

(1987) 06 GUJ CK 0007
In the Gujarat High Court
Case No : First Appeal No. 67 of 1981

Regional Director, ESIC, Ahmedabad	Vs	APPELLANT
Batulbibi and Another		RESPONDENT

Date of Decision : 29-06-1987

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(6A), 2(8), 51A

Citation : (1988) ACJ 146 : (1987) 2 GLR 1099 : (1988) 2 LLJ 29

Hon'ble Judges : D.H. Shukla, J

Bench : Single Bench

Judgement

1. The appellant, the Regional Director, Employees" State Insurance Corporation, Ashram Road, Ahmedabad, is dissatisfied and aggrieved by the

judgment dated 21st March 1980, rendered by the Judge, Employees" Insurance Court, Ahmedabad, in Application (ESI) No. 42 of 1978,

whereby the learned Judge held that : ""The applicants are the dependents of the deceased Haiderkhan Mirkhan, and entitled to claim dependents"

benefits payable under the Act and Regulations thereunder to these dependents which the opponents do pay. The opponent to pay to the

applicants cost of this application which is quantified at Rs. 80/- and bear that of its own.

2. The short facts involved in this appeal are as under :

The respondents herein, the original applicants, are Batulbibi, widow of Haiderkhan Mirkhan, and Islam Haiderkhan, having been the minor son of

the deceased. The deceased Haiderkhan Mirkhan was an employee in Nagri Mills Co. Ltd., working in its Cloth Department as a Press Coolie. It

is alleged that on 30th December 1977, he was on duty in the said mills and he expired on that day. He had worked for about two hours in the mill

on that day and died because of the strain of work that he had undertaken in his employment.

3. The applicant had examined the widow of the deceased at Exh. 12. She has stated that the deceased was working in the Nagri Mills in the

Press Department and on the day of 30th December 1977 at about 9-15 a.m. or so some co-worker of the deceased informed her that her

husband was unwell in the mill. She went to the mill to find that her husband was dead. The applicant has also examined one Babubhai Bhalabhai at

Exh. 17, who was a co-worker of the deceased. He has deposed that they were both in the same mill, in the same shift. On 30th December 1977,

the deceased was also on duty in the press Department in the shift commencing at 7-00 a.m. They went for tea together at about 9-00 a.m. during

recess, known as a short recess, to the canteen. The canteen of the mill is situated inside the mill-premises. Both took tea together, but while the

deceased was taking tea, all of a sudden he fell down. Some time thereafter the doctor was called. It is not in evidence as who that doctor was,

nor is he examined. The doctor declared the deceased to have expired.

4. The dead body was removed to the Civil Hospital where the post-mortem examination was carried out. The post-mortem report is at Exh. 16.

The Medical Officer, who had carried out the post-mortem examination is not examined. As regards the cause of death, it is indicated in column

No. 23 : ""Opinion as to the cause of the death reserved till the report of the Chemical Analyser is available. The viscera was sent for the Chemical

Analyser's report, but the findings were not received till the matter was heard.

5. The applicant examined one Dr. Suresh Manilal Shah, Pathologist, at Exh. 24. He is M.D. in Pathology, and at the time when he gave evidence,

he was employed as Honorary Pathologist to Bapunagar General Hospital, run under the scheme of the Act, i.e. to say the Employees' State

Insurance Act, 1948. Prior to that, he had worked for seven years at V. S. Hospital at Ahmedabad and claimed to have performed, by the time he

gave evidence, 300 to 400 post-mortem examinations. Dr. Shah stated in his evidence that in his opinion based on post-mortem report (Exh. 16),

the cause of death appeared to be mio-cardiac infraction, which is a coronary artery disease. He has stated his reasons to come to the conclusion,

and those reasons have been discussed by the trial Judge in his judgment. I

need not enter into the details. The opponents did not lead any oral evidence.

6. The trial Judge was mainly concerned with two questions as to whether the accident arose out of and in the course of the employment so as to

decide whether the death of the deceased was covered within the definition "employment injury" stated in Section 2(8) of the Employees' State

Insurance Act, 1948. I may state here that the trial Judge decided that there was no difficulty in deciding the question that the applicants were the

dependents of the deceased Haiderkhan, within the meaning of the term "dependent" as given in Section 2(6A) of the Act, since the applicant No.

1 was the widow of the deceased and applicant No. 2 was the minor son of the deceased.

7. The trial Judge relied upon two decisions in the case of The Sarangpur Cotton Manufacturing Co. Ltd. v. Dev Karsan Wd/o. Krishnan

Vashram, reported in and the case of Shantaben Thakore, Wd/o. Chandulal Hemchand v. The New Rajpur Mills Co. Ltd., reported 1967 (VIII)

GLR 1012, to decide that the sudden death of the deceased was within the term "injury" and "accidental injury". Mr. Shah, the learned Advocate

for the appellant, did not question this proposition, and therefore I need not further discuss this aspect of the question.

8. The employment injury must have been Sarangpur Cotton Manufacturing Company Ltd., No. 1 and Another Vs. Dev Karsan (Srimathi) and

Another, been caused to an employee caused by an accident or an occupational disease arising out of and in the course of his employment. Mr.

Shah's submission was that the accidental injury did not arise in the course of his employment, but so far as the other question is concerned,

namely, whether it could be said to have arisen out of employment, he did not have much of a quarrel, in view of the statutory presumption laid

down in Section 51A. Section 51A runs as under :

51A. For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of

evidence to the contrary, also to have arisen out of that employment.

9. There is no evidence led by the respondents to rebut this statutory presumption. The trial Judge has discussed the evidence produced by the

appellant to come to the conclusion that the accidental injury did arise out of

employment and for that matter relied on the evidence of Dr. Suresh M. Shah (Exh. 24). Dr. Shah, for the reasons stated in his evidence, opined that the death was due to mio-cardiac infraction. Having expressed the opinion, he further observed that mio-cardiac infraction may be a result of stress and strain. The trial Judge has ruled out the argument that the deceased might have died on account of poisoning. I am of the view that the ruling-out of death by poisoning is quite correct under the facts and circumstances of the case. I agree with the trial Judge, considering the evidence of Dr. Shah, fortified by the statutory presumption u/s 15A of the Act, that the accidental injury did arise out of the employment.

10. The other aspect of the question as to whether the deceased could be said to have died in the course of employment was also decided by the trial Judge in favour of the respondents. However, there is not much reasoning on this aspect of the question, probably because it was not seriously disputed before him that the death did not occur in the course of the employment. Mr. Shah, however, pressed this point before me. In fact. This was the only point which was seriously pressed before me. Mr. Shah's contention is that considering the fact that the deceased died in the canteen during the short recess, he could not be said to have died in the course of his employment. In support of his contention, Mr. Shah invited attention to a judgment of the Supreme Court, in the case of Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, . It is observed therein as under :

As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be reasonable extension in both time and place and a workman may be regarded in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in

view at all times this theory of notional extension.

In the above case, the decision was, of course, against the workman, but that was on facts which were totally different from those involved in the

present appeal. In that case, a workman employed in a Salt Works, while returning home, after finishing his work had to go by a public path, then

through a sandy area in the open public and finally across a creek through a ferry boat. The workman, while crossing the creek in a public ferry

boat which capsized due to bad weather, was drowned. On a claim for compensation, it was held that on the facts of the case the accident could

not be said to have arisen out of and in the course of the employment while crossing the creek, in as much as the theory of notional extension could

not extend to the point where the boat capsized. Thus, the facts of the above case are entirely different from those involved in the present case. So

far as the general proposition quoted above is concerned, they would apply to the facts of the case, and in fact it would help the respondents.

11. Mr. S. R. Shah also relied upon a judgment, in the case of Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, . However,

the discussion in that case relates more to the question of the injury arising out of the employment, and the discussion, therefore, is not germane so

far as the question whether the accident occurred in the course of employment is concerned.

12. There is no dispute that the workman in the present case had joined duty and that he was still on duty when he died in the canteen. He had

gone to the canteen during the short recess to take tea, but that period is not so long as to disrupt the continuity of the employment. Mr. Shah

argued that during this short period, the deceased could have gone anywhere he chose, even out of the employment-premises. It is not stated

before me how long the short recess was. But, if the recess was indeed short, the liberty to an employee to go away does not in reality mean

anything, since he could not have gone so far as to snatch the continuity of his employment.

13. In the result, I do not find any substance in this appeal. The appeal, therefore, stands dismissed with costs.