
(2008) 07 GUJ CK 0031
In the Gujarat High Court
Case No : First Appeal No. 274 of 2002

Pushpaben Natverlal Darji and others	APPELLANT
Vs	
Nila Borav Engineering Ltd. and others	RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

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

Citation : (2008) 07 GUJ CK 0031

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : M.T.M. Hakim, for the Appellant; K.V. Gadhia and Manish R. Bhatt and P.V. Nanavati and Vibhuti Nanavati, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of this appeal, the appellants have challenged the judgment and order dated 17.4.2001 passed by the Commissioner under Workmen's Compensation Scheme (hereinafter referred to as "the Commissioner) in Workmen Compensation Application No. 57/1998.

2. The facts in brief leading to the filing of the present appeal can be set out as under:

The appellants herein had filed the aforesaid compensation application on the death of one Natwarlal Chhaganbhai Darji-husband of appellant No. 1 and father and father in-law of appellant Nos. 2 and 3 respectively. While on duty as Chaukidar on 8.3.1998, the family members were informed that the health of the said deceased has deteriorated. Immediately, two neighbours rushed to the place where the deceased was working only to find that the said Natwarlal Darji had passed away. The appellants claimed compensation from the employer and therefore filed an application before the Commissioner. After considering the rival submissions, the Commissioner dismissed the application preferred by the present appellants. Being aggrieved by the said order, the present appeal has

been preferred.

Mr. M.T.M. Hakim, learned advocate appearing for the appellants has submitted that the Commissioner has seriously erred in dismissing the application of the appellants. He has submitted that the Commissioner has failed to appreciate that the deceased had died during the course of his employment and during the discharge of his duties as night watchman/Chaukidar.

Mr. Hakim has further submitted that the Commissioner has also seriously is not assessing the compensation due and payable to the appellants and also in avoiding to assess the penalty, interest and cost to be paid to the appellants and therefore Mr. Hakim has called for interference by this Court.

3. Mr. M.R. Bhatt, learned advocate appearing for the respondents has supported the order of the Commissioner and has submitted that the order of the Commissioner is just and proper and does not call for any interference by this Court. He has placed reliance on the decisions of the Apex Court in the case of Jyothi Ademma Vs. Plant Engineer, Nellore and Another, as well as Shakuntala Chandrakant Shreshti v. P.M Garvali and another², and submitted that the issues involved in the aforesaid cases squarely covers the case of the present appellants and therefore the present appeal is required to be dismissed.

4. This Court has gone through the documents placed on record including the impugned order. The Commissioner seems to have gone into the evidence in detail and has come to the conclusion that the death of the deceased was not during the course of employment and was on account of natural circumstances. The Commissioner has not found any evidence on record to come to the conclusion that there was some causal connection between the death of the workman and his employment. In both the decisions relied upon by the learned advocate for the appellants, the Apex Court relying on section 3(1) of the Workmen's Compensation Act has taken a view that only because the cause of the death was due to heart attack, the same by itself may not be a ground to arrive at a conclusion that an accident had occurred resulting in injury. In the present case, the nature of duty of the deceased was watchman. Per se that the duties would not be such which could cause stress or strain. Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In that view of the matter, the view taken by the Commissioner is just and proper and does not call for any interference by this Court, I am in complete agreement with the reasonings adopted and findings arrived at by the Commissioner. Accordingly, this appeal fails and is required to be dismissed.

In the premises aforesaid, appeal is dismissed. No order as to costs.