

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

CMA.No.632 of 2009

J U D G M E N T:

This appeal is filed questioning the order dated 17.11.2008 in WC.No.4 of 2008 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Gudivada.

The case of the applicants before the lower Court is that the first applicant is the wife while applicants 2 and 3 are the minor children and the 4th applicant is the mother of deceased/Durga Prasad. The said Durga Prasad was employed as a driver on a lorry bearing No.AP 27 U 4279, which belongs to the first opposite party and was insured with the second opposite party. The applicants state that the deceased was working on the lorry and he died in an injury arising out of and in the course of employment on 05.02.2006. Therefore, they filed the case claiming compensation.

The first opposite party admitted the employment of the deceased and also stated that he was on duty at the time of the death. The second opposite party denied the entire case and stated that no compensation is payable. For the applicants, AW.1 was examined and Exs.A.1 to A.15 were marked. For the respondents, RWs.1 and 2 were examined.

The insurance policy was marked as Ex.B.1 and the motor claim form was marked as Ex.B.2. Basing on the pleadings, the Commissioner came to a conclusion that the deceased died in an accident arising out of and in the course of employment. Hence, he allowed the application and directed opposite parties 1 and 2 to pay a sum of Rs.3,89,920/-. It is this order that is challenged in the appeal.

This Court heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri V.Padmanabha Rao, learned counsel for the respondents.

The appeal is filed by the insurance company which has essentially urged the point that the deceased did not die in an accident arising out of employment and that his death was a natural death. In the grounds of appeal, ground Nos.3,4,5,7 and 8 are on the natural death issue only.

The learned counsel for the appellant argued that the deceased died of a heart attack. Even the evidence of AW.1 is that the deceased suffered a heart attack, fell down at the fish market area and died. The averment in the claim for compensation is that he suffered a sudden heart attack. Learned counsel for the appellant argued that the postmortem report confirms that the death was due to a heart attack. In the postmortem report-Ex.A.1, it is noticed that the death is termed as a “natural death”. The learned counsel for the appellant also points out that in Ex.A.1, postmortem

report, the doctor noted that the deceased had slept in the truck and in the evening, his friend was unable to wake him up. Similarly, he points out that in Ex.A.7, panchanama it is noticed that the deceased was sleeping in the lorry cabin and his dead body was found there. The panchas noticed the same and recorded the statement. It is the contention of the learned counsel that the contemporaneous documents prove that the deceased was sleeping in the lorry at the time the death occurred. Therefore, it is his contention that the death was due to natural causes only.

In reply thereto, the learned counsel for the respondents argued that the death occurred during and in the course of employment. He also stresses the fact that all the documents point out to an heart attack. Therefore, he argues that the stress and strain of the job had caused the heart attack and that it should be held that the deceased died due to an injury arising out of and in the course of employment only.

While it is true in this case that the death occurred due to heart attack, it is clear from the record that there is no pleading or evidence to the effect that the stress and strain of the job have caused the heart attack. There is no pleading or proof of any aggravating consequences also. The law on this subject is very clear and does not require any repetition. Unless there is a link between the stress and strain of employment and the cause of death, it cannot be said that the

death occurred out of and in the course of employment. The learned counsel for the appellant pointed out that in the cross-examination of AW.1 also he admitted that the body of the deceased was found in the lorry in the cabin and that the heart attack occurred for the first time.

The learned counsel points out that it is their case right from the beginning that the death was due to an heart attack and it was a natural death. No evidence was let in to show that the death occurred due to the stress and strain of employment. The learned counsel also points out that the averments in the application filed are to the effect that the deceased was hale and hearty and he suffered a sudden heart attack. It is the contention of the learned counsel for the appellant that if the deceased was hale and hearty, the stress and strain of employment must be proved by oral and documentary evidence in order to claim compensation. He points out that neither the cleaner of the lorry nor the owner of the lorry were examined. The applicants did not file any evidence to show when the vehicle reached the city of Mumbai where the deceased died. There is no evidence to show that the deceased was subjected to stress/strain due to continuous driving etc.

This Court finds substantial force in the arguments of the learned counsel for the appellant. The case law on this subject is also clear. In this case, it is noticed that there is no

link between the death and the stress and strain of employment. The claimants did not introduce any evidence to prove that the deceased was under stress or that he was strained and that as a consequence of this stress/strain in the employment, the heart attack occurred. ***Shakuntala Chandrakant Shreshti vs. Prabhakar Maruti Garvali and Another¹*** is a decision of the Hon'ble Supreme Court of India, which is directly on the point.

In the absence of such evidence and in view of the fact that the deceased was found sleeping in the lorry cabin, this Court holds that the death was not due to the stress and strain of employment. The applicants themselves have filed the postmortem certificate which shows that the death was natural.

For all these reasons, this Court is of the opinion that the order of the lower Court is wrong and that the applicants could not establish the link between the employment and the death.

The appeal is therefore, allowed and the order of the lower Court is set aside. In the circumstances, no order as to costs.

¹ 2007 ACJ 1

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU,J

Date: .03.2018

KLP

