

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	05.11.2019
Pronounced On	13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.944 of 2007

and

M.P.No.1 of 2007

M/s.Chennai Petroleum Corporation Limited,
Rep. By M.Sankaranarayanan,
Deputy Secretary,
Manali, Chennai - 600 068.Appellant

vs

1.The Presiding Officer,
Deputy Commissioner of Labour - II,
Chennai.

2.Muniammal

3.Yusodha

4.Nagaraaj

5.M/s.Vijayasaraswathi,
No. 14, Srinivasa Perumal Koil Street,
Periyathoppu, Manali,
Chennai - 600 068.Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order of the 1st respondent dated 27.02.2006 in W.C.No.120 of 2004 directing the appellant to pay compensation of Rs.3,70,840/- to respondents 2-4.

For appellant : Mr.Shivathanu Mohan for
Mr.S.Rama Subramaniam Associates

For R1 : Mr.A.Dev Narendran
Government Advocate

For R2 & R3 : Dismissed vide order dt.26.08.2015

For R5 : Mr.C.K.Chandrasekar

For R4 : Mr.P.Jagadeesan

J U D G M E N T

The appellant is aggrieved the impugned order dated 27.02.2006 passed by Commissioner for Workmen's Compensation - 9 / Deputy Commissioner of Labour - 2 in W.C.No.120 of 2004.

2.By the impugned order, the Deputy Commissioner of Labour -II has awarded a sum of Rs.3,88,340/- as compensation and a sum of Rs.2,500/- as funeral expenses as per the provision of the Workmen's Compensation Act, 1923 to the 2nd to 4th respondents/claimants.

3.The 2nd and 3rd respondents who are the mother and wife of the deceased Jagannathan have also died since during the pendency of this appeal. Only the 4th respondent son of the deceased Jagannathan survives.

4.The deceased Jagannathan was earlier an employee by the 5th respondent M/s.Vijayasaraswathi who was awarded a contract of sewage lines/pits cleaning works in the appellant's premises. The said contract was given by the appellant for cleaning the Industrial canteen of the appellant. It was signed for the period of commencing from 01.02.2002 to 30.09.2002. After the contract had come to an end, the appellant continued to retain the some of the employees of the 5th respondent for carrying on the aforesaid work without sub contracting the work to the 5th respondent. The deceased Jaganathan continued to be employed by the appellant.

5.On 04.12.2002 at about 4.30 p.m, the deceased Jaganathan was found lying unconscious near the Industrial canteen and was therefore rushed to the hospital for being given first aid and thereafter taken to the Government Stanley Hospital, Chennai for further treatment where he was declared dead.

6.Thus, the 2nd to 4th respondents herein filed a claim petition before the Deputy Commissioner of Labour - II under the Workmen's Compensation Act, 1923 against the 5th respondent and the appellant on 16.02.2004 though the deceased Jaganathan died on 04.12.2002

7.In the counter filed before the Deputy Commissioner of Labour - II, the appellant stated that the deceased Jaganathan had been earlier admitted to the Government Stanley Hospital during October 2002, just two months before his death for intensive heart disease and therefore the deceased Jaganathan had a history of heart disease and the death was due to the natural causes and not on account of any employment injury. Therefore, the appellant cannot be held liable to pay the compensation under the Act.

8. That apart, it was stated that the 4th respondent herein Nagaraj surviving claimant was already 21 years on the date of claim petition and therefore was not entitled to compensation as a dependant of the deceased Jaganathan. It is further argued that since the deceased Jaganathan died due to heart attack albeit on account of natural cause, no compensation can be awarded to the 2nd to 4th respondent/claimants.

9. The Deputy Commissioner of Labour - II considered the evidence on record and therefore awarded to the 2nd to 4th respondents/claimants, a compensation of Rs.3,88,340/- and Rs.2,500/- towards funeral expenses as per the provision of the Workmen's Compensation Act, 1923.

10. In the above case, the Deputy Commissioner of Labour - II had framed two issues, as to whether the deceased Jaganathan was a worker within the meaning of the Workmen's Compensation Act, 1923 and whether the deceased Jaganathan was employed by the 5th respondent and if so what was the compensation to be paid and who was the responsible to pay the compensation?.

11. Challenging the order of the Deputy Commissioner of Labour -II, the appellant has filed the present Civil Miscellaneous Appeal.

12. The main thrust of the appellant in this appeal is that the deceased died due to the natural causes namely heart attack and therefore, no compensation can be paid to the 2nd to 4th respondents/claimants. In any event, there is only conclusion that the death of the deceased Jaganathan in the post mortem report dated 07.05.2004 also confirmed that the deceased died due heart attack and therefore, no compensation can be awarded without any evidences as to whether any strains was involved or not in the work which would have accentuated or hastened the death of the deceased.

13. The learned counsel for the appellant stated that the post mortem report dated 07.05.2004 confirmed that there was no evidence of external or internal injury and the deceased Jaganathan died of acute heart failure due to coronary heart disease. In this connection, the learned counsel for the appellant relied on the following judgments:-

- i. Jyothi Ademma vs Plant Engineer, Nellore and Another, (2006) 5 SCC 513.
- ii. Shankuntala Chandrakant Shreshti vs Prabhakar Maruti Garvali & Another, (2007) 11 SCC 668.

14. The learned counsel for the 2nd to 4th respondents/claimants submitted that the death was on account of employment/injury due to heart attack which was caused due

to the nature of work in the sewage lines/pits in the Canteen and therefore the compensation that has been awarded by the Deputy Commissioner of Labour - II cannot be interfered with.

15. In this case, the learned counsel for the respondent relied on the following cases:

- i. National Insurance Co. Ltd., vs Pappathi and Others, 2014 SCC OnLine Mad 1017.
- ii. The Oriental Insurance Company Ltd., Kovai vs Nagarai and Others, 2008 (2) CTC 407.
- iii. P. Kalyani vs The Divisional Manager, Southern Railway (Personal Branch), 2003 SCC OnLine Mad 492.

16. It was therefore submitted that the appellant cannot be made the liable and only the 5th respondent contractor was liable to pay the compensation.

17. The learned counsel for the 5th respondent contractor submitted that the deceased was not its employee on the date of his death and drew my attention to the Works Contract issued by the appellant on 04.02.2002 and letter dated 30.08.2002 which indicates that the appellant was terminating the contract. That apart he also referred a letter dated 05.12.2002 given by the appellant to the Chief Inspector of Factories wherein they have wrongly stated that the deceased Jaganathan was aged 40 years contract worker died due to illness.

18. In the present Civil Miscellaneous Appeal, the appellant has raised the following substantial questions of law:-

- i. Whether mere occurrence of death due to sudden myocardial infarction on the premises of the appellant, in the absence of a finding that the death resulting from cardiac arrest arose out of and in the course of employment a liability to pay compensation in accordance with the provisions of the Workmen's Compensation Act could at all arise.
- ii. Whether in the absence of a finding that the death due to myocardial infarction was accelerated on account of the nature of job, a liability under the provisions of the Workmen's Compensation Act could arise.
- iii. Whether in the light of the judgment of the Hon'ble Supreme Court in Jyothi Ademma Vs. Plant Engineer Nellore & another reported in 2006 5 SCC 513 where the law has been laid down that death due to cardiac arrest could not fasten a liability unless there was a

finding that the death was accelerated on account of the nature of work, and in the absence of a finding in the present case that such was the case, the impugned order could be sustained.

19. The only question requires to be answered in the present Civil Miscellaneous Appeal in the facts and circumstances of the case is whether the order passed by the Deputy Commissioner of Labour-II can be sustained or not. According to the appellant there was no discussion as to whether the death on account of heart attack can be construed as death on account of employment injury or not.

20. The Hon'ble Supreme Court in *Shankuntala Chandrakant Shreshti vs Prabhakar Maruti Garvali & Another*, (2007) 11 SCC 668 cited by the learned counsel for the appellant has held that merely because a person dies of heart attack, it cannot be construed that it was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same and therefore medical opinion will be of relevance providing guidance to Court in this behalf. The Court further held that circumstances must exist to establish that the death was caused by reason of failure in a sudden heart failure of heart was because of stress and strain of works and same cannot be presumed and no legal fiction therefor can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Therefore, each case has to be considered on its own fact and no hard-and-fast rule can be laid down therefor.

21. In *Jyothi Ademma vs Plant Engineer, Nellore and Another*, (2006) 5 SCC 513, the evidence was let in to prove that there was any scope stress or strain in the case of deceased there. The Court further held that if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and employer would be liable.

22. In the decision of this Court in *National Insurance Co. Ltd., vs Pappathi and Others*, 2014 SCC OnLine Mad 1017 cited by the learned counsel for the 2nd to 4th respondents/claimant, this Court referred to several other decisions and there relied on the decision in *Oriental Insurance Company vs Nagaraj and Ors*, 2008 (4) MLJ 58, wherein it was held as follows:-

"20. ... Even an ordinary strain in given circumstances of the case would be enough to cause the injury or death which is found to be in the course of and out of employment, it has to be held that the claimant is entitled for the compensation. The claimant is expected in

law to show that the workman suffered injury or death due to strain and stress drawn from the work which in particular circumstance was sufficient to cause injury or death and unlike in a criminal case it is enough to show the preponderance of probabilities which would form a premise that the claimants version is probable. It is not necessary to prove that the injury or death was caused by the stress and strain beyond any doubt but it must be shown and the materials brought before the court shall be, to the satisfaction of the Court." On the facts and circumstances of the case in A. Saroja, reported in 2009 (1) MLJ 495, the learned Judge, at paragraph No. 21, further held that,

"21. Even though there is no plausible medical evidence to portray that the proximate cause for the death was due to the strain and stress, still the other circumstances found in this case show a casual connection between employment and death. There is nothing before this court to infer that there was an error apparent on the face of records so as to lead the Commissioner to commit the jurisdictional error while exercising his powers and the provisions of the Act."

23. In National Insurance Co. Ltd., vs Pappathi and Others, 2014 SCC OnLine Mad 1017 cited by the learned counsel for the 2nd to 4th respondents/claimant, this Court referred relating to the same decision to the National Insurance Co., Bhavani vs A. Saroja and Others, 2009 (1) MLJ 495, which reads as under.:-

16. While considering, whether a finding recorded by the Commissioner under the Workmen's Compensation Act, based on appreciation of evidence that an employee, died out of heart attack, arising out of and in the course of employment could be challenged in an appeal under Section 30 of the Act, in National Insurance Co., Bhavani v. A. Saroja reported in 2009 (1) MLJ 495, this Court considered a case, wherein the claimants were wife and daughters of the deceased, who was employed as a cleaner-cum-driver in a transport Company. While proceeding to Kerala, the lorry was stopped and the employee suffered a severe heart pain and vomited. He was rushed to hospital, where

he was pronounced dead. The relationship of employee and employer was disputed. It was also submitted that death due to heart attack, was due to pre existing ailment or decease and it was not out of natural cause. The Commissioner for Workmen's Compensation Act, arrived at a conclusion that the death occurred during the course of employment.

24.The Court concluded that there was no substantial questions of law were involved in the appeal and thereby it was dismissed filed by the Insurance Company.

25.In The Oriental Insurance Company Ltd., Kovai vs Nagarai and Others, 2008 (2) CTC 407, this Court in paragraph 13 held as under:-

The above finding of fact cannot be said to be based on surmises or conjectures or guess work. The facts would indicate that trimming and plucking tea leaves in the tea estate involves climbing the hilly terrain. Nature of work by by itself involves stress and strain. The inference of Deputy Commissioner of Labour that the deceased workman had stress and strain appears to be legitimate inference. In my considered view, the evidence of PW-1 and nature of work would induce any reasonable mind to draw such an inference of stress and strain involved in the work.

26.The Court concluded that the nature of work would induce any reasonable mind to draw such an inference of stress and strain involved in the work.

27.It was submitted by the learned counsel for the 2nd to 4th respondents/claimant that the nature of work indicates that the work contributed to the death of the deceased and therefore, the compensation awarded by the Deputy Commissioner of Labour - II cannot be interfered with.

28.In P.Kalyani vs The Divisional Manager, Southern Railway (Personal Branch), 2003 SCC OnLine Mad 492 this court had earlier referred to the decision of the full bench of Assam High Court in Assam Railways and Trading Co.Ltd v. Saraswati Devi 1958 A.C.J. 394 wherein it was summarized as follows:-

"Even in eases where a person has been suffering from heart disease, if the nature of the work has contributed to the deterioration of the heart and his death, the personal

injury can be said to arise out of his employment. The case where the deceased was not suffering from any previous heart disease, is to my mind a stronger case and in such circumstances if he suddenly gets a heart attack while proceeding to perform his duty, the accident can be nothing but arising out of his employment."

29. Ultimately, in the above case, the court concluded that it is safe to presume that strain had contributed to or accelerated or hastened the accident. Even in the absence of direct evidence, if the probabilities are more in favour of the applicant, considering the object of the Act, the Commissioner who is the competent authority is to infer that the accident did in fact arise out of and in the course of employment.

30. The learned counsel appearing for the 5th respondent M/s. Vijayasaraswathi (contractor) submitted that the deceased Jaganathan was the formerly employed by the 5th respondent and therefore, the liability cannot be shifted on them, particularly, when the contract came to an end on 30.09.2002. The deceased Jaganathan was a worker of the appellant as on 14.12.2002. The witness of the appellant has also confirmed that no other person can enter factory without their permission. Therefore, it stands confirmed that the deceased Jaganathan was employed by the appellant and there was employee employer relationship between the deceased Jaganathan and the appellant herein.

31. I have considered the rival submissions advanced by the learned counsels for the appellant, 1st respondent, 4th respondent and 5th respondent.

32. The facts of the case are plain and simple. The deceased Jaganathan was earlier employed by the 5th respondent and that the contract of the 5th respondent had come to an end on 30.09.2002.

33. The deceased found as death on 04.12.2002 at about 4.30 p.m in the Industrial Canteen of the appellant. The Post mortem report confirmed that the deceased Jaganathan died due to the heart attack and that it could be due to coronary heart disease (natural causes).

34. Thus, when the deceased Jaganathan died on 04.12.2002 in the appellant's premises, preponderance of probability shows that the deceased continued to work as an employee of appellant though not in permanent capacity for the appellant. Therefore, the death occurred in the course of his employment stands confirmed.

35.The appellant's witness has himself concluded that after the contract came to an end on 30.09.2002, the workers/employee by the 5th respondent were retained. Therefore, it stands concluded that the deceased was employed by the appellant after the contract was between the appellant and 5th respondent ended.

36.Therefore, the submission of the learned counsel for the appellant that the deceased was employed with the 5th respondent is concerned, I am afraid that issue has to be answered against the appellant.

37.However, the Deputy Commissioner has merely concluded that since the deceased was found in the premises of the appellant he was employed by the appellant and therefore the appellant was liable to pay the compensation.

38.Question that arises for consideration in this appeal, is whether the burden of proof is on the employer or on the claimants as to whether the death of the deceased Jaganathan was in the course of employment and was on account of accident as is contemplated in the Section 3 of Act.

39.In the case, there are no external injuries found on the body of the deceased Jaganathan.

40.The decisions of the courts cited by the either side of the contesting parties makes it clear that death due to heart attack can also be considered as an employment injury for granting compensation under the provisions of the Workmen's Compensation Act, 1923. However, the death due to heart attack should be on account of strain in the work undertaken by the deceased employee.

41.The authority acting under the provisions of the Workmen's Compensation Act, are not bound by strict rules of evidence. They have to merely base their finding on the principle of preponderance of probability.

42.In this case, though there is no discussion as to whether the death was due to the stress involved in the nature of work undertaken by the deceased which would have aggravated the death, yet the evidence of the appellant themselves shows that the deceased had been previously admitted just two months before the death for treatment in Government Stantly Hospital during October 2002 for intensive heart disease.

43.I am convinced that the death was aggravated due to the strain involved in the work considering the fact that the appellant themselves have admitted that the deceased had a prevailing heart disease. Burden of proof was therefore on the appellant as the death had taken place within their factory premises. They had the best evidence available with them to

establish that the nature of work carried on by the deceased was not strenuous and did not hasten the death. However, they failed to let in any positive evidence.

44. Shifting the burden on the claimants who were spatially away from the scene of occurrence of the alleged accident cannot be shifted as they have no access to the site or the nature of work carried by the deceased. The post mortem report also cannot substantiate the same, as it would not describe the work carried out by the deceased Jaganathan. Therefore, it would be unfair to shift the proof on claimants who are the dependants of the deceased employee as they would have no access to any evidence regarding the nature of work or event surrounding the accident/death. The only person who could have stated as to whether there was no stress or strain on account of employment would be either deceased himself which is an impossibility or by oral evidences of the colleagues and co-workers. The appellant has not let in any such evidence.

45. Therefore, in my view, the burden of proof was on the appellant to establish that there was no stress or strain. The appellant has not discharged the burden of proof. In fact, there has to be some amount of presumption that the death due to heart attack was because of the stress and strain considering the health condition of the deceased which was weak. The appellants should have ensured that the deceased Jaganathan was not exposed to work which could hasten his death.

46. In view of the above discussions, I am of the view, the substantial questions of law raised by the appellant are answered against the appellant. Accordingly, the present Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jen

To

1. The Deputy Commissioner of Labour - II, Chennai.
2. The Section Officer, V.R. Section. High Court, Madras.

+1 cc to Government Pleader Sr.No. 952340

+1cc to Mr.P.Jagadeesan , Advocate SR.No. 94848

+1cc to Mr.C.K.Chandrasekar , Advocate SR.No. 94351

+1cc to Mr.S.Ramasubramaniam associates SR.No. 94339

C.M.A.No.944 of 2007

and

M.P.No.1 of 2007

A.SK(09/01/2020)

<https://hcservices.ecourts.gov.in/hcservices/>