

(1994) 02 MAD CK 0054

In the Madras High Court

Case No : Appeal Against Order No. 1547 of 1993

Special Officer, Periyakulam Anna Polythene Workers
Industrial Co-operative Society Ltd.

APPELLANT

Vs

Ayyammal (Smt.) and Another

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Employees Compensation Act, 1923 — Section 2, 3, 8

Citation : (1994) ACJ 1225

Hon'ble Judges : Srinivasan, J;Abdul Hadi, J

Bench : Division Bench

Judgement

1. This civil miscellaneous appeal is against the award of Rs. 52,052 passed by the Deputy Commissioner of Labour, Madurai in W. C. No. 72 of 1992 under the Workmen's Compensation Act, (hereinafter referred to as "the Act") as against the claim for compensation for a sum of Rs. 76,885.20. The compensation was claimed by the respondents, parents of the victim, who was working under the appellants-industrial co-operative society.

2. The case of the claimants is briefly as follows : Their daughter Panchavarnam, the deceased, received stab injuries from her husband during the course of her employment under the appellant and died on 22.4.1990. She was getting a monthly wages of Rs. 900 and was aged 27 years at the time of the death.

3. The appellant in its counter-statement stated as follows : The deceased was no doubt a worker working under the appellant, but her husband has murdered her after entering into the work place. The murder was due to his private motivation and cannot be construed as an employment injury. The death is not due to risk incidental to the work of the victim. It is not an accident. There was no casual connection between the employment and the occurrence, which resulted in her death. It is only due to private enmity between her and her husband. The deceased was not getting a monthly wage of Rs. 900. The allegation that her age was 27 year is disputed.

4. After referring to several decisions, the Deputy Commissioner came to the conclusion that the death of the deceased was caused by an accident arising out of an in the course of her employment.

5. Learned counsel for the appellant contends that the death of the deceased was not at all due to an accident and that even assuming it was due to an accident, it cannot be said that the accident arose out of and in the course of her employment. Therefore, according to him, Sec. 3(1) of the Act is not satisfied. The second submission of the said learned counsel is that the claimants are not dependants of the deceased, who was a married daughter. Thus, according to him, Sec. 2(d) of the Act, which defines the term "dependant" is not satisfied in the present case and, therefore, also, also the claimants are not entitled to any compensation. He also points out that this aspect, of claimants not being dependants, was not considered by the Authority below. These are the only two submissions made by the said learned counsel. He also relied on certain decisions which will be presently considered.

6. On the other hand, learned counsel for the respondent-claimants reiterates the reasoning of the authority below and contends that the decision arrived at by the authority below is correct. He also relied on certain decisions, which will be presently considered.

7. Dealing with the first of the abovesaid two submissions of the learned counsel for the appellant, we shall, before going into the legal position and the authorities cited by the said learned counsel, point out one factual point noted by the authority below. It is as follows :

"One Thirumathi Kanchana Mala Who was examined as R. W. 1 has deposed that while the deceased was in the society (appellant), her husband came and asked her to accompany him, that the deceased beat her husband and that the latter has stabbed her. It was also her evidence the husband and wife used to quarrel often and the society has warned them not to enter into the society like this".

The abovesaid observation of the authority below has not been in any way assailed by the learned counsel for the respondents.

8. Now, coming to the legal position, as such, we may first of all point out Sec. 3(1) of the Act, which says, "if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter. So, it has only to be seen whether in the present case, the death of victim was caused by accident arising out of and in the course of her employment". In Bhagubai Vs. General Manager, Central Railway, V.T., Bombay, , a Division Bench of the Bombay High Court, comprising of Chagla, C.J. and Dixit, J. held thus :

"Now, there can be no doubt that before an applicant under the Workmen's Compensation Act can succeed he must discharge the burden of proving (a) that there was an accident arose out of the employment".

Further, in the said decision, after observing that the first two of the abovesaid three requirements were satisfied in the said case, the court dealt with the third requirement as follows :

"The question is whether the applicant has discharged the burden with regard to the third ingredient and also what is the burden that the law places upon him with regard to that ingredient. In our opinion, once the applicant has established that the deceased was at a particular place and he was there because he had to be there by reason of his employment, and he further establishes that because he was there he met with an accident he has discharged the burden which the law places upon him. The law does not place an additional burden upon the applicant to prove that the peril which the employee faced and the accident which arose because of that peril which was not personal to him, but was shared by all the employees or the members of the public. Once the peril is established, it is for the employer then to establish, it is for the employer then to establish either that the peril was brought about by the employee himself, that he added or extended the peril, or that the peril was not a general peril but a personal to the employee. It is because of this that the authorities have made it clear that the casual connection between the accident and the employment which the applicant has to establish is not a remote or ultimate connection, but a connection which is only proximate".

In that Bombay case, the deceased was employed in the Central Railway at a station and he lived in the railway quarters adjoining the railway station. It was found as a fact that the only access for the deceased from his quarters to the railway station was through the compound of the railway quarters. One night the deceased left his quarters a few minutes before midnight in order to join duty and immediately thereafter he was stabbed by some unknown person. In this connection, the Bench also observed thus :

"In our opinion there is not an iota of evidence in this case that the employee was done to death because some one was interested in murdering him. Nor is there any evidence that the employee was bound to be murdered, whether he was on the spot in the course of his employment or anywhere else".

In the above context, the Bombay High Court held that the ingredients of the abovesaid Sec. 3(1) were satisfied and granted compensation.

9. The abovesaid Bombay decision also relied on the following observations in the leading English case in *Thompson v. Simpson* 1917 A. C. 127 :

"In short, my view of the statute is that the expression "arising out of the employment" is not confined to the mere "nature of the employment". The expression, in my opinion, applies to the employment as such to its nature, its conditions, its obligations, and its incidents if by reason of any of these the workman is brought within the zone of special danger and so injured or killed, it appears to me that the broad words of the statute "arising out of the employment" apply if the peril which he encountered was not an added peril produced by the

workmen himself as in the case of *Pluab v. Colidan Flour Mills Co.*, 1914 A. C. 62 and *Barnes v. Sunnery Colliery Co.*, 1912 A. C. 44, in this House, then a case for compensation under the statute appears to arise". [italics supplied]

10. Earlier, a Division Bench of this Court in *Ramabrahman v. Traffic Manager, Visakhapatnam Port*. A. I. R. 1943 Mad. 353. also laid down the principle almost in the same line. There, a contract or of the port authorities employed the workmen for loading manganese ore into ships at a dump within the harbour premises. After having worked for over five hours, they left the harbour premises in order to drink some coffee. The workmen having partaken of the coffee returned to the harbour premises to resume their work. They took a short cut which necessitated their crossing certain railway lines. While they were crossing these lines a railway engine ran into them and both were killed. There was a notice prohibiting persons from crossing the railway lines but it was usual for workmen in the harbour premises to cross the lines in spite of prohibition. In the circumstances this Court held that the accident which befell the workmen arose "out of and in the course of their employment. " The Division Bench therein observed after relying on another English decision of Lord Macmillan in *Mcicullwn v. Horthurbhian Shipping Company Limited* (1932) 147 L. T. 136, thus : "Thus at least, however, could be said, that the accident in order to give rise to a claim for compensation must have some relation to the workmen's employment and must be due to a risk incidental to the employment and must be due to a risk incidental to the employment as distinguished from a risk to which all members of the public were alike exposed. In leaving their work to take refreshment at 7.30 p.m. these workmen did what they were entitled to do. In fact it would manifestly be impossible for them to do this heavy work from 2 p.m. to 10 p.m. without some break. They left the harbour premises and returned and having entered the premises they sought the nearest way to the place where the manganese ore was being loaded. In crossing the railway lines they were following the usual practice of the workmen engaged in the harbour, the prohibition was not an effective prohibition. The responsible officials of the harbour in fact connived at it being disregarded. In other words, the notice might never have been there. Having entered the harbour premises and having met with an accident in the circumstances which we have related we consider their dependants are entitled to compensation. The risk which they ran was incidental to their employment and arouse out of it". [Italics supplied]

Thus two principles emerge : (1) The peril should not be personal to the concerned employee, (2) it must have some relation to the employment. Applying those principles to the present facts, we have necessarily to come to the conclusion that the claimants herein are not entitled to compensation since the death of the victim in the present case cannot be said have been caused "by accident arising out of and in the course of her employment".

11. As already pointed out, it is in evidence that when the husband entered into the premises of the appellant-society, where his wife, the victim, was working

and asked her to accompany him, the victim beat him and the husband then stabbed her. It is also in evidence, as already pointed out, that the husband and wife used to quarrel often. In the above circumstances, it is clear that not only the death was due to quarrels between the victim and her husband and the husband's animosity against the wife, but the victim-wife initially beat her husband and thereby provoked her husband to stab her. In the above circumstances, it is not difficult to hold that the appellant-employer has established that the "peril was brought about by the employee himself (herself) that he (she) added or extended the peril or that the peril was not a general peril, but a peril personal to the employee" as observed in the above referred to Bombay decision. That apart, it cannot be said in the present case that the claimants themselves have discharged their initial burden by establishing that because the deceased was at the work spot in question. She met with the above referred to stabbing by her husband and the resultant death. This initial burden of the claimants was also pointed out in the above referred to Bombay decision, as indicated above. Further, in the light of the abovesaid Madras Bench decision also, it cannot be said that on the facts of the present case, the occurrence in question "has some relation to the workmen's employment" and was "due to a risk incidental to that employment as distinguished from a risk to which all members of public were alike exposed". The event would not have taken place if there was some other employee in the place of the deceased.

12. Hence, we hold that the ingredients of Sec. 3(1) of the Act are not satisfied in the present case. Likewise, the other decision cited before us, viz., Public Works Department Vs. Smt. Kausa, , also turned on its facts. In the said decision P. W. D. Gangjamadar who along with other workmen were carrying on repair work in a road, started from his place of work for collecting the salaries of the workmen from the office and was then murdered by an unknown person on the way. In that context the Madhya Pradesh High Court held that his death arose out of his employment. One finding in the said case was that the death would not have happened but for the fact that he had left, for proceeding to office, for collecting salaries. No such situation has been established in the present case.

13. In contrast, in the other decision cited before us, viz., Parwatibai Vs. Manager, Raj Kumar Mills, , compensation claim was rejected on the ground that the death of the victim not caused by an accident arising out of his employment. There, all that was known was that the deceased workman died of heart failure during his employment and that he was suffering from heart disease but there was no evidence to show that he got heart disease as a result of the work he was engaged in. In that context only, the court held that his death was not caused by an accident arising out of his employment. The following observations in the said decision is relevant :

"Thus if a particular accident would not have happened to a workman had he not been employed to work in the particular place and condition, then it would be an accident arising out of the employment".

But, in the present case, from what has been elicited in evidence, as pointed out earlier, it cannot be concluded that the death of the victim in question would not have happened to her, had she not been employed in the particular place and condition, in which she was working,

14. One other Bombay decision, which was cited before us, considered many of the above referred to earlier decisions including Ramabrahman v. Traffic Manager Visakhapatnam Port A. I. R. 1943 Mad. 353 in Salanabegum v. Maharashtra State Co-operative Land Development Bank, 1989 A. C.J. 1104. There, a jeep driver was employed with a bank. He took the officers of the bank to a village in connection with recovery proceedings. After parking the jeep in the rest house, he had gone to the market, where he was assaulted by some persons in the crowd and he died and compensation was claimed in lieu of his death under the abovesaid Act. In that context, the learned Judge observed as follows :

The only question that calls for consideration is whether it can be said that the accident arose out of the employment or whether there was any connection, causal or otherwise, between the death and the employment of the workman. In this respect, the appellants' contention was that there was incidental connection by the very fact that the deceased Sk. Abudullah was on duty of the bank and but for his performing the duty of taking the bank officers in the jeep to Benapur on that day, the accident could not have taken place. In other words, had he not been on duty of the bank on that day and had he not taken the jeep any where, he would not have met with any accident, much less a fatal one like his death. This contention has much force".

In view of this reasoning, the Bombay High Court, in the abovesaid case, upheld the claim for compensation. But the facts in the present case are different and the same reasoning cannot be applied in the present case.

15. Another decision cited before us was United India Insurance Company Limited v. Hirabai, 1987 A. C.J. 949. It is also distinguishable. It cannot also be applied to the present case, as the facts therein are distinguishable. There, no doubt, the driver of a bus was stabbed to death while on duty and compensation awarded to him was confirmed by the Madhya Pradesh High Court. The reasoning of the said Court for holding that the abovesaid stabbing arose out of the aforesaid driver's employment, can be gathered from the following observation in the said decisions :

"From the evidence and the findings recorded by the learned Commissioner it is clear that the deceased Omprakash Singh had to take the bus at railway station where he was stabbed by one Munnala in consequence of which he died. The deceased had to take the bus to the railway station as part of his duty where he was given a fatal blow. The incident of inflicting knife injury at the time and place when the deceased was on duty was a proximate cause. The injury had resulted to the deceased from the risk incidental to the duties of his service and unless was engaged in the duty owing to his master, in all probability the workman that

is the deceased Omprakash Singh would not have otherwise suffered the injury. In these circumstances, it can well be said that a causal connection was established between the accident and the employment and the accident had occurred on account of the risk which was an incident of the employment. There is neither any pleading nor any suggestion that the deceased by his own act added to the said incident or the same was brought about by himself."

It is evident that the said reasoning will not be applicable to all to the present facts. Further, we may also point out that in the present case, unlike in the abovesaid Madhya Pradesh decision, there is evidence to show that the deceased, by her own act, added to the said incident or the same was brought by herself.

16. The said Madhya Pradesh decision has also relied on the following observation of the Supreme Court in *Mackinnon Mackenzie and Company Limited v. Ibrahim Mahammad Issak*, 1969 A. C.J. 422 :

"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 workmen would not otherwise have suffered"..."

In the present case, from that has been stated above, it is clear to us that the abovesaid test laid down by the Supreme Court has not been satisfied.

17. We may, also point out that the definition of the term "accident" as explained by the Supreme Court in *Union of India (UOI) and Others Vs. Sunil Kumar Ghosh*, . In the said decision, the relevant observation of the Supreme Court is as follows :

"An accident is an occurrence or an event which is unforeseen and startless one when it takes place but does not startle one when it does not take place. It is the happening of the unexpected, not the happening of the expected, which is called accident... But the happening of something which is not inherent in the normal course of events, and which is not ordinarily expected to happen or occur, is called a mishap or an accident".

Now in the present case, as already pointed out, according to R. W. 1's evidence the deceased beat her husband and the latter stabbed her and that the husband and wife used to quarrel often. In such a situation, the death that has taken place due to stabbing by the husband, cannot be called the "happening of the unexpected", of "the happening of something which is not inherent in the normal course of events and which is not ordinarily expected to happen or occur". When the husband and wife quarrel often and when the wife beat the husband, it cannot be said that the stabbing of the wife by the husband is something unexpected or not inherent in the normal course of events. The present case will not come under the term "accident", spoken to in Sec. 3(1) of the Act. Therefore, the impugned order of the Deputy Commissioner has necessarily to be set aside.

18. There is also one other reason for dismissing the abovesaid claim petition and allowing this appeal. This refers to the above referred to second submitting of the learned counsel for the appellant, viz., that the claimants herein were not dependants of the victim as per Sec. 2(1)(d) of the Act. Admittedly the claimants are parents of the victim, who is a married daughter of them. Sec. 2(1)(d)(iii) of the Act inter alia defines "dependant" as follows.

"dependent" means any of the following relatives of a deceased workmen, namely :

(iii) if wholly or in part dependant on the earnings of the workmen at the time of his death.

(a)...

(b) a parent other than a widowed mother."

As laid down by a Full Bench of this Court in B.M. Habeebullah Maricar Vs. Periaswami and Others, , only a dependant can claim compensation under the Act, in the light of what is contained in Secs. 2(1)(n) and 8(4) of the Act. The Full Bench also points out, in the light of Sec. 2(1)(d) of the Act, that a distinction has been made as to the categories of relations whose dependence is presumed by law, vis-a-vis the deceased workmen while in the case of the categories of other relations, the dependency partially or wholly, coupled with the relationship has to be established by the claimants. Thus, for example in the case of relations mentioned in sub-clause (iii) of Sec. 2(d) to which alone, the present case is concerned the burden is on the claimants, viz., the parents of the deceased workman in the present case, to prove that they are either wholly or partially dependants on the earnings of the said workman at the time of her death. It goes without saying that before proving so, there must be necessary pleading in that regard. But, in the present case, there is no such pleading. Nor any such proof has been demonstrated before us by learned counsel for the respondents. Regarding plea, the only relevant allegation in paragraph 5 of the claim petition is "the applicants are the mother and father of the deceased". In Proprietor, St. Joseph's Automobile and Mechanical Works, Tuticorin Vs. Maria Soosai Pillai, , also, this Court held that this dependency question is a question of fact. So it follows that it has to be specifically pleaded and proved. In Proprietor, St. Joseph's Automobile and Mechanical Works, Tuticorin Vs. Maria Soosai Pillai, , the earnings of the deceased workman, far from being an asset of the family were not sufficient to maintain him and the father, the claimant for compensation, had to spend considerable portions of his earnings on the maintenance of his deceased son. The father was not dependant wholly or partially on the earnings of the deceased workman. So it was held that father was not dependant within the meaning of the definition in Sec. 2(2)(d) of the Act. In the present case, the respondents, counsel no doubt contends that the appellant did not plead that the claimants were not dependants, but this argument has no merit. It is the duty of the claimants to plead that they

dependants. When they have not chosen to plead so, it is not for the appellant to plead that they were not dependants.

19. In the result, the impugned order is set aside, W. C. No. 72 of 1992 is dismissed and the civil miscellaneous appeal is allowed. However, in the circumstances of the case, there will be no order as to costs.