

(2011) 10 MAD CK 0122

In the Madras High Court

Case No : Writ Petition (MD) No. 13364 of 2010 and M.P. (MD) No. 1 of 2010

R. Antony

APPELLANT

Vs

The District Collector, Dindigul District, Dindigul and The
Labour Officer, Office of the Labour Officer, Social Protection
Scheme, Dindigul

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 3(1)

Citation : (2011) 10 MAD CK 0122

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Haja Mohideen, for the Appellant; M. Govindan, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has come forward to challenge an order dated 30.4.2010, wherein and by which he was informed that his wife Tmt. Maria was a construction worker and who died due to lorry accident outside the work spot on her way from the vegetable market and hence he cannot be granted compensation.

2. In the writ petition, notice of motion was ordered on 03.11.2010. It is seen from the records that the petitioner's wife Maria was a member of the Construction Workers Welfare Board. She was working as a helper in the construction work. On 8.12.2007, in front of the Dindigul market, a mini load van in which she was travelling met with an accident and she fell down. She was admitted to the City hospital. Subsequently, on the same day, she succumbed to the injuries and died. Subsequent to her death, the present petitioner, who is her husband, made an application for the grant of compensation under Form-C. On receipt of the same, the second respondent informed him that her death is not

covered by the compensation provided as the injury did not take place arising out in the course of her employment. Challenging the same, the writ petition came to be filed.

3. The respondents have not filed any counter affidavit. But, on the contrary, the learned Special Government Pleader informed that Group Personal Accident Insurance Scheme covers the workers under the Tamil Nadu Construction Workers Welfare Scheme, 1994. It only covers the accident arising out of and in the course of employment and does not include the type of the death suffered by the petitioner's wife. Rule 11 providing for accident insurance scheme reads as follows:

11. Group Personal Accident Insurance Scheme.-(1) Application. The scheme shall apply to all registered manual workers.

(2) Definition.-"Accident" means any bodily injury or death or loss of limbs or loss of sight resulting solely and directly from accident arising out of and in the course of his employment but does not include any intentional self injury, suicide, attempted suicide, injury caused while under the influence of intoxicating liquor or drugs or caused by insanity or resulting from the insured persons committing any breach of law or rules or regulations or instructions applicable from time to time.

4. The respondents while rejecting the case of the petitioner did not go into the full import of the scheme. It is the contention of the petitioner that normally constructions workers leave their home at 7.30 a.m. and reaches the destination before 8.30 a.m.. Therefore it was on her way to the work, she had purchased some vegetables before going to the work place. No enquiry was conducted for rejecting his claim even though the accident took place on her way to work spot. Merely because the petitioner made an application for compensation that the accident took place outside the work spot, that does not disqualify the petitioner from claiming compensation. Even travelling towards work spot and the concept of theory of notional extension has to be covered for such matters. In fact, she was travelling in the van proceeding towards work spot and in that process, she died. The FIR given also shows that the death was while she was travelling in the Van. These aspects have not been considered by the respondents before rejecting the claim of the petitioner.

5. In this context, while considering the similar scheme under the Tamil Nadu Manual Workers Social Security and Welfare Scheme, 2001, wherein Rule 17 provides for similar relief, this court had an occasion to consider the scope of the said scheme and the nature of compensation claimed by the person involved in an accident, vide its judgment in V. Maheswari Vs. The Secretry, Tamil Nadu Manual Labour Social Security and Welfare Board, The Divisional Manager, United India Insurance Corporation and The Deputy Inspector of Labour, . After extracting Rule 17, which is similar to that of the present rule, this court had granted compensation where an insured person was murdered and the claim was

rejected on the ground that it did not arise in the course of his employment.

6. The Supreme Court, with reference to the provisions of the Workmen's Compensation Act, in its decision reported in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, held in paragraph 5 as follows:

Para 5: To come within the Act the injury by accident must arise both out of and in the course of employment. The words in the course of the employment mean in the course of the work which the workman is employed to do and which is incidental to it. The words arising out of employment are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. In other words, there must be a casual relationship between the accident and the employment. The expression arising out of employment is again not confined to the mere nature of employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises out of employment. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act

7. This Court vide its decision reported in Superintending Engineer, Parambikulam Aliar Project, Pollachi Vs. Andammal, dealt with a claim made by a workman's legal heir on account of the death due to murder and it was held in paragraph 7 of the judgment as follows:

Para 7: It has also to be remembered that but for the employment of the deceased he would not have been at the place where the accident happened and caused and proximate connection between the accident and employment is also established..

8. Once again, this position was reiterated by this Court vide its decision reported in Senior Divisional Personnel Officer, Southern Railway, Trichy Vs. Kanagambal (Smt.), and in paragraph 7, it was held as follows:

Para 7: The only question that has to be considered is whether the injuries sustained by a workman by an unknown person would amount to an accident arising out and in the course of the employment. It has been decided in the decision reported in Smt. Satiya and Others Vs. Sub-Divisional Officer, P.W.D. (Buildings and Roads) and Others, that murder is an accident from the point of view of the person who suffered from it and it is an untoward event as defined in Section 3(1) of the Act. Therefore, sustaining injury while on duty and meeting his death subsequently has to be necessarily considered as an accident arising out of and in the course of employment.

9. The Madhya Pradesh High Court vide its decision reported in Madhya Pradesh

State Road Transport Corporation and Another Vs. Mst. Basantibai and Others, held in paragraph 9 of the judgment as follows:

Para 9: Normally, an employer owes no duty of care for the safety of his employee while the employee is proceeding to the place of employment from his house. The point, however, is whether the same rule prevails when the situation is abnormal and when as a result of outbreak of violence in the city, the law enforcement authorities promulgate curfew order requiring citizens to be within doors as the only means which can reasonably ensure their safety. In such a situation, when every citizen is expected to be within doors as a matter of safety, if an employer requires his employee, to come to the place of employment in early hours of the morning, it is reasonably foreseeable that the employee is likely to suffer injury at the hands of some ruffian while on the way to join his work unless adequate arrangements are made by the employer for the safety of the employee. Requiring an employee to come to work in such a situation is itself such an act from which harm to the employee is foreseeable and the employee being closely and directly connected with the act of requiring him to join his work, the employer must have his safety in contemplation. On the principles enunciated by Lord Atkin in *Donoghue vs. Stevenson* ([1932] A.C. 562) the employer must, in the circumstances prevailing in the instant case, be held to owe a duty of care to the employee while he was on his way to the place of work. The employer should have taken adequate care for the safety of the employee while he was on his way either by providing safe transport or some persons to accompany and guard him. In case it was not possible for the employer to make any arrangement for the safety of the employee, the employer should have temporarily closed down the business, as the only alternative of avoiding harm to the employee. It has also to be kept in view that the employee, in the instant case, unlike a police constable or a fireman, was not in such an employment where it was expected of him from the nature of employment to face the hazard of a riot.

10. This would set rest all the doubts raised by the insurer. Even otherwise, the Supreme Court in two of its decisions has spelt out the true meaning of the word "accident" found in the Workmen's Compensation Act. The first decision was the one reported in *Jyothi Ademma Vs. Plant Engineer, Nellore and Another*, and paragraph 7 of the judgment reads as follows:

Para 7: The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In *Fenton v. Thorley & Co. Ltd.* 1903 AC 443 it was observed 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. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, A.C. In *Trim Joint District School Board of Management v. Kelly* 1914 AC 667 as follows:

I think that the context shows that in using the word "designed" Lord Macnaghten was referring to designed by the sufferer.

11. In fact, after referring to this decision, the Supreme Court once again reaffirmed the said view in *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another*, and paragraph 26 of the judgment reads as follows:

Para 26: 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.

12. Apart from these facts, in the present case, the petitioner is not making any claim against the employer. But he is making a claim under the Social Construction Workers Welfare Scheme by the State Legislature. The said Scheme applies the provisions of the Workmen's Compensation Act to the Scheme framed under the provisions of the Act on the basis of mutatis mutandis to the construction workers. Further, the Scheme itself creates accident policy providing for compensation on account of an accident which has been explained in the definition found in paragraph 11 of the Scheme. The Scheme only excludes the intentional self injury, suicide, attempted suicide, injury caused while under the influence of intoxicating liquor or drugs or resulting from the injured worker committing any breach of the law. None of the exclusionary clause applies to the case of the petitioner's wife. Therefore, the liability of the insurer can never be whisked away.

13. In view of the above, the impugned order of the second respondent will stand set aside. The matter is remitted back to the second respondent to consider the claim in the light of the judgment referred to above and after hearing the petitioner, pass an appropriate order in accordance with law and on merits within a period of eight weeks from the date of receipt of copy of this order. Accordingly, the writ petition will stand disposed of on the above terms. No costs. Consequently connected miscellaneous petition stands closed.