

(2008) 02 MAD CK 0240
In the Madras High Court
Case No : C.M.A. No. 2336 of 2002

The Oriental Insurance Company Ltd.

APPELLANT

Vs

Nagaraj, Balamurugan, Maniammal [Minors rep. by father and guardian Nagaraj] and The Management, Bombay Burmah Trading Corporation Ltd.

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 3, 3(1), 30

Citation : (2006) ACJ 2587 : (2008) 2 CTC 407 : (2008) 117 FLR 745 : (2008) 3 LLJ 61 : (2008) 2 LW 189 : (2008) 4 MLJ 58

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : M. Vijayaraghavan, for the Appellant; R. Selvakumar, for respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Challenging the order of Deputy Commissioner of Labour Commissioner awarding compensation of Rs. 1,66,290/- for the death of deceased Nagammal, Insurance Company has preferred this appeal denying its liability.

2. First respondent's wife Nagammal was working as an employee under the second respondent at Bombay Burmah Trading Corporation Ltd. and the employees are covered under Insurance Scheme. On 06.09.2000, at about 9.45 a.m., she suffered severe heart attack and she was taken to the hospital by ambulance but she passed away on the way to the hospital. Alleging that the death occurred in the course of employment, first respondent and their son and daughter have filed Petition u/s 10, Workmen's Compensation Act claiming compensation of Rs. 3,00,000/-. Denying any accident at work place, causing injuries to the deceased, management has opposed the claim stating that death was due to heart attack and not due to any accident in the course of employment

and while at work. Insurance Company also resisted the claim contending that deceased died due to heart attack and medical records show that she died due to myocardial infraction and that she was suffering from heart disease for several years. As the death was not in course of employment, the claimants are not entitled to any compensation.

3. Before the Labour Commissioner, claimant examined himself as PW-1. Ex.P-1 Salary Slip and Ex.P-2 Death Certificate and Ex.P-3 Legal Heirship were produced. Upon consideration of oral and documentary evidence, the Deputy Commissioner has held that deceased died on 06.09.2000 due to nature of work and work load and there was direct nexus to the nature of work and death. Referring to Kerala High Court Judgment, 1989 LLJ Vol.II [United India Insurance Co. v. Gopalakrishnan], the Tribunal held that the nature of work caused great strain to the employee which caused her unexpected death. On those findings, the Tribunal has awarded compensation of Rs. 1,66,290/-.

4. Challenging the order of the Labour Commissioner, the learned Counsel for the Appellant Insurance submitted that the death of the deceased could not be said to be due to personal injury caused in the accident. It was further submitted that compensation is payable under the Workmen's Compensation Act only when personal injury was caused in an accident arising out of and in the course of employment. The learned Counsel for the Appellant further argued that in the absence of any material establishing any nexus between the nature of work and death, compensation amount is not payable. In support of his contention, the learned Counsel placed reliance upon 2007 (1)LW 601 and 2007 (4) LW 355.

5. In the light of the above legal proposition, it is to be considered whether death of Nagammal arose out of and in course of her employment under appellant management.

6. Admittedly, Nagammal was working as employee from 1976 in Bombay Burmah Trading Corporation Ltd. It is equally not in dispute that on 06.09.2000 at about 9.45 a.m., Nagammal suffered heart attack and while she was taken in Ambulance to hospital, she died on the way to hospital. According to the appellant, claimants are not eligible to receive any compensation, since death was due to heart attack and not due to any accident in the course of employment and while at work.

7. Section 3(1) of Workmen's Compensation Act deals with employer's liability for compensation which reads as under:

3. 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 employer 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.

8. Contending that circumstances must exist to establish that death was caused because of stress and strain of work, the learned Counsel for the Appellant-Management has placed reliance upon the case reported in *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another*, wherein, the deceased workman/cleaner, while travelling in the vehicle suffered massive heart attack. Observing that the death by the same itself cannot give raise to an inference that the job was strenuous, referring to various case laws the Supreme Court has enumerated the principles as under:

23. There are a large number of English and American decisions, some of which have been taken note of in *ESI Corporation (supra)*, in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act.

24. The principles are:

(1) There must be a casual connection between the injury and the accident 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) If the evidence brought on records establishes 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, but the same would depend upon the fact of each case.

25. Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, *inter alia*, having regard to the nature of the work and the situation in which the deceased was placed.

26. There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority

will commit a jurisdictional error while exercising jurisdiction.

27. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.

In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:

1. stress and strain arising during the course of employment;
2. nature of employment ;
3. injury aggravated due to stress and strain.

28. The deceased was travelling in a vehicle. The same by itself cannot give rise to an inference that the job was strenuous.

29. Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to Court in his behalf.

30. Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefore can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefor.

9. For making out a Claim under the Act, it is necessary to establish definite casual connection between his work and the accident leading to the death. Observing that the mere fact that death had taken place while the deceased was on job is not enough and that onus of proof lies upon the Claimant in the decision reported in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, , the Supreme Court has held as follows:

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 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 "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 casual 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 consideration must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act.

10. In the Sakuntala Chandrakanth case, the cleaner of the vehicle died due to massive heart attack. In the said case before the Supreme Court, nothing has been brought on record to show that heart attack was caused while doing any job. Even according to the employer, the deceased at the relevant point of time was merely getting down from the vehicle. The driver of the vehicle, who was brother of the deceased was the best evidence to speak as to under what circumstances death was caused or death occurred. Driver of the vehicle did not examine himself. Doctor who performed the postmortem was also not examined. Under such circumstances, the Supreme Court has observed that there must be some evidence that the employment contributed to the death of the deceased and it is required to be establish that the death occurred during the course of employment. In the said case, since evidence was found to be lacking and best witness was not examined, Supreme Court has held as follows:

26. There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction.

11. As observed by the Supreme Court, circumstances must exist to establish that the death was caused by reason of failure of heart and it was because of strain of work. Stress and strain resulting in sudden heart failure is not a matter of presumption. Each case is therefore to be considered on its own facts and no hard and fast rule could be laid down therefor.

12. As held by the Supreme Court in the said case, each case is to be considered on its own facts and circumstances. Onus of proof that the death arose out of and in the course of employment is upon claimant. Husband of the deceased who examined himself has stated that the deceased Nagammal was a permanent employment and that she was trimming tea leaves and also plucking tea leaves in the Tea Estate. Such trimming of tea leaves involved manual and physical labour. Having regard to the nature of work and evidence of PW-1, Deputy Commissioner has recorded factual finding that the nature of work involved stress and strain. The finding of the Deputy Commissioner reads as under:

13. The above finding of fact cannot be said to be based on surmises or conjectures or guess work. The facts would indicate that trimming and plucking tea leaves in the tea estate involves climbing the hilly terrain. Nature of work by itself involves stress and strain. The inference of Deputy Commissioner of Labour that the deceased workman had stress and strain appears to be legitimate inference. In my considered view, the evidence of PW-1 and nature of work

would induce any reasonable mind to draw such an inference of stress and strain involved in the work.

14. As held by the Supreme Court in *Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak*, , "Although the onus of proving that the injury by accident arose out of and in the course of employment rests upon the applicant, these essentials may be inferred when the facts proved justify the inference. On the one hand, the Commissioner may not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it".

15. It is also relevant to refer to Division Bench of this Court in *Thiru. T. Shanmuga Mudaliar Vs. Smt. Noorjahan, Mohd. Amsad, Apsana Parveen and The Divisional Manager, United India Insurance Co. Ltd.*, . The question in the appeal decided by the Division Bench was, whether the death of the workman, driver of a bus, due to heart failure was caused because of the heavy strain of employment. The following observation of the Division Bench at page 777 is relevant:

4. ...The connection between the accident and the employment may be established if the strain had contributed to or accelerated or hastened the accident. It may not be possible at all times to produce direct evidence of the connection between the employment and the injury, but if the probabilities are more in favour of the applicant then the Commissioner is justified in inferring that the accident did in fact arose out of an din the course of the employment.

16. The learned Counsel for the Appellant/Management has submitted that evidence of PW-1 is not specific as to the stress and strain and while so, the Deputy Commissioner erred in finding that the accident arose out of and in the course of employment. In response, the learned Counsel for the respondent/workman has submitted that it is not necessary to prove that the accident complained of was a contributory cause to the injury. The learned Counsel for the respondent further submitted that if death or disability is due to heart attack which resulted from the exertion of the employee in the performance of the duties of his employment, compensation should be awarded. In support of his contention, the learned Counsel for the respondent/claimant placed reliance upon - *Madras State Electricity Board Vs. Ambazhathingal Ithachutti Umma*, ; *Management of Devon Estate Vs. Nabeesa and Another*, ; and *Thengackal Estate Vs. Reethammal*, .

17. In *Thengackal Estate Vs. Reethammal*, Kerala, after analyzing the facts, Division Bench of Kerala High Court has held that it would be reasonable to conclude that the strain, even if it was a normal strain, connected with the employment was the reason for the death of the worker. It is further said that even proceeding on the basis that the worker was suffering from chest ailment

and was prone to heart attack, the circumstances in the case would clearly indicate that the strain due to the work he was doing was the cause which accelerated his death due to heart attack.

18. I do not propose to go into the factual details of these cases suffice to note that strain, even normal strain, connected with the employment, was the reason for the death of workman. In the circumstances of the case and nature of work, normal strain contributed to the death. It falls within the purview of "arising out of and in the course of employment" contained in Section 3 of the Act. The provisions of Workmen's Compensation Act should be broadly and liberally construed in order to effectively apply the provisions of the Act.

19. The learned Counsel for the respondent claimant has drawn the attention of the Court to the Statement of Objects and Reasons articulated at the time of moving appeal for Workmen's Compensation Act which ultimately resulted in passing of the Act. The objects and reasons of the Act are stated as follows:

the growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, alongwith the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible from hardship arising from accident.

20. The aforesaid extract from the Statement of Objects and Reasons for passing of the Act clearly indicates that:

The general principles of workmen's compensation command almost universal acceptance, and India is now nearly alone amongst civilized countries in being without legislation embodying these principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practice is, by no means, general. The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.

21. Liberal construction of the provisions should be adopted for the provisions which govern the nature and determination of the injuries for which compensation may be had. There is no reason for taking a narrow view.

22. The finding of the Deputy Commissioner that the deceased died of heart attack and death arose out of and in the course of employment is based on appreciation of evidence and finding of fact. In an Appeal filed u/s 30 of the Act, normally the High Court would not interfere with the finding of fact recorded by the Deputy Commissioner. The proviso to the said Section 30 mandates that no appeal shall lie against any order unless a substantial question of law is involved in the appeal.

23. In Raveendran Vs. Somavally, , it was laid down that the finding recorded by the Commissioner on taking a particular view of the evidence, cannot be

questioned however erroneous, as no question of law can be said to have arisen in such cases. The Commissioner while handling cases under the Act has to deal with the evidence tendered by the claimants and on evaluation of entire evidence, findings have to be entered and such findings cannot be called in question invoking the power u/s 30 of the Act unless a substantial question of law is arising from such findings. It is axiomatic that when there is no question of law, there cannot be any question of general public importance or any question directly and substantially affecting the rights of parties.

24. No specific ground is made out for interfering with the factual finding of the Deputy Commissioner of Labour that the death arose out of and in the course of employment. No substantial question of law is shown to be involved in this appeal. The appeal is devoid of merits and is bound to fail.

25. In the result, the order of the Deputy Commissioner of Labour and Commissioner for Workmen's Compensation, Coimbatore dated 2.8.2002 made in W.C. No. 37/2001 is confirmed and this C.M.A. is dismissed. No costs. Claimants are entitled to withdraw the balance amount along with the accrued interest.