

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 07-12-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.890 OF 2009

M.Akilandanayaki

... Appellant/Petitioner

-vs-

1.The General Manager,  
Solaiyar Estate,  
Solaiyar Post,  
Valparai-642 127

2.New India Assurance Co.Ltd.,  
5, Raja Mill Road,  
Pollachi-642 001.

... Respondents/Respondents

Appeal against the order, dated 18.12.2008, passed in W.C.No.17 of 2007 on the file of Commissioner for Workmen's Compensation, Coimbatore.

For appellant : Mr.K.S.Narayanan

For respondent 2 : Mr.K.Padmanabhan

JUDGMENT

Aggrieved over the dismissal of the claim by the authority under the Workmen's Compensation Act for the death of husband of the appellant, the present appeal is preferred.

2. The case of the claimant/appellant was, that on 04.07.2006, when her husband reported for duty at the first respondent at 07.30 a.m., he fell swooned and was taken to hospital, where he was declared dead at around 08.45 a.m. Therefore, compensation was claimed for the death of her husband from the respondents, who were employer and insurance company. The respondents denied all the averments in the claim petition, on the grounds that the death was not out of and during the course of employment; the deceased workman died of heart attack at his house and, therefore, they were not liable to pay any compensation.

3. The authority below, relying on a judgment of the Hon'ble Supreme Court in Shakuntala Chandrakant Shreshti v. Prabhakar Maruthi Garvali, 2006 (2) TNMAC = 2007-2-L.W.858, and another of this Court in Oriental Insurance Co. Ltd. v. Chinnapillai, 2007 (2) TN MAC 136, has held that the death had not occurred due to stress and strain out of the arduous nature of job done by the deceased workman, which was thereby not during the course of employment and, therefore, the claimant was not entitled to any compensation. Aggrieved over the finding, the claimant has filed this appeal.

4. According to the learned counsel for the appellant, there is a clear evidence by the management witnesses M.W.1 and M.W.2 that the deceased was deputed to do cutting work and thereby he was put to stress and strain and, therefore, it should be construed that the death had occurred during the course of employment and that the authority should have awarded the compensation.

5. Heard both sides.

6. From a perusal of the material available on record, it is seen that the deceased was working as a Supervisor under the first respondent. He was deputed to work in the garden/forest, for supervising the cutting work. Further, the evidence of workmen's witness, W.W.1, who is the wife of the deceased, would go to show that on the previous day, her husband came home healthily and left for job on the next day morning in a healthy condition. However, there is no pleading to the effect that the deceased workman was subjected to any arduous nature of work or that the nature of his job was one of arduous nature.

7. When there is no pleading as well as evidence to prove the arduous nature of job and that stress and strain caused by the same led to the death of the workman, the Hon'ble Supreme Court, in the case of Shakuntala Chandrakant Shreshti, cited above, has set out the principles as under :

"25. 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.

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."

8. Therefore, in the instant case, in the absence of any evidence that the workman had undertaken a work, which was arduous in nature, and due to which, he suffered stress and strain, it cannot be presumed that the death was caused due to stress and strain. Further, there is no evidence to show that the supervisor also had a duty to undertake the arduous nature of work, which caused the stress and strain. On the other hand, all the witnesses clearly depose that the deceased workman came to the work spot in a healthy condition; he suddenly suffered chest pain and was taken to hospital, where he was declared dead. In the absence of any proof that the workman died due to stress and strain arising out of and during the course of employment, the appellant/claimant is not entitled to any compensation. Also, it is an admitted fact that the working time was between 08.00 a.m. and 08.00 p.m. But, the workman witness would say that the deceased workman suffered chest pain around 07.15 a.m. and was taken to hospital between 07.30 a.m. and 07.45 a.m., and declared dead around 08.45 a.m., which would go to show that the death of the workman had not occurred during the course of employment. In such circumstances, no question of law much less substantial question of law arises for consideration in this case to interfere with the award passed by the authority below.

9. Civil Miscellaneous Appeal deserves no merit and is dismissed. No costs.

Sd/-  
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

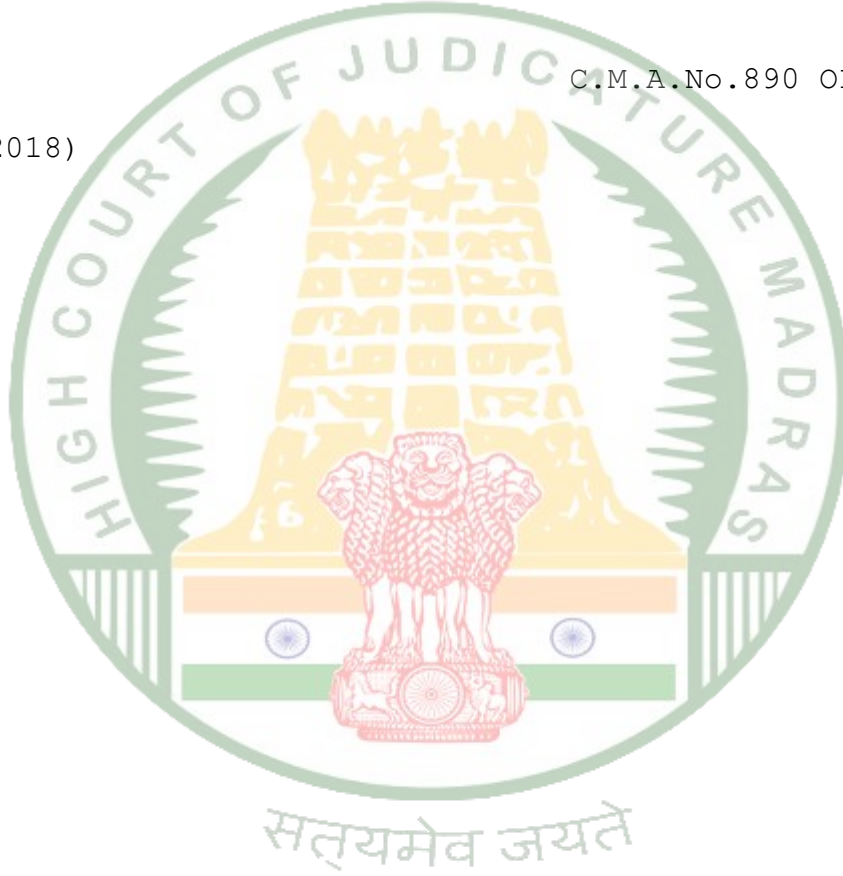
1.Commissioner for Workmen's Compensation,  
Coimbatore.

2.The Section Officer,  
VR Section, High Court,  
Madras.(2 Copies)

+1cc to Mr.K.Padmanabhan, Advocate SR.No.87220

SR(CO)  
GN(09/01/2018)

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