

(1995) 04 MAD CK 0026
In the Madras High Court
Case No : C.M.A. No. 924 of 1987

Tuticorin Stevedores Association

APPELLANT

Vs

Deputy Commissioner for Labour (Commissioner for
Workmen's Compensation) and Others

RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (1996) 1 ACC 199 : (1995) 2 LW 12

Hon'ble Judges : C.V. Govardhan, J

Bench : Single Bench

Advocate : P. Peppin Fernando, for the Appellant; Meenalochini, Addl. Govt.
Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.V. Govardhan, J.—This appeal is against the order passed by the Deputy Commissioner for Labour (Commissioner for Workmen's

Compensation), Tirunelveli, dated 25.9.1987.

2. The applicants are the sons of one Chinnasamy Thevar who was employed under the opposite party as a loadman in harbour at Tuticorin. On

17.12.1985, during the course of his employment, he fell down on account of the crane sling hitting him and became unconscious. He was admitted

in the private hospital of one Rajan and discharged on 4.4.1986. He reported to duty on 5.4.1986. Subsequently, he has taken treatment from

7.4.1986 to 13.4.1986 under one Dr. Madhipraka-sam. He was again admitted in the hospital of Rajan on 14.4.1986. On 4.5.1986, he died.

Deceased Chinnasamy was aged 51 years, drawing an income of Rs. 950/-per month. Hence, the claim is made for Rs. 56,875/-.

3. The opposite party in his counter has stated that the death of Chinnasamy was not on account of the accident that took place on 17.12.1985

and there was no accident as alleged and he was admitted in the hospital only since he complained of chest pain. He was discharged from the

hospital after treatment. Subsequently, he joined duty also and later died. Therefore, the death of Chinnasamy was not on account of any accident

during the course of his employment.

4. On the above pleadings, an enquiry was held by the Deputy Commissioner and he had found the death of Chinnasamy was on account of the

accident which occurred on 17.12.1985, during the course of his employment and awarded a compensation of Rs. 50,887.50.

5. Aggrieved over the same, the opposite party has preferred this appeal.

6. The learned Counsel appearing for the appellant would argue that the deceased Chinnasamy was suffering from liver trouble and he was also a

chronic patient of tuberculosis and the death was a natural death on account of his ailments and, therefore, the order passed by the Commissioner

for Workmen's Compensation is liable to be set aside. It must be noted that on 17.12.1985, the sling of the crane hit the deceased as a result of

which he fell down and became unconscious. On the same day, he was also admitted in the hospital where the employees of the respondent are

usually given treatment and he was discharged only on 4.4.1986, after a prolonged treatment. It is also to be noted that there were no external or

internal injuries sustained by the deceased in the accident that took place on 17.12.1985. He was found fit for duty and, therefore, he has reported

for duty on 5.4.1986. After working for about 10 days, he again got himself admitted in the hospital on 14.4.1986 and ultimately he died on

4.5.1986.

7. The Commissioner for Workmen's Compensation has held that the death was due to the accident that took place on 17.12.1985. The learned

Counsel appearing for the appellant would argue that there was no nexus between the accident that had happened on 17.12.1985 and the death of

Chinnasamy on 4.5.1986 and it was only on account of the disease he was suffering from, that he died in the hospital. That the deceased was

suffering from tuberculosis is not in dispute. The death of the deceased was after five months of the accident. There were no external or internal

injuries found on the person of the deceased and he was found fit for duty on 5.4.1986. It is now for us to decide whether the death of

Chinnasamy was on account of the accident during the course of his employment.

8. The learned Counsel appearing for the Commissioner for Workmen's Compensation, viz., Additional Government Pleader (Civil Side), Mrs.

Meenalochini would argue that when the workman fell down on the ground and became unconscious on the date of the accident, it cannot be

stated that there was no nexus between the death and the accident. She would also argue that when the accidental injury results in death and no

other intervening factor is there, the order passed by the Commissioner for Workmen's Compensation has to be confirmed. There cannot be two

opinions that if the accident had caused any injury resulting in death and there are no other intervening factors, the employer has to be made liable

on the ground that the death was during the course of the employment of the employee. But in the present case, there were no injuries to the

workman and the death was merely due to an intervening factor, viz., the workman was suffering from tuberculosis. To come under the Act to

enable the legal representatives of the employee to get compensation under the Workmen's Compensation Act, it must be shown that the accident

took place during the course of the employment and injury caused during the employment has resulted in death. The burden of proof rests upon the

workman to show that the accident arose out of the employment as well as in the course of employment. In the present case, the applicant was

able to prove that the accident arose out of employment and in the course of employment. But it cannot be stated that the death was on account of

the said accident, in view of the intervening factor of the deceased, namely, the employee was suffering from tuberculosis and the intervening period

of the accident and the death. There is no evidence that the employer was aware of the sickness from which the employee was suffering and in

spite of it, he was compelled to work in such a way that the accident was inevitable.

9. To apply Section 3 of the Workmen's Compensation Act it must be shown that there was a direct connection between the accident and death.

This aspect is lacking in the present case. The employee is aged 51 years suffering from the dreadful disease of tuberculosis and he was found fit

for duty after treatment given to him in the hospital and the death had ensued after five months of the accident. In the above circumstances, it

cannot be stated that the death occurred on account of the accident that arose out of and in the course of his employment.

10. Learned Additional Government Pleader (Civil Side) has relied upon the decision in *Parwati Devi v. H.R. Sugar Factory (P) Ltd.* 1971 ACJ

451 (All), to argue that when a workman who was suffering from T.B. of lungs slipped while on duty resulting in rupture of the veins of lungs dies,

his employer is liable. In the present case, the deceased was suffering from tuberculosis, as in the reported case. He also fell down after the

accident, but after taking treatment he was found fit for employment and joined duty is not in dispute. The accident, therefore, cannot be said to be

the cause of the death. In the above circumstances, I am of opinion that the order passed by the Commissioner for Workmen's Compensation

awarding compensation to the petitioner cannot be sustained and it has to be set aside.

11. In the result, the civil miscellaneous appeal is allowed setting aside the order of the learned Commissioner for Workmen's Compensation,

Tirunelveli. No costs.