

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.125/ 2004

% Judgment reserved on: 21ST August, 2009

Judgment delivered on: 17th September, 2009

Delhi Sweet House,
Shop No. 1, Bhagat Sing Marg,
New Delhi

....Appellant

Through: Mr. S. C. Singhal, Adv.

Versus

(1) Smt. Darshana Rani
Wd/o Late Sh. Kamal Dev Sharma

(2) Master Anil Sharma

(3) Master Virender Sharma
(through Smt. Darshana Rani, his next friend being
mother and natural guardian)
Both sons of Late Kamal Dev Sharma
All R/o 121-B, Rani Garden,
Shastri Nagar,
Near Geeta Colony,
Delhi-110 031

....Respondents.

Through: Nemo

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Appellant by way of present appeal has challenged order dated 23rd January, 2004, passed by Commissioner Workmen's Compensation (Short as Commissioner). Vide impugned order, respondents were awarded compensation of Rs. 1,22,472/- (one lakh, twenty two thousand and four hundred seventy two only), along with interest at the rate of nine per cent per annum, from date of accident, till its payment. This compensation was awarded on account of death of deceased Kamal Dev Sharma, husband of respondent no. 1 and father of respondent nos. 2 and 3.

2. Brief facts are, that deceased was working as Chief Halwai with appellant, for more than twenty five years. Appellant, besides having shop in Gole Market,

New Delhi was also having work shop in Noida(U. P). On 6th March, 1996, deceased was performing his duty i.e. manufacturing sweets at the workshop and while preparing sweets on Sigri (Anghiti), due to heat of fire and manual labour, as well as unhygienic working conditions, received stringent heart attack. He was immediately removed to Kailash Hospital in Noida. On 12th March, 1996 he died due to heart attack, which he received during the course of employment.

3. In written statement, appellant stated that there was no relationship of master and servant between deceased and appellant, on the date of incident. Appellant is running a Halwai shop at Gole Market, New Delhi but kitchen of that shop was discontinued due to objections raised by NDMC. Deceased was employed there from 1991 onwards and left the employment in September, 1995. All his accounts were cleared and settled and relationship of master and servant, between the parties came to an end.

4. The claim petition is not maintainable as deceased died due to heart attack, which ailment is not attributable to the employment of deceased. Heart attack is such a problem which cannot be attributed to or is a direct result of employment. It can be suffered by any one. Only those case are covered under Workman's Compensation Act, 1923 (for short as Act), where ailment suffered by an employee is directly attributable to the job performed by employee. Heart attack can never be on account of heat of fire or on account of manual labour or on account of unhygienic conditions. Present appeal thus is not maintainable.

5. On 21st August, 2009, matter was listed for hearing. Only counsel for appellant appeared, while none appeared for respondents. This matter was shown continuously on board from 10th August, 2009 till 21st August, 2009. During this period, none appeared for respondents. Hence, there was no option but to proceed with the case. Accordingly, arguments

advanced by learned counsel for appellant have been heard.

6. It is submitted by learned counsel for appellant that impugned order is wholly erroneous and without jurisdiction. Section 3 of the Act, provides that no compensation shall be payable to workman in respect of any disease, unless the disease is directly attributed to a specific injury by accident, arising 'out of and in the course of employment'. Certainly, heart attack suffered by deceased, cannot be attributed to any specific injury by accident, as admittedly no such incident occurred in the premises, where deceased was working.

7. It is further contended, that widow of deceased, nowhere in her evidence stated that deceased died on account of any disease or accident, occurred "out of and in the course of employment".

8. In support learned counsel referred to decision of Supreme Court in ***Jyothi Ademma V. Plant***

***engineer, Nellore and Another ; (2006) 5
Supreme court Cases 513.***

9. First question for consideration is, whether there is relationship of master and servant or not. It is an admitted fact that earlier, deceased was employed with the firm of appellant. Case of appellant is, since kitchen of shop in Gole Market, New Delhi has been closed, no work was carried out by the appellant. All dues of deceased were settled, thus, relation of master and servant came to an end.

10. It will be fruitful to reproduce findings of Commissioner on this issue, which read as under:

“I have seen the certificate issued by the Manager, ESI, Local Office Noida, dated 13.2.03 received by this office on 13.2.03 where premium/contribution on behalf of the deceased has been shown for the month of 3/95 paid on 15.4.96, for the month of 9/95 paid on 15.9.96, for the month of 3/96 paid twice on 23.12.96 which is strange that the deceased workman died at Noida Hospital on 12.3.1996 the payments were deposited on account of the premium by the management in the year 1996 after the

death of the deceased workman. I have also seen that Shri Ram Narain mentioned that he received message from Computer Heart that the deceased had died and it is clear from the ESI staff that the Computer Heart was also dealing with the manufacture of Sweets and Namkeens. From these I find that there was a link with the management of Computer Heart with the management /respondent, as such I decide that the deceased was working with the respondent management”.

11. In view of above findings, there is no reason to disbelieve that on the date of accident, deceased was employed by appellant. Since, deceased was employed and working with appellant at the relevant time, the death of deceased in ordinary course or even in course of employment, cannot attract liability of the employer, unless there is a casual connection, between death and employment.

12. Section 3(1) of the Act which is relevant here, reads as follows:

“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 if 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 to a rule expressly framed, for the purpose of securing the safety of workmen, or
 - (ii) The willful 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 willful 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."

13. In ***Jyothi Ademma (Supra) Supreme Court held that:***

“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 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, or if the death was due not only to the disease but also the diseased coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable”.

14. Similarly, in ***Mackinon Mackenzie & Co. (P) Ltd. V. Ibrahim Mahammad Issak***, AIR 1970 SC 1906, Supreme Court held;

“5. 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 the 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 that 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 a causal 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 compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act.”

15. In another case, ***Tata Engineering and Locomotive Co. Ltd. Vs. Smt. Reba Rani Mazumdar; (2003)2 ACC 587***, Court held;

“It is well settled that mere death in ordinary course by some bodily ailment or event in course of employment cannot attract liability of the employer under Section 3 of the Act. There should be a casual connection between the employment and the death in an unexpected way in order to bring the accident within Section 3 of the Act. Though it is not necessary to establish the workman died as a result of an exceptional strain or some exceptional work that he did on that day in question”.

16. As per averments made in claim petition, on 6th March, 1996, deceased was preparing sweets in the workshop on Sigri (Angithi) and due to heat of fire and manual labour as well as unhygienic working conditions, he got stringent heart attack and his condition became serious and management got him admitted in Hospital. Thus, the workman died due to heart attack, which he received during the course of employment.

17. Respondent no. 1-widow of deceased, in evidence by way of affidavit (Ex.PW1/A) stated, that on 6th March, 1996, while working for management at his workshop G-17, Sector-III, Noida, U.P, deceased suffered severe heart attack and was admitted in Kailash Hospital. His death certificate is Ex. PW1/1, while certificate issued by concerned Doctor is Ex. PW 1/2. Hospital slips are Ex.PW 1/3 and Ex. PW1/4, respectively.

18. Coming to the Death Certificate Ex. PW 1/2, 'cause of death' is shown as "Cardiac Resp. Arrest ." Death Certificate nowhere states that deceased suffered heart attack due to heat of fire/fire stroke, manual labour or unhygienic working conditions. There is no evidence whatsoever, to support these averments made in the claim petition. Respondents have not been able to prove that Cardiac arrest was a result of the nature of job.

19. It is well settled that mere death ordinary course by some bodily ailment or event in "course of employment", cannot attract liability of the employer, under Section 3 of the Act. There should be a casual connection between "employment and the death in an unexpected way" in order to bring the accident within Section 3 of the Act.

20. Since, deceased died as a result of heart attack, no liability can be fixed upon the employer. The impugned order, thus cannot be sustained and the same is set aside. Present appeal stand allowed.

21. As per order dated 12th November, 2008, appellant has already deposited the entire amount of compensation i.e. Rs. 2,11,000/- before the Commissioner. Out of this amount, except for an amount of Rs. 75,000/-, the balance has since been released to the claimants.

22. Considering the peculiar circumstances of the case, it is directed that there shall be no recovery from the respondents/claimants of any amount paid, though claimants are not entitled to any compensation.

23. Balance amount of Rs.75,000/- lying deposited before the Commissioner, shall be paid to the appellant, after expiry of period of appeal.

24. Appeal is accordingly disposed of.

25. No order as to costs.

26. Trial court record be sent back.

17th September, 2009
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V.B.GUPTA, J.