

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A. No. 2729 of 2010

and

M.P. No. 1 of 2010

The Divisional Manager,
M/s. The New India Assurance Company Ltd.,
Ram Complex,
29, Paramathy Road, Namakkal. Appellant

Vs

1. Angammal
2. M. Sumathi
3. Minor Divakar
4. R. Ramachandran Respondents

(Minor Divakar R3 is represented by
this mother and Natural Guardian M.Sumathi)

Prayer: Civil Miscellaneous Appeal has been filed under
Section 30 of the Workmen's Compensation Act, 1923, to set
aside the Award dated 15th of May, 2010 passed by the Learned
Deputy Commissioner of Labour at Salem in W.C. No. 210 of
2006.

For Appellant : Mr. J. Michael Visuvasam
For R1 to R3 : Mr. Shase
for Mr. B. Marudhachalamoorthy
For R4 : Not ready in notice

JUDGMENT

The Appellant Insurance Company is aggrieved by the
impugned order dated 15.05.2009 passed by the Deputy
Commissioner of Labour, Salem in W.C. No. 210 of 2006.

2. By the impugned order, the Deputy Commissioner of
Labour has awarded a sum of Rs.4,04,798/- (Rupees Four Lakhs
Four Thousand Seven hundred Ninety Eight Only) including
funeral expenses to the defendants who are the Respondents 1
to 3 herein. In the impugned order, the Deputy Commissioner
of Labour, Salem has concluded that the vehicle has travelled
half the way from North India and it was parked in the
premises of Namakkal Taluk Trailers Owners Association,
Kaniyapet and the deceased wound up by chest pain and was taken

to the hospital where he later succumbed to death and the deceased was subjected to post mortem and the doctors have confirmed that the deceased appears to have died of cardiac arrest due to Myocardial infraction 10 to 12 hours prior to postmortem examination.

3. It is the contention of the Appellant Insurance Company that the death due to heart attack cannot be constituted as work injury warranting compensation under the Workmen's Compensation Act, 1923. The learned counsel for the Appellant further submits that there is no evidence to suggest that the death caused by due to stress and strain involved in the work and therefore, the compensation awarded by the Deputy Commissioner of Labour was liable to be interfered with. He further submitted that the law on the subject is clear as per the decision of the Honourable Supreme Court in the case of Shakuntala Chandrakant Shreshti Vs Prabhakar Maruti Garvalli and another, 2007 (1) ACJ. The Honourable Supreme Court has enunciated the principles of law in paragraph (22) as follows:

"22. The Principles are:

(1) There must be a casual connection between the injury and the accident and the work done in the course of employment.

(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the facts of each case."

and in paragraphs No. 26, 27 & 28 the Court held as under:

"26. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:

(1) stress and strain arising during the course of employment;

(2) nature of employment; and

(3) injury aggravated due to stress and strain.

27. The deceased was travelling in a vehicle. The same by itself cannot give rise to an inference that the job was strenuous.

28. Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf."

4. It is submitted that the Respondents/Claimants have not discharged the burden of proof and therefore the compensation awarded by the Deputy Commissioner of Labour is liable to be set aside.

5. The learned counsel for the Respondents/Claimants submits that the order of the Deputy Commissioner of Labour is well-reasoned and it is based on the facts. It has been concluded that the death was due to strain and stress involved in the long hour of work involving travel of the vehicle from North India to Ranipet where it was station at, when the deceased suffered heart attack and later he died due to it. It is referred to Page No. (11) of the Typed set as

"The said Singaravel has deposed before the Court on 27.01.2010. In his evidence he has stated as follows:

On 18.02.2006, the deceased Murugesan unloaded the consignment from Northern State in Vehicle bearing Registration No. HR-46-B-9295 and thereafter when he stopped the Trailer near Ranipet at Namakkal Circle Drivers and Owners Association for carrying over load. Due to stress and strain, around 3.00 a.m, he sustained Heart Attack. He was taken to the Apollo K.H. Hospital at Melvisharam by the persons employed over there namely Watchman Balusamy, Chandrasekaran and Balasubramaniam. He has further stated that the details about the contents of the complaint. It is also stated in the post-mortem report-Ex.P2 that the deceased Murugesan died due to Heart Attack. The Trailer vehicle bearing Registration No. HR-46-b-9295 is owned by the First Respondent which is evident by the Registration Certificate-Ex.P6 and the Insurance Policy-Ex.P3. On a consideration of the above evidences and the documents, it is clear that the deceased Murugesan was working as driver under the First Respondent and he was driving the aforesaid vehicle bearing Registration No.HR-46-B-9295, that he was deputed to Northern State from where he was loaded the consignments and unloaded the same at Ranipet, that when he was waiting at Ranipet to load further consignment he sustained Heart Attack and that due to continuous driving of the heavy load vehicle from Northern State he was tired and sustained Heart Attack. On that basis, I hold that the deceased Murugesan has suffered Heart Attack while working under the First Respondent."

6. Heard, the learned counsel for the Appellant and the Respondents.

7. At the time of admission, the Appellant has raised the following substantial questions of law:

1. Whether the findings of the Learned Deputy Commissioner of Labour that the death of Late.Murugesan was 'in the course of, and arose out alleged employment' under the IV Respondent is sustainable in the absence of any documentary evidence?

2. Was the Learned Deputy Commissioner right in awarding Compensation to the Respondents I-III against the statutory requirements of Section.3 of the Workmen's Compensation Act, 1923, when the alleged death of Late.Murugesan, was not due to any 'personal injury' caused by an accident, 'in the course of' an arose out of the alleged employment under the IV Respondent?

3. Whether the finding of the Learned Deputy Commissioner of Labour that the death was due to 'stress and strain' is sustainable, when the postmortem report states that the alleged death of Late.Murugesan, was 'Cardiac arrest due to Myocardial Infarction' which is a natural case?

4. Was the Learned Deputy Commissioner right in holding that the death was only due to 'stress and strain', in the absence of any medical evidence on the side of the Respondents I-III?

5. Can the evidence of Aw1 and Aw2 be relied on with regard to the alleged 'stress and strain' due to a long journey from a Northern state resulting in the death of Late.Murugesan in the course of his employment as a 'driver' in the trailer lorry bearing registration number HR 46 B 9295, in the absence of any pleadings with regard to the 'stress and strain' and the starting point of journey of the said trailer lorry?

The authorities under the Workmens' Compensation Act are not governed by strict rules of evidence. Therefore it is incumbent on the Insurance Company or the employer to rebut initial burden of proof discharged by the claimants that the death was due to stress and strain involved in the work. Since the authorities under the Workmens' Compensation Act are not involved by the strict rules of evidence, I do not find any justifiable reason to interfere with the order.

8. The order of the Deputy Commissioner of Labour is well reasoned. It has been clearly concluded that the death was due to strain and stress resulting heart attack.

9. It is however left open for the Appellant to recover the amount from the owner of the vehicle namely the Fourth Respondent in accordance with law. This Civil Miscellaneous Appeal stands dismissed with the above observation. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Deputy Commissioner of Labour,
Salem.
2. The Section Officer,
Vernacular Section, High Court of Madras.

+lcc to Mr.J.Michel Viswasam , Advocate SR.No. 98127

C.M.A.No. 2729 of 2010

and

M.P. No. 1 of 2010

A.SK(27/01/2020)

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