

(1944) 03 CAL CK 0027

In the Calcutta High Court

Case No : Appeal from Original Order No. 117 of 1942

Sm. Rajpalia

APPELLANT

Vs

Champdani Jute Mills Ltd.

RESPONDENT

Date of Decision : 15-03-1944

Acts Referred:

Citation : (1944) 03 CAL CK 0027

Final Decision : Allowed

Judgement

Derbyshire, C.J.—This is an appeal from a judgment of the Commissioner, Workmen's Compensation, Bengal, refusing compensation claimed for the death of a workman. The workman was an employee in the Respondent's jute mill and was described as a "tulander." On July 15th, 1941, the workman whilst working at the mill, helping to lift bales of jute on to the heads of coolies known as "sangras," complained of giddiness, lay down and died then and there. The death was ascribed by the doctor as due to cerebral haemorrhage.

2. The workman had earned Rs. 15 to Rs. 18 a month and his father and his widow, who claimed to be his dependants, have brought this claim for a lump sum payment of Rs. 600 in respect of Chunder's death.

3. The evidence of Bandhu, a fellow-workman of the deceased, was that the deceased used to work with others raising bales of jute on to the heads of other workmen; that on the day in question work began at 6 A. M. and that at about 7-30 A. M. when the deceased was raising a bale he sat down, complained of pains in the chest, lay down and was taken by fellow workmen to the doctor who said that the workman was dead. In cross-examination this witness said:

"The system is that 8 tulanders with 3 sangras lift a bale of jute on the heads of the 3 sangras who carry it to the batching room. Tulander does not carry it on his head. When the 3 sangras return after delivering the bales at the batching room then the tulanders again lift another bale. Chander was working standing on bales of jute stacked there. When sangras are not present, he and other

tulanders would sit down on the stack of bales. There are many other sangras and so the tulanders do not get an interval of a minute or two. Four batches of 3 sangras were working that day. Chancier was in good health. He was all along working as tulandar-sometimes the work is more, sometimes less-at the time the work was heavy but it was so also on many previous occasions. When we had returned from the batching room we found Chander seated and on question he said he had pain in the chest. He lay down on the stack of bales....Chander received no injury whatsoever.

4. Another workman, a Jamadar over the tulanders, gave evidence for the employers. He stated that-

Chunder was seated on a bale of jute after tiffin when he was asked to come and help in raising the bundles. He said he would do it a little later as he was feeling giddy since return after a drink of water. Then he was lying down on the bales when others caught him and took him with others, help to the dispensary. He had no fall from the top of the bales. The work was the ordinary daily work.

5. Later this witness said that in the morning Chunder had worked before he went to have a drink of water.

6. Another workman named Ferringhe gave evidence for the employers. He stated that-

I was working as tulander at the time of Chunder's death. He was working with others on top of the bales resting in the interval between work after a drink of water and complained of giddiness and he was about to be down when we caught hold of him and with help took him to the dispensary where we heard he was dead.

7. The medical officer of the mill, Dr. Mukherjee, said:

According to my diagnosis the death was due to cerebral haemorrhage. The man was already dead when he was brought to the dispensary.... The cerebral haemorrhage may be due to syphilitic causes and a man of his age will not have high blood pressure. Death was not due to shock or heart failure. I got no evidence of any fall. There was no external mark of injury. I myself called the police. Police investigated the circumstances of his death. As police and I "both considered death, was due to natural causes and there was no foul play the dead body was handed over to the relations for cremation. The police did not consider post mortem examination necessary.

8. In cross-examination the doctor said:

So far as I remember I had never treated the man before or heard anything about it. I do not know whether he was suffering from syphilis. I did not expect blood to come out in cerebral haemorrhage. If death is due to primary heart failure-there would have been previous complaint and visit to hospital. I would not expect red marks in the eye in case of cerebral haemorrhage. Giddiness,

sitting down and sudden collapse are the only symptoms from which I diagnosed it as cerebral haemorrhage. In a case of a man suffering from blood pressure the same symptoms may appear on exertion and cause death. Age is against it. Rarely a man may have blood pressure at his age.

9. The Commissioner says in his judgment:

After evidence was recorded the facts have become simple. The evidence leaves no room for doubt that the applicant was a tulaner working in the Opposite Party's mill. He was either seated or standing on some jute bales in the interval of his work, waiting for return of the coolies to carry the tales. He suddenly complained of giddiness. He either lay down himself or his companions caught him and put him down to lie there. Life was soon extinct. He was dead before he could be taken to the dispensary. The evidence further shows that he was doing his ordinary work and not any extra-strenuous work. There is no evidence that he was suffering from any illness or disease the course of which was accelerated by his ordinary work. He had never before been to the mill doctor for any illness. The doctor's opinion is that death was perhaps due to cerebral haemorrhage. The doctor does not consider he had high blood pressure. The doctor suspects the cerebral haemorrhage may be of syphilitic origin but he had not previously treated the man for any venereal complaint. Unfortunately there was no post mortem examination. The present case does not fall within the group of cases which deals with strain or exertion as there was no such strain or exertion. It also does not come within the rule in *Clover, Clayton & Co., Ltd. v. Hughes* 3 B. W. C. C. 275 (1910) as there is no evidence of any previous disease (like aneurism in that case) which resulted in death from ordinary work. If he had any such disease or was suffering from any such bodily condition which made him susceptible to injury from even moderate exertion, then it could have been said to have been caused by accident though he was doing his ordinary work. In the present case such evidence is wanting. Under the circumstances we must hold that the applicants have failed to show that the death of the workman Chunder was caused by accident. The claim therefore fails and is dismissed.

10. The Appellant has contended in effect that the Commissioner has misdirected himself in law in giving his decision and the case of *M'Innes v. Dunsmuir & Jackson, Ltd.* 1 B. W. C. C. 226 (1908) was cited. There a workman, whose duties were to lift along with another iron plates weighing between 3 and 4 cwts so that they could be hung from a crane and then pushed under a punching machine, collapsed a little time after he had helped to lift the plates. The arbitrator found that after the plates were lifted to the crane and swung therefrom, there was no weight on the arms of the labourer and that on the occasion in question a plate had been slung and subjected to the punching machine for about ten or twelve minutes when the Respondent felt a slight pain on the left side of his head accompanied by a giddy feeling which caused him to seize hold of the side of the machine for support. He was helped outside by his fellow-labourers and rested for a quarter of an hour and then returned to work.

Three quarters of an hour later he became giddy, complained of want of power in the right arm and leg, taken home and put to bed. Four days later he had an attack of cerebral haemorrhage which caused right-side paralysis from which he was still suffering. The arbitrator found that the workman in the course of his ordinary usual employment over-exerted himself and eventually brought on an attack of cerebral haemorrhage. In his judgment Lord Mackenzie said:

The Sheriff has found that as the result of those exertions the claimant had an attack of cerebral haemorrhage. I think it is impossible, taking the term "accident" in the sense in which it should be applied in the construction of the Workmen's Compensation Act, to say that the injury which the man sustained was not an injury by accident arising out of and in the course of the employment.

11. That is a somewhat similar case on the facts. Apparently, two people there used to lift the plates. Cases under the Workmen's Compensation Act depend upon their own facts and upon the law as laid down in the Act. There was considerable doubt when the English Workmen's Compensation Act of 1906 was first put into operation as to whether the dependants of a man suffering from some complaint from which he might have died, even if he had been not at work, were entitled to compensation if he died whilst at work. The matter came up for consideration in the case of *Clover, Clayton & Co. v. Hughes* 3 B. W. C. C. 275 (1910) to which the learned Commissioner has referred. The facts there were that a workman suffering from an advanced aneurism which means an enlargement of a vein or artery of the aorta was doing his work in the ordinary way by tightening a nut with a spanner. This ordinary strain caused a rupture of the aneurism which resulted in death. The County Court Judge found that the workman's death resulted from personal injury by accident within the meaning of the Act. There was an appeal to the Court of Appeal which upheld the decision and the House of Lords by a majority of three to two upheld the Court of Appeal. In the course of his speech Lord Loreburn, L. C, at page 281 said:

I do not think we should attach any importance to the fact that there was no strain, or exertion out of the ordinary. It is found by the County Court Judge that the strain in fact caused the rupture, meaning, no doubt, that if it had not been for the strain, the rupture would not have occurred when it did. If the degree of exertion beyond what is usual had to be considered in these cases, there must be some standard of exertion, varying in every trade. Nor do I think we should attach any importance to the fact that this man's health was as described. If the state of his health had to be considered, there must be some standard of health, varying, I suppose, with men of different ages. An accident arises out of the employment when the required exertion producing the accident is too great for the man undertaking the work, whatever the degree of exertion or the condition of health.

It may be said, and was said, that if the Act admits of a claim in the present case, every one whose disease kills him while he is at work will be entitled to compensation. I do not think so, and for this reason. It may be that the work has

not, as a matter of substance, contributed to the accident, though in fact the accident happened while he was working. In each case the arbitrator ought to consider whether, in substance, as far as he can judge on such matter the accident came from the disease alone, so that whatever the man had been doing it would probably have come all the same, or whether the employment contributed to it. In other words, did he die from the disease alone or from the disease and employment taken together, looking at it broadly? Looking at it broadly, I say, and free from over-nice conjecture: Was it the disease that did it or did the work he was doing help in any material degree?

12. Lord Collins in his judgment referred to the case of *Fenton v. Thorley* [1903] A. C. 443 in which he said:

I agree with the Court of Appeal that the case is concluded by the authority of *Fenton v. Thorley* (3). In fact the argument for the Appellant was substantially that which prevailed in the Court of Appeal in a series of cases which were overruled by that decision.

13. Then later he said:

Lord Macnaghten, in overruling this and a group of other cases decided on the same lines by the Court of Appeal says at page 446: "If a man, in lifting a weight or trying to move something not easily moved, were to strain a muscle, or rick his back, or rupture himself, the mishap, in ordinary parlance, would be described as an accident. Anybody would say that the man had met with an accident in lifting a "weight or trying to move something too heavy for him". He then goes on to express his entire agreement with the case of *Stewart v. Wilsons and Clyde Coal Company Ltd.* [1902] 5 Fraser 120 and singles out for special approval a passage in the judgment of Lord M'Laren: "If a workman, in the reasonable performance of his duties, sustains a physiological injury as the result of the work he is engaged in....this is an accidental injury in the sense of the statute" Lord Lindley likewise expresses his approval of the same decision.

14. In my opinion, the question for the Commissioner in this case was to say whether the workman in the performance of his duties had sustained a physiological injury as the result of the work he was engaged in. It is not a question of whether he had some previous illness or not. It is unfortunate that there was no post mortem examination. There was no suspicion of foul play and the body was released for cremation at once. The doctor diagnosed the case without a post mortem examination as one of cerebral haemorrhage. That was the best conclusion he could come to. Looking at it in the light of the case of *M'Innes v. Dunsmuir & Jackson, Ltd.* 1 B. W. C. C. 226 (1908), it is a likely conclusion. The doctor himself thought there might be some syphilis but he had no evidence of syphilis. That must go out of our consideration altogether. He thought the man too young to suffer from hardened arteries. It would not have made any difference if he did, except that it might have made it easier for the workman to prove his case. The workman had never complained of illness

before. There was no evidence that he had been treated for any illness except for some boils a few years ago. On the morning in question when he went to work, as far as we can judge, there was nothing the matter with him. After lifting bales of jute which we are informed may be 5 or 6 maunds in weight on to the heads of coolies, the number of coolies being rather more than usual, more bundles had to be lifted. When the man was waiting for another batch of coolies to come he felt ill, complained of giddiness, had a drink of water, lay down and latterly died. The doctor says that the cause was cerebral haemorrhage. Cerebral haemorrhage means a bursting of the blood vessels on the brain. That would be a physiological injury. The question was not put to the doctor whether the exertion could have caused cerebral haemorrhage. But after all that is a matter for us. Looking at the evidence I can see no other cause for this accident except the strain of the work that he was doing. Such accidents have happened before and in a similar way. In my opinion the workman's death was caused by an accident-cerebral haemorrhage -arising in the course of the man's employment and arising out of it. Therefore, in my view, the workman's dependants are entitled to proper compensation under the workmen's Compensation Act.

15. For those reasons I am of the opinion that this appeal should be allowed and the case remitted to the Commissioner, Workmen's Compensation, Bengal for him to determine the amount of compensation, who are the dependants of the workman within the meaning of the Act and to award compensate accordingly.

16. The Appellant is entitled to her costs in this appeal-the hearing fee is assessed at five fold mohurs.

Lodge, J.

I agree.