
(2014) 06 MAD CK 0046
In the Madras High Court
Case No : C.M.A. (MD) No. 761 of 2006

Sakina Sheriff

APPELLANT

Vs

M. Amsath Begum and Others

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2015) 3 ACC 499 : (2015) ACJ 1226

Hon'ble Judges : K. Kalyanasundaram, J.

Bench : Single Bench

Advocate : A. Velan for Ajmal Associates, for the Appellant; N. Ranjith, for the Respondent

Final Decision : Allowed

Judgement

K. Kalyanasundaram, J.?Challenging the award passed by the Deputy Commissioner of Labour, Dindigul in W.C. No. 290 of 2004, the present appeal is filed. The respondents laid a petition before the Deputy Commissioner of Labour contending that late Mytheen Pitchai, who is the husband of the claimant No. 1 and the father of the claimant Nos. 2 to 6, was working as a driver with the appellant for Ambassador car bearing registration No. TN 59-Z 0336, suffered heart attack on 9.11.2003 and died. The claimants have contended that the accident happened in the course of employment and hence, they are entitled for the compensation.

2. Resisting the claim petition, the appellant filed counter-affidavit denying the allegations made by the claimants. The appellant admitted the employment of the deceased Mytheen Pitchai, but denied her liability contending that the death did not take place in the course of employment or arising out of employment.

3. The claimant No. 1 examined herself as P.W. 1 and marked Exhs. P1 to P7 and on the side of the appellant, no witness was examined and no document was got marked.

4. The Deputy Commissioner of Labour, relying upon the evidence of P.W. 1 and

the counter filed by the appellant, held that the deceased was the employee of the appellant and on 11.11.2003, he died due to heart attack in the course of employment and awarded compensation of Rs. 2,11,634. Challenging the award, the present appeal is filed.

5. Heard Mr. A. Velan, learned counsel for the appellant, and perused the materials available on record.

6. The learned counsel for the appellant submitted that the liability of the employer to pay compensation will arise only if there is any accident arising out of the employment. But whereas the death of the employee occurred due to heart attack, when he was residing in the outdoor house and as such, the death being the natural one, the appellant is not liable to pay any compensation. The learned counsel further submitted that if the employee died due to heart attack, the onus is upon the claimants to show that it was the work and the resulting strain which contributed to or aggravated the injury and if the claimants established a greater possibility which satisfies a reasonable man that the work contributed to causing of personal injury, it would be enough for the workman to succeed. But in this case, the claimants have not discharged their onus and they had not pleaded and proved to the satisfaction of the Commissioner that the nature of employment resulted in stress and strain of the deceased.

7. Learned counsel for the appellant has relied upon the judgment of the Hon"ble Apex Court in Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, of the judgment read as follows:

"(19) The sufferance of heart disease amongst young persons is not unknown. A disease of heart may remain undetected. A person may suffer mild heart attack but he may not feel any pain. There must, thus, be some evidence that the employment contributed to the death of the deceased. It is required to be established that death occurred during the course of employment.

(22) There are a large number of English and American decisions, some of which have been taken note of in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, , 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 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 fact of each case."

8. In *P. Kalyani Vs. The Divisional Manager, Southern Railway (Personal Branch)*, , the court has held as follows:

"(7) It is also relevant to refer a Division Bench decision of this court in *Thiru. T. Shanmuga Mudaliar Vs. Smt. Noorjahan, Mohd. Amsad, Apsana Parveen and The Divisional Manager, United India Insurance Co. Ltd.*, . The question in the appeals decided by the Division Bench was, whether the death of the workman, driver of a bus, due to heart failure was caused because of the heavy strain of employment. The following observation of the Division Bench in para 4 is relevant:

"(4) ...The connection between the accident and the employment may be established if the strain had contributed to or accelerated or hastened the accident. It may not be possible at all times to produce direct evidence of the connection between the employment and the injury, but if the probabilities are more in favour of the applicant then the Commissioner is justified in inferring that the accident did in fact arise out of and in the course of the employment".

9. Mr. A. Velan, learned counsel for the appellant, has further relied upon the judgment of this court in *The Oriental Insurance Company Ltd. Vs. Nagaraj, Balamurugan, Maniammal [Minors rep. by father and guardian Nagaraj]* and *The Management, Bombay Burmah Trading Corporation Ltd.*, and para 8 of the above said judgment reads as follows:

"(8) ... "(28) Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf."

10. In the light of the above judgments of the Hon"ble Apex Court and this court, even though the deceased was working as a driver with the appellant, the claimants have to prove the causal connection between the accident and the work done in the course of employment. Merely because a person died of a heart attack, that does not give an automatic presumption that the same was by way of accident. The deceased, suffering from heart disease, may not be aware of the same. The claimants must prove that the stress and strain arising during the course of employment accelerated or aggravated the accident.

11. In the present case, the claim petition does not narrate the nature of employment and the stress and strain arising during the course of employment, which hastened or contributed to the accident. The claimants have also not let in medical evidence in support of their case. However, the Deputy Commissioner of Labour has allowed the claim petition only on the evidence of P.W. 1 and the counter-affidavit filed by the respondent in which the appellant has admitted the employment of the deceased with the appellant. Indisputably, the onus is upon the claimants to establish that it was the work and the resulting strain that contributed to the accident. But there is no proper pleading and evidence

adduced by the claimants and there is no material to show that the nature of employment caused stress and strain to the deceased and the accident occurred due to stress and strain. In the light of the principles laid down by the Hon"ble Supreme Court and this court, in my considered opinion the claimants have not discharged the onus of proof to show that it was the work and the resulting strain which contributed to or aggravated the injury.

12. In view of the above finding, the order passed by the Deputy Commissioner of Labour is set aside and the civil miscellaneous appeal is allowed. Consequently, the connected miscellaneous petition is closed. No costs. Since the order of the Deputy Commissioner of Labour is set aside, the amount deposited by the appellant to the credit of W.C. No. 290 of 2004 can be returned to her.