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C.M.A.No.2154 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2154 of 2022

The New India Assurance Co. Ltd.,
Motor Third Party Claims,
No.232, Bombay Mutual Building, 6th Floor,
NSC Bose Road,
Chennai- 600 001.

.. Appellant

Vs.

1. Srinivasan

2. Priyavathy

3.Vels University,
Thalambur Village,
Chengalpattu Taluk,
Kilambakkam, Kancheepuram-603 103.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Order dated 25.03.2022 made in E.C.No.26 of 2019, on the file of Commissioner of Labour-II, MACT, Chennai.

For Appellant : Mr.P.Sankaranarayanan



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For Respondents : R1- died
Mr.A.G.F.Terry Chella Raja (R2)
No appearance (R3)

J U D G M E N T

Challenging the order dated 25.03.2022 passed by the Commissioner of Labour-II, Motor Accident Claims Tribunal, Chennai in E.C.No.26 of 2019, the Insurance Company has preferred this Civil Miscellaneous Appeal.

2. On 30.08.2018 at about 10.00 a.m, one Mr.Thangavelan @ Thangaraj, who is the son of the 1st respondent and husband of the 2nd respondent, who was working as a Driver of 3rd respondent college bus, while driving the bus after picking up the students, died on the spot having suffered severe heart attack. The respondents 1 and 2 made a claim for compensation under Section 10 of the Employees Compensation Act, 1923.

3. The Commissioner of Labour-II, Chennai-06, on consideration of both oral and documentary evidence, vide order dated 25.03.2022 awarded a sum of Rs.11,63,414/- towards compensation payable by the appellant. Challenging the same, the appellant has come forward with the present appeal.



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4. The only point for consideration arises in this appeal is, whether the death of the deceased was in an accident arising out of and in the course of his employment with the 3rd respondent College, which caused due to stress and strain of the employment?

5. The learned counsel for the appellant would contend that in the Post-Mortem report-Ex.P7, the Doctor opined that the deceased was passed away due to the Coronary Artery Disease (natural cause) and therefore, the workman died due to the natural cause and the Authority should have considered this said aspect. In support of his contention, he referred to Section 3 of the Employees Compensation Act, 1923 (in short 'the Act'), which is extracted hereunder:

"3. Employer's liability for compensation- (1) *If personal injury is caused to a employee 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:*

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

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

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



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

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employees.

(2) If a employee employed in any employment specified in part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a employee whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a employment specified in Part C of Scheule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational diease peculiar to by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved-

(a) that a employeee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continous period which is less that the period specified under the sub-section for that employment, and

(b) that the disease has arisen out of and in the course of the employment; the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that the employee who having served under any employer in any



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employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

2-A. If a employee employed in any employment specified in Part C of Schdule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the comepnasation in such proportion as the Commissioner may, in the circumstances deem just

(3) The Central Government or the State Government after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply in the case of notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2-A), and (3), no compensation shall be payable to a employee in respect of any disease unless the disease is



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directly attributable to a specific injury by accident arising out of and in the course of employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a employee in any Court of law in respect of any injury -

(a) if he has instituted a claim to compensation in respect of the injury before the Commissioner, or

(b) if any agreement has been come to between the employee and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act."

6. By relying upon the above, the learned counsel submitted that the Insurance Company is not laible to pay the compensation and therefore he prayed this Court to allow this Appeal.

7. On the other hand, the learned counsel for the 2nd Respondent relying upon the decision of Hon'ble Apex Court in the case of ***Param Pal Singh Vs. National Insurance Co. Ltd.*** reported in ***2013 (1) TN MAC (SC)***, submitted that if a workan died in the course of his employment, his employer shall be liable to pay the compensation. He further submitted that taking all these aspects into consideration, the Authority has rightly awarded the compensation to the claimants, which requires no interference.



8. Heard the learned counsel appearing on either side and perused the records.

9. In the judgment of the Hon'ble Supreme Court (cited supra) relied on by the learned counsel for the 2nd Respondent, in para 22, the Hon'ble Supreme Court makes it very clear that even a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. The Hon'ble Supreme Court has also followed the decision of the House of Lords in "***Clover Clayton & Co. V. Hughes*** reported in **1910 AC 242**" wherein, it has been held as under:

"4. Even if a workman dies from a pre-existing disease, if a disease if aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in Clover Clayton & Co. V. Hughes, where the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. A post mortem examination showed that there was a large aneurism of the aorta, and that death was caused by reapture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was alsoeep, and very slight exertion or strain would have been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that



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this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and House of Lords:

"No doubt the ordinary accident," said Lord Loreburn, L.C. "is associated with something external: the bursting of a boiler or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as straining of muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight, it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident."

With regard to Lord Macnaghten's definition of an accident being "an unlooked for mishap or untoward even which is not expected or designed" it was said that an event was unexpected if it was not expected by the man who suffered it, even though everyman of commonsense who knew the circumstances would think it certain to happen."

10. In the present case, it is not in dispute that the deceased while undertaking the job of driving as his regular avocation, there was every reason to assume that the avocation of driving was a material contributory factor that accelerated his unexpected death to occur which in all fairness, should be held to be an untoward mishap in his life span and such an untoward mishap can



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therefore be reasonably described as an accident and the same can be safely construed as solely attributable to the nature of employment indulged in with his employer.

11. Therefore, having regard to the facts and circumstances of the case and having followed the decision of the Hon'ble Apex Court, this Court has no hesitation to hold that since the deceased during the course of his employment as a driver, felt uncomfortable having sustained severed heart attack and died on the spot, the death of the deceased was in an accident arising out of and in the course of his employment with the 3rd respondent. Therefore, this Court does not find any infirmity or irregularity in the award granting compensation by the Commissioner of Labour-II and there is no scope to interfere with the same.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed as devoid of merits. No costs.

13. It is represented by the learned counsel for the 2nd Respondent that during the pendency of the Appeal, the 1st Respondent had passed away and the only legal heir of the deceased is now the 2nd respondent who is none other



than his wife. The said submission is taken on record.

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14. In view of the same, the 2nd Respondent is directed to deposit the entire compensation amount before the Joint Commissioner of Labour-II, Chennai-6, within a period of six weeks from the date of receipt of a copy of this order and on such deposit, the said authority is directed to permit the 2nd respondent/claimant to withdraw the same.

24.01.2024

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Index : Yes / No

Internet : Yes / No

To

1. Vels University,
Thalambur Village,
Chengalpattu Taluk,
Kilambakkam, Kancheepuram-603 103.
2. The Commissioner of Labour-II, MACT, Chennai.
3. The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.

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