



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 17.12.2019**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.P. (MD) No.6307 of 2013**

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S.Santha

... Petitioner

-Vs-

The Labour Officer  
(Social Security Scheme)  
Madurai

... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the respondent in Claim Petition No.Kattu/E.Ma/dated ..08.2012 signed on 11.08.2012 and quash the same and direct the respondent to grant the death benefits of the petitioner's deceased husband to her within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen  
For Respondent : Mr.S.Dhayalan  
Government Advocate

**ORDER**

The petitioner has come forward to challenge an order dated 11.08.2012, wherein, she was informed that her husband R.Sekar was a construction worker, who died due to van accident outside the work spot on his way from return to home and hence, she cannot be granted compensation.

2. The case of the petitioner is that her husband while going for construction work on 22.04.2010 in his friend's two wheeler was hit by a Van bearing Registration No.TN 20 AU 5113 which came in opposite direction in a rash and negligent manner and he died on the spot. Hence, the petitioner filed a claim petition before the respondent under Clause 11 (2)(a) of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994 for sanction of Rs.1,00,000/- on 04.06.2010. The respondent belatedly rejected the claim of the petitioner by stating that the said accident did not happen during the course of the employment and therefore, the claim petition under Clause 11(5) of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994 is not maintainable. Challenging the same, the Writ petition came to be filed.

3.The respondent has not filed any counter. The learned Government Advocate would contend that the Group Personal Accident



Insurance Scheme covers the workers under the Tamil Nadu Construction Workers Welfare Scheme, 1994. It only covers the accident arising out of and in the course of employment. The petitioner's husband met with an accident on his way to work and not entitled for a claim.

4. Heard the learned counsel for the petitioner as well as the respondent.

5. It will be useful to extract Rule 11 of the Accident Insurance Scheme.

*"11. Group Personal Accident Insurance Scheme -(1)  
Application:- The Scheme shall apply to all registered manual workers.*

*(2) Definition; " Accident means any bodily injury or death or loss of limbs or loss sight resulting solely and directly from accident arising out of and in the course of his employments but does not include any intentional self injury, suicide, attempted suicide, injury caused while under the influence of intoxicating liquor or drugs or caused by insanity or resulting from the insured persons committing any breach of law or rules or regulations or instructions applicable from time to time"*

6. The respondent while rejecting the case of the petitioner did not go into the full import of the scheme. It is the contention of the petitioner that normally constructions workers leave their home at 7.30 a.m and reaches the destination before 8.30 a.m. No enquiry was conducted for rejecting her claim. Merely because the petitioner made an application for compensation that the accident took place outside the work spot that does not disqualify the petitioner from claiming compensation. Even travelling towards work spot and the concept of theory of notional extension has to be covered for such matters. These aspects have not been considered by the respondent before rejecting the claim of the petitioner.

7. In this context, while considering the similar scheme under the Tamil Nadu Manual Workers Social Security and Welfare Scheme, 2001, wherein Rule 17 provides for similar relief, this Court had an occasion to consider the scope of the said scheme and the nature of compensation claimed by the person involved in an accident, vide its judgment in *V. Maheswari Vs. Secretary, Tamil Nadu Manual Labour Social Security and Welfare Board, Chennai and others* reported in **(2007) 3 MLJ 295**. After extracting Rule 17, which is similar to that of the present rule, this Court had granted compensation where an insured person was murdered and the claim was rejected on the ground that it did not arise in the course of his employment.



8. The Supreme Court, with reference to the provisions of the Workmen's Compensation Act, in its decision reported in **1970(1) SCR 869=(1969) 2 SCC 607 (Mackinnon Mackenzie and Co., (P) Ltd., Vs. Ibrahim Mahammad Issak** held in paragraph 5 as follows:

"Para 5: .. to come within the Act the injury by accident must arise both out of and in the course of employment. The workds in the course of the employment mean in the course of the work which the workman is employed to do and which is accidental to it. The words arising out of employment are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. In other words, there must be a casual relationship between the accident and the employment. The expression arising out of employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises out of employment. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act..."

7. This Court vide its decision reported in 1983 (II) L.L.J 326 (Superintending Engineer, Parambikulam Aliar Project, Pollachi Vs. andammal) dealt with a claim made by a workman's legal heir on account of the death due to murder and it was held in paragraph 7 of the judgment as follows : para 7: "... it has also to be remembered that but for the employment of the deceased he would not have been at the place where the accident happened and caused and proximate connection between the accident and employment it also established..."

8. Once again, this position was reiterated by the Court vide its decision reported in 1995 (II) L.L.J 231 (Senior Divisional Personnel Officer, S.Rly, Trichy Vs. Kanagambal) and in paragraph 7, it was held as follows:

"Para:7 " The only question that has to be considered is whether the injuries sustained by a workman by an unknown person would amount to an accident arising out and in the course of the employment. It has been decided in the decision reported in Smt. Satiya Vs. Sub Divisional Officer, P.W.D (1975-I-LLJ 394) (M.P). that murder is an accident from the point of view of the person



who suffered from it and it is an untoward event as defined in Section 3(1) of the Act. Therefore, sustaining injury while on duty and meeting his death subsequently has to be necessarily considered as an accident arising out of and in the course of employment.

9. The Madhya Pradesh High Court vide its decision reported in 1971 (II) L.L.J. 273 [Madhya Pradesh State Road Transport Corporation and another vs. Mst. Basantibai and others] held in paragraph 9 of the judgment as follows: Para 9: "... Normally, an employer owes no duty of care for the safety of his employee while the employee is proceeding to the place of employment from his house. The point, however, is whether the same rule prevails when the situation is abnormal and when as a result of outbreak of violence in the city, the law enforcement authorities promulgate curfew order requiring citizens to be within doors as the only means which can reasonably ensure their safety. In such a situation, when every citizen is expected to be within doors as a matter of safety, if an employer requires his employee, to come to the place of employment in early hours of the morning, it is reasonably foreseeable that the employee is likely to suffer injury at the hands of some ruffian while on the way to join his work unless adequate arrangements are made by the employer for the safety of the employee. Requiring an employee to come to work in such a situation is itself such an act from which harm to the employee is foreseeable and the employee being closely and directly connected with the act of requiring him to join his work, the employer must have his safety in contemplation. On the principles enunciated by Lord Atkin in Donoghue vs. Stevenson ([1932] A.C.

562) the employer must, in the circumstances prevailing in the instant case, be held to owe a duty of care to the employee while he was on his way to the place of work. The employer should have taken adequate care for the safety of the employee while he was on his way either by providing safe transport or some persons to accompany and guard him. In case it was not possible for the employer to make any arrangement for the safety of the employee, the employer should have temporarily closed down the business, as the only alternative of avoiding harm to the employee. It has also to be kept in view that the employee, in the instant case, unlike a police constable or a fireman, was not in such an employment where it was expected of him from the nature of employment to face the hazard of a riot."

10. This would set rest all the doubts raised by the insurer. Even otherwise, the Supreme Court in two of its



decisions has spelt out the true meaning of the word "accident" found in the Workmen's Compensation Act. The first decision was the one reported in (2006) 5 SCC 513 [Jyothi Ademma vs. Plant Engineer, Nellore and another] and paragraph 7 of the judgment reads as follows:

Para 7: "The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In *Fenton v. Thorley & Co. Ltd.* [1903 AC 443] it was observed that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, A.C. In *Trim Joint District School Board of Management v. Kelly* [1914 AC 667] as follows :

"I think that the context shows that in using the word 'designed' Lord Macnaghten was referring to designed by the sufferer."

11. In fact, after referring to this decision, the Supreme Court once again reaffirmed the said view in *JT 2007 (1) SC 15* [Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another] and paragraph 26 of the judgment reads as follows:

Para 26: "Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, *inter alia*, having regard to the nature of the work and the situation in which the deceased was placed."

9. Based on the above referred judgments, the petitioner is entitled for the claim under the Scheme. Apart from the above, the petitioner made a claim under the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994. Further, the Scheme itself creates accident policy providing for compensation on account of an accident which has been explained in the definition found in paragraph 11 of the Scheme. The Scheme only excludes the intentional self injury, suicide, attempted suicide, injury caused while under the influence of intoxicating liquor or drugs or resulting from the injured worker committing any breach of the law. None of the exclusionary clause applies to the case of the petitioner's husband. Therefore, the liability of the insurer can never be whisked away.

10. In view of the above, the impugned order of the respondent in Claim Petition No.Kattu/E.Ma/08/2010 is set aside and this Writ petition is allowed and the respondent is directed to pay the petitioner under the Scheme, within a period of



twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

msa

**To**

The Labour Officer  
(Social Security Scheme)  
Madurai

+1 CC to Mr.A.HAJAMOHIDEEN, Advocate ( SR-105425[F]dated  
17/12/2019 )

+1 CC to SPL.GP ( SR-105551[F] dated 18/12/2019 )

**W.P. (MD) No.6307 of 2013**

**17.12.2019**

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