for two days, that too, on a very difficult hilly terrain. This Court can take judicial notice of the fact that road from Jammu to Srinagar is a tricky hilly terrain and carrying heavy load in a truck is very stressful job. I am in agreement with the learned counsel for the appellant-insurer that the death of the deceased was not solely on account of the accident i.e. stress and strain of the work but the fact cannot be denied that the medical condition, whatever the deceased was suffering from, deteriorated and aggravated by the stress and strain of the work and this is so very clearly stated by the witness-Inder Singh, who was the person responsible for shifting the deceased from the vehicle to the District Hospital, Ramban. Though, the medical record indicates "multiple organ failure" as cause of death but the medical evidence does not indicate that such multi organ failure could not have been aggravated by the stress and strain of the job, the deceased was performing at the time of accident. Somewhat similar issue has already been dealt with by this Court in the case of United India Insurance Company Ltd. v. Inder Jeet Kour and others, MA No.636/2010 decided on 20.08.2018. Observations of this Court in paragraph Nos. 17 and 18 of the judgment deserves to be taken note of and are, thus, reproduced hereunder:-

"17. Literal meaning of "Res ipsa loquitur" is that "thing speaks for itself". The circumstances in which the deceased met with untoward death speak for themselves and there should be no manner of doubt that the death of the deceased was nothing but as a result of stress and strain of driving in the hilly terrain from Jammu to Poonch and back. In the view I have taken, I am supported by the judgment of the Supreme Court rendered in the case of Mst. Parampal Singh Vs. M/s National Insurance Company and another; (2013) 3 SCC 409 decided on 14.12.2012. The facts of the case of Param Pal Singh (supra) are

identical to the facts of the case in hand. In the aforementioned case, the deceased was employed as truck driver. On 17.07.2002, he was driving a Truck in connection with commercial transport operation from Delhi to Nimiaghat. When the truck reached near about of Nimiaghat, the deceased felt giddy and, therefore, parked the vehicle on the roadside near a hotel and soon thereafter, he fainted. The deceased was removed to a nearby hospital, where the doctors declared him brought dead. The claim petition was filed by the claimants before the Commissioner alleging that the death of the deceased was due to stress and strain of continuous driving in the course of his employment with the employer. In the backdrop of the aforesaid facts situation, the question that arose for determination before the Supreme Court was whether the death of the deceased was in an accident arisen out of and in the course of his employment with the employer. The Hon^{ble} Supreme Court after taking note of case law on the subject including the English law, came to the conclusion that there was causal connection to the death of the deceased with that of his employment as Truck driver. What was held by the Supreme Court in the aforesaid judgment in paragraph 29 is 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 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....."

18. For arriving at the aforesaid conclusion, the Supreme Court even discussed the decision rendered by the Supreme Court in the case of Shakuntala Chandrakant Shreshti (supra) heavily relied upon by the learned counsel for the appellant in the instant case. All aspects of the issue as were highlighted by the learned counsel for the appellant in the instant case were duly considered and analysed by the Supreme Court. The discussion by the Hon^{ble} Supreme Court reflected from paragraph 21 and 26 answers all the questions raised by the appellant and even those not even contemplated by the appellant. At the cost of making the judgment a bit voluminous, I deem it absolutely necessary to reproduce the aforesaid paragraphs numbered from 21 to 26, which read as

under:-

"21. We are not oblivious that an accident may cause an internal injury as was held in *Fenton (Pauper) V. J. Thorley & Co. Ltd.*, (1903) AC 443, by the Court of Appeal. "...I come, therefore, to the conclusion that the expression 'accident' is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed" Lord Lindley opined: "The word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word 'accident' is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents occasioned by carelessness; but for legal purposes it is often important to distinguish carelessness from other unintended and unexpected events. 22. There are a large number of English and American decisions, some of which have been taken note of in *Employees' State Insurance Corporation*, 1996 ACJ 1281 (SC), in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are: (1) There must be a causal connection between the injury and the accident and the work done in the course of employment. (2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury. (3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the facts of each case. 23. Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, *inter alia*, having regard to the nature of the work and the situation in which the deceased was placed. 24. There is a crucial link between the causal connection of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction.

25. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred. 26. In a case of this nature to prove that accident has taken place, factors which would have to be established, *inter alia* are: (1) Stress and strain arising during the course of employment; (2) Nature of employment; and (3) Injury aggravated due to stress and strain."

13. In view of the aforesaid and also looking to the available medical evidence, I

have arrived at a conclusion that the death of the deceased in the instant case has a direct co-relation with his employment. It is because of the constant exposure of the deceased to dust and smoke at the stone crusher for 18 long years that he contracted the 'coronary artery disease'. Even if, one were to agree with the insurer that the 'coronary artery disease' suffered by the deceased was constitutional in nature, there is ample evidence on record to indicate that the same got aggravated by the hazards to which the deceased was exposed. There could be no denial of the fact that the working at a stone crusher, that too, for 18 long years would expose a workman to dust and smoke, which in turn, is capable of inflicting heart and lungs disease to such workman.

14. In view of totality of the circumstances and also for the reasons stated above, I do not find any substantial question of law involved in this appeal for determination, a sine qua non for maintainability of an appeal under Section 30 of the Employees Compensation Act.

15. This appeal is, thus, found to be devoid of any merit, hence dismissed. The award amount deposited before this Court shall be released by the Registry in favour of the claimants in terms of the award of the Commissioner.