

(1951) 06 CAL CK 0028
In the Calcutta High Court
Case No : A.F.O.O. No. 115 of 1950

Steel Products Ltd.

APPELLANT

Vs

Amelda

RESPONDENT

Date of Decision : 20-06-1951

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : AIR 1951 Cal 145 : 56 CWN 481

Hon'ble Judges : Harries, C.J.;Das, J

Bench : Division Bench

Advocate : Phanindra Kumar Sanyal and Jitendra Mohan Sen Gupta, for the Appellant; Mukunda Behari Mallik and Mahendra Kumar Ghose, for the Respondent

Final Decision : Allowed

Judgement

Harries, C.J.

1 This is an appeal by the employers from an order of the Commissioner for Workmen's Compensation granting the respondent compensation amounting to Rs. 2400/- together with certain costs.

2. The respondent-applicant was the widow or one Isac Francis, a fitter employed by the appellants. There was evidence that he had been sent, to Writers Buildings to repair a handle of an almirah, obviously therefore the work which he was sent to do was of the lightest kind.

3. There was evidence of a lower division assistant employed in the Writers Buildings. According to this assistant Sailendra Nath Chatterjee, the deceased workman took measurements of the almirah which was in a room on the ground-floor of the building. He went outside & started working. This assistant said that the workman had a fit & began foaming at the mouth. According to this witness the workman did not have an accidental fall.

4. Medical evidence was given by Dr. Ashok Kumar Mukherjee, the Resident Medical Officer of the Campbell Hospital. He treated the deceased man when he was brought to the hospital & according to the witness it was a case of cerebral thrombosis with progressive cerebral edema. The deceased workman died eleven days afterwards, death being due to this thrombosis & cerebral edema.

5. The witness stated that the deceased man had a slight injury on the upper right arm. But he said that he could not say whether he sustained that injury before the attack of thrombosis or after it. The witness however did say that if a man was in the condition the deceased man must have been, an accidental fall might bring on thrombosis & cerebral haemorrhage or aggravate the condition. The witness however could not express an opinion as to what happened because he had no history of an accident or the onset of the disease.

6. The respondent however did give evidence, & according to her, her husband recovered consciousness in the hospital & told her that he had fallen, apparently from a height. At first she said that her husband told her that while he was working "he fell down from top." This would suggest that he must have fallen from a height & in cross examination she made the same suggestion & said that her husband told her that he had first climbed up for work when he had a fall.

7. It is quite clear that the learned Commissioner did not accept this woman's evidence. Quite obviously she was an untruthful witness because she insisted that her husband was perfectly well & never missed any work, though the evidence of the Manager of the appellants was that he had had previous fainting fits & was frequently away from work owing to his health. The learned Commissioner however came to the conclusion that after eliminating the widow's evidence the probabilities pointed to an accident, & therefore he held that the death of the workman was the result of an accident arising out of & in the course of his employment.

8. That death occurred in the course of his employment admits of no doubt whatsoever. But it is not sufficient to prove that the workman died during his employment. It must be shown that he died as a result of an accident, that is, there must be some connection between his work & his death.

9. All that can be said in this case is that the workman after measuring something on an almirah went outside apparently to start work. What he was doing outside is not known. But he was found foaming at the mouth. There is no direct evidence that he fell, but, on the other hand, it cannot be said that he did not. I think that he must have fallen. But whether the fall preceded the attack of cerebral haemorrhage & thrombosis, or whether the attack of cerebral haemorrhage & thrombosis caused the fall, it is utterly impossible to say.

10. The injury on the upper right arm suggests that there was a fall. But a court cannot deduce anything material from that injury because the workman could have suffered the injury by falling before the attack or falling as a result of the attack.

11. If it was proved that the workman fell before the onset of the attack I should be prepared to hold that his death was the result of an accident, because of the medical evidence which suggests that a fall might bring on this attack or aggravate the condition. On the other hand, if the attack preceded the fall then it would be impossible in this case to hold that death was due to an accident because there is nothing to connect the attack with what he was doing.

12. An accident may be something very slight. In the case of "Clover, Clayton & Co., Ltd. v. Hughes (1910) A. C. 242, a workman suffering from serious aneurism 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 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. It was held by a majority in the House of Lords that there was evidence to support the finding, & that it was a case of personal injury by accident arising out of & in the course of the employment.

13. In "Clover, Clayton's case" the evidence was that the man was actually tightening a nut when he fell & that a strain was sufficient to bring on a rupture of the aneurism. There was established therefore a connection between what he was doing & his death. But there is no such evidence in this case. There is nothing upon which we can hold that this attack came on whilst the workman was doing something connected with his work.

14. The facts are entirely consistent with two possibilities, namely, that he fell & the fall either caused this attack or hastened its onset, or that he was attacked by this disease which caused him to fall. It is in my view quite impossible to say which of those two alternatives is the more probable.

15. In such a case it appears to me that a court must hold that it has not been established that death was due to accident arising out of & in the course of the employment. The matter was considered by the House of Lords in "Lancaster v. Blackwell Colliery Co. Ltd. (1920) 122 L. T. 162, in which it was held that on a claim for compensation under the Workmen's Compensation Act, if the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then the applicant fails to prove his case, for the onus is upon the applicant.

16. It seems to me that we can only conjecture as to what happened in this case & that being so the claim must fail.

17. The learned Commissioner relied on this House of Lords case, but I am wholly unable to see how he could have found for the applicant. It is true that in the House of Lords case the learned Lords did hold that death was due to accident. But there was considerable evidence which pointed in that direction & that being so the probabilities were in favour of accident causing death rather than death from natural causes. Their Lordships observed that where the known facts are not equally consistent, where there is ground for comparing & balancing

probabilities as to their respective value, & 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.

18. I should have been only too glad to have drawn an inference in favour of the applicant in this case, if I could have done so. But on the meagre facts placed before the Court it is quite impossible for any court to say that this man's death was the result of a fall or anything which can be described as an accident. The facts are equally consistent with a sudden onset of this disease wholly unconnected with anything that he was doing at the time. That being so the application should have been dismissed.

19. In the result this appeal is allowed. The order of the learned Commissioner for Workmen's Compensation is set aside and the claim for compensation is dismissed. Under the circumstances I would make no order as to costs.

20. The money in deposit in the Court of the Commissioner for Workmen's Compensation must be repaid to the appellant-employers.

Das, J.

21. I agree.