

(1963) 11 AHC CK 0008
In the Allahabad High Court
Case No : F.A.F.O. No. 110 of 1957

Shyama Devi

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 13-11-1963

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 2(8), 82

Citation : AIR 1964 All 427 : (1963) 7 FLR 443

Hon'ble Judges : V. Bhargava, J;B.D. Gupta, J

Bench : Division Bench

Advocate : H.N. Seth, for the Appellant; J. Swarup, for the Respondent

Final Decision : Allowed

Judgement

B.D. Gupta, J.—This appeal, u/s 82 of the Employees" State Insurance Act (Central Act 34 of 1948), has come up before us as a result of an order passed by a learned single Judge of this Court directing the appeal to be placed before a Division Bench.

2. The appellant, Shyama Devi, laid a claim u/s 75 of the Employees State Insurance Act (hereinafter referred to as the Act) on the assertion that she was the widow of one Badri Prasad Srivastava, who was an insured employee in Messrs. Atherton West & Co. Ltd., Kanpur, and that Badri Prasad Srivastava died as a result of personal injury caused by accident on the 10th September, 1954, shortly after midday, whilst he was serving as a coolie employed in Messrs. Atherton West & Co. Ltd.; According to the claim set forward by the appellant, she was also the guardian of Vidyawati, who was the only child left by the deceased.

3. The claim was contested. It was admitted that Badri Prasad Srivastava was an insured employee in Messrs. Atherton West & Co. Ltd., Kanpur, but it was asserted that Badri Prasad had not sustained employment injury, as defined in the Act. The case of the respondent was that Badri Prasad died of heart failure,

and not as a result of any employment injury, and that, therefore, his dependants were not entitled to lay any claim. The learned Judge, who constituted the Employees' Insurance Court, framed three issues, as follows :

"(1) Whether Badri Prasad Srivastava died on the 10th September 1954, on account of employment injury?

(2) If the death of Badri Prasad Srivastava was due to employment injury, who are the dependants entitled to get dependants' benefits?

(3) If the death of Sri Badri Prasad Srivastava was due to employment injury and his dependants are entitled to dependants' benefits, what should be the amount of the same?"

4. On a consideration of the evidence before him, the learned Judge came to the conclusion that the death of Badri Prasad Srivastava was not due to an employment injury, as defined under the Act. The learned Judge did not give any finding on issues Nos. 2 and 3, and dismissed the claim by his order dated the 24th March, 1956. It is against this order that the present appeal was filed.

5. Learned counsel for the appellant has urged that the view taken by the learned Judge that the death of Badri Prasad was not due to an employment injury, as defined under the Act, is incorrect. In order to appreciate the controversy certain facts may now be set forward. The evidence of the witnesses produced by the appellant was that, on the relevant day, Badri Prasad was doing the work of carrying stacks of sheets of cotton cloth from a place inside the factory premises where those stacks were arranged, to another place, within those very premises, at a distance of about 70 yards from the former place, and that the weight of each stack of sheets of cotton cloth, which were not tied together, was approximately 30 seers and that, at the relevant time only three persons were looking after the work of four persons, as one person had gone to offer prayers. The evidence further was that, whilst performing the aforesaid duties, when Badri Prasad was carrying a bundle, he somehow fell down with the result that the bundle came over him, where after a number of bundles, which were placed on a table, about that very place, also fell down over Badri Prasad. Several persons, including the witnesses, thereupon rushed to the place where the bundles had fallen on the chest and face of Badri Prasad, and removed the bundles from over Badri Prasad, and then found that Badri Prasad was already dead, where after the dead body was taken to the Supervisor who informed the doctor.

The learned Judge's assessment of the evidence given by the witnesses of the appellant was that it showed that Badri Prasad, while carrying a bundle of sheets of cotton cloth, fell down, and that bundle came over him along with some others that were placed on a table nearby. Dr. B. C. Saxena was examined on behalf of the respondent for the purpose of showing that death was due to heart failure. Dr. Saxena had not subjected the body of Badri Prasad to post-mortem examination and the learned Judge characterised the evidence of Dr. Saxena as

absolutely useless on the ground that the opinion of Dr. Saxena appeared to be based on conjecture. The learned Judge, nevertheless, took the view that the death of Badri Prasad was due to heart-failure following which Badri Prasad suddenly fell down as a result of which numerous other bundles also tumbled down over him. The reason given by the learned Judge for this conclusion is that, as the sheets of cotton cloth were not tied, but were simply arranged one over the other, the falling down of those sheets on Badri Prasad could not have given any abnormal pressure, and that since each bundle appeared to consist of 26 to 28 dhotis, there was no question of death on account of the fall of the bundle, and that such a fall could, not cause an injury so as to result in the death of a person.

6. "Employment injury" has been defined in Clause (8) of Section 2 of the Act as follows :

" "employment injury" means a personal injury to an employee caused by accident or on an occupational disease arising out of and in the course of his employment in a factory or establishment to which this Act applies, which injury or occupational disease would entitle such employee to compensation under the Workmen's Compensation Act, 1923 (VIII of 1923), if he were a workman within the meaning of the said Act."

There was some controversy before the learned: single Judge, who referred this case to a Division Bench, about the exact scope of the aforesaid definition. We do not consider it necessary to enter into this controversy because in our opinion, on the finding recorded by the learned Judge, that "death was evidently due to heart failure", and when Badri Prasad Srivastava fell down as a result of heart failure the bundles naturally came down over him, his view that it could not be said to be the result of an employment injury, as defined in the Act, appears to be perfectly sound. Learned counsel for the appellant also did not seriously challenge this position. His contention, in the main, was that the aforesaid finding of the learned Judge is speculative and unfounded and that the only legitimate inference deducible from the evidence was that Badri Prasad died as a result of a personal injury caused by accident during the course of his employment. This contention, naturally involved an assessment of the evidence led by the parties for the purpose of finding out whether the finding of the learned Judge was correct, and the question arose whether, in the course of an appeal u/s 82 of the Act, it is open to this Court to go behind the finding recorded by the learned Judge, or whether the finding recorded by the learned Judge is not open to scrutiny by this Court. We then heard learned counsel for the parties on this aspect of the controversy and our opinion is that it is open to this Court to scrutinise the correctness or propriety of the finding recorded by the learned Judge. The relevant clause of Section 82 of the Act is Clause (2) thereof, which runs as follows :--

"An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law."

7. The contention of learned counsel for the appellant was that it is open to this Court to summarily reject an appeal u/s 82 of the Act on the ground that it does not involve a substantial question of law, but that if this Court has not done so, and has admitted the appeal, it became open to the appellant, at the hearing of the appeal, to attack the finding of the learned Judge on its merits. In support of his contention learned counsel for the appellant has relied upon the decision of a Division Bench of this Court in the case of Upper Ganges Electric Employees Union Vs. Upper Ganges Valley Electricity Supply Co. Ltd. and Another, . The decision in the above case turned round the interpretation of Sub-section (1) of Section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, the relevant portion whereof runs as follows :--

"Subject to the provisions of this section, an appeal shall lie to the Appellate Tribunal from any award or decision of an Industrial Tribunal if-

(a) the appeal involves any substantial question of law."

Mootham C. J., giving the judgment of the Division Bench, observed that "the requirement in Section 7 (1) (a) of the Act that the appeal must involve a substantial question of law was intended to enable the appellate Labour Tribunal to dismiss summarily an appeal which involved only a question of law of minor importance". The judgment then proceeded to deal with the argument that the Tribunal could not consider the question whether a certain person was a workman, or whether his dismissal was wrongful, because these questions were questions of fact, and the view taken by the Division Bench was that it was open to the Tribunal to consider afresh the question whether the dismissal of that workman was wrong. It was observed that, if the Appellate Labour Tribunal had jurisdiction to hear the appeal, it had jurisdiction to decide any question raised in the appeals. It was further observed that once the requirement of the appeal involving a substantial question of law was fulfilled there appeared nothing to warrant any restriction on the scope of the appeal. Reliance was placed by the Division Bench on the decision of the Federal Court in the case of Niharendu Dutt Majumdar v. Emperor AIR 1942 F C 22 where Gwyer C. J., delivering the judgment of the Federal Court, observed that once a certificate had been given by the High Court u/s 205(1) of the Government of India Act, 1935, that the case involved a substantial question of law the appellant was entitled, with the leave of the Court, to raise any point in his defence. Learned counsel for the respondent referred to a decision of another High Court taking a contrary view. We are of the view that the decision of the Division Bench in the case of the Upper Ganges Electric Employees Union Vs. Upper Ganges Valley Electricity Supply Co. Ltd. and Another, , well supported as it is by the decision of the Federal Court in the case of Niharendu Dutt Majumdar A I R 1942 F C 22, is binding on us with the result that, in our opinion, it is perfectly open to the appellant, at the hearing of this appeal, to challenge the finding recorded by the learned judge.

8. Having heard learned counsel for the parties on the merits of the finding of the

learned Judge, we are of the view that it cannot be sustained. We see no reason to doubt the evidence given by the witnesses examined on behalf of the appellant. This evidence, in our opinion, establishes the following facts :

Since sometime before the falling down of Badri Prasad, out of four persons who were scheduled to be on duty, one of them had gone out to offer prayers with the result that only three workers, including Badri Prasad, were carrying on the work. Each bundle of sheets of cotton cloth, which Badri Prasad had to carry from a fixed place to another, at a distance of 70 yards, was approximately 30 seers in weight. At the time Badri Prasad fell down and died he was carrying one such bundle and happened, somehow to fall down with the result that that bundle, as also several other bundles which were placed on a table close-by, all fell on the chest and face of Badri Prasad, where after when these bundles were removed from over him, Badri Prasad was found dead. There was nothing to indicate that Badri Prasad was the victim of some ailment which had weakened his heart or that, on the day on which he died, there was anything abnormal in his health, or that he was performing the duty of carrying these heavy bundles even though he was unfit to do so. The death of Badri Prasad took place within the premises of Messrs. Atherton West & Co., Ltd., Kanpur, and in our opinion, it was the duty of the Company to have arranged for a post-mortem examination of the body of Badri Prasad, in case it was intended to assert that there was something inherently wrong with the functioning of the heart of Badri Prasad.

9. We are in full agreement with the view of the learned Judge that the evidence given by Dr. Saxena was absolutely useless and we are surprised that, even though the death of Badri Prasad was intimated to the doctor immediately after the accident, all that the doctor apparently did was to observe whether he had received any external injury and pronounce him dead. We are unable to agree with the learned Judge that, simply because the sheets of cotton cloth were not tied together but were arranged one over the other, the falling down of stacks of such cloth, the weight of each stack being approximately 30 seers, would not result in any abnormal pressure upon Badri Prasad. In our opinion, Badri Prasad, whilst performing duty in the course of his employment, accidentally fell down with the result that the stack of sheets of cotton cloth, which he was carrying over his head, as also several other stacks placed on a table close-by, each stack weighing approximately 30 seers, fell down on his chest and face.

It is very probable that death was caused by asphyxia as a result of heaps of cloth falling on his face and preventing breathing and, in any case, the inference which necessarily flows from the circumstances is that failure of heart and consequential death were the result of stacks of cloth falling on him. We are not inclined to construe the meaning of the word "injury" so as to confine it to a visible injury in the shape of some wound. Such a construction would be narrow and would be inconsistent with the purpose of the Act which is to provide for certain benefits to employees in cases of sickness, maternity and employment injury. In the first instance, internal examination of the body of Badri Prasad may

have revealed internal injury to one or more of the vital organs of the body. The responsibility of failure to get the body subjected to post-mortem examination obviously lies with the Company in whose premises Badri Prasad was working at the time. Secondly, the mere fact that injury to the body may not have been visible would not necessarily mean that death took place without any injury whatever.

We can understand the death of a person in extreme old age as being death attributable not to any injury but to the vital organs of the body having lived their life and ceasing to function. In the present case, however, we are far even from a border-line case, in which there may be some controversy as to whether death of a person is to be attributed to injury, to some congenital or acquired defect in any vital organ of the body, or to sheer old age. There is nothing to indicate that Badri Prasad was aged, nor is there anything to indicate that there was anything peculiarly wrong with him since before or on or about the day on which his death took place. Keeping in view the finding we have recorded earlier as to the circumstances in which his death took place, we send it impossible to comprehend, much less accept, the hypothesis that Badri Prasad merely passed away without any cause which can be described as "injury" within the meaning of that word as used in Clause (8) of Section 2 of the Act. In our opinion, the appellant had fully established that Badri Prasad died on 10th September 1954, on account of employment injury and the first issue framed by the learned Judge must be answered in favour of the appellant.

10. It is regrettable that the learned Judge did not record any finding on issues Nos. 2 and 3. This necessitates a remand.

11. We, therefore, allow this appeal, set aside the order of the learned Judge dated the 24th March 1956, and direct that the record be sent back to the learned Judge with the direction that he shall proceed, without unnecessary delay, to fix a date for hearing the parties and, after hearing them, to proceed to decide the case in accordance with law in view of such findings as he may record on issues Nos. 2 and 3 framed by him. The appellant shall be entitled to her costs of this Court. The costs before the Employees' Insurance Court shall abide the event.