

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No. 2809 of 2016

and

CMP.No.20349 of 2016

M/s. Savamalai Coffee Estate P Ltd.,
Manampalli,
Valparai taluk,
Coimbatore District - 642 127
Rep.by its Authority Signatory ... Appellant

Vs

1. Tmt. Parukutty,
2. Rama,
3. Reshma,
4. United India Insurance Company Limited,
Old No.1028, New No.768,
United India Building,
Coimbatore - 641 018. ... Respondents

This appeal is filed under Section 30 of workmen Compensation Act 1923 against the order dated 05.10.2016 in E.C.No.88 of 2014 on the file of the Deputy Commissioner of Labour, Coimbatore (Commissioner for Workmen Compensation, Coimbatore).

For Appellant : Mr.S.Ravi
for M/s.Gupta & Ravi
For Respondents 1 to 3 : Mr. P.Saravana Sowmiyan
For 4th Respondent : Mr.T. Ravichandran

JUDGEMENT

Challenging the order of the Commissioner of Workmen's Compensation made in E.C.No.88/2014 the present appeal is filed. The case of the respondent 1 to 3 herein, who were the claimants, is that the husband of the first respondent and the father of the respondents 2 and 3. D.Chandran was working with the appellant Management as a casual labourer engaged in spraying of pesticides in the plantation. It appears that on 17.4.2014, the said D.Chandran had finished his work at 3.00 p.m. and left for his house and at 9.30 pm he complained chest

pain, he was taken to the Government Hospital at Valparai, where it was declared that he was brought dead. Therefore, according to the claimants, the death occurred due to the stress and strain suffered by the deceased Chandran in the course of his employment.

2. The said claim was resisted by the appellant-Management, contending that the deceased Chandran has completed his work at about 3.00pm and left for his residence and around 9.30pm, when it was informed that D.Chandran has got chest pain, he was immediately taken to the Government Hospital at Valparai, where he was declared dead. According to the appellant-Management, the death did not occur in the course of the employment and therefore, the appellant-Management is not liable to pay the compensation. It is further contended that even assuming that the appellant-Management is liable to pay the compensation, there is a valid Insurance policy covering the risk and it is only the 4th respondent Insurance Company, which has to pay the compensation.

3. Before the Deputy Commissioner, the first claimant, namely the wife of the deceased Chandran was examined as PW1 and Exs.P1 to Ex.P5 were marked. On the side of the appellant-Management, one Papu, an employee of the Management was examined and R.Nithyanandan was examined on the side of the 4th respondent-Insurance company.

4. The Tribunal allowed the claim on the basis of the available materials and held that the incident had occurred during and in the course of employment and it was further held that the appellant-Management is liable to pay compensation. The quantum of compensation was determined at Rs.4,23,651/- and it was apportioned between the appellant-Management and the Insurance company. The liability of the Insurance company was fixed at Rs.85,217/- and the balance amount Rs.3,38,434/- was directed to be paid by the appellant management.

5. Aggrieved by the same, the appellant-Management is on appeal before this Court.

6. I have heard Mr.S.Ravi, learned counsel appearing for M/s.Gupta & Ravi, for the appellant, Mr.P. Saravana Sowmiyan, learned counsel appearing for the respondents 1 to 3 and Mr.T.Ravichandran, learned counsel appearing for the 4th respondent.

7. Mr.S.Ravi, learned counsel appearing for the appellant would contend that the claimants have not established that the incident had occurred out of and during the course of employment. He invited my attention to the decision of the

Hon'ble Supreme Court in Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruthi Garvali and another, reported in [2007 (1) LLN 570], wherein the Hon'ble Supreme Court has observed as follows:

"25. The principles are:

(1) There must be a causal 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.

29. 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."

Relying upon the above observations of the Apex court, the learned counsel would contend that unless it is shown that the death occurred

(i) because of the stress and strain arising during the course of employment;

(ii) the nature of the employment;

(iii) the injury was aggravated due to stress and strain, it cannot be said that the Deputy Commissioner of workmen's Compensation has the jurisdiction to grant compensation.

8. The Hon'ble Apex Court had further held that in order to confer jurisdiction on the Commissioner of workmen's Compensation the above factors should be established. Unless it is brought home by the claimant that the incident actually occurred during the course of employment, the Commissioner for Workmen's Compensation cannot assume jurisdiction to award compensation. The following observation of the Hon'ble Supreme Court in paragraph 41 of the Judgment referred to Supra will be apposite in the circumstances:-

"41. Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before that the commissioner unless such jurisdictional facts are

found, the commissioner will have no jurisdiction to pass an order. It is now well-settled that 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."

9. It is also held by the Supreme Court in the said decision that the jurisdictional question will involve a substantial question of law in an appeal Under Section 30 of the Workmen's Compensation Act.

10. The learned Counsel for the appellant would also invite my attention to the judgment of this Court in Oriental Insurance Company, Ltd., Chennai v. Saraswathi and another reported in [2008 (4) LLN 287], wherein Hon'ble Mr. Justice S. Manikumar has held as follows:-

"23. As stated supra, in order to succeed the claim, the claimant has to prove that the employee sustained an "employment injury" arising out of and in the course of employment. Both the conditions have to be fulfilled before a claim to be made under the workmen's Compensation Act.

24. In the instant case, there is no direct evidence that a personal injury was caused to the workman by an accident, while he was discharging his duties in the course of employment...."

11. The learned Judge has also further pointed out that when the finding of the Commissioner for Workmen's Compensation Act, lacks legal evidence and if perversity is apparent on the face of the record then a substantial question of law is made out under Section 30 of the Workmen's Compensation Act and therefore, interference is called for. In Oriental Insurance Company, Ltd v. Smt. Chinnapillai and others [2008 (4) LLN 303], Hon'ble Mr. Justice R. Sudhakar had an occasion to consider a similar tea estate case, wherein the deceased suffered a massive heart Attack while plucking the tea leaves and after referring to the Judgment in Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruthi Garvali and another, [2007 (1) L.L.N. 570] referred to supra, this Court has held that unless it is shown that there was a relationship between the nature of the work done and the injuries suffered, the Commissioner for Workmen's Compensation has not got jurisdiction. In the said Judgment in para 31 it was observed as follows:-

"31. Only because a person dies of heart attack, the same does not give rise to automatic

presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf."

12. In view of the above legal pronouncements it has to be seen as to whether the claimants have made out a case to enable the Workmen's compensation Commissioner to invoke his jurisdiction to grant compensation.

13. Mr.P.Saravana Sowmiyan learned counsel appearing for the respondents 1 to 3 who are the claimants, would rely upon the judgment of a Division Bench of this court in Management of Pachamalai Estate, Valparai v. Smt. Mani, reported in 2007 (1) L.W.249. The learned counsel would draw my attention to the observations of the Division Bench, wherein it is stated that the estate worker who was working in a trench, suffered heart attack and died in the course of the employment. Even in the said Judgment, in para 14, the Division Bench sounded a note of caution and as observed as follows:-

"14. This is not to suggest that in every case where an employee dies in heart attack while on duty, it must be taken that the death is on account of accident arising out of and in the course of employment. Obviously, the court is required to find out on the basis of materials on record whether there is any causal connection between the nature of work and the disease suffered by the workman. Obviously any conclusion is to be arrived on the basis of evidence on record and it cannot be laid down as an Universal principle that every case of death of employee during working hours on account of heart attack, that, the accident arose out of and in the course of employment."

14. In decision of the Supreme Court reported in [2013 (3) SCC 409], Parampal Singh through father v. National Insurance Company and Another, the Supreme Court had an occasion to consider the question and Hon'ble Mr.Justice F.M.Ibrahim Kalifulla, who authored the judgment, after referring to Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruthi Garvali and another, [2007 (1) L.L.N. 570] and the judgment of the Madhya Pradesh High Court in Sundarbai v. Ordnance Factory Lab, [1996 Lab IC 1163], observed in para 27 as follows:-

"27. The Madhya Pradesh High Court in Sundarbai v.Ordnance Factory Lab IC in para 10 has culled out the principles as under: (lab IC p.1168)

"10. On a review of the authorities, the principles insofar as relevant for our purpose 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 a 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."

Finally the Hon'ble Apex Court concluded on the facts that the driver who has driven to a distance of 1152 Kilometers, died immediately after reaching the destination and would have undergone a severe stress and that was a contributory factor for his death.

15. In the instant case, it is admitted that the deceased Chandran had completed his work at 3.00p.m. and returned to his quarters and his duty was only spraying of pesticides in the plantation. It is not the case of the claimants that he was assigned any other tougher work on the said day so as to complain that he had suffered additional stress or strain on the fateful day, that is, on 17.04.2014. He has done his normal work and returned to his residence, and thereafter, around 9.30pm in the night nearly six hours after completing his work, he had suffered a heart attack. There is no evidence to show that there was additional stress or strain because of some additional work that he was asked to do on the particular day. The evidence of PW1 is that despite Chandran complained of chest pain even during the work, he was forced to work, cannot be believed in the absence of any other disinterested testimony.

Admittedly, there was no post-mortem and the cause of death was not known.

16. As per law declared by this court as well as the Hon'ble Supreme Court referred to above, unless it is shown that the death was caused by stress or strain caused during the course of employment, the Commissioner for Workmen's Compensation cannot assume jurisdiction to grant compensation.

17. The findings of the learned Deputy Commissioner for Workmen's Compensation, on these aspects, are perverse and do not appear to be normal conclusion on the effect of the evidence. Therefore, the award of the Commissioner Workmen Compensation is liable to be set aside and is accordingly set aside. The appeal is allowed. However, there shall be no order as to costs. Consequently the connected miscellaneous petition is closed. If the appellant or the 4th respondent had deposited any amount, pursuant to the award before the Commissioner for Workmen's Compensation they will be entitled to withdraw the said amount.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jv/av
To

The Deputy Commissioner of Labour,
(Commissioner for Workmen's Compensation)
Coimbatore.

Copy to
The Section Officer,
VR Section, High Court, Madras

+lcc to Mr.T. Ravichandran, Advocate, S.R.No.49339
+lcc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.49344
+lcc to M/s.Gupta & Ravi, Advocate, S.R.No.49295

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SV(CO)
CS/28/08/17