
(2009) 07 MAD CK 0117
In the Madras High Court
Case No : C.M.A. No. 2705 of 2004

Thangammal

APPELLANT

Vs

The Management, OBLI Hospital

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 3

Citation : (2010) 124 FLR 760

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : K.M. Ramesh, for the Appellant; M.R. Raghavan, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The appeal is directed against the order of the Dy. Commissioner of Labaour, Salem, Authority under Workmen's

compensation Act, 1923 dated 31.12.2002 in W.C.340 of 2000 (received by the Appellant on 16.1.2003 in ½ original postal cover containing the

date of despatch as 14.1.2003 by the office of the Dy. Commissioner of Labour is enclosed).

2. In the claim petition, it is stated that from 1995 onwards one Rathinam daughter of the claimant was appointed as assistant in the opposite

party's hospital. On 18.11.1998 at about 8.00 a.m. while she was in the employment, getting down from steps, she fell down, got swooned and

she was entrusted to the claimant. On examination by the doctor, it was learnt that she died. The opposite party authorities prevented the claimant

from lodging any complaint in the police station near, to take the body for post-mortem examination, paid Rs. 3000/- and send the corpse to

Yercaud. The deceased was spinster. There is no dependent except the claimant

to the deceased. She was getting a sum of Rs. 1,600/- from the opposite party per month and she was 18 years at the time of accident. The notice sent by the claimant was refused by the opposite party. Hence, a sum of Rs. 2,00,000/- alongwith interest is prayed for as compensation.

3. In the counter filed by the opposite party, it is admitted that she was employed as ayah in the hospital and that her last drawn salary was Rs.

1,600/- per month. It is not correct to state that she died due to the fall from staircase. In fact, she was a tuberculosis patient and was taking

treatment for long time. Only due to the disease, she swooned and died. The claimant is not the dependent of the deceased. The claimant was

living with her husband and looking after the family including the deceased. Her two sons are employed. She is not a dependent on the deceased.

The opposite party hospital is not covered under Schedule II of the Workmen's Compensation Act which is not illustrative but inclusive. Since it

is not a scheduled employment, the claimant is not entitled for any claim under this Act. The deceased suffered natural death and hence, the petition

has to be dismissed.

4. After considering the evidence on record, the authority below dismissed the claim petition by stating that the deceased did not die in the course

of and out of employment. Hence, the claimant has preferred this appeal. At the time of admission of this appeal, this Court framed the following

substantial question of law:

Whether the Authority was right in holding that the applicant is not entitled to relief when the fact that the deceased was employed as Ayya in the

hospital with a salary of Rs. 1,600/- p.m. and that she died on 18.11.1998 as admitted by the respondent in the counter before the Authority.

5. As far as the plea of the respondent that the claimant being the mother of the deceased is not dependent of the deceased, the learned Counsel

for the appellant would say that as per the definition in Section 2(d)(iii)(b), a parent other than widow mother can also be a dependent on his or her

son or daughter. Hence, there could be no doubt about the fact that the appellant could be treated as a dependent to the deceased.

6. In so far as the employment of the deceased under the opposite party is concerned, the matter is not much debate. The learned Counsel for the

respondent Mr. M.R. Raghavan would strenuously contend that since she was

found suffering from Tuberculosis while she was under employment, her services were terminated w.e.f July 1998 and afterwards she did not attend to the duty and hence she was not under employment of the opposite party after July 1998. To establish this aspect, respondent has produced attendance register for the years 1997 and 1998.

7. Per contra, it is stated that in the employees roll upto July 1998, the name of the deceased Rathinam is found in the register but from August

1998 onwards her name does not find place for any of the ensuing months. It is pertinent to note that the attendance register for the year 1998 was

inspected, that is to say, seen by the labour inspector on 24.09.1998 and signed by him. Hence some importance has to be attached to this

document and there is no wrong in observing that the attendance registers are genuine and they are being maintained regularly in the course of employment.

8. As per the learned Counsel for the respondent, there are ample evidence from the doctors who are in service in the opposite party hospital

itself. Three Doctors have been examined as R.W.1 to R.W.3. R.W.1 has stated that the deceased was admitted to the hospital on 06.10.1997

for Tuberculosis that she vomited blood and since her health was in a critical condition, she was referred to Government hospital. The R.W.2 has

deposed that he treated Rathinam for her Tuberculosis and while she was coughing, she emitted blood and blood pressure was also low and that

he is of the opinion that she might have died of tuberculosis. R.W.3 doctor also endorsed the opinion of R.W.1 and R.W.2 by stating that during

1998 and 1999, the deceased used to come to his clinic for consultation and that she was not commanding good health from beginning.

9. It appears that R.W.3 Doctor has not served in the opposite party hospital and he is an independent witness. While the cumulative effect of

evidence of R.W.1 to R.W.3 are carefully scrutinized, there is nothing to smell rat in their oral accounts and this Court places reliance upon them.

10. The learned Counsel for the appellant Mr. K.M. Ramesh would draw attention of this Court to a decision of this Court reported in 1982 II

L.L.J, Page 149, Sri Jayaram Motor Service and Pitchammal, wherein this Court after referring to a judgment of the Andhra Pradesh High Court

has laid down the principle, under what circumstances a claim of the employee

could be considered. The relevant portion of the judgment goes thus.

The next question to be considered is whether the respondent's husband met with his death in the course of the employment and out of the

employment. It is laid down in the case reported in Chhotulal v. Hamaram (1969) A.C.J. 346 , that it is incumbent upon the Commissioner to be

clear in his finding in respect of the question whether the accident arose out of and in the course of his employment. The question that the accident

arose out of employment depends upon the facts of each particular case. One test for determining this is whether it was a part of the injured

person's employment to hazard, to suffer, or to do that which caused the injury. In the course of the judgment the following principles enunciated in

Paturi Veeranna and Another Vs. Pathuri Seethamma, are quoted with approval:

It is enough if it is established that:

(1) at the time of the accident he was in fact employed on the duties of his employment; (2) that it occurred at the place where he was performing

those-duties; and (3) that the immediate act which led to the accident is not so remote from the sphere of his duties as to be regarded as something

foreign to them.

In order to entitle a workman for compensation there must be a casual relationship between the cause of death and his employment. On a study of

the above decisions it is evident that a workman died even after leaving the work as a result of stress and strain which he suffered earlier during the

period of work a connection is established between the employment and his death.

11. He also places reliance of a Division Bench of Bombay High Court in Laxmibai Atmaram Vs. Chairman and Trustees, Bombay Port Trust, in

which it is held as under:

(d) Workmen's Compensation Act (1923), Section 3 ½ Accident arising out of the employment.

If the workman dies 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 is suffering from a particular case and as a result of wear and tear of his employment he dies of that disease, no liability

would be fixed upon the employer. 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 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. Case law referred.

12. By means of establishing a fact that the deceased was not in the employment from July 1998 and that she was suffering from severe

tuberculosis during the relevant period, this Court is of the considered view that the claimant is not entitled for the compensation. It is cardinal

principle that there shall be a nexus and a casual connection between the employment and the employment injury and in the absence of such factor,

there could be no consideration for grant of compensation.

13. As adverted to supra, sine there is no connection between the alleged employment and employment injury, and she was not at all under

employment with the opposite party, the respondent is not liable to pay compensation and in this regard, this Court finds no ground to interfere

with the findings and decisions of the Commissioner which deserves to be confirmed and it is accordingly confirmed.

14. The Civil Miscellaneous Appeal is dismissed. No costs.