

(1980) 01 GUJ CK 0006
In the Gujarat High Court
Case No : First Appeal No. 131 of 1975

The Divisional Controller, Gujarat State Road Transport Corporation

APPELLANT

Vs

Bai Jiviben Arjan and Another

RESPONDENT

Date of Decision : 25-01-1980

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (1981) ACJ 188

Hon'ble Judges : M.K. Shah, J

Bench : Single Bench

Advocate : Vijay V. Patel and K.M. Patel, for V.B. Patel and Deepak K. Trivedi, for the Appellant; H.B. Shah, for the Respondent

Judgement

M.K. Shah, J.—This is an appeal by the original opponent in a workmen compensation application before the learned Judge, Labour Court and Ex-officio Commissioner for Workmen's Compensation, Rajkot district, Rajkot being W.C. (F) Application No. 9 of 1972, allowing the said application of the applicants, who are the heirs of the deceased Assistant Traffic Inspector attached to the Gujarat State Road Transport Corporation, who got a heart-attack while on duty on 26th May, 1972 and who later succumbed to the same, by awarding a sum of Rs. 10,01)0/- as compensation payable under the Workmen's Compensation Act, (The Act).

2. The Appellant is the original opponent-Divisional Controller of the Gujarat State Road Transport Corporation ("Corporation"). Respondent No. 1-original applicant No. 1 is the widow of the deceased employee AD. Vora while Respondent No. 2 original applicant No. 2 is the son of the deceased.

3. The incident happened on 26th May 1972 while the deceased Assistant Traffic Inspector was traveling in an S.T. bus plying between Rajkot and Navlakhi belonging to the opponent Corporation. When the bus was on its way to Morvi, he got a heart attack. He was removed to the hospital at Morvi where he was

initially treated and thereafter he took further treatment at Rajkot but ultimately he succumbed to the same on 6th June 1972. It was the case of the original applicants that the death of the deceased was caused by means of an accident which arose out of and in the course of his employment; that opponent Corporation was, therefore, liable to pay compensation to the applicants under the Act.

4. The claim was contested by the opponent Corporation inter alia on the ground that the deceased was not a workman within the meaning of that term under the Act and it was also denied that the deceased died on account of an accident arising out of and in the course of his employment and it was averred that the deceased died a natural death and the duties to be performed were quite ordinary duties which were neither excessive nor strenuous and that he died of the disease from which he suffered and not because of his duties or employment meaning thereby that there was no casual connection between the employment and the death of the deceased.

5. The learned Judge of the Labour Court and Ex-Office Commissioner for Workmen's Compensation, on the evidence led before him, came to the conclusion that the deceased was a workman within the meaning of the Act and that he received the said personal injury in the form of a heart attack on 26th May, 1972 as alleged by the applicants by an accident resulting in his death on 6th June, 1972 and that the said accident arose out of and in the course of his employment with the opponent-Corporation.

6. The Commissioner, therefore, awarded an amount of Rs. 10,000/- as compensation to opponent No. 1 widow of the deceased with interest at 6% per annum from 1-9-1972 upto the date of deposit or recovery of the amount. Aggrieved by this order, the original opponent-Corporation has preferred this appeal.

7. Mr. V.V. Patel the learned Advocate appearing for the Appellant contends that in the instant case there is no material on record to justify a conclusion that there was a causal connection between the death of the deceased and his duties and that the accident happened out of the deceased's employment with the opponent-Corporation. He has referred me to several authorities on the subject. They are Kamla Bai Vs. Divisional Superintendent, Central Railway, Nagpur, ; Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, ; Bai Shakri v. New Manekehowk Mills Company Ltd. 1958 A.C.J. 53 (Guj.) and Ramlal Jawahirlal Vs. Smt. Leela Bai and Others, . These decisions are based on consideration of the provisions contained in Section 3 of the Act, the material part whereof so far it concerns the question under consideration in the instant case reads thus:

3(1). 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;

Thus, in order that an employer is held liable to pay compensation, the claimant will have to establish that the deceased (in case of fatal accident) was a workman within the meaning of the Act. It will also have to be established that the personal injury was caused to him by the accident. It will further have to be established that the accident arose out of and during the course of the employment of the workman and on all these facts being established, the employer will be held liable to pay compensation in accordance with the provisions contained in chapter II read with Section 3 of the Act. As observed by the Supreme Court in Mackinnon's case 1969 ACL 422 (S.C.) "To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it". 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 workman would not otherwise have suffered." In other words, there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such-to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises "out of employment". To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act.

This Court also in Bai Shakri's case 1958 A.C.J, 53 (Guj.), set out the principles which emerge from decided cases in this connection and they are-

- (1) There must be a causal connection between the injury and the accident and the work done in the course of employment.
- (2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.
- (3) It is not necessary that the workman must be actually working at the time of his death or that death must occur while he is working or had just ceased work.
- (4) Where the evidence is balanced if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed.

8. Now, applying this test to the facts of the present case, in my opinion, it would be difficult to come to the conclusion that the injury was caused to the deceased resulting in his death out of the employment, meaning thereby that there was casual connection between the death of the deceased and the work he was

engaged in at the time when the accident happened. It is to be borne in mind in this connection that there is no history of any previous heart disease or any previous heart attacks and the question, therefore, of any acceleration of such disease pre-existing by virtue of the strain and stress of the duties which the deceased had to perform during the course of his employment does not arise in the instant case. This is a case in which it appears that the deceased got a heart attack for the first time and succumbed to the same within a few days in spite of treatment and as the evidence of Dr. Mankad who had worked as Civil Surgeon and Assistant Civil Surgeon and in whose private hospital at the relevant time the deceased was admitted shows, he died of heart attack and as his certificate, Ex. 26 shows, he suffered from acute coronary thrombosis. In this opinion, the attack may be due to age, overweight body, or over exertion or tension.

9. There are also facts on record showing that the duties of the deceased as Assistant Traffic Inspector were to travel in the bus to be inspected and note its number, the conductor and driver, the route, the time taken by the bus from reaching from one stage to another, the number of passengers etc. He also had to check the tickets whether properly issued by the conductor or not and to see that buses operated according to schedule and rules. On the day of accident, it was a summer day being 26th May 1972. He started his duties by boarding the bus at mid-day at 12 noon. The bus carried about 48 passengers and though there is no positive evidence, it may be presumed that he must have performed his duty of checking the tickets from the passengers etc. by moving from seat to seat in a running bus.

10. On these facts and in this background, the question which arises is as to whether these duties were such as would cause strain and stress and which were responsible for the heart attack. In other words whether that was a contributory cause of the attack which he got while in the bus.

11. Now, in the instant case, there is no previous history of any heart attack or heart disease and this was a sudden attack of coronary thrombosis. Can it be said that there was causal connection between this attack of coronary thrombosis and the duties which the deceased was performing as Assistant Traffic Inspector ? The medical science has not advanced to that stage when it can precisely lay down the exact causes for a heart attack or heart disease. But it is, presumed, as Dr. Mankad says, that old age, overweight body, over exertion, tension and anxiety are some of the causes which may lead to heart disease or heart attack. So far as the deceased is concerned, it cannot be said that he was old in age he being 54 years old nor is there any material to warrant an inference that it was the old age which was one of the contributory causes.

12. It is true, he was fat but then also, it cannot be said that this amounted to an overweight body which might be one of the causes contributing to a person getting heart disease. In any event, old age and overweight body will have no connection with his employment. Over-exertion, tension and anxiety are three other possible causes. There is no evidence worth the name on record to show

that his duties involved over-exertion, tension and anxiety. In this view of the matter, it is difficult to agree with the learned Commissioner in his finding that it was legitimate and reasonable to infer that strain and stress of the duties which the deceased was performing was one of the causes or was a contributory cause if not the sole cause of the injury viz. attack of coronary thrombosis which the deceased got. The duties of the Assistant Traffic Inspector, as are stated hereinabove, in my opinion, are normal duties of an employee with the Corporation, entrusted with the work of inspection and checking of buses as also of tickets from passengers and supervising and controlling bus traffic. These cannot be turned as duties which are fraught with any danger or hazard having likelihood of a person being struck by a heart attack or a heart disease. Again, on the day of the accident, there is nothing on record to show that the duties which he performed in traveling in the bus, at noon time and doing the usual work as an assistant traffic inspector, involved any strenuous duties causing stress or leading to the deceased getting any such attack as a result of the strain and stress involved in performance of his duties. The learned Judge was, therefore, obviously in error in the conclusion arrived at by him and in holding that the accident arose out of and in the course of the deceased's employment with the opponent-Corporation. The appeal, therefore, succeeds and is allowed.

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13. I have now heard Mr. H.B. Shah, the learned Advocate representing Respondent No. 1 at length and he has not been able to persuade me to change the view I have taken in the judgment which was dictated on 26/27th July, 1979. (As above)

14. Mr. Shah relied on *Jivatben v. Saraspur Co-op. Supply Society Ltd. and Anr.* The learned Single Judge who decided this matter placed strong reliance on *Jivatben Shamuben Vs. The Manager, the Saraspur Co-Op. Supply Society Ltd. Another*, and Mr. Shah strongly relies on the said Bombay decision. In the submission of Mr. Shah, the facts are similar in the Bombay case as well as the case at hand and that, therefore, the ratio should apply to the facts of the present case. In the Bombay case, applicant's husband Kaluji was a weaver in the employ of Respondent-Silver Cotton Mills Limited and the evidence showed that he was working on the first shift on 6th June, 1953 which started from 7-30 a.m. and he collapsed in the weaving department of the Mills where he has working. He was removed to the hospital. Some stimulants were given to him. He became conscious, went home and on that very night, at about 12 O'clock he died, and the court observed that it is the most natural inference to draw that when a man suddenly collapses and dies very soon after and the doctor is not in a position to suggest any reason for this sudden collapse and the death ensuing that he was suffering from heart trouble which cannot be discovered on a mere clinical examination and that the fact that in the instant case, the deceased workman had worked for eight hours on a hot day must have caused the strain and accelerated his death, with the result that it must be held to be due to

accident arising out of and in the course of employment.

15. In my opinion, Bai Diva's case 1956 (1) L.L.J. 740 was decided on its own facts. An expert, Dr. Vaidya was examined and on hypothetical questions, he gave opinion that if a weaver works about eight hours in a textile mills in Ahmedabad in the weaving department in the month of June and collapses unconscious and dies within six hours, it is likely that he must have died of heart failure. He also opined that unconsciousness is a sign of a heart disease and work is likely to accelerate death of a person suffering from heart disease. It would be thus seen that there was expert opinion in that case which guided the court in coming to the conclusion that the death must have been caused by a heart attack and that the deceased must have been suffering from heart disease before that. Again, this was also a case in which the workman was employed in rather a manual and strenuous work. He was employed in the mill and had worked for eight hours on a hot day and if such a person was suffering from the heart disease, then a reasonable inference can be drawn that such work must have caused strain and accelerated his death.

16. Now, let us look at the facts of the case at hand. In the instant case, there is no doubt that the deceased died of heart failure because the doctor's certificate exhibit 31 in terms says that he expired of heart failure on 6th June, 1972. But there is neither an opinion the doctor who treated him nor any expert opinion on hypothetical questions to the effect that he was or must be suffering from heart disease before he got the heart attack on 26th May, 1972. The expert in the Bombay case² came to the conclusion that he must be suffering from heart disease by placing reliance on the sign which indicated such disease viz. unconsciousness. In the instant case, there is no material on record to show that the deceased became unconscious. He got sudden heart attack on 26th May, 1972 and he did not succumb to the injuries very soon as in the Bombay case, but succumbed to the injury much later, viz. on 6th June, 1972 that is-after lapse of about 11 days from the attack. Dr. Mankad examined at exhibit 25 who had treated the deceased in terms stated that he cannot say whether there was causal connection for the heart attack and his duties as a checker of S.T. bus. Neither Dr. Mankad or Dr. Nathvani who was another doctor who had treated him, says that the patient had in-fact suffered from heart disease or there were any indications that in the past, he was a heart patient. Dr. Mankad merely referred to, as earlier stated, the possible causes of heart attack and stated that the attack cannot be due to certain reasons specifically stated, but may be due to age, over-weight body, over exertion, tension and anxiety which are some of the factors. But in the case of the deceased, he could not show which was the reason for his attack. He also admitted that the heart attack can be possible even when a person rests in bed. Again, Mr. Trivedi drew my attention to exhibit 51 which is a leave application which the deceased made to his employer just a day prior to his death. In this application, he gave the history about the circumstances under which he got the heart attack and the ailment following the same and he, therefore, asked for ex-post facto sanction for leave for the period

from 27.5.1972 to 5-6-1972. In this letter also, we do not find a word about any previous heart attack or disease from which the deceased was suffering previous to the attack which he got on 26th May, 1972. In these circumstances, it would not be possible to come to the conclusion that there was any causal connection between the attack which he got and the work in which he was engaged.

17. The result of the above discussion is that there is no reason to depart from the order earlier passed by me. Order accordingly.