

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

CMA No.696 of 2005
and CMA No.280 of 2005

COMMON JUDGMENT:

These two appeals arise out of the order dated 16.12.2014 passed in WC Case No.8 of 2003 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nellore.

The brief facts of the case are that one Shaik Nooron Saheb (hereinafter called 'the deceased') was working in the Southern Railways. While he was attending duties as a watchman on 29.07.1995 he suddenly sick and died. Claiming compensation, the wife and the two children have filed this case against the General Manager, Southern Railways, Chennai. The General Manager, Southern Railways denied the entire case. The parties went to trial. For the applicants, the wife of the deceased was examined as AW.1 and three other witnesses were examined on their behalf as AWs.2 to AW.4. Exs.A.1 to A.7 were marked. For the respondent, RWs.1 & 2 were examined and Exs.B.1-medical certificate was marked.

After considering the oral and documentary evidence, the Commissioner passed the impugned order on 16.12.2004 by which he directed the Railways to deposit a sum of Rs.74,316/- within 30 days. On the failure of the Railways to so deposit, he ordered that interest @ 12% per annum is to be paid.

The Railways, who are dissatisfied with the award of compensation, have preferred an appeal in CMA No.696 of 2005 questioning the award of compensation. The applicants viz., wife and children of the deceased preferred another appeal in CMA No.280 of 2005 as they are not satisfied with the award of interest. Their case is that the minimum rate of interest of 12% should have been awarded from the date of the accident till payment.

As the said two appeals arise out of the same judgment, they were taken up for hearing together.

This Court has heard Sri Pasumoor Madhusudhana Reddy, learned counsel for the appellants/applicants in CMA No.280 of 2005 & for the respondents in CMA No.696 of 2005 and Sri T.S.Venkata Ramana, learned standing counsel for the South Central Railways.

As CMA No.280 of 2005 relates to the question of interest, both the learned counsel concentrated on the death and the award of compensation, since interest is corollary of the preliminary question of compensation. The learned standing counsel for Railways *firstly* argued CMA No.696 of 2005.

The admitted fact is that the death of the husband of first applicant occurred on 29.07.1995. There is no controversy of the same. But, as pointed out by the learned standing counsel for the Railways, the issue, which has to be decided, is about the 'cause' of the death.

It is the contention of the learned standing counsel for the Railways/appellant in CMA No.696 of 2005 that the death of the worker was due to natural causes only and not a death arising out of and in the course of employment. On the other hand, it is the case of the respondents/ workman's family that the death occurred out of and in the course of employment, therefore, the compensation should be awarded. Therefore, this Court is called upon to see and decide whether the death occurred out of and in the course of employment and whether there is any connection between the death and employment.

The learned standing counsel for the Railways relied on ***Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali***¹, wherein the Hon'ble Supreme Court held that the onus is upon the applicant to show that the work and the resulting strain caused the accident or the death. After reviewing the entire law, it was held that the claimant should establish that because of the stress and strain, the death has occurred. The Supreme Court further held that unless this fact is established, the Commissioner would not have 'jurisdiction' to pass an order. The passages from this judgment from paras 29, 37 and 38 are reproduced below.

"29. Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefor can be raised. As a

¹ (2008) 1 SCC (L&S) 964

person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard-and-fast rule can be laid down therefor.

37. The nature of duty of the deceased was that of a helper. *Per se* that the duties would not be such which could cause stress or strain. If an additional duty was required to be performed by him, the same was required to be clearly stated.

38. Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. It is now well-settled that for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the facts of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question.”

In para-29, it was held that the link between the death and the employment must be established and the need for the medical opinion is also highlighted. If the facts of the present case are viewed in line with this argument, it would be very clear that there is no pleading about the stress and strain of employment at all. Para-4 of the plaint is bereft of details. The respondents in their counter has clearly taken a plea that there is no link/relationship between the work and the death. In Para-4 they also pointed out that the Doctor, who attended the employee, certified that the cause of death as meningitis. A reading of the chief and cross-examination of AW.1 also

shows that there is no evidence about the stress and strain of employment leading to the death. In fact, AW.1 states as follows:

“I do not know for what reason he was unwell. I do not know that he died due to brain fever. No post-mortem was done.”

The documents filed by the applicants shows that the cause of death may be meningitis. The Doctor, who gave Ex.A.1-certificate, was examined as AW.4. In his evidence, he differs from what he states in Ex.A.1 and states that the death may be due to any other cause, but there is no post-mortem examination. In his cross-examination, he clearly admits “I do not know the cause of the death”.

The other two witnesses (AWs.2 & 3) were also examined to prove the death, but the learned counsel pointed out that AWs.2 & 3 do not shed any light on the cause of the death, but merely speak about noticing the body and informing AW.1. Neither of them has deposed about the stress and strain of employment on the deceased.

The Railways examined two witnesses as RWs.1 & 2. RW.1 deposed that the worker was on medical leave on earlier occasions and in fact he was sick for 15 days from 16.06.1995 to 30.06.1995. He deposed that there was no stress and strain at all in the work. The cross-examination of this witness does not establish the stress and strain of the employment, which could have caused the death.

On a review of the entire evidence particularly keeping in view of the pronouncement of the Hon'ble Supreme Court, this Court is of the opinion that the link or the relationship between the death and the work/employment is not explained. Despite clear and categorical denial by the Railways, the claimants have failed to prove that the death was caused due to the stress and strain of the employment. The learned standing counsel for the Railways also relied upon the judgment of a learned single Judge of this Court in CMA No.590 of 2005 dated 13.08.2004 wherein the learned single Judge also held that for fixing liability on the employer, two conditions must be satisfied a) that the employee has sustained injuries in question; and b) that the injury/accident was in the course of employment.

This Court on a review of the facts analyzes that there is no post-mortem examination of the deceased to prove the cause of death. In this case neither adequate pleading nor proof is there to show that the deceased died due to the stress and strain of the employment. The job that the deceased was admittedly doing was that of a watchman. No evidence was let in to show that he was made to work unusually long hours or that there are no facilities for rest/shade etc. to show that the duty aggravated the cause or actually caused the death.

In the absence of any such evidence, this Court is of the opinion that the link between the death and the job is not established. This Court therefore holds that the applicants

are not entitled to any compensation and the order of the Commissioner for Workmen's Compensation dated 16.12.2004 is wrong. CMA No.696 of 2005 is therefore allowed and the judgment and decree dated 16.12.2004 in WC No.8 of 2003 is hereby set aside.

CMA No.280 of 2005:

This CMA is filed by the wife and children of the deceased railway employee, Shaik Nooron Saheb. It is the contention of the learned counsel for the applicants that since the deceased died due to the stress and strain of employment on 29.07.1995, the applicants have filed WC Case No.8 of 2003 claiming compensation for the said death. The said case was allowed after a trial and the Commissioner awarded a sum of Rs.74,316/- as compensation. He, however, directed that the compensation should be deposited within 30 days, failing which interest was awarded. Aggrieved by this finding on the question of interest, this appeal was filed by the applicants in the lower Court claiming interest from the date of the accident till the date of the payment.

The case of the applicants is that the Workmen's Compensation Act itself provides for payment of compensation from the date of the accident till date of the payment. The learned counsel for the applicants also points out that in ***Pratap Narain Singh Deo v. Srinivas Sabata***², the Hon'ble Supreme Court held that compensation is payable

² AIR 1976 SC 222

from the date of the accident and that interest is therefore payable from the said date. He therefore argued that the order of the Commissioner is patently erroneous and interest as claimed in the appeal should be allowed.

In reply thereto, the learned counsel for the Railways pointed out that even though the accident occurred in 1995, the case was filed in 2003 and the case should have been filed within two years. The applicants filed a Miscellaneous Petition for condonation of delay which is allowed and they were permitted to file the case. Therefore, relying upon the judgment of a learned single Judge of this Court in CMA No.206 of 2005, dated 19.09.2014, the learned counsel argued that the claimants are not entitled to claim interest from the date of the accident till the date of the payment, since they have caused the delay in filing the application. The learned counsel also contended that even on the ground of equity, they are not entitled to interest for the reason that even though the claim of the Railways is that the death of the worker was a natural death, a job was given to the first applicant by the Railways on compassionate grounds. He pointed out that in the examination, AW.1 admits that she is now given a job by the Railways. His final contention is that the award of compensation itself is wrong and no interest is therefore to be awarded as the principal sum itself is not payable.

This Court on a review of the facts, law and the evidence is of the opinion that in view of the fact that CMA No.686 of 2005 was allowed and the impugned order awarding compensation is set aside, the question of payment of interest does not arise. Even otherwise, for a period of delay caused by the worker, they are not entitled to claim interest in this court as per the dictum of a learned single Judge of this Court in CMA No.206 of 2005. Even on the ground of equity, this Court observes that the first applicant was given a job in the Railways.

For all the above reasons, this Court holds that this CMA No.280 of 2005 does not have any merits and accordingly, the same is dismissed.

In the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous Petitions, if any, pending in these appeals shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 27.04.2018
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