

(2004) 06 KAR CK 0069

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1138 of 2003

The Divisional Controller, North East Karnataka Road
Transport Corporation

APPELLANT

Vs

Sangamma and Others

RESPONDENT

Date of Decision : 15-06-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 3 (1), 30

Citation : (2005) ACJ 455 : (2005) 1 KarLJ 530

Hon'ble Judges : P. Vishwanatha Shetty, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : H.R. Renuka, for the Appellant; S.S. Sajjanshetty, for Respondents-1 to 6, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant in this appeal is a Divisional Controller of North East Karnataka Road Transport Corporation. In this appeal the appellant has called in question the correctness of the order dated 17th August, 2002 made in No. WCA.CR.25 of 2001 by the Commissioner for Workmen's Compensation (hereinafter referred to as "the Commissioner"), Gulbarga Division, awarding a sum of Rs. 3,94,120/ (Rupees Three Lakh Ninety-four Thousand One Hundred and Twenty Only) by way of compensation to respondents 1 to 6 on account of death of one Revanasiddappa (hereinafter referred to as "the workman") who was working as a Conductor in the appellant-Corporation. The 1st respondent is the wife of the workman, the 2nd respondent is the mother and respondents 3 to 6 are his children.

2. The respondents made a claim before the Commissioner u/s 3 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") seeking compensation from the appellant on the ground that the workman had died in an accident that has occurred in the course of employment under the appellant. According to the respondents, while the workman was working at

Chittapur under the appellant as a Conductor in the vehicle belonging to the appellant, on 19th January, 2001 while he was plying on the route Tuljapur to Chittapur, he developed chest pain; and when the same was informed to the driver of the bus, the driver stopped the bus at Naladurg Bus Stand and admitted him to the Ashwini Nursing Home which is close to Naladurg Bus Stand and he died in the hospital on account of heart attack. It is the case of the respondents that on the date of death the workman was 35 years of age and he was drawing a salary of Rs. 4,731/ (Rupees four thousand seven hundred thirty-one only) and all the respondents were entirely depending upon his income for their livelihood. However, the appellant resisted the claim of the respondents inter alia contending that the workman did not die on account of the personal injury caused to him in an accident that had arisen out of and in the course of the employment. According to the stand taken by the appellant, the death on account of heart attack taking place in the course of the employment cannot be treated as an accident that takes place in the course of employment to attract Section 3 of the Act. However, the Commissioner on the basis of the materials on record, has found that the workman died on account of heart attack, which he suffered in the course of his employment as a conductor of the vehicle belonging to the appellant.

3. Smt. Renuka, learned Counsel appearing for the appellant, challenging the correctness of the impugned order submitted that the Commissioner has erred in law taking the view that heart attack suffered by the workman while working as conductor in the vehicle belonging to the appellant can be construed as an injury suffered by him in an accident arising out of and in the course of his employment. According to the learned Counsel, the appellant will be liable to pay compensation if the workman had suffered any personal injury on account of any accident that has arisen in the course of his employment and the heart attack being a natural event that has taken place on account of physical unfitness or ailment of the workman, the death taking place on account of heart attack cannot be treated as an accident. She further pointed out that there is no injury caused to the workman on account of any accident that has taken place in the course of his employment.

4. However, Sri S.S. Sajjanshetty, learned Counsel appearing for the respondents, strongly supporting the impugned order, pointed out that the word "accident" employed in Section 3 of the Act, keeping in mind the object of the Legislature, must be interpreted as any untoward incident or any unexpected incident taking place during the course of employment, According to him, the workman suffered heart attack while he was travelling in the bus as a Conductor during night- time on account of the pressure and fatigue of the work and the strain of travelling. According to the learned Counsel, stress and strain, both physical and mental, is one of the causes for heart attack. In support of his submission, he relied upon the decision of the Supreme Court in the case of General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, and the Single Bench decision of this Court in the case of Smt. Kamala Vs. S.R. Varadaraja

Setty, and also Division Bench judgment of Kerala High Court in the case of Devshi Bhanji Khona v. Mary Burno and Another 1985 ACJ 299(Ker.). He also referred to us the meaning of the word "accident" as set out in Chambers 21st Century Dictionary.

5. In the light of the rival submissions made by the learned Counsels for the parties, the only question that would arise for consideration in this appeal is as to whether the workman had died on account of the personal injury caused to him on account of accident arising out of and in the course of his employment?

6. As noticed by us earlier, the Commissioner has recorded a finding that the workman developed severe chest pain while he was discharging his duty as a Conductor in the vehicle belonging to the appellant on the route Tuljapur to Chittapur; and having been informed of the same to the driver of the bus, the driver stopped the bus at Naladurg Bus Stand and the workman was admitted to Ashwini Hospital at Naladurga and in the hospital he died at around 6.55 a.m. The said finding recorded by the Commissioner is purely a question of fact. We do not find any error in the said finding recorded by the Commissioner, which calls for interference by us in this appeal, in exercise of our power u/s 30 of the Act. Further, the said finding also is not challenged by the learned Counsel for the appellant. Therefore, we will have to proceed on the basis that the workman died on account of heart attack suffered by him in the course of his employment.

7. In the light of our conclusion that the workman had died on account of heart attack suffered by him in the course of the employment, the only other question that would arise for consideration is, whether the heart attack suffered by a conductor of a transport vehicle in the course of his employment, can be termed as a personal injury suffered by a workman on account of accident arising out of and in the course of his employment? Before we proceed to consider the said question, it is useful to refer to Section 3(1) of the Act, which reads as hereunder:

"Section 3(1): If the 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".

From the reading of Section 3(1) of the Act what would emerge is that an employer is liable to pay compensation, in accordance with the provisions of the Act, to a workman if such workman suffers personal injury by an accident arising out of and in the course of his employment. Therefore, the question is, what should be the meaning attached or given to the words "personal injury caused to a workman by accident?" According to the Chambers 20th Century Dictionary "injury" means damage, hurt, impairment, annoyance. Therefore, in our considered view the development of just pain or for that matter any other pain, would be an injury caused to the person. However, to make an employer liable to pay compensation for such an injury suffered by the workman, such an injury must have been caused to the workman on account of an accident arising out of

and in the course of his employment. Therefore, if on account of chest pain or heart attack, if a workman dies, the question would be whether such an event can be construed as an accident? If such an event can be construed as an accident, the employer would be liable to pay the compensation to the legal representatives of the workman under the Act. No doubt, as noticed by us earlier, it is the contention of the learned Counsel for the appellant that the development of chest pain or heart attack is a natural event which every human being would be prone to and merely because a workman like the conductor in a bus suffers chest pain or heart attack in the course of employment cannot be construed as an accident arising out of and in the course of employment. We are unable to accede to the said contention. The reasons are more than one. Firstly, we will have to keep in mind the context under which the word "accident" is employed in Section 3(1) of the Act. There cannot be any dispute that the Act is a beneficial legislation intended to protect the interest of the workman who generally belong to the less fortunate section of the society. Section 3 of the Act provides for payment of compensation in accordance with the provisions of the Act, if any personal injury is caused to a workman by an accident arising out of and in the course of his employment. The object of Section 3(1) of the Act is to ensure financial assistance and to relieve the workman and his family members of the hardship they may suffer on account of a personal injury that may be caused to a workman in an accident arising out of and in the course of his employment. It is well-settled that while interpreting the beneficial legislation, in the absence of the language employed in the legislation being clear and unambiguous and does not give scope for views more than one, the Courts will have to interpret the legislation or the provisions of the legislation keeping in mind the object and purpose of legislation. If it is so understood, it is not possible to give a restricted meaning to the word "accident" u/s 3(1) of the Act so as to exclude the death of a workman in the course of employment on account, of heart attack. The word "accident" in the context in which it is employed has to be given a very wide and liberal meaning to make Section 3 of the Act purposeful and meaningful, so that, the object of the legislation is achieved. If it is so done, the word "accident" can be understood in the context as an event or incident taking place unexpectedly or suddenly. In fact, this view of ours gets support from the meaning given to the word "accident" in Chambers 21st Century Dictionary wherein the meaning of the word "accident" has been stated as:

"an unexpected event which causes damage or harm; something which happens without planning or intention, chance managed it by accident".

8. Therefore, if a workman suffers a personal injury unexpectedly or suddenly and such personal injury suffered by the workman can be attributed to the work undertaken by the workman or has some connection to the nature of the duties discharged by a workman, such an injury suffered can be treated as a result of the accident arising out of and in the course of the employment. In the instant case, the evidence on record shows that the workman was working at Chittapur

depot of the appellant and he had boarded the bus in the early hours of the day to carry out his duties as Conductor. It is on record that after the bus proceeded around 40 kilometers, the workman developed chest pain and when the same was informed to the driver of the bus, the driver stopped the bus at Naladurg Bus Stand and admitted the workman to Ashwini Hospital. Among several causes for chest pain, one of the causes is strain and stress of work. Under these circumstances, the nature of work one undertakes, whether it be carrying a load on head, or driving a vehicle or working as a conductor or carrying out more strenuous work, where physical exercise is involved, have strain and stress of the work on the individual. Further, for development of chest pain or heart attack, physical exercise or physical strain alone is not the cause; even the mental strain also could be a cause for chest pain or advancing the heart attack. Therefore, even assuming that the workman had the block of the arteries of his heart, the free flow of blood to the heart could be affected on account of the strain of work. Therefore, since admittedly, the workman at the time when he developed chest pain was conducting the bus as its conductor, it is reasonable to infer that he died on account of personal injury suffered by him in an accident arising out of and in the course of his employment. We would also like to point out that taking a view, different from the one we have expressed above, would be defeating the very object of the legislation. As noticed by us earlier, the Act is a beneficial legislation intended to give some security to the workman. We are of the considered view that the provisions of the Act is in the nature of a "Mini Insurance Scheme" to the workmen, Therefore, the liability of the employer under the Act is conceptually quite different from the liability under tort. Therefore, the interpretation to the provisions of the Act calls for a broad and liberal construction, lest its evident object is defeated. It is necessary to point out that while death is a natural event of life, the cause like heart attack or any other ailment cannot be considered as natural event that would take place, as contended by learned Counsel for the appellant. The strain of the work may be mental or physical; depending upon the nature of the work one takes up and the physical and mental conditions of an individual, a person may suffer heart attack. Heart-attack suffered, sometimes, if immediate and proper medical care is provided, may save the life of the patient. In this case the workman was on duty and was admitted to a moffusil hospital. It is not the case of the appellant that the best medical treatment was made available to the workman when he complained of chest pain.

9. In this connection, it is useful to refer to the decision of the Supreme Court in the case of Mackinnon Mackenzie and Company (Private) Limited v. Smt. Rita Fernandez 1969 II LLJ 812(SC). The Court while taking the view that if a workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a result of wear and tear of his employment and no liability could be fixed upon to the employer, held that if the employment is a contributory cause or has accelerated the death or if the death was due not only to the disease but the disease coupled

with the employment, it was held said that the death has taken place out of employment and the employer would be liable, It is further observed in the said decision that even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under circumstances which can be said to be accidental, his death results from injury by accident. The facts of the present case, set out by us above, would clearly show that the employment of the workman as a Conductor contributed or accelerated the death of the workman.

In the case of National Insurance Co. Ltd. Vs. Balawwa, the Division Bench of this Court has taken the view that the word "accident" should be taken to mean a mishap or untoward event, not expected or designed; that, if a person suffers 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 an in the course of his employment, then the employer is liable to pay compensation u/s 3 read with Section 4 of the Workmen's Compensation Act, 1923.

The Division Bench of this Court in the case of The Divisional Controller, NEKRTC Vs. Marembree and Others, while considering whether the death of a driver of the vehicle on account of heart attack can be attributable as an injury suffered by the driver on account of an accident arising out of and in the course of the employment while accepting the finding recorded by the Commissioner in that case, has observed as follows:

"On the evidence available on record in the present case, it has to be held, without demur, that the workman had died of heart attack, there being an pre-existing heart condition which was aggravated by the strain of the work of the workman which resulted in his death. The fact that the workman's unexplained or apparently natural death had occurred during the course of employment, having established casual connection between the nature of employment and death, the employment was attributable cause accelerating the death. That the death of the workman was not only due to the disease from which he was suffering but on account of factors coupled with employment, has led the Commissioner to conclude that the death occurred as a consequence of and in the course of employment. Therefore, both the conditions entitling the applicants to claim compensation u/s 3 of the Act are fully satisfied. The contentions raised by the appellant-Corporation is one without any merit".

Further, in the case of Devshi Bhanji Khona, the Kerala High Court While considering the question whether the death of a workman due to heart failure while carrying load can be considered as an injury suffered on account of accident arising out of or in course of the employment, has taken the view that there is a casual connection between the employment and his death in an unexpected way and that could certainly be considered to be accident arising out and in the course of his employment. In this connection, it is useful to refer to the observation made by the Court at paragraph 4 of the judgment which reads as hereunder:

"4. 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. W. 1-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 casual 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".

10. Therefore, if the facts of this are analysed, as stated above, in the light of the decisions referred to by us above, we have no hesitation to take the view that the workman has suffered an injury in an accident in the course of his employment and as such the appellant is liable to pay the compensation. Therefore, in the light of the discussion made above, we are of view that the conclusion reached by the Commissioner for Workmen's Compensation that the workman died on account of injury suffered by him in an accident arising out of and in the course of his employment is correct. Therefore, this appeal is liable to be dismissed.

11. However, one other question that would arise for consideration is, since the appellant has deposited the compensation awarded before this Court while filing the appeal, whether the deposit and the interest it has earned can be treated as the appellant satisfying the award passed by the Commissioner as contended by the learned Counsel for the appellant? In our view, it cannot be. u/s 4-A of the Act, the appellant is required to satisfy the award within one month. Though the award was passed by the Commissioner on 17th August, 2002, the appeal was filed on 10th February, 2003 with an application praying to condone the delay of 130 days caused in filing the appeal. The sum of Rs. 4,09,869/- came to be deposited by the appellant in terms of the award passed by the Commissioner, only in the month of May 2003 and on account of the pendency of the appeal, the respondents were denied of the benefit of the compensation awarded by the Commissioner. Therefore, we are of the view that there is no merit in the contention of the learned Counsel for the appellant that from the date of the appellant depositing the amount before this Court it must be held that the appellant has satisfied the award passed by the Commissioner and as such, is not liable to pay interest on the compensation awarded.

12. Further, it is also necessary to point out that though the Commissioner has not made any direction to invest the compensation awarded in a fixed deposit, in the light of the decision of the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, we find it is just and necessary to make an order directing that substantial amount awarded by way of compensation should be invested in a Nationalised Bank. Respondents 3 to 6 are minor children and therefore, it is necessary to protect their interest. Out of the total compensation awarded to the respondents, the amount payable to respondents 3 to 6 shall be invested in a Fixed Deposit in a Nationalised Bank or Post Office Savings Scheme, whichever earns higher rate of interest and beneficial to the interest of respondents 3 to 6 till the date they attain majority. Out of the compensation payable to the 1st respondent, 50 per cent of the compensation shall be deposited in a Nationalised Bank for a period of one year. However, she would be entitled to withdraw periodical interest that may be payable on the deposit made. The amount payable to the 2nd respondent may be paid to her.

13. The Registrar (Judicial) is directed to withdraw the amount invested in the Bank and forward the same to the Commissioner for Workmen's Compensation. The Commissioner shall ensure that the amount payable to the respondents is invested in the light of the direction given above and submit the compliance report to this Court within two weeks from the date of disbursement of the amount made.

14. Subject to the direction given above, this appeal is liable to be dismissed. Accordingly, it is dismissed with costs of Rs. 2, 000/-.