

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.125 of 2009

JUDGMENT:

This appeal is preferred questioning order dated 10.07.2007 in W.C.No.14 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-I, Visakhapatnam.

2. First respondent herein submitted application to the Commissioner for Workmen's Compensation (for short "lower authority") to direct appellants herein to pay compensation of Rs.3,38,880/- along with interest and contending that her husband N. Simhadri died on 09.09.2003 while he was on duty as guard in a passenger train No.228 plying from Visakhapatnam to Rayapur. She further contended that her husband died at railway station of Rayagada, when the train reached Rayagada, the co-workers shifted the body to the hospital, Rayagada, where postmortem was conducted. She stated that herself and her daughters by name Santhosh Ramadevi and Ramani are dependants of the deceased as appellants herein have not paid any compensation though demanded, and hence, she prayed for compensation.

3. Appellants opposed the claim contending that death is only due to acute myocardial in function leading to cardiac arrest, respiratory failure, which is a natural one and it is not due to any stress in discharge of his duties, therefore appellants are not liable to pay any compensation under the provisions of Workmen's Compensation Act. On these contentions, lower authority conducted enquiry, during which, one witness is examined on behalf of claimants and 6 documents are marked and two witnesses are examined and 3 documents are marked on behalf of

appellants and on a over all consideration of oral and documentary evidence, lower authority held that appellants herein are jointly and severally liable to pay compensation of Rs.3,38,880/-. Questioning the same, present appeal is preferred.

4. Heard advocate for appellants.

5. Advocate for appellants submitted that there is absolutely no evidence on record to show that the death was accidental and due to stress in discharge of his duties as guard, on the other hand, evidence on record would disclose that it was a natural death due to acute myocardial in function leading to cardiac arrest, therefore there is no liability for the employer/appellants.

6. He relied on a decision of Hon'ble the Supreme Court reported in **Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvah & another**^[1], wherein it was clearly held as under:

39. Unless evidence is brought on record to elaborate that death by way of cardiac arrest has occurred because of stress or strain, Commissioner would not have any jurisdiction to grant damages. In other words, claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. It is now well-settled for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the fact of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question.

40. Section 30 of the said Act postulates an appeal directly to High Court if a substantial question of law is involved in the appeal.

41. A jurisdictional question will involve a substantial question of law. A finding of fact arrived at without there being any evidence would also give rise to a substantial question of law. From the order passed by the Commissioner, it appears,

he has not arrived at a finding that the job involved any stress or strain. It was merely stated that he was working as a Khalasi in a truck which was going to Taverwadi Village from Kolhapur to get the milk. The autopsy was conducted at Chandgad District Hospital. The driver Prashant Chandrakant Shreshti admittedly brought him to hospital. He was his brother. The post-mortem examination commenced from 6.30 a.m. on 28.9.2002 and ended at 7.30 a.m. on the same day. From the post-mortem report, it appears that in the accompanying report, it is stated that the death was due to sudden heart attack. When exactly the death took place is not known. It will bear repetition to state that under what circumstances the death took place is also not known. There was also no pleading in this behalf. The commissioner came to the conclusion that the death took place during the course of the employment but then no evidence has been brought on record to show that it had a casual connection between accident and serious injury so as to fulfill the requirements of the terms "out of employment". Indisputably, there has to be a proximate nexus between cause of death and employment. A stray statement made by appellant that the deceased had died while working in the vehicle and stress or strain of the work did not appear to have any foundation. Admittedly she was not present at the spot. She had also no personal knowledge. All these facts she had admitted in cross-examination.

7. He submitted that in view of the decision referred to above, the order passed by lower authority is not tenable. He further submitted that appellants have already provided job under compassionate appointment to one of the children of the deceased and so also paid all the other benefits to the family members of the deceased and prayed that appeal has to be allowed and the impugned order dated 10.07.2007 in W.C.No.14 of 2005 is liable to be set aside.

8. In spite of granting sufficient time, no arguments are advanced on behalf of claimants/respondents.

9. Now the point that would arise for my consideration is:

Whether the order of the Commissioner for Workmen's Compensation & Assistant Commissioner of Labour, Circle-I, Visakhapatnam is legal, proper and correct?

POINT:

10. I have perused the material papers including the impugned order dated 10.07.2007. There is no dispute that deceased N.Simhadri died on 09.09.2003 while on duty as guard in a passenger train due to cardiac arrest. On behalf of claimant, she herself is examined as AW.1 and she reiterated the petition averments in the claim petition and to the documents relied on by her. On behalf of appellants, two witnesses were examined and both of them deposed that passenger train No.228 was running from Visakhapatnam to Rayapur on 09.09.2003 and the deceased had to work as outgoing guard at Rayagada station in the said train and he signed for duty and taken over charge of train No.228 from Rayagada station to Titlagarh station prior to 30 minutes before the arrival of train at Rayagada station as per extent rule. They further stated that after arrival of train, Sri N.Simhadri further taken over the charges from the incoming guard of the said train and he was in the break van to exchange the signal and to start the train at 8.20 hours, the break van porter of the concerned station noticed that the outgoing guard Simhadri fell down and laying on the seat. He immediately reported to SS/RGDA on duty, outgoing drivers and all others and on receipt of message, the Assistant Divisional Medical Officer, Rayagada attended on him and found that Simhadri died at 8.30 hrs. They further stated that as per Postmortem report most probable cause of death was due to acute myocardial arrest, respiratory failure and it is a case of heart attack, which is a natural death and the same was occurred during the course of his employment.

11. As rightly pointed out by advocate for appellants there is absolutely no evidence on record to show that there was any

stress that resulted in death of the deceased. As per the decision of Supreme court referred to above, unless such evidence is brought on record the lower authority would not get any jurisdiction to entertain any claim made on behalf of dependants of the deceased.

12. Here, from the submission of advocate for appellants, family members of the deceased were already provided a job under compassionate appointment and all other death benefits were given to the family members therefore in view of these aspects and relying on decision of Supreme Court, I am of the considered view that the lower authority has erred in granting compensation without there being any material to show that the death was due to stress and strain.

13. For these reasons, the impugned order dated 10.07.2007 in W.C.No.14 of 2005 on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-I, Visakhapatnam is set aside. Railways are at liberty to recover money if already taken away by the claimant under due process of law.

14. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Advocate fee is fixed at Rs.5,000/- .

Miscellaneous petitions, if any pending, in this appeal shall stand closed.

S. RAVI KUMAR, J

Date: 30-06-2016.

gvl

[\[1\]](#) AIR 2007 Supreme Court 248