



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2018
(Reserved on 18.04.2018)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.40 of 2018
and
CMP(MD)No.552 of 2018

The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
T.N.E.B.[Now TANGEDCO],
Virudhunagar.

... Appellant/Respondent

vs.

R.Thangamani

... Respondent/Applicant

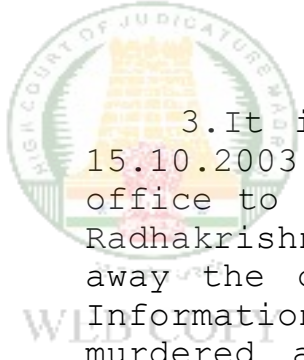
Appeal filed under Section 30 of Workmen's Compensation Act,
against the award dated 30.08.2017 passed in E.C.No.7 of 2014 on
the file of Workman Compensation Tribunal, Madurai.

For Appellant : Mr.M.Mohan Babu
For Respondent : Mr.T.Arul for Mr.R.Thangasamy

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the
award dated 30.08.2017 passed in E.C.No.7 of 2014 on the file of
Workman Compensation Tribunal, Madurai.

2.It is the case of the respondent/claimant that her husband
Late A.Radhakrishnan was working as Line Inspector in the
appellant circle at Rajapalayam during 2013. On 15.10.2003, the
appellant circle Avarampatty section collected the amount of
Rs.3,64,797/- from the consumers and kept the same in the office
under safe custody since the section officials could not remit the
same to the bank. The Electricity Board authorities passed orders
on 06.12.1999 and again on 28.02.1981, directing the section
officials to safeguard the cash by posting a night watchman or
some other staff in the event of heavy cash collections kept at
the office during night. The regular section official for
Avarampatty section had gone on leave and therefore, Avarampatty
section was placed under the control of another section head.



3.It is the further case of the respondent/claimant that on 15.10.2003 at midnight, some unknown persons intruded into the office to commit theft and to take away the cash. While the said Radhakrishnan resisted their attempt, they murdered him and took away the cash. On complaint, the Police have registered First Information Report, stating that Radhakrishnan, Board employee was murdered and cash were stolen. The respondent/claimant would further submit that the appellant had granted family pension and other terminal benefits on the death of her husband and also provided compassionate appointment to her son R.A.Alagushunmughapandian as Helper at Madurai.

4.The respondent/claimant further submitted that she filed a claim petition under Section 10 of the Workmen's Compensation Act, claiming compensation of Rs.3,02,500/- for the death of her husband in the course of employment under the appellant. Since on the death of her husband, the respondent was suffering from mental strain resulting in paralysis which restricted her movement, for which, she was kept under treatment at home, the respondent filed such claim petition with the delay of 2252 days.

5.The appellant filed counter contending that the respondent's husband A.Radhakrishnan who was working as Line Inspector had been murdered by some strangers while he was sleeping in the office beyond office hours and no special permission from the Superintending Engineer or from any authorities was obtained by the deceased employee to stay in the office of the appellant and therefore, the death of the deceased cannot be said to be occurred during the course of employment to enable the respondent to claim compensation under the Workmen's Compensation Act. The murder of the deceased had happened only due to his personal motive with others.

6.It was further contended that since on the death of the deceased, his entire terminal benefits were settled to the respondent and son of the deceased was also given compassionate appointment, nothing was to be paid by way of compensation. It was further contended that employees who are not coming under permanent category alone are entitled to compensation since they would not get any terminal benefits as a board employee. However, the deceased was a permanent category employee. Therefore, it was prayed that the claim petition be dismissed.

7.The Deputy Commissioner of Labour, after conducting a detailed enquiry passed an award dated 30.08.2017 holding that the deceased Radhakrishnan died in the course of employment as Line Inspector under the appellant and consequently directed the appellant to pay compensation of Rs.2,73,620/- to the respondent with interest from the date of accident. Aggrieved by the said award, the appellant has filed this appeal raising the following substantial questions of law:-



'1. Whether the claimant come under the category of workmen defined in Section 2(n) of the Workmen's Compensation Act 1923 and Rules 1924?

2. Whether the claim petition filed before the Tribunal is maintainable since it is barred by limitation? Whether the Deputy Commissioner of Labour is right in allowing the petition without considering that the notice has not been given by the claimant within the notice period (i.e., within 2 years)?

3. Whether the claimant is entitled to get compensation on the ground that the accident (murder) occurred out of employment and the burden of proof lies on the claimant only?

4. Whether the claimant is entitled to get remedy for compensation as double remedy since already an appointment has been given to her son and all the benefits has been disbursed by the board?'

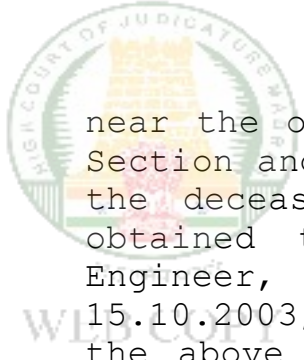
8. Learned counsel for the appellant would submit that the Deputy Commissioner of Labour ought not to have allowed the claim petition since the respondent/claimant had not proved that the deceased died during the course of employment. Further, the inordinate delay of 2252 days in filing the claim petition was not satisfactorily explained through the materials, however, the Deputy Commissioner of Labour ignoring the same, condoned the delay and has erroneously allowed the claim petition. It is further submitted that the Deputy Commissioner of Labour allowed the claim petition without considering the fact that terminal benefits of the deceased was settled and son of the deceased was also provided with compassionate appointment. Therefore, the impugned order is liable to be set aside. In support of his contentions, learned counsel for the appellant relied on the following judgments:-

(i) Shyama Devi vs. Union of India and another reported in 2005 (2) TN MAC 336.

(ii) Daya Kishan Joshi and another vs. Dynemech Systems Pvt.Ltd., reported in 2017-IV-LLJ-168(SC).

9. Heard the learned counsel for the parties and perused the materials available on record.

10. Perusal of the records shows that the respondent examined herself as PW1 and reiterated the averments in the claim petition and also marked 11 documents. On behalf of the appellant, the Assistant Electrical Engineer, Avarampatti, Rajapalayam Division, was examined as RW1 and 8 documents were marked. RW1 deposed that on promotion, the deceased Radhakrishnan was relieved from Avarampatti Section office on 22.11.2001 and transferred to South Rajapalayam Town and worked as Line Inspector. RW1 marked the ~~services rendered by the deceased~~ state of the deceased stating that the deceased received Rs.10,168/- as salary. While working at South Rajapalayam Town Section, the deceased resided in a rental room

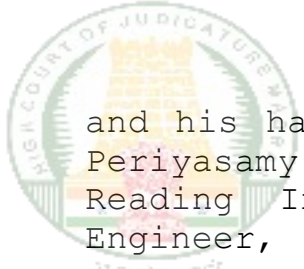


near the office of the Assistant Electrical Engineer, Avarampatti Section and since bathroom facility was not available in the room, the deceased requested the officers of Avarampatti Section and obtained the key of the office of the Assistant Electrical Engineer, Avarampatti Section and used the same. While on 15.10.2003, the deceased unlocked the office to use the bathroom, the above incident had occurred, which was not in working hours and that there was no permission given to the deceased to stay in the office and therefore, it cannot be said that the accident had occurred during the course of employment. RW1 further deposed that in the FIR, it is stated that board employee Radhakrishnan found dead and it is not stated as the Line Inspector in duty at the office of the Assistant Electrical Engineer, Avarampatti Section and therefore, it is clear that the deceased was not working at Avarampatti Section on the date of occurrence.

11.It is the further deposition of RW1 that for doing any urgent works in the night, the key of the office is usually given to the nearest house-owner or shop-owner, since the post of watchman was not allowed. Likewise, since the deceased Radhakrishnan resided in a rental room near the office and since he requested for the office key to use the bathroom, the key of the office was handed over to him and on the date of occurrence when the deceased unlocked the office, robbers attacked and murdered him which cannot in any way be said as the accident occurred during the course of employment. Further, the terminal benefits of the deceased Radhakrishnan was settled on his death and his son was also provided with compassionate appointment and therefore, the claim petition was not maintainable. RW1 also deposed that on 15.10.2003 as per the register, a sum of Rs.3,64,797/- was collected apart from the amount received by way of cheque and the same was kept in the office for safe custody.

12.Perusal of the impugned order further shows that during his cross examination, RW1 deposed that he was on leave on 15.10.2003 and 16.10.2003 and one Manikavasagam was posted as additional in-charge for the said office and he lodged the FIR. He further stated that he did not know about Ex.P6, by which, whenever heavy cash is kept in the office, a staff should be posted for the night duty since there was no post of Watchman and on the night of 15.10.2003, for doing urgent work, one Assistant and Wireman were in the office and they would have handed over the key to the deceased. RW1 also deposed that the practice of handing over the office key was prevalent even before he joined as Assistant Engineer in the said office. He also admitted that after murdering the deceased Radhakrishnan, the above said amount was stolen by the unknown persons.

<https://hcservices.courtsip.mhcservices.net> Perusal of Ex.P1-FIR, the Deputy Commissioner of Labour found that the board employee Thiru.K.Periyasamy found that the office doors were opened and also found the Radhakrishnan dead



and his hands, legs and mouth were tied and thereafter, the said Periyasamy informed the same to RW1 and one Murugesan, Meter Reading Inspector and one Sankaralingam, Assistant Executive Engineer, Rajapalayam. All of them came to the scene of occurrence and found the deceased dead and his hands, legs and mouth were tied and also found that the cash of Rs.3,64,797/- was stolen. From the perusal of Ex.P1-FIR, the Deputy Commissioner of Labour also found that on 15.10.2003, around 9.00 p.m., one Soman, Wireman and Ajay Ghosh, Assistant were talking with the deceased Radhakrishnan. In Ex.P2-Postmortem report, it was mentioned as ''..... Found dead in Electricity office at 7 a.m on 16/10/2003. Money to the value of Rs.3,64,797/- is said to be missing in office.....''. Upon consideration of Ex.P1-FIR, Ex.P2-Postmortem report and the oral evidence of PW1 and RW1, the Deputy Commissioner of Labour held that the deceased Radhakrishnan died in the course of employment as Line Inspector under the appellant and consequently awarded Rs.2,71,020/- as compensation.

14.If the person murdered is an employee and the motive for murder was not personal to the victim, then it is a compensable claim under the Workmen Compensation Act. In this case, the deceased was working as Line Inspector at South Rajapalayam Town and while he unlocked the office of Avarampatti Section to use the bathroom, unknown persons entered into the office and attempted to steal the cash kept in the office and when the same was resisted by the deceased Radhakrishnan, he was murdered and the above said cash amount kept at the office was also stolen. Therefore, it is clear that the deceased Radhakrishnan in an attempt to safeguard the cash, resisted the attempt of robbery which resulted in his murder by the robbers. Therefore, it cannot be termed as the murder done out of personal vengeance. Hence, the respondent is entitled to stake a claim under the Workmen's Compensation Act.

15.Apart from the above, it is to be noted that as per the guidelines issued on 28.02.2001, the Board shall post a night watchman whenever heavy cash is kept at the office. However, it is the deposition of RW1 that since the post of watchman was not allowed, it was the usual practice that the office key of Avarampatti Section will be handed over to the nearest house-owner or shop-owner so as to enable the staff to attend any urgent work in the night time. Since the deceased Radhakrishnan was residing in a rental room nearby the office of Avarampatti Section and on his request for usage of bathroom, office key was handed over to him and while he unlocked the office, he found that there was an attempt to commit theft and hence he resisted the same which resulted in his murder by unknown persons. Though it was contended that at the time of accident the deceased Radhakrishnan was working at South Rajapalayam Town and he was not at all

<https://www.mca21.gov.in/Services/Avarampatti-Section-Office> and therefore, the alleged murder cannot be said to be occurred during the course of employment, the deceased Radhakrishnan admittedly a board



employee, died while resisting the attempt of theft of cash at Avarampatti Section Office and therefore, it cannot be construed as the murder not happened during the course of employment. When the Board guidelines stipulate that whenever heavy cash is kept at the office, a night watchman or some other staff should be posted for night duty, it is not known why the Board officials handed over the key of the office to the deceased without appointing the watchman or why no other staff of Avarampatti Section was posted for night duty on the date of occurrence.

16. In *Shyama Devi vs. Union of India* and another reported in 2005 (2) TN MAC 336, relied on by the counsel for appellant, workman therein was a railway switchman and he was on duty at railway station between 8 am to 4 pm. After duty period, he left the office and reached his quarters. Mob armed with deadly weapons trespassed into the office of Station Master and damaged the railway property. On hearing commotion, the workman took out his licensed gun and proceeded towards railway station. While trying to pacify mob, the workman suffered lathi blow which resulted in his death. A claim was made for compensation on the ground that the workman died during the course of employment and the same was rejected by the Commissioner holding that there was no causal connection between death and employment. On appeal, the High Court held that merely because the deceased after his duty had gone to his quarters and came out only after hearing commotion to pacify mob, it cannot be said that his death was not in the course of employment. In fact, the deceased was courageous enough to come out of his quarters even after his duty hours to save the railway property. So saying, the High Court held that the claim petition is liable to be allowed.

In the present case also, the deceased Radhakrishnan in the process of preventing the attempt to steal cash by unknown persons was done to death by murdering him.

17. In *Daya Kishan Joshi and another vs. Dynemech Systems Pvt.Ltd.*, reported in 2017-IV-LLJ-168(SC), relied on by the counsel for appellant, it has been held as follows:-

'The words 'arising out of' and 'in the course of employment' are in fact two different phrases and have been understood as such. If the accident had occurred on account of a risk which is an incident of employment, the claim shall succeed unless, of course, the workman had exposed himself to an added peril by his own imprudent act. The phrase 'in the course of employment' suggests that the injury must be caused during the currency of employment, whereas the expression 'out of employment' conveys the idea that there must be a casual connection between the employment and the injury caused to the workman as a result of the accident. Prima facie, while deciding the issue on hand, there is no material on record to show that the deceased workman had exposed



himself to added peril by his own imprudent act.

There is a notional extension at both entry and exit by time and space. There may be some reasonable extension in both time and space and a workman may be regarded as in the course of his employment even though he has not reached or has left employer's premises. The very nature of his employment made it necessary for him to be there. In view of the same, it needs to be held that the accident had taken place in the course of the employment.''

In the present case, there is no evidence to prove that the deceased Radhakrishnan had exposed himself to an added peril by his own imprudent act and he died only in resisting the attempt of unknown persons from stealing the cash kept at the office of the appellant.

18. In *Bhagubai v. Central Railway* [A.I.R. 1955 Bom. 105] (Bombay High Court), the deceased was stabbed to death while he was on his way to join duty. It was not disputed that the death was a result of an accident or that it arose in the course of his employment. The dispute was whether it arose out of the employment of the deceased. The Division Bench held at page 404 as follows:

"Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident. In this case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was



in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to join duty, and he had to pass this spot in order to join his duty. Therefore, the connection between the employment and accident is established. There is no evidence in this case that the employee in any way added to the peril. There is no evidence that he was stabbed because the assailant wanted to stab him and not anybody else."

Thereafter, at page 405-406, it was held as under:

"Once the peril is established, it is for the employer then to establish either that the peril was brought about by the employee himself, or that the peril was not a general peril but a peril personal to the employee. It is because of this that the authorities have made it clear that the causal connection between the accident and the employment which the applicant has to establish is not a remote or ultimate connection but a connection which is only proximate. Once that proximate connection is established the applicant has discharged the burden, and in this case the proximate connection between the employment and the injury is the fact that the deceased was at a particular spot in the course of his employment and it was at that spot that he was assaulted and done to death."

19. In *Smt. Satiya v. Sub-Divisional Officer, Public Works Department (Buildings and Road), Narsimhapur* [1974 (2) L.L.N. 204], a chowkidar in the Public Works Department was murdered while on duty. One of the questions that arose was whether his murder could be said to be an accident. Relying upon *Nisbet*, it was held that the murder was an unlooked for mishap or untoward event which was not expected or designed. The learned Judge held that word "accident" excludes the idea of wilful and intentional act but as explained in *Nisbet*, "the phrase ought to be held to include murder as it was an accidental happening so far as the workman was concerned."

20. In the light of the above discussion, this Court is of the considered opinion that the deceased Radhakrishnan died during the course of employment and there is no infirmity in the impugned order of the Deputy Commissioner of Labour. Accordingly, the substantial questions of law are answered in favour of the respondent/claimant

This Civil Miscellaneous Appeal is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(W)

/True copy/



To

The Commissioner for Workman Compensation,
Workman Compensation Tribunal,
Madurai.

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+1cc to Mr.R.SENTHIL KUMAR, Advocate, SR.No. 68764

+1cc to Mr.R.THANGASAMY, Advocate, SR.No. 68808

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19.06.2018

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