

*** THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

+ C.M.A.No.884 OF 2005

% 14.10.2015

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The Manager, Singareni Collieries Co. Ltd & Anr.

Appellants

VERSUS

\$ Arkati Gattu Mallu & Others

Respondents

! Counsel for Appellants : Sri M. Soloman Raju,

representing Sri J.Prabhakar

^ Counsel for the respondents : Sri S. Surender Reddy

<GIST:

> HEAD NOTE:

? Cases referred

1. (2008) 2 CLT 541
2. (1996) 6 SCC 1
3. 2004 (4) ALT 277
4. AIR 1963 Gau 127 (FB)
5. (2006) 5 SCC 513
6. AIR 1961 AP 15
7. (2013) 3 SCC 409

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL MISCELLANEOUS APPEAL No.884 OF 2005

JUDGMENT:

This civil miscellaneous appeal is preferred under Section 30 of the Workmen's Compensation Act, 1923 (the Act), assailing the order dated 31.3.2005 in W.C.No.4 of 2002 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Adilabad.

2. For the sake of convenience, the parties to this appeal will be referred to as they are arrayed before the lower authority.

3. The facts leading to filing of the present appeal are briefly as follows: The applicant No.1 is the wife and applicant Nos.2 to 4 are the children of one Arkati Rajaiah @ Rajamallu. Arkati Rajaiah (hereinafter referred to as 'the deceased') died while working as Lineman in SRP-3 Incline Sreerampur of Singareni Collieries

Company Limited (SCCL). On 24.5.2001 the deceased attended first shift in the mine and at about 2.45 PM due to suffocation he suffered cardio respiratory arrest and died in course of his employment. The Station House Officer, Sreerampur Police Station registered a case in Crime No.44 of 2001 under Section 174 of Cr.PC. After completion of investigation, the Investigating Officer submitted final report to the Mandal Executive Magistrate/Revenue Divisional Officer, Mancherial, on 23.9.2001, stating that the deceased died in the mine accident. By the time of his death, the deceased was aged about 40 years and earning Rs.10,000/- per month. In spite of several representations, opposite parties did not choose to pay compensation to the applicants. The applicants got issued legal notice dated 04.2.2002 requesting opposite party No.1 to pay compensation of Rs.4,00,000/- to the applicants within 15 days from the date of the notice while addressing a copy to opposite party No.2. Having received the notice, opposite party Nos.1 and 2 did not choose to pay the compensation. Hence, they filed an application under Section 22 of the Act claiming a compensation of Rs.4,00,000/- from the Opposite Parties.

4. The opposite party Nos.1 and 2 filed counter admitting that the deceased worked as Lineman in SRP-3 Incline, Sreerampur and died on 24.5.2001 due to heart attack while attending first shift. It is contended that at the place of work along with the deceased five others worked and if suffocation was cause of the incident, other workmen could also have suffered the same problem. The ventilation, temperature and air quantities are well within the stipulated and statutory limits. The reports reveal that the place where the deceased and five others worked was having sufficient ventilation, air temperature, and the temperature was only 26.5⁰ C at the work place. In the report dated 25.8.2001, the Civil Assistant Surgeon, Mancherial stated the cause of death was due to cardio-respiratory arrest which was because of circulatory collapse but it is not due to the heat exhaustion. There is no possibility of getting heat exhaustion to the deceased where the temperature was as low as 26.5⁰ C. Except the deceased, no other workman complained anything either during the course of work or after completion of the work on that day. The accident must arise out of and in the course of employment and then only the employer is liable to pay compensation. In the instant case, the deceased did not receive any personal injury on 24.5.2001 arising out of and in the course of his employment leading to his death. There is no casual connection between the death of deceased and his employment. The deceased was aged 42 years and earning Rs.6,222/- gross wages per month at

the time of his death. Hence, the application is liable to be dismissed.

5. Basing on the rival contentions, learned Commissioner framed the following issues:

(1) Whether the deceased was a workman, within the meaning of the W.C. Act, 1923?

(2) Whether the accident occurred during the course of employment under opposite party No.1?

(3) What is the age and wage of the deceased is to be determined?

(4) What relief the applicants are entitled and who are liable for paying compensation?

6. During the course of enquiry, on behalf of the applicants, P.W.1 was examined and Exs.A1 to A10 were marked. On behalf of opposite party Nos.1 and 2, R.Ws.1 and 2 were examined and Exs.B1 to B3 were marked. On appraising the oral, documentary evidence and other material available on record, the learned Commissioner arrived at a conclusion that the deceased died out of and in course of his employment and allowed the petition in part by awarding compensation of Rs.3,56,980/-with interest at 9% per annum excluding 30 days from the date of the accident till the date of deposit. Feeling aggrieved by the orders of the learned Commissioner, opposite party Nos.1 and 2 preferred the present appeal.

7. The contention of Sri M.Soloman Raju, learned Advocate representing Sri J.Prabhakar, learned standing counsel for opposite party Nos.1 and 2 is three fold:

(1) The oral testimony of R.Ws.1 and 2 coupled with Exs.B1 and B3 clinchingly establishes that the deceased died due to heart attack; therefore opposite parties are, in any way, not liable to pay compensation to the applicants under the W.C. Act;

(2) The learned Commissioner ought to have held that the death of the deceased would fall outside the purview of employment, as the nature of employment has nothing to do with the death of the deceased;

(3) The learned Commissioner lacks inherent jurisdiction to entertain the application filed by the applicant, as the claim of the applicants falls outside the purview of Sub-section (1) of Section 3 of the W.C. Act.

Per contra, Sri S.Surender Reddy, learned counsel for the applicants submitted that the findings recorded by the learned Commissioner are fully supported by the recitals of Exs.A1, A2, A3, A8 and A10. He further submitted that the deceased died due to respiratory failure and that aspect was considered by the learned

Commissioner in right perspective and allowed the petition. He also submitted that even as per the testimony of R.W.1, the opposite parties paid the compensation to the workmen who died while attending the work irrespective of nature of death.

8. Basing on the rival contentions, the substantial questions of law that arise for consideration in this appeal are:

1. *Whether there is casual connection between the nature of employment and the death of the deceased?*
2. *Whether the death of the deceased falls outside the purview of Sub-section (1) of Section 3 of the W.C. Act, which disentitles the applicants to file application under Section 22 of the W.C. Act?*

Question Nos.1 and 2:

9. Both the questions are interlinked with each other; hence, I am inclined to address both the questions simultaneously in order to avoid recapitulation of facts, evidence and law.

10. It is a settled principle of law that the learned Commissioner lacks inherent jurisdiction to entertain the application under the provisions of the W.C. Act in the absence of employer-employee relationship between the opposite party No.1 and the deceased. To put it in a different way, establishment of employer and employee relationship is *sine qua non* to entertain the application under Section 22 of the Act. The specific case of the applicants is that by the time of unfortunate incident, the deceased was working as Lineman in SRP-3 of Sreerampur. This particular aspect was admitted by the opposite parties in the counter. Suffice it to say, admitted facts need not be proved. Therefore, there is no much dispute between the parties with regard to employer-employee relationship between opposite party No.1 and the deceased. Therefore, I am fully agreeing with the finding recorded by the learned Commissioner on issue No.1.

11. Before advertng to the controversial facts of the case, let me consider the provisions of the W.C. Act. The W.C. Act is a piece of beneficial and social security legislation. The court has to interpret the provisions of the W.C. Act in order to achieve the object for which the Act was enacted. The very purpose of the Act is to provide for payment of certain classes of workmen compensation for injury by accident. To claim compensation from the employer, the injured workman or legal representatives of the deceased workman, have to satisfactorily prove the

ingredients of Sub-section (1) of Section 3 of the Act. For better appreciation of the rival contentions, it is not out of place to extract hereunder Sub-section (1) of Section 3 of the Act.

Section 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.

A perusal of Sub-section (1) of Section 3 of the W.C. Act, at a glance, demonstrates that initial burden of proof cast on the applicants to establish that the personal injury is caused to the deceased-workman arising out of and in the course of his employment. Once the workman or the legal representatives of the deceased-workman *prima facie* establishes the ingredients of Sub-section (1) of Section 3 of the W.C. Act, onus of proof shifts to the employer to establish that the case of the workman or the legal representatives of the deceased-workman falls outside the purview of Sub-section (1) of Section 3 the W.C. Act. It is apposite to refer the case-law on which the learned counsel for both the parties have placed reliance in order to substantiate their respective submissions.

12. To substantiate the arguments, learned counsel for the opposite parties has drawn my attention to the decision of Madras High Court in **Oriental Insurance Co. Ltd., v Saraswathi**, wherein at paras 21 to 23 it was held as follows:

21. There are a large number of English and American decisions, some of which have been taken note of in *ESI Corporation v Francis D. Costa*, 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.

22. 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.

23. There is a crucial link between the casual 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.

13. The learned counsel for the applicants has drawn my attention to the decision of this court in **Union of India v S.Mariyamma**, wherein at para 30 it was held as follows:

30. From a conspectus of the above decisions, broadly the following aspects would emerge, to determine the aspect of accident "arising out of and in the course of employment": -

(1) The minimum requirement is establishment of the fact of casual connection between the accident and the work done in the course of employment.

(2) It is not necessary that the workman must be actually working at the time and place of his work, when and where the accident or death/injury occurred.

(3) Even if the accident had occurred during the course of employment of a workman, there shall not be any voluntary involvement in a peculiar or exceptional danger which results from the nature of employment, or the workman must not have contributed to the peril, some thing by his own conduct or exposing himself to risk, which risk, in normal course, is not expected to be taken by the workman.

(4) It is sufficient to prove that there was casual connection between the employment and the injury/death. It is also not necessary that the workman died as a result of exceptional strain or exceptional work.

(5) The width of time of employment need not necessarily be confined to the working hours of the workman. The movements of the workman which are ancillary to the employment shall also be taken into consideration to determine the aspect of "during the course of employment".

(6) Even if a workman was suffering from heart disease, if the nature of the work has contributed to the deterioration in his health condition resulting his death, such injury can be said to be an "accident" said to have occurred during the course of his employment.

14. In **Assam Railways and Trading Co. Ltd., v Swaraswati Devi**, the High Court of Assam held as follows:

In order to determine whether an accident could be held to have arisen out of the employment of the victim with the Company, it has been laid down in various decisions that the following tests would require to be fulfilled, namely,

(1) that the workman was in fact employed on, or performing the duties of, his employment at the time of the accident;

(2) that the accident occurred at or about the place where he was performing these duties, or where the performance of these duties required him to be present;

(3) that the immediate act which led to or resulted in the accident had some form of causal relation with the performance of these duties, and such causal

connection could be held to exist if the immediate act which led to the accident is not so remote from the sphere of his duties or the performance thereof, as to be regarded as something foreign to them.

15. In **Jyothi Ademma v Plant Engineer, Nellore**, the Hon'ble Apex Court held as follows:

6. Under Section [3\(1\)](#) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a 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 disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.**

7. The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In *Fenton v Thorley & Co. Ltd.*, 1903 AC 443 : 72 LJKB 787 : 89 LT 314 (HL), it was observed that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, A.C. in *Trim Joint District School Board of Management v Kelly*, 1914 AC 667 : 83 LJPC 220 : 111 LT 305 (HL) as follows:

"I think that the context shows that in using the word 'designed' Lord Macnaghten was referring to designed by the sufferer."

(emphasis supplied)

16. In **Kondiseti Anjaiah v T.Lakshmaiah**, this court, at para 11, held as follows:

11. In *Blumby v Cobben Flour Mills Co. Ltd.*, 1914 AC 62, the appellant was employed with two others in a room in the respondent's mill to stack bundles of sacks. The bundles were always stacked by hand. After the men had raised the bundles as high as they could by hand the appellant resolved to utilize for this purpose a revolving shaft which ran along with the room near the ceiling but was not used in connection with any machinery in that room. A rope was thrown over the shaft and one did was made fast to a bundle which was then handled by means of the shaft to the top of the stack.

The appellant, who was standing on the stack while endeavouring to extricate a bundle which had been hauled too high and had stuck between the shaft and the ceiling, got his arm entangled in the rope and was carried round the shaft and injured. It was held that there was no evidence to support a finding by the county court judge that the accident arose out of the workman's employment within the Workmen's Compensation Act. The following observations at page 68 are illustrative;

"Was the risk one reasonably incidental to the employment? And the question may be further amplified according as we consider what the workman must prove to show that a risk was an employment risk, or what the employer must prove to show it was not an employment risk.

As regards the first branch, I think the point is very accurately expressed by the Master of the Rolls in the case of *Craske v. Wigan*, (1909) 2 KB 635 where he says:

"It is not enough for the applicant to say, 'The accident would not have happened if I had not been engaged in that employment or if I had not been in that particular place'. He must go further and must say 'The accident arose because of something I was doing in the course of my employment or because I was exposed by the nature of my employment to some particular danger'."

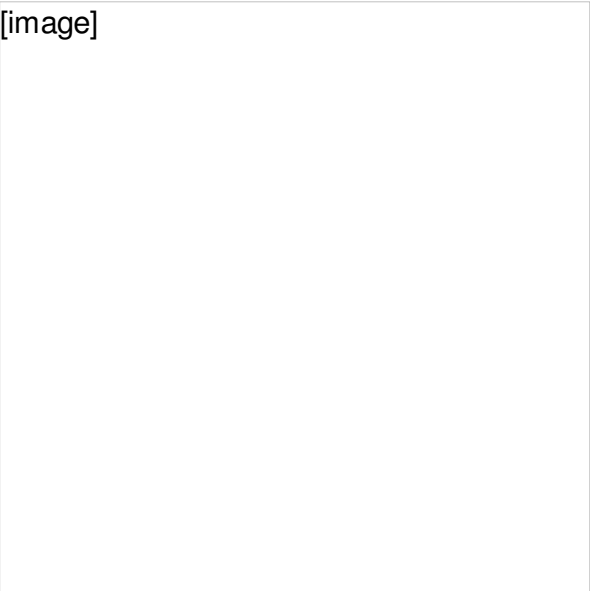
As regards the second branch, a risk is not incidental to the employment when either it is not due to the nature of the employment or when it is an added peril due to the conduct of the servant himself. Illustrations of the first proposition will be found in all the cases where the risk has been found to be a risk common to all mankind and not accentuated by the incidents of the employment. In application to facts the dividing line is sometimes very nearly approached, but I think that in all the cases the principle to be applied has

been rightly stated.

An illustration of the second proposition will be found in the case already cited of (1912) AC 44 where Lord Atkinson said: 'The unfortunate deceased in this case lost his life through the new and added peril to which by his own conduct he exposed himself, not through any peril which his contract of service, directly or indirectly, involved or at all obliged him to encounter'. Lord Atkinson added the words 'It was not, therefore, reasonably incidental to his employment. That is the crucial test' ".

In *Mrs. Margaret Thom or Simpson v. Sinal* AID 1917 AC 127, a workman employed by a fish curer, while working in a shed belonging to her employer, was injured by the fall of a wall which was being built on the property of an adjoining proprietor, with the result that the roof of the shed collapsed and the woman was buried under the wreckage. It was held in that case that the accident arose out of her employment within the meaning of the Workmen's Compensation Act, 1906. Viscount Haldane approved the observations of the Master of the Rolls, extracted earlier in the judgment, namely, that the claimant should be able to say that "the accident would not have happened if I had not been engaged in that employment, or if I had not been in that particular place, and the accident arose because of something I was doing in the course of my employment, or because I was exposed by the nature of my employment to some peculiar danger". It is further observed by Lord Parmoor, in the case, at page 146 as follows:

"In my opinion, if the conditions of the workman's employment oblige him to work in a particular building and thereby expose him to the risk of the accident which has happened, this may be described as a peculiar danger to which, from the nature of the employment, the workman is exposed.



A risk may be accentuated by the incidents of the employment when the conditions of the employment oblige the work to be carried on in a particular building which exposes the workman to the risk of the accident which in fact has occurred. An example of the application of this principle is found in the case of *Andrew v. Edleworth Industrial Society*, (1904) 2 K. B. 32 at p. 34, which is approved in the opinion of Lord Dunedin.

Collins M. B. says: "Though it" (the accident) "may not be connected with, or have any relation to, the work the man was doing, yet, if in point of fact the position in which the man was doing the work, and the place he must necessarily occupy while doing the work, are a position and a place of danger which caused the accident, it may fairly be said that it arose out of the employment, not because of the work, but because of the position",

To sum up, the legal principles involved in determining whether the accident had arisen out of and in the course of a person's employment, it is enough if it is established that (1) at the time of the accident he was in fact employed on the duties of his employment; (2) that it occurred at the place where he was performing those duties; and (3) that the immediate act which led to the accident is not so remote from the sphere of his duties as to be regarded as something foreign to them.

17. In **Param Pal Singh v. National Insurance Co.**, the Hon'ble apex court, at page 424, while considering the circumstances similar to the case on hand, held as follows:

29. Applying the various principles laid down in the above decisions to the

facts of this case, we can validly conclude that there was *causal connection* to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45-year-old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

30. Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that the deceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle on the side of the road near a hotel soon whereafter he breathed his last. In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside.

18. Let me consider the facts of the case on hand in touchstone with the provisions of the W.C. Act and in the light of the principle enunciated in the cases cited supra. To substantiate the case, applicant No.1 examined herself as P.W.1 and got marked Exs.A1 to A10. To demolish the case of applicants, Safety Officer of SRP-3 Incline Sreerampur examined himself as R.W.1. R.W.2 is the Medical Officer of SCCL. Exs.B1 to B3 were marked on behalf of opposite parties. As seen from the testimony of P.W.1 and R.W.1, on 24.5.2001 the deceased attended the first shift work in SRP-3 and 3A Sreerampur. The oral testimony of R.Ws.1 and 2 clearly reveals that the deceased died while attending the duty at SRP-3 Incline Sreerampur. Thus, the applicants have proved that the deceased died at the work place.

19. There is a serious dispute between the parties as to cause of death of the deceased. The opposite party Nos.1 and 2 contend that the death of the deceased was due to heart attack, which is nothing to do with the nature of his employment; therefore, opposite parties are not liable to pay any compensation. To substantiate their contentions, the opposite parties mainly relied upon the testimony of R.W.2.

The oral testimony of R.W.2 (Senior Medical Officer at R.K.8 Dispensary of Sreerampur Project) reveals that on receiving information over phone that a person collapsed in SRP-3 and 3A Incline, he went there at about 3.45 PM and on examination found the said person dead. In the cross-examination he stated that cause of death of deceased is to be ascertained by Post Mortem Examination and its reports. A perusal of Ex.A3 Post Mortem Examination Report clearly reveals that viscera and blood collected from the body of the deceased were sent to Forensic Laboratory, Hyderabad for chemical analysis and report.

20. A perusal of Ex.A3 Post-mortem Examination report also reveals that no external injuries were found on the body of the deceased. A perusal of Ex.A1 F.I.R. reveals that the Station House Officer, Sreerampur Police Station registered a case in Crime No.44 of 2001 under Section 174 Cr.PC. As per the recitals of Ex.A1, the deceased complained uneasiness at 5L junction of main Incline. As per the recitals of Ex.A2 Inquest panchanama also the deceased complained uneasiness prior to his last breath. In column No.9 of Ex.A2 Inquest panchanama, it is mentioned that immediately after the death, the body of the deceased became blackish. As per Ex.A10 final medical report, the deceased died due to cardio respiratory arrest because of circulatory collapse secondary due to the heat exhaustion. The Sub Inspector of Police, Sreerampur submitted final report to the Executive Magistrate, Mancherial (Ex.A8). As per the final medical report, the deceased died in the Mine due to collapse and circulatory exhaustion of heat. Ex.B1 is the original copy of ventilation, temperature, gas testing and air sample report dated 25.5.2001. This report indicates temperature, ventilation and air condition in the Mine as on 25.5.2001. In the cross-examination, R.W.1 admitted that the name of the Mine is not mentioned in Ex.B1. Basing on Ex.B1, it is not possible to arrive at a conclusion that temperature, ventilation and air were available as per the guidelines on 24.5.2001. Basing on Ex.B1, it is also not possible to arrive at a conclusion that required oxygen was available in the Mine in question on 24.5.2001. It is a matter of common knowledge that the temperature in the month of May would be very high even in the plain area. In such circumstances, the possibility of heat exhaustion in the Mine cannot be ruled out completely. Ex.B2 is copy of certificate determining the age of the deceased, which will not throw any light on the controversial aspects. R.W.2 is the author of Ex.B3 is office copy of non-accident medical report dated 25.5.2001. A perusal of Ex.B3 clearly reveals that the medical investigation conducted by R.W.1

shows mild cardiomegaly; Lungs clear; and there is no bone injury to skull and pelvis. When the lungs are clear, there is every possibility of supply of purified blood to the heart. If the respiratory system, lungs and heart function harmoniously, the possibility of cardio-respiratory arrest would not arise in normal course. Even as per Ex.B3, the deceased has not been suffering with chronic cardiomegaly. The cause of death of the deceased is not mentioned in Ex.B3 non-accident medical report. The court shall not be carried away with the nomenclature of a document. It is not mentioned in Ex.B3 that the deceased died of heart attack. If the deceased died of heart attack, what prevented R.W.2 to mention the same in Ex.B3. The oral testimony of R.W.3 is not supported by the recitals of Ex.B3 so far as the cause of death of the deceased is concerned.

21. If the medical evidence available on record is taken into consideration, the deceased died due to exhaustion of heat in the Mine. Without too much going into medical jargon, the difference between 'heart attack' and 'cardio-respiratory arrest' can be understood. A heart attack occurs when one or more of coronary arteries become blocked. Over time, a coronary artery can become narrow from the build-up of various substances, including cholesterol (atherosclerosis). This condition, known as coronary artery disease, causes most heart attacks. Cardio-respiratory arrest occurs when respiratory system fails. Respiratory system means supplying of oxygen to lungs, which in turn supply purified blood to the heart. If any individual is unable to get the required oxygen, it may affect the functioning of the respiratory system which eventually leads to non-supply of required oxygen to lungs. The ill-functioning of lungs will automatically stop pumping of purified blood to the heart. Once impure blood enters into the heart, there is a blockage of blood in the coronary arterilleries instantaneously and causes sudden cardiac arrest. A heart attack is caused when blood flow to the heart is blocked, and sudden cardiac arrest is caused when the heart malfunctions and suddenly stops beating unexpectedly.

22. The crucial question that falls for consideration here is whether there is any possibility of a workman sustaining cardio respiratory arrest while working in a coal mine. If the answer is affirmative, there is statutory obligation on the part of opposite parties to pay compensation to the claimants as per the provisions of the W.C. Act. If the answer is negative, the workman or the legal representatives of deceased-workman are not entitled to claim compensation by pressing into service the

provisions of the W.C. Act. R.W.1 is competent to speak about the climatic condition under which the deceased worked on 24.5.2001. It is not in dispute that the first shift starts at 7.00 AM and ends by 3.00 PM. Even as per the testimony of R.W.1, the nature of the work of the deceased was carrying the rails. In the cross-examination, R.W.1 in unequivocal terms testified that six linemen have to carry on rail weighing 150 KGs from 10 to 75 Mtrs in the underground. In eight (8) hours of duty, the linemen have to repeat the above nature of work from 15 to 20 times. Each workman will be provided with one light and gas testing. As per the testimony of R.W.1 on the ill-fated day, the deceased attended the duty from 8.30 AM to 2.45 PM. The evidence placed on record clinchingly establishes that the deceased continuously carried on rail weighing up to 2.45 PM. Just before closing of the first shift, the deceased complained of uneasiness. Immediately his colleagues shifted him to 5-Level junction where he died. The fact remains that the deceased was in the Mine at the relevant point of time. In column No.8 Ex.A2 Inquest panchanama it is clearly mentioned that SRP-3 is a coal mine and it is ½ (half) KM underneath the surface.

23. Even as per the case of the opposite parties, they provide ventilation and gas testing in the Mine. This itself indicates that oxygen available in the Mine would not be on par with surface. Interestingly, the opposite parties have not verified whether there is any defect in the gas testing supplied to the deceased. If there is defect the possibility of non-getting of required oxygen cannot be ruled out completely. Undoubtedly the work carried out by the deceased involves stress and strain. In such circumstances, the stress and strain coupled with insufficient oxygen certainly affect the health condition of a workman. Two individuals may not have same condition of health. Simply because other five workmen have not complied with uneasiness by itself is not a valid ground to discard the version put-forth by the applicants without considering the other attending circumstances. The requirement of oxygen may differ from person to person depending upon functioning of different organs of human body. The availability of oxygen differs from place to place. A person working in a Mine may feel suffocation if he could not get required oxygen. The material placed before the learned Commissioner clinchingly establishes that one may not get required oxygen in the Mine. Even assuming that the workers have been provided with light and gas testing, the possibility of not getting required oxygen by the deceased cannot be ruled out completely. As observed earlier, the Investigating Officer submitted final report to the Mandal Executive

Magistrate/Revenue Divisional Officer, Mancheri, on 23.9.2001, stating that the deceased died in the mine accident. It is not out of place to extract hereunder the relevant portion of the cross-examination of R.W.1 *"I admit that if the workman dies in the mine accident our management is liable to pay compensation as per the W.C. Act."* The nature of the work being attended by the deceased undoubtedly involves strain and stress coupled with want of required oxygen.

24. Even as per the testimony of R.W.2, there are no external or internal injuries on the body of the deceased. The final medical report (Ex.A10) submitted by the Medical Officer clearly establishes the link between the nature of work and cause of death of the deceased. The medical evidence fully supports the version put forth by the applicants so far as the cause of death of the deceased is concerned.

25. In the light of the foregoing discussion, the facts that emerged are the deceased while discharging his duty as lineman on 24.5.2001, got suffocation and by reason of consequent respiratory failure, he succumbed to death. There is no evidence of external or internal injuries over the body of the deceased. The opposite parties have not filed any document showing that the deceased has been suffering from chronic heart ailment and there is no casual connection between the nature of employment and cause of death. The important points to be noted here are: (1) the incident happened in the coal mine, which is ½ KM underneath the surface; and (2) the unfortunate incident occurred in the last week of May, in which time the temperature even on the surface is very high, more particularly in coal belt area.

26. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that the applicants have established the proximate nexus between cause of death of the deceased and arduous nature of work being attended by the deceased in course of his employment. The deceased died out of and in course of his employment; therefore, they are entitled to compensation under the W.C. Act.

27. The learned Commissioner has considered the oral and documentary evidence with reference to scope of Sub-section (1) of Section 3 of the W.C. Act and arrived at a conclusion that the deceased died out of and in course of his employment. The findings recorded by the learned Commissioner are based on evidence much less legally admissible evidence.

28. As per the case of the applicants, the deceased was aged about 40 years. The

applicants have not produced any document to prove that the deceased was aged about 40 years by the time of his death. As per the recitals of Ex.B2, the deceased was aged about 42 years. Basing on Ex.B2, the learned Commissioner has taken the appropriate factor as 178.49. As per Ex.A7 pay clip the deceased was drawing Rs.9,139.96 ps per month. The learned Commissioner has taken the monthly wages of the deceased as Rs.4,000/- in view of ceiling under the provisions of W.C. Act. By meticulously following the procedure contemplated under the Act, the learned Commissioner rightly awarded the compensation of Rs.3,56,980/-. The opposite party Nos.1 and 2 are liable to pay the compensation. There are no grounds much less valid grounds to interfere with the well considered order of the learned Commissioner. The civil miscellaneous appeal lacks merits and *bona fides*. Accordingly, the questions are answered.

29. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 14-10-2015

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