

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-03-2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.2608 of 2017
and
C.M.P.No.15180 of 2017

The Managing Director,
M/s.Cheyyar SEZ Developers Pvt. Ltd.,
SEZ, Plot No.3-A,
Sipcot Industrial Park,
Mangal Village, Maathur Post,
Cheyyar Taluk,
Thiruvannamalai District - 631 701. Appellant

Vs

T.Vijayalakshmi Respondent

PRAYER : Civil Miscellaneous Appeal filed to set aside the order dated 02.09.2016 made in E.C.No.500 of 2012 on the file of the Deputy Commissioner of Labour - 2, Chennai.

For Appellant : Mr.M.R.Dharani Chander

For Respondents: Mr.Balan Haridas

J U D G M E N T

The appeal has been filed against the award passed by the Workmen's Compensation Commissioner, awarding a sum of Rs.6,82,760/- for the death of one A.Thirumaran, during the course and under the employment of the appellant on 22.02.2017, when he was at Delhi due to work of the appellant.

2.The respondent's husband A.Thirumaran was employed as Executive Vice General Manager of the appellant company. The respondent's husband was paid a monthly salary of Rs.93,650/-. The said officer due to his work went to Delhi on 20.02.2017 for receiving certain papers relating to Visa of the officials of the appellant. Since the papers were not ready, he was compelled to stay at Delhi on 22.02.2017 also, on which date he

died due to heart attack. Therefore, the respondent filed claim petition before the Workmen's Compensation Commissioner. The Workmen's Compensation Commissioner, found that the husband of the respondent, who comes under the definition of "employee", died during the course and under the employment of the appellant and that due to stress and strain, arising out of the job, the respondent's husband died and hence a sum of Rs.6,82,760/- was awarded by the Workmen's Compensation Commissioner. The said award is being challenged before this Court.

3. On the following question of law, the appeal is admitted: Whether the Commissioner for Workmen's Compensation was right in holding that the deceased employee died in the course of employment. In the light of the evidence, it has been adduced in the original proceedings?

4. However, from the facts of the case, one more substantial question of law has to be framed, i.e., Whether the Workmen's Compensation Commissioner failed in holding that the respondent's husband died during the course of employment and due to stress and strain, especially, postmortem report speaks about Cardiac Arrest, which is natural death.

5. Heard Mr. M. R. Dharani Chander, learned counsel appearing for the appellant and Mr. Balan Haridas, learned counsel appearing for the respondent.

5. It is an admitted fact that the respondent's husband was employed as an Executive Vice General Manager of the appellant company. After considering the evidence on record, the commissioner found that all the employees working under the appellant company would come under the definition of "employee" as per the amended Act 49 of 2009. Therefore, the said finding cannot be disturbed.

6. Mr. Dharanichander, learned counsel appearing for the petitioner would argue very strenuously that the said deceased employee joined only 2½ months ago and there was no strain and stress, so as to cause cardiac arrest. Moreover, the employee was staying in a Five Star Hotel and during night time he died and therefore, there was no stress and strain and he was not in employment at the time of death. He relied upon the following judgments in Shakuntala Chandrakant Shirshti Vs. Prabhakar Maruti Garvali, reported in (2006) 0 Supreme (SC) 1105; Malikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Co. Ltd., 2009 II LLJ 305 (SC); the Regional Director, ESI Corporation & another Vs. Francis De Costa & Another, reported in 1996 (6) Supreme 678. By relying upon the above judgments, he would submit that the workman died naturally and there is no

connection between the cause of death and the employment. He would further rely upon the evidence of PW1 to show that nothing has been stated about the stress and strain alleged to have been suffered by the employee. Hence he seeks to set aside the award passed by the Workmen's Compensation Commissioner.

7.The learned counsel for the respondent would submit that the workman was looking after the liaison work and not only all the workers but also the Government officials have to be dealt with and because of the stress and strain, he died. Moreover, due to official work, he was compelled to go to New Delhi and was made to stay in a hotel. His stay at New Delhi alone prevented him from getting appropriate relief. If he had stayed with his family, he would have been taken care of, by his family members. Therefore, the death is due to stress and strain arising out of employment. He would rely upon the judgment of the Hon'ble Supreme Court in Mackinnon Mackenzie & Company Private Limited ..Vs.. Ibrahim Mahommed Issak, reported in CDJ 1969 SC 203.

8.A perusal of the records would show that the respondent's husband was employed and he would come under the definition of employee as already discussed. Secondly, he was dealing with various departments of the Government for works of the appellant company. A specific plea has been made in the claim petition itself in paragraph 3 stating that the respondent's husband was discharging his responsibilities round the clock, ever since he joined the appellant company involving great deal of stress and strain. Further, in paragraph 11 also it has been stated that the post which the deceased employee held involved a good deal of stress and strain. Even in PW1's evidence also, the same has been emphasised. Therefore, there is no evidence available to come to the conclusion that the employee was not under stress and strain, because of the employment under the appellant.

9.Merely because the postmortem report stated that the death was due to cardiac arrest, it cannot be stated that cardiac arrest is not due to stress and strain. The term "natural death" would only disclose that the death is not unnatural like murder etc., Any work in industry, especially, in the Executive level would definitely involve stress and strain. Moreover, the employee went to Delhi on 20.02.2017, only to discharge his official function to receive the visa papers. Since work was delayed, he was compelled to stay back till 22.02.2017, on which date he died due to heart attack in the hotel, where he stayed. It is very clear that the notional extension of employment has to be applied herein as employee was only on official duty in Delhi. PW1 categorically stated in her claim petition as well as in the evidence that because of employment, the respondent's husband had stress and strain. Therefore, it has directly

contributed for the cause of death viz., heart attack. Though the Workmen's Compensation Commissioner had not elaborately dealt with the issue, he had categorically found that death was due to stress and strain of the work under the appellant. Such finding is based on pleading and PW1 evidence and therefore, the said finding on fact cannot be disturbed.

10.As rightly relied upon by Mr.Balan haridoss, learned counsel for the respondent, the Hon'ble Supreme Court in CDJ 1969 SC 203 has categorically held that it is impossible to lay down any rule as to the degree of proof which is sufficient to justify inference being drawn, but the evidence must be such would induce reasonable mind to draw it. Paragraph 5 of 6 the of the said order is usefully extracted as follows:

"5.To come within the Act the injury by accident must arise both out of and in the course. of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it." The words "arising out of employment" are understood to mean that "during the course. of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." In other words there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these factors the workman is brought within the scene of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. In Lancashire and Yorkshire Railway Co. v. Highley 1917 ACS 352 Lord Sumner laid down the following test for determining whether an accident "arose out of the employment": "There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury ? If yea, the accident arose out of his employment. If nay, it did not, because, what it was not part of the employment

to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. To ask if the cause of the was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his. employment, that the workman should have acted as he was. acting or should have been in the position in which he was, whereby in the course of that employment he sustained injury."

6. In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove: it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to. lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but' the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead L.C. in Lancaster v. Blackwell Colliery Co. Ltd., 1918 WC and IR 345 observed:

"If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."

11. In this case also, during the course of employment, when the employee stayed at Delhi, he died. As already pointed out by this Court, PW1 has categorically stated that the work under the appellant involved stress and

strain and therefore, the finding given by the Commissioner that the death was due to stress and strain under the employment of the appellant cannot be disturbed. Accordingly, order of the Commissioner is confirmed. The appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

12.The Workmen's Compensation Commissioner is directed to pay the amount to the respondent within one week from the date of receipt of a copy of this order through RTGS transfer.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Labour - 2,
Chennai.

+1cc to Mr.R.Dharanichander, Advocate Sr.23082

C.M.A.No.2608 of 2017

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