

(2017) 03 GAU CK 0025
In the Gauhati High Court
Case No : M.F.A. No. 106 of 2011

The Manager, Kacharigaon Tea Estate	APPELLANT
Vs	
The Commissioner for Workmen's Compensation	RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Employees Compensation Act, 1923 — Section 3(1)

Citation : (2017) 2 ACC 127

Hon'ble Judges : Mr. S. Serto, J.

Bench : Single Bench

Advocate : Mr. S.N. Sarma, Mr. A. Sarma, Mr. A. Jahid and Mr. B. Barali, Advocates, for the Appellant; Mrs. B. Dutta, Advocate, for the Respondent No. 1; Mr. P. Sundi, Advocate, for the Respondent No. 2

Final Decision : Partly Allowed

Judgement

Mr. S. Serto, J. (Oral)—Heard Mr. S.N. Sarma, learned Sr. counsel for the appellant and also heard Mr. P. Sundi, learned counsel for the respondents/claimants.

2. This is an appeal under section 30 of the Workmen's Compensation Act, 1923 against the impugned judgment and order dated 23.08.2011, passed by the Commissioner, Workmen's Compensation, Zone-III, Tezpur, in W.C. Case No. 15 of 2009.

3. The brief facts and circumstances leading to this appeal are as follows :-

On 22.06.2009, the mother of the respondents (now deceased), who was the original respondent/claimant, filed an application before the Commissioner, Workmen's Compensation, Zone-III, Tezpur claiming that her husband Late Mohan Proja, who was daily rated employee of Kacharigaon T.E., while spraying pesticides over the tea plants belonging to his employer on 10.04.2008, suddenly felt ill and started shivering and became unconscious, so, his co-workers took him to the tea garden hospital where the Doctor of the T.E. treated him. The

Doctor advised for his treatment at Civil hospital, but, before he could be taken to that hospital he died in the tea garden hospital in the evening of the same day. Since her husband died during the course of his employment, she expected to be paid compensation, so she waited expectantly for quite some time. But, when her expectation was not met, she sent a notice to the T.E. under section 10 of Workmen's Compensation Act, through registered AD post on 14.05.2009. But the T.E through a letter dated 23.05.2009, responded that she was not entitled to any compensation. Therefore, she has come to the Commissioner, Workmen's Compensation, for granting the compensation she is entitled to under the Act as follows :-

That her deceased husband was a daily rated permanent workman earning a daily wage of Rs. 58.50/- per day, and entitled to fort-nightly ration of 12 kgs of rice, 12 kgs of Atta, 150 grams of tea leaves calculated in monetary value 24 kgs of rice per month X Rs. 19 per kg = Rs. 456/-, 24 kgs of Atta per month X Rs. 16 per kgs = Rs. 384/- and 300 grams of tea leaves = Rs. 100/-, 144 cft of firewood annually valued at Rs. 2850/- per year, i.e., Rs. 237.50 per month. All these added together Rs. 2773.50/-. Beside, these he was also entitled to apron, umbrella, chappal, kambal and tarpaulin total monetary value of which was Rs. 900/- per year, i.e., Rs. 75/- per month. Calculated all these benefits together she claimed that her husband's monthly earning was Rs. 2773.50/-. She also claimed that her husband was 45 years of age at the time of his death. Therefore, she was entitled to compensation of 60% of Rs. 2773.50/- multiplied by the relevant factor, i.e., Rs. 169.44, i.e., Rs. 1387X169.44 = Rs. 2,35,013.28/-

In addition she also claimed an interest @ 12% per annum from April, 2008 to May, 2009 under section-4 A(3)(a), and penalty for default in payment of compensation with interest @ 50% of the total amount claimed.

4. The T.E. who is the appellant here in this appeal filed a written statement before the Commissioner, Workmen's Compensation stating that the deceased Mohan Proja did not die of any injury suffered/sustained by him during the course of his employment, therefore, he is not entitled to any compensation under the Workmen's Compensation Act. Secondly, the appellant/respondent contended that after the death of the workman the respondent/claimant have been employed as Badli Worker and also paid benefits as per the entitlement, therefore, there is no more entitlement left for the respondent/claimant to receive from the T.E.

5. The original respondent/claimant produced and examined four witnesses in support of her claim and the appellant/respondent produced and examined two witnesses in support of their case. The documents like post-mortem report on the death body of Late Mohan Proja and the report of expert opinion on the kidney, liver and stomach were filed and exhibited.

The learned Commissioner, Workmen's Compensation, Tezpur after having considered the evidence and submissions of both the learned counsels who

represented the parties passed the impugned judgment and order in which he had awarded a sum of Rs. 2,30,777/- as compensation along with interest @ 12% p.a from 22.06.2009 to 28.08.2011 which he worked out as Rs. 93,080/-.

6. Being aggrieved, the appellant/respondent has come to this Court assailing the impugned judgment and order of the learned Commissioner on the following grounds :-

(i) that the learned Commissioner failed to consider the fact that the deceased workman Lt. Mohan Proja died of cardiac arrest and not of any incident that happened during the course of employment.

(ii) that the learned Commissioner did not record any finding as to whether there was any causal connection between the incident and employment of the deceased workman.

(iii) that the learned Commissioner awarded the claim without their being any evidence to show that there was causal connection between the spraying of pesticides and the death of the workman.

(iv) that though the Forensic Science Laboratory had proved that spraying of insecticides was not the cause of death of the deceased workman, the learned Commissioner while passing the impugned judgment and order did not consider the same at all.

7. After having heard the parties, this Court on 29.09.2011 had framed the following issues :-

(i) Whether the death of the workman had any causal connection with spraying of pesticide by him ?

(ii) Whether the finding of the learned Commissioner, holding the appellant liable to pay compensation is perverse ?

(iii) Any other question(s), which may be allowed to be raised at the time of hearing.

8. I shall now take up the issues one after the other :

Mr. S.N. Sarma, learned Sr. counsel who appeared on behalf of the appellant submitted as follows :

That everything i.e. required of the Tea Estate to do in such cases has been done for the claimant (original claimant), therefore, the claimants are not entitled to any more benefit. The learned Sr. counsel also submitted that interest can be paid only from the day the compensation becomes due, if at all, it is required to be paid and not from the date on which the workman died. As such, the judgment of the learned Commissioner, Workmen's Compensation granting interest from the date on which the workman died is against the settled principle of law.

The learned Sr. counsel also submitted at length on the evidence of the cause of death of deceased workman as follows :

That Directorate of Forensic Science who examined the stomach, liver and kidney of the deceased workman certified that no poison was found in all these organs, therefore, there was no causal relationship between the work in which the deceased was engaged and the cause of his death.

The learned counsel further submitted that the deceased workman died due to heart failure as per the medical certificate issued by the Kacharigaon T.E., hospital, and there is no evidence which proves that there was any incident or accident which arose during the time when the deceased employee was performing his duty, to which the cause of his sudden physical weakness that ultimately led to his death can be attributed.

According to the learned counsel, for a workman to be entitled to compensation under section 3 of Workmen's Compensation Act, there must have been an accident which caused injury or injuries to the workman in the course of his employment, and that injury or injuries should have been the cause of his death. But since there is no such evidence to show that there was an accident which caused any physical injury to the deceased workman, there is no causal connection with the work performed by him and his death. Therefore, no compensation can be awarded to the respondent/claimant.

The learned counsel referred to the decision of this High Court in the case of New India Assurance Co. Ltd. v. Ujjaladebnath and Ors., reported in 2001 (1) GLT 32 specially para - 8, 9 & 10 of the judgment. The relevant portions of the judgment referred to by the learned counsel are given herein below :-

"(8) Reliance has also been placed on the decisions of Supreme Court in Union of India v. Sunil Kumar Ghosh, (1984) 4 SCC 246 and in Maghar Singh v. Jaswant Singh, (1998) 9 SCC 134 in order to show that there is no causal connection between the cause of the death and employment of the deceased workman.

(9) It has been submitted at the bar without any objection that this plea was not specifically pleaded before the Court of the first instance. Even no question was put to the witness in this direction. Therefore, this Court in appeal cannot entertain this question for adjudication.

(10) I have given due consideration to the respective submissions and the decisions referred to above. It is true that in order to succeed, it must be proved that there is a nexus between the cause of death and the employment. In the instant case, it is an admitted fact that he was sent to Calcutta for driving the Truck for carriage of goods back to Udaipur in Tripura. This is undoubtedly a strenuous job and the workman who had no history of any previous cardiac disorder suddenly developed chest pain and died on his return journey. This simple fact would show that the cause of death of the workman is relatable to his employment and the death having arisen in the course of his employment, the

legal heirs are entitled to compensation."

9. The learned counsel, thereafter, referred to the evidence given by the PW No. 2 where the PW stated that the workman fell down and fainted, and submitted that the witness did not say that there was any accident. He also referred to the evidence given by the PW No.3 where the witness stated that when he was (the workman) unable to stand we let him lie down on the road. The learned counsel further referred to the statement of PW No. 3 given in his cross-examination wherein, the witness stated that the deceased workman was unable to stand properly and thereafter, submitted that all these shows that the workman was not keeping well at that time and for that reason only he died and not because of anything that happened in the course of performing his duty.

The learned counsel further submitted that the law referred to by the Commissioner is old law, since, there is a new law the same must be followed. The learned counsel referred to the following judgments reported in :-

- (i) (2007) 11 SCC 688,
- (ii) (2006) 5 SCC 513,
- (iii) (2009 4 LLJ 805 and
- (iv) (2011) 4 LLJ 457.

10. The learned counsel for the respondents in reply submitted that the Workmen's Compensation Act is beneficial, social legislation, therefore, it should be given liberal interpretation and in the proceedings of cases taken up under it the strict standard of evidence as applied in criminal cases should not be applied. As to do, so would defeat the very purpose for which the same was enacted.

The learned counsel submitted also that if there is causal connection between the employment and death of the workman that should be accepted as sufficient for arriving at the conclusion that the workman died due to and in the course of his employment.

The learned counsel further submitted that the kind or nature of work to which the workman was employed must also be taken into consideration while deciding whether there was casual relationship between the employment of the workman and his death. The nature of the employment of the workman in this case was that of spraying insecticides over the tea plants and the same certainly requires strength and good condition of health. Therefore, if he was not physically fit he may not have been able to endure the strains or stress of it. And that appears to be what has happened to the workman in this case. Therefore, there was certainly causal connection between his employment and his death.

The learned counsel cited 1933 Suppl. (4) SCC 100 in support of his submission.

11. From the evidence given by the witnesses produced by both the respondents/ claimants and the appellant it is evident that the workman was spraying chemical

in the tea garden i.e., the place of his employment with back-pack machine. And while he was doing so, in the course of his employment, he fell down and fainted, and thereafter, he was taken to the garden hospital where he died after sometime.

The cause of death as per the medical certificate issued by the Doctor of the tea garden was heart failure.

The only question therefore is whether there was causal relationship between the work he was performing and his death. There is no evidence or record to suggest that there was any other cause for his death. Therefore, the only probable reason which directly or indirectly could have caused his death is the work he was performing just before he died. As stated above, according to the doctor who treated him the cause of death of the workman was heart failure. One of the causes of heart failure may be extreme physical stress or strain due to exertion, depending on the health condition of an individual.

Unfortunately, the post-mortem report did not suggest the cause of death and the toxicology report also only suggested that there was no poisonous substance present in the vital organs of the workman. The only medical evidence as stated above is the one given by the tea garden Doctor who treated the workman before he died.

According to him, the workman's blood pressure was as high as 220/120 mmhg and his pulse rate was 150 per minute. He also mentioned that the liver of the workman was enlarged and his spleen was abnormal. All these shows that the workman was not in perfect health. It is the responsibility of the tea company to ensure that a workman is fit for the work he is about to undertake before he starts doing it. For that they have hospitals in the tea gardens. Therefore, if they have not discharged their duty they cannot escape from their liability arising out of it. According to the Doctor heart failure may occurred due to high/low B.P. but what could have cause the high B.P. and high pulse rate in the deceased workman is not stated by the Doctor. It could be that the workman had some ailment which was not known to him but the same was precipitated by the work that he performed. Spraying of insecticides can cause certain amount of physical stress because the work requires moving about certain area of the vast tea garden, that too with a back pack that contains the insecticide. Such movement with back pack certainly would have caused physical stress and strain to the workman, specially, when he was not keeping good health. The same is most likely to have led to his heart failure. As stated above, according to the Doctor, the workman's liver was enlarged and his spleen was abnormal which suggests that he was not in good normal health. With that kind of health condition and in the circumstances in which he fainted and fell down which finally led to his death, one can only conclude that the stress and strain of his employment either directly or indirectly has caused failure of his heart. As such, it can only be concluded that there was casual connection or relationship between the employment of the workman and the cause of his death. There is no other

conclusion that can be drawn in the facts and circumstances of the case and the evidence available.

From the judgments submitted by both the learned counsels what can be concluded is that there should be causal connection or relation between the employment and the cause of death of the workman. At the cost of repetition it may be stated here again that in this case, the workman was in his place of employment performing his duty, and while doing so his physical strength could not longer hold him, therefore, he fainted and never recovered. The only reasonable conclusion that can be drawn, therefore, is that there was causal connection between the work that the employee was doing under his employment and the cause of his death.

In the case of *Jyothi Ademma v. Plant Engineer, Nellore and Another*, reported in (2006) 5 SCC 513, the Hon'ble Supreme Court interpreted the provision of Section 3(1) of the Workmen's Compensation Act, 1923. The same is instructive and relevant in the facts and circumstances of this case. Therefore, the relevant portion of the judgment is given here below :

5. Section 3(1) of the Act which is relevant for the purpose of this case reads as follows :

"Employer's liability for compensation - (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employment shall be liable to pay compensation in accordance with the provisions of this Chapter.

Provided that the employer shall not be so liable -

(a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) In respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to-

(i) The workman having been at the time thereof under the influence of drink or drugs, or

(ii) The wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) The wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen",

6. Under section 3(1) it has to be established that there was some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the

employment is a contributory cause or has accelerated the death.

It would be seen from the above given portion of the judgment particularly para-6 that if the employment had contributed to the cause or had accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

A Division Bench of this High Court in the case of National Insurance Co. Ltd. & Ors. v. Sabita Gope, 2000(1) GLT 27, had dealt with a similar question. In that case a driver who died in sleep was held to have died due to an accident arising out of and in course of his employment.

In the light of the judgment of the Hon'ble Supreme Court and the Division Bench of this High Court given above, I am of the opinion that the death of the workman was contributed or accelerated by his employment. As rightly submitted by the learned counsel of the respondents/claimants, the Workmen's Compensation Act is beneficial, social legislation and its provision must be interpreted in the way that its objective are achieved. The strict rule of evidence like in a criminal case cannot be applied in cases arising out of this Act. Evidence is to be on the basis of preponderance of probabilities as in the case of civil cases. Considering the evidence available in this case from that point of view, this Court is of the considered opinion that the workman had died due to and in the course of his employment.

12. Now coming to the Issue No.2, because of the findings in the Issue No.1, I find no perversity in the judgment of the learned Commissioner in holding the appellant liable to pay compensation to the claimants. The only mistake committed by the Id. Commissioner is in regard to the interest awarded. The learned Commissioner had granted interest from 10.04.2008, which is the day the workman died. The law has been settled on this that interest shall be payable only after 1(one) month from the date of adjudication. Therefore, the judgment and award of the learned Commissioner shall stand modified to that extend only. To make it more clear, the claimants are entitled to get compensation amount of Rs. 2,30,777/- with interest @ 12% p.a with effect from 1 (one month) after the date of judgment of the learned Commissioner, Workmen's Compensation Act, 1923.

In view of what has been stated above, the appeal is partly allowed and partly rejected.