

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 481 OF 1997

Chief Executive Officer,
Zilla Parishad, Beed

APPELLANT

VERSUS

1. Asarabai w/o Kondiba Jadhav
Since deceased through L.R.
- 1-A. Madhukar s/o Kondiba Jadhav,
Age : 51 years, occu. Labour
R/o Limbaganesh, Taluka and
District Beed
2. Laxmibai w/o Kondiba Jadhav,
Age : 53 years, occu. Nil,
R/o as above
3. Gopinath s/o Kondiba Jadhav,
Age : 38 years, Occu. Labour,
R/o as above
4. Navnath s/o Kondiba Jadhav,
Age : 35 years, Occu. Labour,
R/o as above
5. Madhukar s/o Kondiba Jadhav,
Age : 23 years, Occu. Labur,
R/o as above
6. Shesherao s/o Kondiba Jadhav,
Occu. Agri., R/o as above
7. Shivkalyan s/o Kondiba Jadhav,
Age : 29 years, Occu. Agri.,
R/o as above

RESPONDENTS

(Appeal is dismissed as against
respondents No. 3 to 7 vide

Additional Registrar's order
dated 22.12.1998)

Mr. H.K. Munde, Advocate for the appellant
Mr. G.M. Jadhav, Advocate for respondents No.1-A & 2
Appeal is dismissed as against respondents No. 3 to 7
vide Additional Registrar's order dated 22.12.1998

CORAM : M.T. JOSHI, J.

DATE : 20/02/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the direction to pay compensation to the present respondents No. 1 to 7, in a proceeding under section 8 of the Workmen's Compensation Act, the present appeal is preferred by the original respondent i.e. the employer of deceased Kondiba.
3. The facts of the case, in nutshell, would show that deceased Kondiba was working as watchman with the present appellant – Zilla Parishad, Beed. It was the case of the present respondents that he was appointed as sepoy, but was asked to carry the duties of a watchman on daily wages. Thereafter, he was taken on regular

temporary establishment w.e.f. 1st April, 1978. He was thereafter sent on deputation to the Divisional Office, Minor Irrigation of Zilla Parishad, Beed. During the relevant period, he was serving as watchman and on 10th June, 1993, he died due to cardiac arrest. It is the case of the respondents that as the deceased suffered the heart-attack in the night while working as night watchman, it was pleaded that as the deceased died due to the nature of the work, without his own fault, therefore the compensation be granted. The necessary pleadings regarding the salary, age, etc. of the deceased were made.

4. The present appellant denied all the adverse allegations. It was submitted that the appellant is not liable to pay any compensation. According to the appellant, the deceased has died his natural death and that the deceased was in employment on the basis of 'maroof' contract (as a result of employment due to collective bargaining between the Union and the Employer). In the circumstances, it was submitted that the appellant is not liable to pay compensation.

5. Before the learned Commissioner, whole of the evidence was directed, as to the fact, as to whether there was any causal connection between the death of the deceased and his employment. The respondents have examined the deceased respondent No. 1 Asrabai i.e. the widow and the colleague of the deceased, namely, Hari Sasane. On behalf of the original respondent/present appellant, the officer, namely, Mr. Mudgal was examined.

6. The learned Commissioner came to the conclusion that the deceased died suddenly during the course and out of his employment while performing his duty. It was found that the police had recorded the panchanama and also carried the post-mortem examination of the dead-body. In those circumstances, the compensation of Rs. 30,000/- with penalty of Rs. 15,000/- was granted.

7. Mr. H.K. Munde, learned counsel for the appellant submits that there was no causal connection between the death of the deceased and his nature of employment. Merely because he died during the duty hours due to cardiac arrest, does not mean that he died during the course of the employment. Mr. Munde,

therefore, submitted that the learned Commissioner ought to have considered this fact and ought to have dismissed the application.

8. Mr. G.M. Jadhav, learned counsel for the respondents, submits that the evidence on record would show that the deceased had suffered stress due to the nature of work i.e. as night watchman. He was required to take rounds during the night and thus, as sufficient evidence was led before the learned Commissioner that there was a causal connection between the death of the deceased and the nature of his work, no fault can be found with the reasoning forwarded by the learned Commissioner. Mr. Jadhav further submitted that as no substantial question of law has arisen, re-appreciation of evidence is not required. Hence, on this ground, he submits that the appeal be dismissed.

9. On the basis of above material on record, in my view, a substantial question of law, as framed below, has arisen in the present appeal :-

“Whether the learned Commissioner for Workmen's

Compensation has committed patent error in appreciating the evidence that there was causal connection between the death of the deceased and the nature of the work of the deceased?"

My finding to the above point is in the affirmative. The appeal is, therefore, allowed, for the reasons to follow:-

R E A S O N S

10. The deceased was admittedly employed as sepoy. He was asked to work as night watchman at certain project. The evidence of respondent No.1 Asrabai (since deceased) would show that for a period of 5 to 7 years, the deceased was working as such. Though there was no proof regarding age of the deceased, at the time of filing of the petition before the learned Commissioner, respondent No. 1 Asrabai – the widow of the deceased had shown her age as 47 years. It can thus be inferred that the deceased was above 50 years of age.

11. The respondent No. 1 Asrabai has deposed that

deceased Kondiba was posted at Chavanwadi Project as a watchman. He had worked as a watchman there for about 5 to 7 years and thereafter, he was shifted to the office as a peon. Thereafter, he was allotted duty of night watchman. He died about three years after carrying such a duty. The deceased used to inform her that he was loaded with burden of duty, as he was required to take round during night hours, as there were machines and other goods in the compound. Further, according to her, the deceased was complaining that he was not given the watchman's duty during the day time and therefore, he was complaining of stress due to heavy work. During her cross-examination as well as the cross-examination of her witness, it has come on record that the deceased had left behind him two wives and five children. It was denied that the deceased was not suffering from any stress due to the nature of the duty.

12. PW2 Hari Sasane deposed that he was knowing deceased Kondiba as he was working with the same department. According to him, deceased used to complain to him that he was feeling stress due to the office work and that he was required to perform the duty which was

not expected and in the circumstances, the deceased was found dead while on duty. The cross-examination of this witness would reveal that he was also allotted the duty of night watchman and was not allotted duty during the day time. He denied that the deceased never made complaint to him.

13. The appellant's witness Mr. Mudgal Shetty deposed that he was an Engineer and therefore, was not aware about the ground situation.

14. On the basis of this evidence, the learned Commissioner came to the conclusion that as the death of deceased Kondiba was sudden and on duty itself, therefore, he has died during the course of and out of his employment.

15. Mr. G.M. Jadhav, learned counsel for the respondents, relied on the ratio laid down in the case of **"Mst. Param Pal Singh through Father Vs. M/s National Insurance Co. and another"**, reported in **2013 (1) ALL MR 456 (S.C.)** and the judgement delivered by this Court on **20th March, 2014 in First Appeal No. 482/1997 (Chief**

Executive Officer, Zilla Parishad, beed Vs. Madhav s/o Santu Pandit).

16. On the other hand, Mr. Munde, learned counsel for the appellant, relied on the ratio laid down in the case of **"Superintending Engineer, Maharashtra State Electricity Board, Sangli and others Vs. Smt. Susheela V. Dhongade and others"**, reported in **2004 (4) Mh.L.J. 997.**

17. The law on the issue has been completely revisited in the case of **"Mst. Param Pal Singh through Father Vs. M/s National Insurance Co. and another"** (cited supra), by the Supreme Court of India from paragraph No. 22 to paragraph No. 25, as under :-

"22. However, there are decisions of the English Court as early as of the year 1903 onwards stating that unlooked-for mishap or an untoward event which is not expected or designed should be construed as falling within the definition of an accident and in the event of such untoward unexpected event resulted in a personal injury caused to the workman in the course of his employment in connection with the trade and business of his employer, the same would be governed by the provisions of Section 3 of the Workmen's Compensation Act. Such a legal principle evolved from time immemorial

got the seal of approval of this Court and for this purpose we can refer to the celebrated decision in *Ritta Farnandes* (supra). After referring to the decision of House of Lords in *Clover Clayton & Co. V. Hughes* reported in 1910 A.C. 242 this Court referred to the relevant passage in the decision of House of Lords in paragraph 4, which reads as under:

:4. Even if 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. 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 a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, 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 this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and the 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 event 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.

23. In a recent decision of this Court in *Shakuntala Chandrakant Shreshti* (supra), the factors to be established to prove that an accident has taken place have been culled out and stated as under in paragraph 28:

:28. 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:*

24. In *Mallikarjuna G. Hiremath V. Branch Manager, Oriental Insurance Co. Ltd.* and another reported in AIR 2009 SC 2019 the principles to attract Section 3 of the Workmen's Compensation Act have been stated as

under in paragraph 14:

:14. There are a large number of English and American decisions, some of which have been taken note of in ESI Corpn's case (supra) in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. 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. The Madhya Pradesh High Court in Smt. Sundarbai V. The General Manager, Ordnance Factory, Khamaria, Jabalpur reported in 1976 Lab I.C. 1163 in paragraph 10 the principles have been culled out as under:

:10. On a review of the authorities, the principles insofar as relevant for our purposes may be stated as follows:

(A) Accident means an untoward mishap which is not expected or designed by the workman. Injury means physiological injury.

(B) Accident and injury are distinct in cases where accident is an event happening externally to a man; e.g. when a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and in such cases accident and injury coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work.

(C) Physiological injury suffered by a workman due mainly to the progress of disease unconnected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence.

(D) The connection between the injury and employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury.

(E) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man might hold that the more probable conclusion is that there was a connection."

Zilla Parishad, Beed Vs. Madhav s/o Santu Pandit" (First Appeal No. 482/1997), decided by this Court on **20th March, 2014**, the case was of a deceased lady who was on manual duty of repairing of road and she died due to the heart-attack. In those circumstances, it was held that there was causal connection between her death and nature of her duties.

19. In the case of **"Superintending Engineer, Maharashtra State Electricity Board, Sangli and others Vs. Smt. Susheela V. Dhongade and others"** (cited supra), relied on by Mr. Munde, learned counsel for the appellant, it was found that a clerk who was required to work as meter reader, had died suddenly and it was, therefore, found that there was no causal connection between his death and the nature of his work.

20. In the case of **"Mst. Param Pal Singh through Father Vs. M/s National Insurance Co. and another"** (cited supra), a 45 years old driver, who was required to drive heavy vehicle regularly from Delhi to Nimiaghat at a distance of 1152 kms., had suffered from giddiness while applying certain bolt to the wheel of the truck

and taking into consideration the principles those were enunciated from various authorities, as detailed supra, it was held in paragraph No. 27 that the deceased was only 45 years old driver, died unexpectedly, who was regularly driving the vehicle to a distant place which was 1152 kms. away from Delhi and therefore, it was observed that it was at least material contributory factor if not the sole cause that accelerated his unexpected death to occur.

21. Here in the present case, what we find is that the deceased was above 50 years age. He was carrying job of night watchman. He died due to heart-attack. Though the respondent No. 1 Asarabai as well as one of his colleagues have deposed that the deceased was complaining regarding the nature of the work/duty, the nature of the work was not of such a nature that any strain would occur. The learned Member, however, finding that the deceased died suddenly due to heart-attack while on duty, did not appreciate as to whether there was a causal connection between the death of the deceased and the nature of his duties and came to the conclusion that the death has occurred during the course

and out of his employment, the compensation was granted. In my view, a patent error is committed by the learned Member while allowing the petition. In the result, the following order:-

22. The appeal is hereby allowed without any order as to costs. The order of the Commissioner for Workmen's Compensation, Beed, dated 12.08.1996, passed in Workmen's Compensation Application No. 2/1995, is hereby set aside. Instead, the said W.C. Application No. 2/1995 itself is dismissed without any order as to costs throughout.

23. The amount deposited by the present appellant be refunded to it after a period of sixty days from the date of this judgement.

[M.T. JOSHI]
JUDGE