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**(1976) 03 MP CK 0007**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous F.A. No. 180 of 1972**

Sundarbai

APPELLANT

Vs

General Manager, Ordnance Factory, Jabalpur

RESPONDENT

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**Date of Decision : 29-03-1976**

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 3

**Citation : (1987) 166 ITR 475**

**Hon'ble Judges : S.M.N. Raina, J;G.P. Singh, J**

**Bench : Division Bench**

**Advocate : Gulab Gupta, for the Appellant; R.P. Sinha, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

G.P. Singh, J.—The appellant Suderbai's husband Moolchand was a workman in the Ordnance Factory, Khamaria, the respondent in this appeal. Moolchand died on 8th May 1969 while working in the Factory. The post mortem examination revealed that Moolchand was suffering from aneurism of aorta and cause of death was rupture of aneurism. The appellant applied to the Commissioner for Workmen's Compensation for award of Rs. 7,000 as compensation alleging that death of Moolchand resulted from injury caused by accident arising out of and in the course of his employment. In particular it was alleged that injury was caused due to strenuous work. The respondent denied that the death of Moolchand resulted from any injury by accident arising out of his employment. It was, however, admitted that Moolchand was doing his normal work as a labourer in the Box Plant Section when he died. The appellant led evidence to prove that on 8th May 1969 Moolchand before the tea break was engaged in loading and unloading heavy boxes from a lorry and after the tea break he was cleaning covers when he died (see the evidence of Hari A.W. 3). The respondent on the other hand examined the Foreman Harliker (N.A.W. 2) to prove that Moolchand throughout was doing the comparatively light work of cleaning covers. Dr. Srivastava, who had conducted the post mortem examination, was also

examined. He stated that Moolchand died due to rupture of aneurism of arch of aorta. He further stated that "if a man is already having disease of aneurism, then over-strain will accelerate the death". The Commissioner rejected the evidence that Moolchand on 8th May did the work of loading and unloading heavy boxes and he accepted the evidence of Harlikar that Moolchand was throughout doing the comparatively light work of cleaning covers. The Commissioner then concluded that he was unable to believe the applicant's theory of overstrain to the deceased on the date of incident" and that he found no force in the contention that "Moolchand died due to strenuous work". In this view of the matter, the application for compensation was dismissed by the Commissioner by his order dated 19th July 1972 against which the present appeal has been filed.

2. The employer's liability to pay compensation under sub-section (1) of section 3 of the Workmen's Compensation Act, 1923, arises only "if personal injury is caused to a workman by accident arising out of and in the course of his employment". In the instant case (here is no difficulty about the course of employment as the workman died while doing his normal work in the factory where he was employed. The question that arises for consideration in the case is whether the workman's death resulted from an injury by accident arising out of his employment.

3. Section 3 of the Act is modelled on the lines of similar provisions contained in the corresponding English Acts and English decisions which show a progressive and liberal approach, are useful in understanding and applying this section. In the leading case of *Fenton v. Thorley and Co, Limited* 1903 AC 443, pp. 448, 449 Lord Macnaghten said that the word "accident" should be understood in the popular and ordinary sense "as denoting an unlocked for mishap or an untoward event which is not expected or designed," and he quoted with approval the opinion of Lord MacLaren in *Stewart v. Wilsons and Clyde Coal Co. Ltd* 1910 AC 242 that "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 accidental injury in the sense of the statute." In *Fenton's* case the workman ruptured himself by an act of over exertion in trying to turn the wheel of a machine. The injury occurred while he was engaged in his ordinary work and in doing or trying to do the very thing which he meant to accomplish. The House of Lords in reversing the order of the Court of Appeal and the award of the County Court Judge held that the workman suffered injury by accident arising out of and in the course of his employment. Then in *Clover, Clayton and Co Limited v. Hughes* 1910 AC 242 the workman died due to rupture of an aneurism while doing his ordinary work in the ordinary way without any unusual exertion or strain. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and a very slight exertion, or strain, would have been sufficient to bring about a rupture. Even so, the House of Lords held that the rupture of aneurism was an injury by accident as it was an unexpected event so far as the workman was concerned and that this accident arose out of his employment as

the strain of the work in which he was engaged, howsoever ordinary it may have been, was in fact one of the contributing causes. The points that can be taken to be decided in this case are : (1) The test whether an occurrence is "unexpected" so as to be an accident is whether it is unexpected by the person who suffers from it not whether it would be expected by medical men or persons other than the deceased or injured person; (2) The applicant for compensation need not prove that the employment was cause a proxima of the accident and it is enough if the employment is shown to be one of the contributing causes; (3) An accident arises out of the employment when the exertion called for by the work is too great for the workman and results in his death or injury, whatever be the degree of exertion required or the condition of the workman's health and in the words of Lord Loreburn, L.C., no importance should be attached to the fact that "there was no strain out of the ordinary". So Huges' case has been held to establish "that there may be personal injury by accident even though the employee's work has proceeded in the normal way and even though the injury is employment, and this is so even though the injury or change occasioned partly, or even mainly, by the progress or development of an existing disease if the work he is doing at or about the moment of the occurrence of the physiological injury or change contributes in any material degree to its occurrence. Moreover, this is none the less true though there may be no evidence of any strain or similar course other than that arising out of the man's ordinary work."

6. Mention may also be made of *Hetherington v. Amalgamated Collieries of W.A. Limited* (1939) 62 CLR 317, a case decided by the High Court of Australia. This was a case of death of a workman who suffered from arterio-sclerosis and any exertion might have caused a rupture of the hardened walls of an artery which might have brought about his death. In the words of the doctors who were examined in the case "the deceased was a candidate for sudden death-work or no work." Still it was held that the death occurred from personal injury by accident arising out of the deceased's employment as the day's work was found to have contributed or hastened his death. Dixon J., in the course of his judgment said : "Surprising as it may seem, such a cause of death falls within the definition of injury by accident arising out of the employment. As a matter of common speech, the expression "injury by accident" appears inappropriate and inapplicable. But a long course of judicial decisions has extracted from the expression latent implications which make the test of the employer's liability independent of such things as external mishap, traumatic injury and unusual or unexpected incidents of work or duty."

7. Previous cases were again reviewed by the House of Lords in the context of somewhat different set of facts in *Fife Coal Co. Ltd. v. Young* (1940) 2 All ER 85 (H.L.). Lord Atkin in this case in his speech observed : "There are two topics, however, upon which I wish to make some remarks. 1. The legal conception of "accident" within the meaning of the Workmen's Compensation Act has undoubtedly been enlarged in the more recent decisions. 2. It is necessary to emphasise the distinction between "accident" and "injury", which in some cases

tend to be confused. No doubt the more usual case of an "accident" is an event happening externally to a man. An explosion occurs in a mine, or a workman falls from a ladder. It is now established, however, that, apart from external accident, there may be what no doubt others as well as myself have called internal accident. A man suffers from rupture, as aneurism bursts, the muscular action of the heart fails, while the man is doing his ordinary work, turning wheel or a screw, or lifting his hand. In such cases, it is hardly possible to distinguish in time between accident and injury. The rupture which is accident is at the same time injury, from which follows at once, or after a lapse of time, death or incapacity."

8. The Indian cases have also proceeded on the same lines. In *Laxmibai Atmaram Vs. Chairman and Trustees, Bombay Port Trust*, a watchman suffering from heart disease died due partly to the strain caused by the deceased being on his legs while on work and it was held that death resulted from injury by accident arising out of and in the course of employment. In *Diva Kaluji Vs. Silver Cotton Mills Ltd.*, a weaver in the employ of the respondent collapsed after eight hours work in the weaving department and died that very night. Although there was no positive evidence, the Court inferred that the workman was suffering from heart disease and that the fact that he worked for eight hours on a hot day must obviously have caused strain and accelerated his death. In this view, it was held that death resulted from injury by accident arising out of and in the course of employment. Chagla, C.J., in the course of his judgment said that "the mere paucity of evidence should not relieve the Court of its obligation to come to a conclusion on necessary and material issues". Another case that may be usefully referred is the case of *Shantaben Thakor v. New Raipur Mills* AIR 1968 Guj. 113 (DB) . In this case the workman who was suffering from acute coronary thrombosis died while working in the stamping department of the mills. The Commissioner allowed compensation to the deceased's widow, but in appeal a learned Single Judge of the High Court set aside the Commissioner's order on the view that if a person labouring under a disease dies as a result of the disease and the ordinary strain of his ordinary work he cannot be said to have died as a result of accident. In a Letters Patent Appeal, the view taken by the learned Single Judge was overruled and the Commissioner's order was restored. The learned Judges ruled that the existence of a disease does not by itself negative the possibility of existence of a causal connection between the death and the employment. They further held that it is natural to presume that if the work involved some strain, the disease that was existing was likely to be aggravated provided there was some evidence to support such a finding and that the real question in such cases would be whether the work that was assigned to the deceased at the relevant time was likely to cause strain that would accelerate his death. I may next refer to *Parwatibai Vs. Manager, Raj Kumar Mills*, , a case of our High Court decided by Dixit, J. In this case a workman employed in the Mills who was suffering from heart disease died of heart attack in the course of his work. Dixit, J. decided against the workman's widow on the view that there was

no evidence to establish the association of the accident with the employment. In the course of his judgment Dixit, J. said that there was nothing to show "that the heart attack was due to an exceptional strain of work that Kalu (the workman) did on the day in question." If by this observation the learned Judge meant to say that ordinary strain of ordinary work is insufficient to furnish any causal connection between the accident and employment, I am unable to agree. In view of the authorities to which reference has already been made, if the workman is suffering from advanced heart disease ordinary strain of ordinary work in which he is employed at the relevant time may be too great for him and may furnish the connection between his death and employment. I may recall here again the words of Lord Loreburn, L.C. in *Huges case*: "I do not think we should attach any importance to the fact that there was no strain or exertion out of the ordinary": ( 1910 A.C. 242 , p. 246). Reference may then be made to the case of *Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, .* In this case, which related to a claim for compensation for the death of a missing seaman employed as a deckhand, the Supreme Court held that the words "arising out of employment" are understood to mean "a causal relationship between the accident and the employment."

9. The burden to prove that the employment contributed to the accident is on the applicant. Therefore, if the facts which are proved give rise to conflicting inferences of equal degrees of probability so that a choice between them is a mere matter of conjecture, then the applicant will fail. "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 Commissioner would be justified in drawing an inference in his favour: Lord Birkenhead L.C. in *Lancaster v. Blackwell Colliery Co. Ltd*, (1918-19) All ER 328 (HL) p. 330. In *M. Mackenzie's case* the Supreme Court adverted to the question of nature of evidence required u/s 3 and approved the observations of Lord Birkenhead, L. C, on that point in *Lancaster v. Blackwell Colliery Co. Ltd*. (supra). The Supreme Court further observed: "On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it."

10. On a review of the authorities, the principles in so far as relevant for our purposes may be stated as follows:--

(A) "Accident" means an untoward mishap which is not expected or designed by the workman. "Injury" means physiological injury.

(B) "Accident" and "injury" are distinct in cases where accident is an event happening externally to a man; e.g. when a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and

in such cases "accident" and "injury" coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work.

(C) Physiological injury suffered by a workman due mainly to the progress of a disease unconnected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence.

(D) The connection between the injury and employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury.

(E) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man might hold that the more probable conclusion is that there was a connection.

11. Let us now revert to the facts of the instant case. I have already stated that the death of Moolchand was caused by rupture of aneurism of arch of aorta while he was working. Moolchand must never have expected rupture of aneurism even if he knew that he was suffering from that disease otherwise he would not have gone to work to kill himself. Rupture of aneurism was a physiological injury and as the injury was unexpected from the point of view of Moolchand, it must be held that he suffered personal injury by accident resulting in his death in the course of his employment. The next and most important question is did this injury arise out of the employment. In other words, the question is did the work in which Moolchand was engaged on the date of occurrence of the injury contribute, accelerate or hasten its occurrence. The Commissioner did not believe the appellant's evidence that Moolchand on the date of his death was engaged in loading and unloading heavy boxes from a lorry. This being a finding of fact must be accepted. The Commissioner on this finding came to the conclusion that he was unable to believe the applicant's case of overstrain by strenuous work and dismissed the application. The Commissioner, however, failed to consider that the ordinary work in which, according to the respondent, Moolchand was engaged on that day may have itself furnished the necessary overstrain which connected the accident with the employment. In overlooking this aspect of the case the Commissioner, in my opinion, committed a substantial error of law. It is now for us to examine this aspect and to reach our conclusion in that matter. We have already stated that the doctor's opinion was that overstrain in work will accelerate the rupture of aneurism. The work in the factory starts in the morning at 8 A.M. We were informed that there is a tea break for half an hour at 12.30 p.m. According to the respondent's evidence Moolchand throughout the day (leaving the tea break) till his death at 3 p.m. did the work of cleaning the covers. According to the appellant's evidence, which was not contradicted, the work by the labourers like Moolchand used to be done in the open. It was the month of May and 8th May when Moolchand died must have been a hot day.

Having regard to the balance of probabilities, I am of opinion that it is reasonable to conclude that the ordinary strain of ordinary work done by Moolchand in the open on a hot summer day for nearly seven hours led to the necessary overstrain, accelerating or hastening the rupture of the aneurism from which he was suffering. Applying the principles stated above, my conclusion, therefore, is that Moolchand died as a result of personal injury caused by accident arising out of and in the course of employment. It is not disputed that on this finding the appellant will be entitled to get Rs. 7,000 as compensation from the respondent.

12. The learned counsel for the respondent submitted that as the disease of aneurism from which Moolchand suffered was not attributable to any specific injury by accident, the appellant was not entitled to any compensation. Reference in this connection was made to sub-section (4) of section 3 of the Act. This sub-section says that save as provided by sub-section (2), (2A) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of employment. Sub-section (2), (2A) and (3), speaking briefly, make provision for occupational diseases and in cases falling under these sub-sections the disease is deemed to be an injury by accident arising out of and in the course of employment. Nice questions of law arise whether a disease arising out of employment but not covered by these sub-sections can be said to be attributable to any specific injury by accident. In *Hoberts v. Dorothea State Quarries Co. Ltd.* (1948) All ER 201 (HL) a workman employed in slate quarries for about twenty years by inhaling particles of Silica day to day in the course of his work suffered from the disease of Silicosis and was incapacitated. In rejecting his claim for compensation the House of Lords held that the incapacity caused by Silicosis was the result of a continuous process going on substantially from day to day over a period of years and could not be said to be the result of an accident each one of which was specific and ascertainable and accordingly Silicosis was not an injury by accident. On the other hand, in *Pyrah v. Doneaster Corporation* (1949) 1 All ER 883 (CA) a nurse employed in a tuberculosis hospital suffered from tuberculosis by inhaling tuberculosis germs and the Court of Appeal held that this was an injury by accident on the reasoning that although it might not be possible to fix the exact dates on which the nurse inhaled tuberculosis germs, on each occasion on which that occurred there was an assault of bacilli which constituted an accident. These interesting questions do not arise in the instant case. Here the appellant does not claim compensation on the ground that the disease of aneurism was itself an injury by accident arising out of employment, but on the ground that the rupture of aneurism which was an injury by accident was accelerated or hastened by the strain of the work in which Moolchand was engaged on the date of his death and, therefore, the injury arose out of and in the course of employment. In my opinion, sub-section (4) of section 3 is inapplicable in this case.

13. I allow the appeal and set aside the order of the Commissioner. The respondent shall pay a sum of Rs. 7,000 as compensation to the appellant with

interest at 4% from the date of application made before the Commissioner upto the date of payment. The appellant shall also recover from the respondent costs of this Court as also of the proceedings before the Commissioner. Counsel's fee according to schedule, if certified.

## ORDER

Raina J.

14. I agree with my learned brother that this appeal must be allowed on the terms proposed by him. I would, however, like to add a few words as this case raises an important question of employer's liability u/s 3 of the Workmen's Compensation Act (hereinafter referred to as "the Act").

15. It is not disputed that the deceased Moolchand was a workman in the Ordnance Factory, Khamaria. On the 8th May, 1969 he died in the Factory during the working hours and post mortem examination revealed that he was suffering from a disease known as aneurism of aorta and immediate cause of death was rupture of aneurism. Although some of the witnesses for the appellant tried to make out that Moolchand was on that day engaged in strenuous work of loading and unloading of boxes, the evidence on this point was not accepted by the learned Commissioner. The Commissioner relied on the evidence of Harlikar (D. W. 2) according to whom the deceased was, assigned the light work of cleaning of lids. In paragraph 6 of the reply to the application it was stated as under :

He was working in Box Plant section and was engaged as cooly to arrange the good.

It is, therefore, clear that he was engaged in work requiring physical exertion and he died in the Factory premises while engaged in such work. Even though such work may not be very strenuous, the question for consideration is whether the employer would be liable in these circumstances. The law on the subject has been discussed exhaustively by my learned Brother. I would, however, advert to only certain important aspects on the question.

16. u/s 3 of the Workmen's Compensation Act, an employer, is liable to pay compensation to a workman if a personal injury is caused to him by an accident arising out of and in the course of his employment. The word "accident" has not been defined in the Act; but has been construed by the Courts in a wider sense as connoting a mishap or untoward event, external or internal, not expected or designed by the victim. The accident in the instant case was rupture of the blood vessels. It is obvious that the accident was in the course of his employment; but the crucial point is whether it can be said to arise out of his employment within the meaning of section 3 of the Act. The learned Commissioner held that as the deceased was not engaged in strenuous work and was already suffering from the disease of aneurism, it could not be said to arise out of the employment. This view does not appear to be correct.

17. The crucial test for determining whether the accident arose out of

employment was laid down by Lord Sumner in *Lancashire and Yorkshire Rly. Co. v. Highley* 1917 AC 352 in the following terms:

Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment.

18. The aforesaid test was quoted with approval by their Lordships of the Supreme Court in *Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak*, which may be considered as a leading case on the point. Their Lordships held that the words "arising out of employment" mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which unless so engaged the workman would not otherwise have suffered. In other words there must be casual relationship between the accident and the employment.

19. Applying the above test to the facts of the present case it would appear that even though the work may not be as strenuous as that of lifting heavy weight, it did involve physical strain and if carried on for a long time, was bound to result in over strain, which according to Dr. Shrivastava, could cause rupture of the blood vessels. It appears, in the instant case, that the continuous physical strain, in the course of the employment, resulted in the death of Moolchand due to rupture of blood vessels.

20. It is immaterial in such cases that physical strain which resulted in death was not unusual even outside the course of his employment. An accident may occur to a workman while in the course of the employment or otherwise. If it happens in the course of the employment and is occasioned by physical strain in performing the duties incidental to such employment the employer is liable.

21. I, therefore, agree that the respondent must be held to be liable u/s 3 of the Act.