

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.339 of 2007

JUDGMENT:

This appeal is filed by the Insurance Company against the orders dated 27.01.2007 in W.C.No.11 of 2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Vijayawada.

The brief facts of the case are that the first applicant was the wife and the second and third applicants are the minor children of one G.S. Raju, who died on 05.06.2001. Earlier to this, he sustained an injury arising out and in the course of employment while working as a driver on the lorry belonging to the first opposite party which is insured with the second opposite party. The further case of the applicants is that the deceased sustained serious injuries and was treated medically for the same. He was discharged from the hospital but due to post-traumatic depression, he died on 05.06.2001. Claiming that the death was due to the injuries sustained earlier and the consequent depression, the application was filed seeking compensation.

The first respondent did not file his counter and admitted the employment of the deceased as driver, but denied his liability to pay compensation. Second opposite party denied the entire case and stated that the death was not related to the accident.

On the applicants side, the first applicant was examined as AW.1, the Doctor, who treated the deceased, was examined as AW.2 and another witness was also examined as AW.3 Exs.A.1 to A.7 were marked, while Exs.X.1 & X.2 were marked through the Doctor. On behalf of the opposite parties, two witnesses were examined and a copy of insurance policy was marked as Ex.B.1. The Commissioner for Workmen's Compensation after assessing the entire evidence passed an order directing the payment of compensation of Rs.2,96,704/. It is this order that is assailed in the appeal now.

Heard Sri A.V.K.S. Prasad, learned counsel for the appellant/insurance company and Sri Ravi Kumar Tolety, learned counsel for the respondents/applicants.

The learned counsel for the appellant/insurance company argues that the Commissioner erroneously came to a conclusion that the death of the deceased on 05.06.2001 was related to the injuries sustained earlier and he vehemently argues that there was no nexus between the injury and the death of the deceased. Therefore, he argues that the death was not related to the employment. He relied upon a judgment of the Hon'ble Supreme Court of India in ***Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another***¹ wherein it was clearly held that there should be a clear nexus between the cause of the death and the stress and strain of the employment. The Supreme Court

¹ (2007) 11 SCC 668

also stressed the need for adequate pleading and proof in such cases. The “link” in the words of the Hon’ble Supreme Court between the employment and the death is a “crucial link”. This crucial link has to be established. On the other hand, the learned counsel for the respondents/ applicants justified the award passed by the Commissioner and cited a judgment reported in ***Durbshan B. Curseetjees Sons, Kakinada v. D. Sesharathnam***², which is of a learned single Judge of this Court. It was a case where a person sustained head injury on 01.05.1976. He was treated in a hospital till 06.05.1976 and was discharged. Later, he joined the duty and while he was on duty working as a supervisor he died on the high seas. The learned single Judge of this Court held that from the medical evidence adduced in that case, a valid inference could be drawn that the earlier accident accelerated or contributed to the death even after the lapse of some period. The evidence in that case allowed this Court to draw the inference. Therefore, the crucial question for decision in this case is whether there is any “crucial link” between the death and the accident that occurred.

The appraisal of the evidence shows that the applicant’s wife deposed as AW.1. There is nothing in her evidence to show that her husband’s mental state was bad and he suffered from traumatic stress leading to a suicide on 05.06.2001. She was the best witness to speak about the

² 1987 ACJ 467

mental state of her husband, but unfortunately in chief examination itself, there is no evidence either of the mental trauma or of the finding stress and strain from the loans he had supposedly incurred for his treatment.

The second witness who was examined as AW.2 is the doctor who treated the deceased after the injury. No questions were posed to this Doctor about the mental state of the deceased nor was any question posed to him of the expenses incurred for the medical treatment. The Doctor also deposed that there is no life danger to the deceased due to the femur fracture. AW.3 is a driver, who knew the family members of the deceased for the last 10 years. He also did not depose about the mental status of the deceased. On the contrary, he also deposed that he does not know about the consequent events after the death. Therefore, there is no evidence of any mental stress on the deceased nor is there any positive evidence to show that he had borrowed money for his treatment. In addition to this, the post-mortem report which is filed as Ex.A.3 clearly discloses that the cause of death is suicide.

The issue No.1 framed by the Commissioner is also to this effect whether the deceased has committed suicide, as a result of the accident arising out of and in the course of employment. A reading of the finding of the Commissioner on the first issue shows that the learned counsel for the applicants argued that basing on the medical literature that

the persons after the accidents develop post traumatic stress disorder and there is a tendency to commit suicide also. It is a fact that post traumatic stress disorder is a medically recognized condition. However, the existence of the said condition should be proved. In the case on hand, there is neither pleading nor proved to justify the existence of such a stressed mental condition. The Commissioner came to the conclusion that the death was due to the employment injury. The very words used by the Commissioner to the effect “the deceased might be deranged and he might have committed suicide” clearly leads to the inference that there was no material to show that the deceased was in fact depressed due to the accident or due to the loans incurred by him for his treatment. Therefore, this Court has come to the conclusion based on the judgment of the Supreme Court reported in ***Shakuntala Chandrakant Shreshti***'s (1 supra) that the applicants failed to prove the nexus between the death and the accident. Para-24 of the said judgment is again being reproduced.

“There is a crucial link between the causal 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.”

Therefore, in the facts and circumstances of the case, particularly the lack of medical evidence or other evidence linking the death to the employment injury, this Court has

come to the conclusion that the Commissioner is committed a jurisdictional error based on surmises and conjectures. Consequently, the order of the Commissioner is liable to be set aside.

Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned order dated 27.01.2007 of the Commissioner for Workmen's Compensation in W.C.No.11 of 2003 is hereby set aside. However, there shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 27.11.2017
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D.V.S.S. SOMAYAJULU, J

