

(1977) 03 BOM CK 0035

In the Bombay High Court

Case No : Letters Patent Appeal No. 62 of 1973

The Municipal Corporation

APPELLANT

Vs

Smt. Sulochanabai Sadashiv Joil

RESPONDENT

Date of Decision : 21-03-1977

Acts Referred:

Employees Compensation Act, 1923 — Section 2, 3

Citation : (1979) 81 BOMLR 82 : (1978) MhLj 199

Hon'ble Judges : Mridul, J;Deshpande, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deshpande, J.—One Sadashiv Joil was employed in the B.E.S.T. Undertaking as a bus starter at Bombay Central relief point. While on duty in his office on December 13, 1970, he felt pain in his chest at about 8.45 a.m. He was relieved of his work immediately and made to lie down on the bench. He was however restless and felt giddy. He was removed to the Nair Hospital, where he was declared dead at about 9-20 a.m. while still in the casualty ward.

2. The respondent, his. widow, claimed compensation against the employer, the appellant, u/s 3 of the Workmen's Compensation Act, hereinafter referred to as the Act, contending that Joil died of the injury caused to him by accident arising out of and in the course of his, employment. Appellant contended, firstly that the deceased was doing clerical work as a bus starter and was not a workman, not having been connected with the operation of the buses within the meaning of Clause (I) of Schedule II read with Section 2(n) of the Act, and secondly that the death was natural and was not caused by any injury in any accident in the course of his employment.

3. By his order dated March 2, 1973, the Additional Commissioner held that the deceased was a "workman" within the meaning of the Act and his death was caused by an injury i.e. pain in the chest in the course of his duties and as such

the respondent; was entitled to compensation of Rs. 9,000 with interest.

4. An appeal against this order was summarily dismissed by a learned Judge of this Court on April 10, 1973. This Letters Patent appeal is directed against the same.

5. Mr. K. K. Singhavi the learned advocate appearing for the appellant, contends that a bus starter cannot be said to be a "workman" within the meaning of the Act and, secondly, that the death after the pain in the chest in the ordinary course of life without any causal connection with the duties in the office, or any accident, cannot be said to have been caused as a result of any injury in accident, in the course of his employment. Mr. Singhavi made it clear that this appeal is intended for a decision of this Court on the two law points raised, and the appellant was willing to make any ex gratia payment to the respondent that this Court may consider to be reasonable.

6. Mr. Karandikar, the learned advocate appearing for the respondent raised a preliminary objection to the maintainability of this appeal on the ground that findings of facts of the trial Court cannot be assailed in appeal. We however note that there is no dispute about the primary facts in this case, it is thus not in dispute that the deceased was employed in the appellant's depot as a District bus starter and that the death took place during his hours of duty from 5-45 a.m. to 2-25 p. m. Even in regard to his duties the finding that "the bus starter has to see that whether the buses arrive in time, and the departure of the buses is in time. He has to maintain the time table, starter" record and number of other duties which show that he has to see various type of duties pertaining to the operation of the bus" is not challenged. Mr. Karandikar placed reliance on Clauses 13, 14, 17, 21, 27, 28, 31, 47, 49 and 50 of a booklet headed as "District Starters Duty Booklet" indicating the instructions about the day-to-day work of the bus starter. Mr. Singhavi did not seriously dispute that duties of the bus starter included such work also though he was unable to vouch the authenticity of the said booklet. These clauses only indicated that the deceased was required to do also some supervisory work. It was not however disputed that the bus starter is not required to do any manual work in regard to the operation of any one of the vehicles nor these duties required him to accompany any vehicle or operate any vehicle or co-operate with the driver of any vehicle, when the vehicle was in motion on the road.

7. It is also not disputed that, the deceased complained of pain in his chest at 8-45 a.m. and was then made to rest and taken to the hospital where he was declared dead at 9-20 a. m. Cause of death is admitted to be myocardial ischaemia. There is evidence of the blood arteries being contracted, But this does not furnish any proof of injuries. The doctor's evidence shows that deceased was never discovered to be a heart patient though cardiograms were taken thrice during 1960 to 1964.

8. Coming now to the first question, the word "workman" is defined in Section

2(n) of the Act, as follows:

2. (n) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is -

(i) ...

(ii) employed on monthly wages not exceeding five hundred rupees, in any such capacity as is specified in Schedule II.

It was not disputed before us that only Clause (i) from Schedule II is relevant. The same is as follows:

The following persons are workmen within the meaning of section 2(1)(n) and subject to the provisions of that section, that is to say, any person who is -

(i) employed, otherwise than in a clerical capacity or on a railway, in, connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading and unloading, of any such vehicle;...

(Italics ours).

It will be thus seen that the connection of one's employment, (1) with the operation of a vehicle or with the (2) the loading or unloading of any such vehicle, makes such an employee a workman within the meaning of this section. The question is what precisely is the nature of this, "connection" of the duties of the employee with the operation or loading and unloading of the vehicle. Broadly speaking, even the General Manager of the Depot can be said to be so connected. But his connection on the face of it is too remote. Persons employed "in a clerical capacity" are however specifically excluded from its purview, while those connected with loading and unloading operations are expressly included. Implications of these provisions on the nature of connection of the duties with the operation of the vehicles should not be ignored. Some clerks at any rate are assumed to have close connection with such operations and are expressly excluded, while those connected with loading and unloading are expressly included, implying that their connection with the operation of the vehicle was otherwise remote. This indicates that, persons actually operating the vehicles and connected directly by manual labour alone are intended to be covered by the definition. Close examination of other clauses of Schedule II also indicates legislative emphasis on manual labour as a test for being treated as workman.

9. Now, the duties of the deceased as such bus starter consisted mainly of maintaining the record in regard to the arrival and departure of buses. Certain clauses in the booklet referred to above, do indicate as if such bus starter has to take on the spot decisions, and give direction as to how the vehicle should be operated in certain) limited situations. Even the process of work involved in such duties, is in no way different in quality from clerical work. At the most it may

require higher calibre than is required for any ordinary clerical work. This does not alter the nature of his connection with the operation of the vehicle nor can these duties bring him nearer to the contemplated connection to warrant his inclusion in the "workman". Looked at from this point of view, it should be difficult to hold that the deceased was a workman within the meaning of Section 2(1)(n) read with Clause (i) in Schedule II.

10. Learned Additional Commissioner has relied on judgment of Kerala High Court in the case of Ganrsan Vs. Bhagavathi Amma and Others, , and that of the Mysore High Court in Malatibai and Others Vs. Mysore State Road Transport Corporation, Belgaum and Another, In the first case the High Court was required to consider whether a checker entrusted with the duty of verifying the accuracy of freight for the goods transported, and the accounts maintained, was a workman within the meaning of Section 2(1)(n) of the Act. The learned Judges answered the question in the affirmative relying in turn on the ratio of judgments of the Madra's, High Court in the case of Pollachi Transport Ltd. v. Arumuga AIR[1938] Mad. 485, and that of the Calcutta High Court in the case of Nanda Kumar v. Pramatha Nath (1937) 42 C.W.N. 123. Madras and Calcutta High Courts, held a conductor of the vehicle to be such a workman as it was found that his assistance for ensuring the safety of the incoming and outgoing passengers, and controlling the movements of the bus throughout the journey was indispensable for operation of the vehicle by the driver. This is how the duties of the conductor were found to have been integrally connected with the operation of the vehicle. The ratio of these two cases is clearly thus distinguishable. The judgment of the Kerala High Court does not indicate how this ratio and the reasoning of these cases could be applied to the case of a checker who was not in any manner directly connected with the operation of the vehicle. The Kerala High Court observed that

... the expression in connection with" is an expression of wide content embracing activities which subserve or are ancillary to "operation or maintenance".(p. 168).

So far so good. But it is difficult to see how the checker's work is different from the work of a clerk who is in terms excluded. Limits placed on such width by this exception clause apparently seem to have escaped the notice. We "say so with great respect The Mysore High Court held a traffic controller also to be a workman. With respect, we are unable to distinguish his work from the ordinary clerical work. We are unable to notice the same "connection" hi the work of checker or traffic controller with the operation of the vehicle, as can be found between the conductor and such operators of the vehicle. The assumption of the learned Judge of the Mysore High Court that every one connected with operation of the vehicle, excepting the clerks, is covered by the definition, does not appear to be correct or sound. This means that persons doing higher type of intellectual work are intended to be covered by the definition of the "workman" and clerks alone are intended to be excluded from this category. With respect, we are unable to agree with this. It is difficult to trace any rational basis for assuming

that clerk's superiors were intended to be benefited but not the clerks. In our opinion every type of clerical connection is intended to be excluded from the purview of the definition. It is true that the words "in connection with" do require broad and liberal construction, but so must be respected the legislative intent, indicated by the words of the clause "otherwise than in a clerical capacity". Dictionary meaning of the word "operation" is:

doing or performing esp. of action: work, deed involving practical application of principles or processes often experimentally or as part of a series of actions.

In a way number of processes can broadly be said to have been connected with the operation of the vehicle including the work of a clerk or the work of his superior, administrative or executive. But the legislative intent however appears, to be to cover only such "connection" which involves some manual labour or some other work integrally connected with it. With respect, views of the Kerala and Mysore High Courts are unacceptable to us. In this view of the matter, we are unable to confirm the finding that the deceased was a workman within the meaning of this Act.

11. On the second question, very little can be said in support of the finding. Three factors must be established to attract the liability u/s 3 of the Act. Firstly, there must be an injury. Secondly, it should be caused in an accident. Thirdly, it should be caused in the course of the employment. Mere death in ordinary course by some bodily ailment or even in the course of employment cannot attract liability of the employer u/s 3. The words "injury" and "accident" in Section 3 of the Act imply the existence of some external factor to cause death apart from internal ailment of the body. It was never suggested that the work ordinarily done by the deceased could directly or indirectly contribute to the pains in the chest. Nor any particular work of that day is suggested to be the cause of such pain and the resultant death. The duties attached to his post do not involve any strain. The trial Court has referred to the negligence in not extending treatment within 15-20 minutes. But there is no evidence either of any particular duty of any one in office nor evidence of its non-compliance. In, fact there is no evidence of the deceased having indicated any gravity till he was removed to the hospital. That the deceased should have suffered from the pain in the chest and should have died immediately on reaching the hospital is indeed unfortunate. But this could as well be in the ordinary course of life without involving any accident, or any personal injury to the deceased in the course of the employment. No such circumstance can be inferred merely from the death during the office hours. Some causal connection between the employment and the death, independently of the bodily ailment, must be shown to invoke Section 3 of the Act. It is difficult to see what inference can be drawn from the mere fact that the blood arteries of the deceased were contracted. This ordinarily is the effect of the age in natural course.

12. Mr. Karandikar relied on- the division Bench judgment of this Court in the case of Diva Kaluji Vs. Silver Cotton Mills Ltd., . The judgment only emphasizes

the need to look to circumstantial evidence when direct evidence is absent. With respect, there can hardly be any quarrel with this proposition of law. In the said case, the learned Judges drew an inference of an injury in the course of his employment, from the fact that the deceased had worked as weaver in the heat during the month of June in Ahmedabad, which could put strain on the heart of the deceased. Mr. Karandikar could not draw our attention to any circumstance from the facts of this case to warrant such inference of the strain on the heart of the deceased. His reliance on the judgment of the Madhya Pradesh High Court in Parwatibai Vs. Manager, Raj Kumar Mills, is equally misplaced. In the said case the workman was found to have suffered a shock, while he was mounting a belt on the machine. He was found to have collapsed and died insflantaneously. The learned Judges followed the division Bench judgment of our High Court. We are unable to draw any assistance from the ratio of the said case. We are thus unable to uphold the finding of the learned Additional Commissioner on the second point also.

13. We have heard Mr. Karandikar and Mr. Singhavi on the question of ex gratia payment. After giving our anxious consideration on various points involved in the case, we feel that ends of justice will be met, if the appellant pays a sum of Rs. 5,000 to the respondent by way of ex gratia payment..

14. Accordingly we allow the appeal.

15. We, however, make no order as to costs in the circumstances of the case.

16. The appellant had already deposited a sum of Rs. 9,000 and odd in the Court of the learned Additional Commissioner for Workmen's Compensation. The record does not indicate as to whether the amount was withdrawn by the respondent on furnishing the required security. If the amount is not so withdrawn, she will be at liberty to withdraw a sum of Rs. 5,000 in terms of the above order. If she has withdrawn the sum of Rs. 9,000 or more she is hereby directed to refund a sum drawn in excess and appellant will be at liberty to withdraw the same.