

**(2019) 05 DEL CK 0359**

**In the Delhi High Court**

**Case No :** First Appeal From Order No. 79 Of 2016, Civil Miscellaneous No. 5692, 5694 Of 2016, 27515 Of 2017

Star Health & Allied Insurance Co Ltd

APPELLANT

Vs

Ambedkar Singh & Ors

RESPONDENT

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**Date of Decision :** 15-05-2019

**Acts Referred:**

Workmen's Compensation Act, 1925 — Section 1, 3, 3(1), 4

**Citation :** (2019) 265 DLT 73

**Hon'ble Judges :** Najmi Waziri, J

**Bench :** Single Bench

**Advocate :** Suman Bagga, Pankaj Gupta, Rajesh Kumar

**Final Decision :** Dismissed

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## Judgement

Najmi Waziri, J

1. This appeal impugns an order dated 02.12.2012 granting compensation to the respondents for the demise of Subodh Singh, the relative of the

claimants. Subodh Singh expired in Saudi Arabia, where he had been sent in the course of his employment. Before his departure from India, the

employer and the Insurance Company had both examined him medically and had found him to be physically fit or not suffering from any ailments.

2. The aforesaid medical examination was all the more necessary and relevant for the insurance company because the insurance cover was extended

when the insured had sufficiently satisfied itself that the assured Mr.Subodh Singh did not suffer from any medical infirmity. The claimantsâ?

contended that because of strain and stress brought about by more than normal working hours, on regular basis, in a foreign land, the deceased

developed mental and physical stress. This was compounded with the extremely

high day temperatures in that country. The claim was allowed on the same ground in terms of the following reasoning:-

6. On perusal of record and material available and pleadings of both the parties, it is clearly established that the deceased Subodh Singh was doing

his work abroad on the direction of M/s Sana International. It is also established that M/s. Sana International had got the deceased fully medically

examined two times in Delhi, thereafter the deceased Subodh Singh was sent abroad and Shri Subodh Singh was also examined by the doctor before

joining his duty at the said work place. It is also established that the deceased Subodh Singh was working abroad and residing abroad for respondent

No.1 and 3. M/s. Sana International accepted that they had only arranged the medical check-up and other formalities to deceased Subodh Singh.

7. Respondent No.2 i.e. the Insurance Company also admitted the policy which was issued by the Insurance Company regarding deceased Subodh

Singh. They only denied on the ground that the death of deceased was not covered under policy and it is a natural death, but it is clear that Subodh

Singh was working and residing in Saudi Arabia as a workman of the management, therefore, the legal heirs of the deceased Subodh Singh are fully

entitled for compensation from the Respondents. The Insurance Company had taken objection on the medical report of the deceased Subodh Singh, in

which doctors mentioned the cause of death, acute blood and respiratory arrest, a result of concealed illness, but in the present case the deceased

workman Subodh Singh was examined by doctors in Delhi and in Saudi Arabia after joining his duty. It is not possible that any workman can conceal

any such illness before doctors. Shri Subodh Singh, deceased workman could not have concealed his disease, if any, before the doctors who examined

him on instance of the management as it is the duty of the doctor to examine any person who was present before him for examination thoroughly and

produce their report before concerned authority. In the present case the workman was duly examined by M/s. Sana International before competent

doctors twice and the Insurance Company also got the deceased workman Subodh Singh medically examined before issuing policy in favour of

deceased Subodh Singh. Accordingly, if any disease occurred to the deceased Subodh Singh after he arrived in Saudi Arabia which was result of

living in different atmosphere and other reasons which are already mentioned in

the statement of claim. The death of the deceased was covered as occupational decease under Employees Compensation Act, 1923 in part (3), item No.26, accordingly issue No.I was decided in favour of the applicants and against the respondents/ management. The applicant/ claimant demanded a compensation of Rs.4,12,000/- but the insurance company already accepted its policy that the policy amount is Rs. 10,00,000/- as compensation in accidental death, accordingly the applicants are entitled to Rs. 10,00,000/- as compensation for which the policy was already issued by the Insurance Company. There is no harm to any party if the said insurance company pays the above mentioned amount as per terms of the insurance policy.

3. The learned counsel for the appellant submits that the impugned order has erred in appreciating the terms of indemnification under the insurance policy in the event of death or an injury suffered by the employee, i.e. the indemnification would happen either of the two eventualities resulted solely and directly from accident caused by external violent and visible means. In particular, she relies upon para. A of the Policy as well on "Death by accident", which is defined as under:-

"Death by accident: Death caused by external, violent and visible means would include death arising out of or traceable to slipping and/or falling from the mountain terrain, biting by insects, snakes and/animals drowning washing away in floods, landslides, rockslides, earthquake, cyclone and other convulsions of nature and/or calamities, murder and terrorist activities.

4. The learned counsel further contends that the demise of the assured employee was not covered under the aforesaid expression "Death by accident"; i.e. on a common understanding and in a non-technical sense, the said expression would mean that the death ought to have been as a result of some violent act or an accident having been caused while on the move in a vehicle or from falling or on being bitten by poisonous insects/creatures or by drowning and other convulsions of nature such as being swept/drowned away in floods, landslides etc.. In the present case, none of these eventualities happened. Instead, the deceased passed away due to some undetected illness. She argues that in any case the insurance policy did not extend the indemnification for death due to concealed illness or a natural death. Therefore, the appellant would have no liability to pay any compensation. It is argued that the amount claimed was only Rs.4.12 lacs

yet the impugned order granted over Rs.10 lacs alongwith interest @

12% per annum, which is unfounded; that the impugned order has erred and ought to be set aside.

5. The learned counsel for the respondents refutes the aforesaid contentions and submits that the Workmen's Compensation Act, 1923 is a socially

beneficial legislation and a broad interpretation has to be accorded to its provisions and the insurance policy too has to be read likewise. He relies upon

the judgment of Madras High Court in *United India Insurance Co. Ltd. v. Padmini* and another 2015 ACJ 439 to contend that the Death by accident

would cover the expressions "death by accident", where death has occurred because of stress and strain during the course of employment. The

aforesaid case had examined the issue of stress and strain in the job of a watchman. The relevant paras are as under:

21. On the aspect of an employment injury and the liability on the Company to pay compensation, let me consider some of the decisions:

(a) In *Laxmibai v. Chairman and Trustees, Bombay Port Trust*, 1954 (1) LLJ 614, the Bombay Port Trust had employed a night watchman at its

pumping station where a process was carried on for pumping water by more than ten persons. One night, when the watchman was on duty as usual,

he complained of pain in his chest and he was asked to lie down. His condition deteriorated and he died after a few hours. The medical evidence

showed that the deceased was suffering from heart disease and that the death was brought about by the strain caused upon his heart, by the particular

work that he was doing, viz., having to stand on his legs and having to move about as a watchman. The question posed before the Court was whether

the deceased died of injury by an accident arising out of and in the course of employment. The High Court of Bombay held that he died of an injury by

an accident falling within the scope of Section 3 of the Act. The Learned Chief Justice, who delivered the judgment for the Bench observed that if the

workman died as a natural result of the disease from which he was suffering, then it could not be said that his death was caused out of his

employment. If a workman was suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, no

liability would be fixed upon the employees. But if the employment is a contributory cause, or if the employment has accelerated his death, or if it

would be said that death was due not only to the disease but the disease coupled with the employment, then the employer would be liable and it could

then be said that death arose out of the employment of the deceased.

(b) In *Bai Shakri v. New Manekchowk Mills Company Ltd.*, 1962 (4) FLR 369 : 1961 GLR 23 : 1961 (1) LLJ 585 Guj, the Gujarat High Court held

that:

“10. Once it is found that the work which he has been doing is to be within his employment, the question of negligence, great or small on his

part is irrelevant. Once it is established that workman is doing an act which is within the scope of his employment though in a way which is negligent

in any degree and is injured by risk incurred only by that way of doing it, he is entitled to compensation per Lord Atkin in *Haris v. Associated Portland*

*Cement Manufacturers, Ltd.*, 1939 AC 71. The determinate factor is whether the personal injury suffered by the workman arose out of and in the

course of his employment.

11. Similarly, Lord Loreburn, L.C., in *Clover Clavton and Company, Ltd. v. Hughes*, 1910 AC 242, remarked that an accident had been defined by the

Houses of Lords in a previous decision as an unlooked for mishap or an untoward event which is not expected or designed. In that case, the workman

was suffering from serious aneurism and was employed in tightening a nut by a spanner when he suddenly fell down dead from rupture of the

aneurism. The County Court Judge found upon conflicting evidence that death was caused by strain arising out of the ordinary work of the deceased

operating upon a condition of body which was such as to render the strain fatal. The House of Lords held that there was evidence to support the

finding that it was a case of personal injury by accidents arising out of and in the course of the employment within the Workmen's Compensation Act,

1906. At p. 245 of the Report, the learned Lord Chancellor said that the workman died from the rupture of an aneurism, and that the death was

caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal.

The aneurism was in such an advanced condition that it might have burst even while the man was asleep, and very slight exertion or strain would have

been sufficient therefore to bring about a rupture. These were the findings of facts by the learned County Council Judge and these findings of facts

the learned Lord Chancellor considered binding. The question then arose whether on these findings the learned trial Judge was entitled to regard the

rupture as an "accident" within the meaning of the Act. The learned Lord Chancellor said that he was so entitled.

13. The question whether the work of a workman contributed to the personal injury or not becomes difficult of determination where it is a case of a

heart attack. In such a case there are always two possibilities. A man with a bad heart might die in sleep or while he is actually resting. He may also

die with the slightest strain arising out of even ordinary work, not involving any out of the ordinary physical strain. Such a case arose in *Whittle v.*

*Ebbw Vale Steel, Iron and Coal Company, Ltd.*, 1936 (2) AELR 1221. The deceased in that case was a grease boiler aged 61, and was at the time of

the accident suffering from heart disease. Notwithstanding his Doctor's advice, he insisted upon going to work. The evidence of the Doctor was that

he might have died at any moment and any strain, even stooping, was prejudicial to him. He was seen about his work at 5-20 a.m. and found, dead at

5-40 a.m. lying over a water tank, his face being covered with water. The Post-mortem examination showed that he died of heart disease. Upon these

facts, the County Court Judge held that the work upon which the deceased was engaged contributed to and accelerated his death and made an award

in favour of his dependents. The Appeal Court also held that the employment contributed to the death of the deceased. It will be seen that in his case

the cause of death was not known with certainty since there was no evidence as to how the deceased met his death. The question therefore that

arises in such a case is whether upon the known facts there is an equal degree of probability that death was due to the employment or whether that

was a more probable conclusion in the view of a reasonable man. In an earlier case in *Lancaster v. Blockwell Colliery, Ltd.*, quoted by Slasser, L.J., in

this decision, Lord Birkenhead, L.C., observed that if the facts which are proved give rise to conflicting inference of equal degrees of probability so

that the choice between them is a mere matter of conjecture, then, of course, the Applicant fails to prove his case, because it is plain that the onus in

these matters is upon the Applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing

probabilities as to their respective value and where a reasonable man might hold that the more probable conclusion is that for which the applicant

contends, then the Arbitrator is justified in drawing an inference in his favour. In the case of *Whittle v. Ebbw Vale Steel, Iron and Coal Company,*

*Ltd.*, 1936 (2) AELR 1221, (*supra*) there was clear medical evidence that the workman was not fit for a job involving continuous hard work; that he

was a weak man by reason of his cardiac condition, that a man with a heart like that might break down under any physical strain and that the work

described would have a deleterious effect upon him. What impressed the Appeal Court in that case was the fact that the workman was found dead

within twenty minutes of the time when he would cease work and at the place where he would normally and the last of the four times he had to go to

the tank. The tank where he was found dead was the very place where he would complete his work; the last process he had to do was to carry the

grease to the tank to cool, and that was the place where he was found. In other words, the fact that the man died within twenty minutes from the time

that he would cease his work that day and the fact that he was found dead at the place where he would go last before he ceased working that day

were not only consistent with the conclusion but showed a greater probability that he died as a result of strain from his work, than his having died

purely by the effect of the disease he was suffering from. Goddard, J. (as he then was), stressed this principle at p. 1235 of the Report where he

observed:

“the principle which I extract from the case of *Patridge Jonas v. James*, 1933 A.C. 501 seems to me to be this: the House of Lords have decided

that where a man in a diseased condition dies, and it is found that the disease and the work together contributed to his death, then his death results

from accident within the meaning of the Act.”

14. Similarly, in *Hilton v. Billington & Newton, Ltd.*, 1936 (3) AELR 292, it was held that the workman's dependents were entitled to compensation as

the medical evidence clearly showed that it was the strain of the work that had contributed to or accelerated the death of the workman concerned.

The facts there were that on 21st February, 1936, a cold day, a lorry driver strained himself by having to crank up his lorry at frequent intervals. On

23rd February he was found to be suffering from influenza. He returned to work on 16th March having recovered from influenza. He died on 27th

April. The evidence showed that the strain on 21st February was much more than

the ordinary strain of work and that the Lorry-driver was continuously ill from the day of the strain to the day of his death. The Lorry-driver had been suffering from heart disease of long standing and he might have died from the effects of any sudden strain. One Doctor said that death was due to the strain, another that excessive strain would have shortended his life, and the Lorry-driver's own doctor stated that he had apparently well recovered â??but heart irreguls-having impulse.â? The County Court Judge held that the medical evidence did not show that death had been caused by strain and dismissed the application for compensation. The Appeal Court held that the County Court Judge had misunderstood the evidence of the doctor, when he thought that it meant that the Lorry-driver had recovered from the strain. It was held that the evidence meant that he had recovered from influenza but not from strain and the Appeal was allowed and an award in favour of the workman's widow followed. This is yet another case where the medical evidence clearly showed that it was the strain on the heart which the workman was subjected to on 21st February, 1936 and which had contributed to his death.â??

(c) In *United India Insurance Co. v. C.S. Gopalakrishnan*, 1989 (1) ACC 524 : 1989 (2) LLJ 30 Ker, the Kerala High Court held that:

â??10. â?|. In *Executive Engineer v. Janaki*, 1978 KLT 897, a Division Bench of this Court held thus (headnote):

â??Compensation can be awarded only if the accident arose in the course of and out of the employment of the workman and those conditions refer to the time when the accident happened and the casual connection between the employment and the death. If the workman actually got ill in the course of and on account of the employment and he died as a result of it, then there is no scope for controversy at all. The employer is bound to give compensation. He is also bound to give compensation in cases where the workman had an illness already but the employment furnished a contributory cause to his death or if the employment caused aggravation of the illness and accelerated his death. If it was a natural result of a disease which the workman already had that he died and his employment did not furnish a contributory cause to his death or, if the employment had really nothing to do with the aggravation of his disease and acceleration of his death, then it cannot be said that there was a casual connection between his employment

and subsequent death.â??

11. In 1933 AC 481, the House of Lords have considered the question where a dock labourer left his home soon after 5 a.m apparently in good health

and felt unwell soon after reaching the dock where he was employed. At 6 a.m. he commenced work and was engaged with others in loading and

unloading bags of china clay and sugar. At 8.30 a.m. he had breakfast. He resumed work at 9 a.m. The deceased man was intended to move one of

the bags on the platform. He was sitting on another bag at the time. He raised his hook above his head in order to lay hold on the bag he wished to

shift. Then he fell forward and died. The man suffered from heart disease, but the nature of the disease was uncertain. In proceedings under Section

1 of the Workmen's Compensation Act, 1925, by the widow and sole dependent of the deceased workman, the County Court Judge held that there

was no sufficient evidence of an accident arising out of or in the course of the man's employment; for that, any slight muscular movement might have

caused his death at any time, and that there was nothing fortuitous about it. The House of Lords held that on the evidence it could not be doubted that

the work the deceased man was doing contributed to his death;

that when that was proved it established that the death was due to an accident arising out of and in the course of his employment, unless the contrary

was shown, and that, in applying as the test, the question whether the death was to be expected at any time, the County Court Judge had misdirected

himself.

12. Lord Warrington, concurring with the judgment, put the proposition in a very simple style on two broad grounds. His Lordship said â??All we

have to determine, or all the learned County Court Judge had to determine, is whether the work in which the man was engaged this morning

contributed to his death.â? Further, it is said that â??In my opinion, that is not enough: he ought to have considered the whole of the events of that

morning from the moment the man left home and went to his work and what happened during the continuance of that work.â?? In *McFarlane v. Hutton*

*Brothers (Stevedores) Ltd.*, 1926 (96) LJKB 357 : 20 BWCC 222 and *Muscroft v. Stewarts and Lloyds Ltd.*, 1928 (140) LT 64 : 21 BWCC 274, the

case was one in which the workman suffered from heart disease and he died while he was working as a stevedore, unloading from a ship. The

County Court Judge held that the death was due to disease and that it had not been caused due to sudden strain with the work he was proceeding in

the ordinary way and, therefore, there had been no accident such as entitled the dependant for compensation. It has to be noted significantly that what

The County Court Judge emphasised was the fact that there was no sudden strain of the work that the workman was carrying out in the ordinary

way. But the Court of Appeal of England held that the County Court Judge had misdirected himself and that to establish an accident, it was not

necessary to find a sudden or special strain and an award should be made in favour of the dependant. Lord Hanworth, M.R., at page 227, enunciated

the law as follows:

“if there is an unexpected personal injury arising from some physiological condition set up in the course of the work, that may be described as an

accident even although there is, at the moment, nothing unusual or particular which sets it up. That is the basis of the principle or authority which we

have to apply.”

19. A Full Bench of the Assam High Court in *Assam Rlys. and Trading Co. v. Saraswati Devi*, AIR 1963 Assam 127, observed thus (at pages 133 &

134): Even in cases where a person has been suffering from heart disease, if the nature of the work has contributed to the deterioration of the heart

and his death, the personal injury can be said to arise out of his employment. The case where the deceased was not suffering from any previous heart

disease, is to my mind a stronger case and in such circumstances if he suddenly gets a heart attack while proceeding to perform his duty, the accident

can be nothing but arising out of his employment.

22. Taking the evidence adduced in the case and the circumstances involved in the case, we feel that it has been established in the case that there

was a casual connection between the death of the deceased and the work done in the course of his employment. We are of the opinion that from the

evidence it is possible to infer that the strain of the work contributed to the fatal accident. Though the workman died due to heart failure, we are

certain that it is not necessary that the workman was actually working at the time of his death and that the death must occur while he was working or

had just ceased to work. Further, we find that the evidence shows a great probability which satisfies in a reasonable manner that the strenuous work

contributed to the fatal accident. This finding of the Commissioner is not unreasonable which requires interference by this Court.â??

(d) In *Thengachal Estate v. Reethammal*, 1997 (2) ACC 555, the Kerala High Court held that:

â??9. Pleadings and the evidence in the case would clearly establish that Ramayya had some chest Complaint and had suffered some chest pain in

the early hours of the morning on 1.7.1991 even before he went for the work. Admittedly, Ramayya, at the time when he fell down in the garden with

chest pain was doing work with a spade in discharge of his duties as a gardener employed by the Appellant. It is also an admitted fact that on his way

to the hospital, he died on 1.7.1991 itself. The Post-Mortem Certificate would show the cause of death as asphyxia resulting from heart attack. These

facts and circumstances, either admitted or proved by the oral and documentary evidence in the case, would in our view clearly establish that but for

the strain due to the work he was doing the unexpected death would not have occurred. We say so because it is the Appellant's own case in the

written statement that Ramayya had chest Complaint and had chest pain in the early hours of the morning of 1.7.1991 even before he went for the

work. In the circumstances, it will only be reasonable to conclude that the strain even if it was a normal strain connected with the employment was the

reason for the death. Even proceeding on the basis that Ramayya was suffering from chest ailment and was prone to heart attack, the circumstances

in the case would clearly indicate that the strain due to the work he was doing was the cause which accelerated his death due to heart attack. As

such, in our view, the circumstances established in this case are sufficient to establish the required causal connection between the death and the

employment.

10. In *United India Insurance Co. v. C.S. Gopalakrishnan*, 1989 (2) LLJ 30, this Court, while dealing with the requirement of causal connection

between the employment and the death in order to bring the accident within Section 3 of the Act, has stated thus:

â??â?It is not necessary that it should be established that the workman died as a result of exceptional strain or some exceptional work that he did on

the day in question. If the nature of the work and the hours of work caused great strain to the employee and that strain caused the unexpected death,

it can be said that the workman died as a result of an accident which has arisen in the course of his employment. Understanding the expression

“accident” as an “unlooked for mishap” or as a “untoward event” which is not expected or designed, we feel that in the state of health

which Ramayya was having at the relevant time, the employment as a gardener has at least accelerated his death or that his death was due not only to

the disease but the disease coupled with the employment and as such the death of Ramayya has arisen out of his employment. We find sufficient

support in taking the above view in the lucid exposition of law made by Chagla, C.J. in *Laxmibai Atmaram v. Chairman and Trustees, Bombay Port*

*Trust*, 1954 (1) LLJ 614, which reads thus:

“But, if the employment is a contributory cause, or if the employment has accelerated the death, or if it could be said that the death was due not only

to the disease but the disease coupled with the employment, then the employer would be liable and it could be said that the death arose out of the

employment of the deceased. We have no doubt in our mind that the work Ramayya was doing at the time when he suffered chest pain has been a

contributory cause of the death if not the sole cause. Same is the view taken in the following decisions dealing with more or less similar facts and

circumstances:

(1) *Devshi Bhonji Kohnav v. Maty Bumo*, 1984 (2) LLJ 70;

(2) *Executive Engineer v. Janaki*, 1978 KLI 897;

(3) *Assam Rlys. and Trading Co. v. Saraswati Devi*, AIR 1963 Assam 127; and

(4) *Zubeda Bano v. Maharashtra S.R.T. Corporation*, 1990 Lab. IC 1781.

In the *Assam Railway's* case, a Full Bench of the Assam High Court in detail considered all aspects about death caused as a result of heart disease of

employees while they were in the course of their employment. After a thorough analysis it has been held thus:

“Even in cases where a person has been suffering from heart disease, if the nature of the work has contributed to the deterioration of the heart and

his death, the personal injury can be said to arise out of his employment. The case where the deceased was into suffering from any previous heart

disease is to my mind a stronger case and in such circumstances if he suddenly gets a heart attack while proceeding to perform his duty, the accident

can be nothing but arising out of his employment.â??

In *Zubeda Bano v. Maharashtra S.R.T. Corporation*, 1990 Lab. IC 1781, a Division Bench of the Bombay High Court has held thus:

â??Heart injury when brought about by a strain due to work in the employment and (not by natural wear and tear) is compensable though pre-existing

condition may have been the contributory element and this is irrespective of the percentage of the part played by either of them, viz. the work and the

condition.â??

(e) In *Depot Manager, Andhra Pradesh State Transport Corporation v. Gurrapu Anjamma*, 2000 (1) ACC 648 : 2001 ACJ 1885 : 1999 (6) ALD 101,

the Andhra Pradesh High Court held that,

â??4. â?|. In support of his contentions, learned Counsel for the Respondents relied upon the following decisions:

1. *Thengackal Estate v. Reethammal*, LLJ 1996 (2) 511;
2. *National Insurance Company Ltd Bangalore v. Balawwa*, 1994 (1) LLJ 433;
3. *United India Insurance Company Limited v. Yasodara Amma*, LLJ 1990 (1) 387;
4. *Abdul Sallar Rehmanbhai v. Julekhabai Daryawardi*, 1989 LLR 289;
- Rahiman
5. *United India Insurance v. C.S. Gopalakrishnan*, LLJ 1989 (2) 30; and
6. *Zubeda Bano v. S.R.T.C.*, LLJ 1991 (1) 66.

5. In *Reethammal's case* (supra) the Division Bench of Kerala High Court held thus:

â??Understanding the expression â??accidentâ? as an â??unlooked for mishapâ? or as an â??untoward eventâ? which is not expected or designed,

we feel that in the state of health which Ramayya was having at the relevant time, the employment as a gardener has at least accelerated his death or

that his death was due not only to the disease but the disease coupled with the employment and as such the death of Rantayya has arisen out of his

employment. We find sufficient support in taking the above view in the lucid exposition of law made by Chagla, CJ, in *Laxmibai Atmaram v. Chairman*

and Trustees, Bombay Port Trust, 1954 (1) LLJ 614, which reads thus at page 616:

â??â?| But, if the employment is a contributory cause or if the employment has accelerated the death, or if it could be said that the death was due not

only to the disease but the disease coupled with the employment, then the employer would be liable and it could be said that the death arose out of the employment of the deceased.â??

We have no doubt in our mind that the work Ramayya was doing at the time when he suffered chest pain has been a contributory cause of the death

if not the sole causeâ?!.â??

6. In Balawwa's case (supra) the Division Bench of Karnataka High Court held as follows:

â?? With regard to the first point, it is no doubt true that a claim for compensation for the death of an employee could be made under Section 3 read with Section 4 of the Workmen's Compensation Act only if the death of that employee has occurred due to an injury sustained by accident out of and

in the course of his employment. By a series of Judicial pronouncements it is now well settled that the word â??accidentâ? should be taken to mean a

mishap or untoward event, not expected or designed; that if a person suffered heart attack and dies, it necessarily means that there has been an injury

to the heart and that, that event being a mishap not expected or designed, is an accident and that, if a workman suffers heart attack out of and in the

course of his employment, then the employer is liable to pay compensation under Section 3 read with Section 4 of the Workmen's Compensation Act

(See: 1. Mackinnon Mackenzie and Co (P) Ltd v. Rita Fernanda, 1969 (2) LLJ 812; Devshi Bhanji Khona v. Mary Burno, 1985 (2) LLJ 70 (Kerala);

United India Insurance Company Ltd. v. Yashodhara Amma, 1990 (1) LLJ 387 (Kerala); Zubeda liana v. Maharashtra State Road Transport

Corporation, 1991 (1) LLJ 66 (Bombay).â?? (Para 10)

7. In United India Insurance Company Limited v. Yasodara Amma, LLJ 1990 (1) 387, in which a driver while driving the vehicle developed heart

attack and later on died and in those circumstances, the Division Bench of Kerala High Court held as follows:

â??From what we have quoted above, it is clear that the â??accidentâ? found in sub-section (1) of Section 3 has to be understood as meaning a

mishap or untoward event not expected or designed. Certainly, in this case, the mishap-the untoward event happened in the course of the employment

of the deceased at Perambra. As we said early, the symptoms of heart attack were seen and the deceased was taken to the hospital and finally he

succumbed to death. Counsel submitted that these circumstances will not be sufficient to say that there was a personal injury which is one of the

necessary desiderata of Section 3(1) of the Act. We do not agree. An almost similar case was considered by a Division Bench of this Court in

Executive Engineer v. Janaki, 1978 KLT 897, Narayana Pillai, J., speaking for the Division Bench, observed thus:

“The principles applicable to cases of the instant type are by now well established. Compensation can be awarded only if the accident arose in the

course of and out of the employment of the workman and those conditions refer to the time when the accident happened and the casual connection

between the employment and the death. If the workman actually got ill in the course of and on account of the employment and he died as a result of it

then there is no scope for a controversy at all.”

6. Here, in this case, there is no scope for a controversy that the workman actually got ill in the course of his employment. Of course, his illness was

not an external injury, but it was a serious injury to the heart. The strenuous driving of the vehicle from ICozhikode to Perambra accelerated his illness

and that resulted in the death of the Claimant's husband. We feel that the object of the section is to give protection to the helpless dependents of such

workers and taking a pragmatic and meaningful construction of the section, we felt that the Commissioner has rightly applied the decision reported in

Executive Engineer v. Janaki (supra). The decision rendered by the Commissioner is proper and legal. We see no error of law involved in this Appeal.

This Appeal deserves to be dismissed and we do so. No order as to costs.”

8. In Abdul Sallar Rehmanbhai v. Julekhabai Rahiman Daryawardi, 1989 LLR 289, in which a Conductor died due to heart attack while he was

sleeping in the bus. The Division Bench of Bombay High Court held that if any employee while on duty dies of heart attack, the employer will be liable

for payment of compensation to his dependant. It is immaterial as to whether the employee was actually performing his duties or not.

9. The Division Bench of Kerala High Court in United India Insurance v. C.S. Gopalakrishnan, LLJ 1989 (2) 30, after considering a case where the

deceased bus conductor died of heart attack while sleeping the vehicle after strenuous work, bus crew had to sleep in the vehicle at the halting place

where no shelter was provided either for the bus or for the crew and the bus

conductor died of heart attack, held thus: (Para 9)

“Though it is necessary that there should be a casual connection between the employment and the death in the unexpected way in order to bring

the accident within Section 3, it is not necessary that it should be established that the workman died as a result of exceptional strain or some

exceptional work that he did on the date in question. If the nature of the work and the hours of work caused great strain to the employee and that

strain caused the unexpected death, it can be said that the workman died as a result of an accident which has arisen in the course of his

employment.”

After discussing various case laws in Para 17 of its judgment, it was further held thus:

“| But, considering the circumstances proved in the case, it is only natural and probable to infer that the workman was put to great strain and

stress in discharging his duties. From the evidence discussed by the Commissioner, it is clear that the workman was asked to do work for more hours

than what he was statutorily bound to do.”

(Emphasis Supplied)

6. The respondent also relies upon the judgment of the High Court of Kerala at Ernakulam in *United India Insurance Co. Ltd. v. Yasodhara Amma*

and another 1989 ACJ 1075 which held as under:

“4. Counsel for the appellant submitted before us that the section is not attracted since there is no personal injury caused to the workman by

accident arising out of and in the course of his employment, Certainly, the illness showed fatal symptoms during the course of his employment. The

question is whether there was any personal injury caused to the workman by accident. How this provision has to be construed has been clearly stated

by a Division Bench of this court in *Devshi Bhanji Khona v. Mary Burno*, (1984-II-LLJ-70) where it was observed thus (p.71):

The object behind the legislation being protection to the weaker section with a view to do social justice, the provisions of the Act have to be

interpreted liberally so that other things being equal, the leaning of the court has to be towards the person for whose benefit the legislation is made.

Bearing this principle in mind, the expression 'accident' found in Sub-section (1) of Section 3 of the Act has to be understood as meaning a mishap or

untoward event, not expected or designed. In other words, the basic and indispensable ingredient of the accident is the unexpectedness. In this case, the workman who was already suffering from heart disease, as disclosed by the oral evidence of the co-worker of the 1st respondent's husband and Ext.

WI. Medical Certificate, when he was subjected to over-exertion, there was a sudden deterioration of his health which proved to be fatal. But for this over-exertion, which he was not able to bear in the state of health in which he was then, the death, following his fall while carrying the cashew boxes, would not have occurred. In this way, there is a causal connection between the employment and his death in the unexpected way. This could certainly be considered to be an accident arising out of and in the course of his employment, which would entitle the dependent legal heir to claim compensation".

5. From what we have quoted above, it is clear that the 'accident' found in Sub-section (1) of Section 3 has to be understood as meaning a mishap or

untoward event not expected or designed. Certainly, in this case, the mishap the untoward event-happened in the course of the employment of the

deceased at Perambra. As we said earlier, the symptoms of heart attack were seen and the deceased was taken to the hospital and finally he

succumbed to death. Counsel submitted that these circumstances will not be sufficient to say that there was a personal injury which is one of the

necessary desiderata of Section 3(1) of the Act. We do not agree. An almost similar case was considered by a Division Bench of this court in

Executive Engineer v. Janaki. 1978 KLT 897. Narayana Pillai. J. speaking for the Division Bench, observed thus:

The principles applicable to cases of the instant type are by now well established. Compensation can be awarded only if the accident arose in the

course of and out of the employment of the workman and those conditions refer to the time when the accident happened and the causal connection

between the employment and the death. If the workman actually got ill in the course of and on account of the employment and he died as a result of it

then there is no scope for a controversy at all".

7. What emerges from the aforesaid discussion is that when the deceased went from India, he did not have any medical ailment. However, he

developed a medical condition, which led to his demise; it would be attributable

to the discharge of his duties during the course of his employment and would be covered under the terms of indemnification under the insurance policy.

8. Interestingly, the learned Trial Court has pertinently held that the deceased-Subodh Singh was medically examined in Delhi, before he left for work to Saudi Arabia, and was also examined after joining his duties. It was not possible for a workman to conceal any prior ailment before the two sets of doctors, who had examined him at the instance of the Management.

9. In view of the above, the Court finds no reason to interfere with the impugned order. The petition, being without merits, is dismissed. The pending applications also stand dismissed.