

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

C.M.A.No. 1983 of 2014

S.Ramasamy

...Appellant

Vs.

1.The Management,
Murugali Estate,
Murugali Estate Bazaar,
Valparai 642 118.

2.The National Insurance Co-Ltd.,
46, More St, Division II,
Chennai.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 against the award of the Deputy Commissioner of labour, Coimbatore in W.C.No.6 of 2003 dated 19.03.2004 received on 27.05.2004, dismissing the claim of the petitioner.

For Appellant : Mr.S.N.Ravichandran

For Respondent 1 : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

For Respondent 2 : Mr.J.Chandran

ORDER

The claimant is the appellant before this Court. This claim petition was filed on the death of his wife who was an employee under the first respondent. On 02.08.2001, when the deceased employee was working under the first respondent, she died due to stress and strain while returning from the estate. She was aged about 30 years at the time of death and was earning a sum of Rs.2500/- per month. Based on these facts, he claimed a sum of Rs.2,59,975/- as compensation. The respondent management denied the incident and contended that the death was during the course and arising out of employment. The deceased was already a heart patient and died of natural causes and not within the

precincts of the estate. Since she was doing only weeding works, it cannot be said that death was caused due to stress and strain and therefore the claimant is not entitled to any compensation.

2. Two witnesses each were examined on both sides and four documents vide exhibit P1 to P4 and R1 to R4 were marked. On consideration of the oral and documentary evidence, the Commissioner for Workmen's Compensation held that the death did not happen during and out of the course of the employment and dismissed the claim petition.

3. Aggrieved over the same, the appellant is before this Court. This Civil Miscellaneous Appeal was admitted on the following Questions of law:

"a. Whether the Labour Commissioner is correct the holding that the death was not during the course of employment, when the evidence are clear that the death occurred while returning home from the duty?

b. Whether the Labour Commissioner is right in discarding the evidence of Ganesan to dismiss the claim?"

4. On perusal of the evidence, it is seen that the claimant had examined himself as P.W.1 and co-worker as P.W.2. Admittedly, the deceased was an employee under the first respondent management and that she had worked on 02.08.2001 at the estate of respondent, for, it is seen from the evidence of R.W.1 Assistant Field Officer, the deceased had worked at 9B forest on 02.08.2001. It is stated by R.W.1 that the work was over by 02.30 P.M, all the workers have left on account of the Aadi peruku. Therefore, he would depose that the deceased did not die during the course of the employment, but after a long time after her return and the death cannot be said arising out of the employment. From the deposition of R.W.1, it is clear that the deceased was employed under the first respondent management on the date of incident.

5. The estate supervisor examined as R.W.2 also admit in his evidence that the deceased was doing light work under his supervision and that she did not die due to stress and strain. Both the witnesses of the respondent would affirm that the death was not due to stress and strain, but it is the uniform statement that both of them were aware of the death only on the next day i.e. 03.08.2001. Even after ignoring the evidence of P.W.2-Co-worker, from the evidence of P.W.1 and R.Ws.1 & 2, it is clear that on the fateful day, the deceased was admittedly under employment of first respondent/ management. In such circumstances, it has to be seen as to whether she died during the course of employment and that the death arose out of the employment.

6. In various Cases of the Supreme Court and High Courts, there has been a good deal of discussion on the meaning of "Phrases" - "arising out of and in the course of his employment" appearing in Sec.3 of Workmen's Compensation Act. The significant principles are as follows:

(1) There must be connection (Casual) between injury 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) It is not necessary that the workman must be actually working at the time of death.

(4) If it satisfies a reasonable man that the work contributed to the causing of the personnel injury it would be enough for the workman to succeed.

7. In the instant case, the employee was returning from work and found dead on the way. Whether she proceeded through the usual route or taken a short cut, the fact remains that the employee, while on her return suffered death. P.W.2 would clearly depose that the deceased was doing stone work which was arduous. Even though, it is stated on the side of the management that the deceased employee was only doing light work, the death has some casual connection with the work. This Court is of the considered opinion that it arose out of the employment. The learned counsel for the first respondent would vehemently contend that the death was due to the natural cause and it cannot be said that it arose of the employment. But there is no evidence on the side of management to prove the same.

8. The judgment by the Supreme Court in the case JYOTHI ADEMMA Vs. PLANT ENGINEER, NELLORE & ANR. decided on 11.07.2006 is as follows:

"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 of 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.

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 448, 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."

9. From this it is clearly seen that the death, even assuming not during the course of employment has some casual connection with the work and it was accelerated by the same. Returning from work in the forest route falls within the meaning of employment and it should be considered that it arose out of the employment.

10. It has also been held in management of DEVON ESTATE, NILGIRIS Vs. NABEESA and another (1991 ACJ 489) as follows:

"The expression 'out of and in the course of his employment' has been the subject of interpretation in numerous cases. There is also the expression "accident" in the section. The basic and indispensable ingredient of accident is unexpectedness. A second ingredient, however, has been added in most judicial decision. The injury must be traceable within reasonable limits to a definite time, place and occasion or cause."

11. It has also been held in MADRAS STATE ELECTRICITY BOARD VS. AMBAZHATHINGAL ITHACHUTTI UMMA ((1966) 2 LLJ 12) is as follows:

"if the accidental injury suffered in the course of his employment is the proximate cause of the employee's death, the previous physical condition is unimportant".

12. Reliance is also placed in B.M.SODHA VS. HINDUSTAN TILES ((1977) 2 LLJ 95), wherein it was held as follows:

"The sudden collapse of the worker after he suffered this injury resulting in his chest pain was clearly the result of his work connected with the work he was doing. In fact, this was a clear case where the old age got coupled with the employment and, therefore, the employment was a contributory cause and the casual connection being established, the conclusion was inescapable that the accident arose out of and during the course of the employment".

13. It has also been held in the MANAGEMENT OF VANNIAR ESTATE HIGHWAYS, MADURAI DISTRICT VS. KAMATCHI & COMMISSIONER FOR WORKMEN'S COMPENSATION, MADURAI(II(1991) ACC 63) is as follows:

" a pre- existing heart condition which was aggravated by the strain of the work of the deceased resulting in his death would constitute accidental injury within the meaning of the Act."

13. Reliance is also placed in UNITED INDIA INSURANCE COMPANY VS. C.S.GOPALAKRISHNAN & ANOTHER (1989(II) LLJ 30), a Bench Decision of High Court of Kerala, wherein it was stated as follows:

"Though there should be casual connection between the employment and the death in the unexpected way, in order to bring the accident within Section 3, it is not necessary that it should be established that the workman died as a result of exceptional stain on some exceptional work that he did on the day in question. If the nature of the work and the hours of work caused great strain to the employee and that strain caused the unexpected death, it can be aid that the workman died as a result of accident which has arisen in the course of his employment."

14. Considering all the above decisions, this Court is of the considered opinion that the deceased death arose during and out of the course of the employment. The Commissioner for Workmen's Compensation Act without considering the evidence in proper prospective, went on to dismiss the claim which is patently illegal and perverse. Accordingly, the order passed by the authority is set aside.

15. Even though, the claimant has stated that the deceased was earning a sum of Rs.2,500/- per month, it is not proved through documentary evidence. On the other hand, the first respondent management would admit in their counter that the deceased was earning only a sum of Rs.1501/-. In such circumstance, this Court fix the monthly wage of the deceased at Rs.1500-/. Since this Court has already taken a view that the death arose within the course of the employment, the claimant is entitled to compensation.

16. It is also an admitted case that the employment of the deceased was covered by insurance by second respondent. In such case, the second respondent is liable to pay the compensation. The second respondent is therefore directed to deposit the appropriate compensation along with the interest at the rate of 6% per annum from the date of accident till the date of deposit.

In fine, this Civil Miscellaneous Appeal is allowed as per the above observations.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The Deputy Commissioner of Labour,
Coimbatore.

2. The Management,
Murugali Estate,
Murugali Estate Bazaar,
Valparai 642 118.

3. The National Insurance Co-Ltd.,
46, More St, Division II,
Chennai.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No. 87534

+1cc to Mr.J.Chandran, Advocate, S.R.No. 87353

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SPD (CO)
GN (02/11/2018)

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