



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 07.01.2020
Delivered On : 26.02.2020
CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI
C.M.A. (MD) No.1420 of 2007

New India Assurance Company Ltd.,
Mettuppalayam.

.. Appellant/Respondent No.2

Vs.

1.M.Sarumathi
2.Minor M.Udayaraj Kumar
3.Minor M.Preethiba ...Respondent 1 & 3/Petitioners
(Respondents 2 and 3 are minors Represented
by their mother and next friend 1st respondent)

4.The Group Manager,
The Bombay Burmah Trading Corporation,
Singampatti Group. ..4th Respondent/Respondent 1

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, to set aside the award dated 29.05.2006 made in W.C.No.65 of 2005 on the file of the Workmen's Compensation Commissioner & Deputy Commissioner of Labour, Tirunelveli - 2.

For Appellant	: Mr.D.Sivaraman
For 1 st Respondent	: Mr.P.Samuel Gunasingh
For 4 th Respondent	: Mr.K.Govindaraj
Respondents 2 and 3	: Minors

ORDER

Heard learned counsel appearing on either side.

2.This Civil Miscellaneous Appeal has been filed against the award passed in W.C.No.65 of 2005 dated 29.05.2006, on the file of the Workmen's Compensation Commissioner & Deputy Commissioner of Labour, Tirunelveli. The respondents 1 to 3 who are the claimants, have filed a claim petition in W.C.No.65 of 2005 seeking compensation for the death of Manonmani.

3.The case of the claimants is that the said Manonmani was working as a Supervisor in the 12th garden of the fourth respondent and his duty was to supervise the usage of pesticides. He was not given any protective tools. On 06.03.2004, when he was supervising the administration of pesticides at about 01.00 p.m., he had chest pain and was sent home. The next day, the pharmacist of the fourth respondent visited Manonmani and advised him to get admitted in



hospital. But on the way to the hospital, he died. Due to heavy work load and due to inhalation of pesticides, he suffered heart ailments and died. Hence, the respondents 1 to 3 are entitled for a compensation of Rs.3,12,000/- (Rupees Three Lakhs Twelve Thousand only) with 12 % interest.

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4.The case of the Insurance Company/appellant is that the nature of work of Manonmani did not require much physical labour and that the death is not due to stress and strain of the work. He was only a Supervisor and he was on leave on 02.03.2004 and on 03.03.2004. He supervised the work of administration of pesticides and returned back home. He was not referred to hospital and he died in his sleep on 06.03.2004. The death was only a natural death and not due to stress or strain arising out of the work load. Nobody else was affected by the pesticides. The claimants are not entitled for any compensation.

5.The case of the fourth respondent is that the nature of work of Supervisor was not hard physically. There is no possibility for any stress or strain in the work. The death was a natural one. The deceased died in his sleep. There is no connection between the death and the work. The claimants are not entitled for compensation.

6.After considering both sides, the labour Court awarded a sum of Rs.1,88,148/- (Rupees One Lakh Eighty Eight Thousand One Hundred and Forty Eight only) as compensation. Against which, the Insurance Company/appellant has preferred this appeal.

7.On the side of the appellant, it is stated that the deceased was taking treatment for various ailments including tuberculosis and urinary problems and Ex.R3 reveals the same and that the evidence of P.W.2 reveals that only permitted pesticides were used and they are harmless to the human body and that there is no direct casual connection between the death and the nature of employment and that postmortem was not conducted and that the award is unsustainable.

8.On the side of the appellant, it is stated that the deceased was staying alone and he died at night. On 07.03.2004, his neighbor found his door locked for a long time. He informed the Manager and the door was broke open. The deceased was then taken to hospital and was declared as dead. The deceased was having chronic diseases prior to the death and he took treatment. There was no casual connection between the death and the employment. The death was not during the course of employment or out of the course of employment. There was no evidence regarding stress or strain caused to the deceased. The initial burden was not proved by the claimants. The medical report reveals that the deceased was taking treatment for one year and he was having chronic tuberculosis and he also took treatment for kidney ailment. The medical reports cannot be thrown



away. The Labour Commissioner failed to give a finding as to the cause of death. There was no injury leading to the death of the deceased. The occurrence was not during the course of employment or out of the course of employment.

9. The learned counsel for the appellant would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Jyothi Ademma v. Plant Engineer, Nellore and Another** reported in (2006) 5 Supreme Court Cases 513, wherein it is stated as follows:

"Under Section 3(1) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But 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 the employer would be liable."

10. The learned counsel for the appellant would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Another** reported in (2007) 11 Supreme Court Cases 668, wherein it is stated as follows:

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

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

Only because the cause of death was due to heart attack, the same by itself may not be a ground to arrive at a conclusion that an accident had occurred resulting in injury.

Indisputably, there has to be a proximate nexus between cause of death and employment. A stray statement made by the appellant that the deceased had died while working in the vehicle and stress or strain of the work did not appear to have any foundation. Admittedly, she was not present at the spot. She had also no personal knowledge. All these facts she had admitted in the cross examination."



11.The learned counsel for the appellant would rely upon the judgment passed by this Court in the case of **Oriental Insurance Co. Ltd., v. Chinnapillai and other** reported in **2007 (2) TN MAC 136**, wherein it is stated as follows:

"The deceased in this case suffered a massive heart attack. The death it is stated is due to "Myocardial infarction". Merely because the death is due to heart attack that by itself cannot be a reason to arrive at a conclusion that an accident had occurred resulting in an injury out of employment. In this case, the deceased was plucking tea leaves in the tea garden along with co-workers.

There is no finding with regard to stress and strain in the employment and consequent to the same the deceased died.

In this case, there is no evidence to show that there was stress and strain in the course of employment nor a finding by the Commissioner for Workmen's compensation on that ground."

12.On the side of the respondents 1 to 3, it is stated that the citations referred above are not relevant to the present facts of the case. P.W.1 has deposed that no protective tools were given to the deceased for supervising the work of administration of pesticides. The deceased was inhaling poison. There is no medical reports for any other ailments or any other treatment from the year 2000 till the death of the deceased. Even a ill or sick person is entitled for compensation.

13.The learned counsel for the respondents would rely upon the judgment passed by this Court in the case of **National Insurance Co. ltd., V. A. Saroja and others** reported in **(2009) 1 MLJ 495**, wherein it is stated as follows:

"Bearing in mind the above stated, I am of the considered view that the judicial pronouncements made this subject clear.

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.

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."



14.The learned counsel for the respondents would rely upon the judgment passed by this Court in the case of **United India Insurance Co. ltd., V. Padmini and others** reported in **C.M.A.No.3638 of 2012**, wherein it is stated as follows:

"This Court is of the view that no perversity can be attached to the finding of the Commissioner of Workmen's compensation that the death has occurred, arising out of and during the course of employment and due to the employment injury. Hence, the finding is confirmed. There is no challenge to the quantum of compensation."

15.The learned counsel for the respondents would rely upon the judgment passed by the Gauhati High Court in the case of **The Manager V. The Commissioner of Workmen's Compensation and others** reported in **M.F.A.No.106 of 2011**, wherein it is stated as follows:

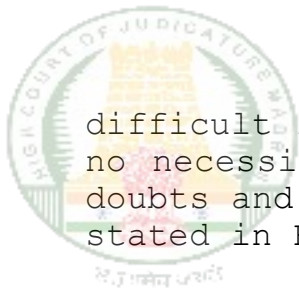
"Under Section 3(1) it has to be established that there was some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death.

It would be seen from the above given portion of the judgment particularly para - 6 that if the employment had contributed to the cause or had 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 the employer would be liable."

16.It is stated that the job of the deceased was to supervise the administration of the pesticides and no protective gears were given and the nature of the work accelerated his death and that a co-worker was examined to prove the nature of work and to prove that the deceased was having chest pain on 06.03.2004 and that he was sent back home.

17.On the side of the appellant, it is stated that R.W.3 was the Manager having custody of the personal documents, Ex.R3 and he was not cross examined by the claimants and that nobody else was affected by the usage of pesticides.

18.On the side of the respondents, it is stated that casual connection is sufficient and that the nature of human body is different for everyone and the effect of inhaling poison will be



difficult in accordance with different body types and that there is no necessity for the claimants to prove the case beyond reasonable doubts and that the doctor was not examined to prove the particulars stated in Ex.R3.

19.It is seen that the deceased Manonmani was supervising the administration of pesticides. P.W.1 deposed that the deceased complaints about chest pain on 06.03.2004 and he was sent back home and the very next day, he was taken to hospital where he was found death. There seems to be a casual connection between the death and the nature of work. P.W.3 deposed that there are no entries in Ex.R3 regarding tuberculosis and urinary problem during the period of 2003 to 2004. From the evidence of R.W.3 and from Ex.R3, it is clear that at the time of death, the deceased was not having any other ailments and from the evidence of P.W.1, it is clear that the nature of his work was exposure to pesticides. The fact that protective gear was not given to deceased was not denied by the fourth respondent. The effect of the pesticides may be different depending upon the body type of each person. Hence, it is decided that the death was during the course of employment and the nature of work accelerated the death. There is no dispute regarding the factum of insurance with the appellant. Hence, it is decided that the claimants are entitled for compensation from the appellants.

20.In the above circumstances, there is no reason sufficient enough to interfere in the order passed by the lower Court. Hence, this Civil Miscellaneous Appeal is dismissed and the award passed in W.C.No.65 of 2005 dated 29.05.2006, on the file of the Workmen's Compensation Commissioner & Deputy Commissioner of Labour, Tirunelveli is confirmed. No Costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

MRN

To

The Workmen's Compensation Commissioner & Deputy Commissioner of Labour, Tirunelveli.

+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-8852[F] dated 27/02/2020)

+1 CC to Mr.P.SAMUVEL GUNASINGH, Advocate (SR-8321[F] dated 26/02/2020)

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-8451[F] dated 26/02/2020)

C.M.A.(MD)No.1420 of 2007

26.02.2020

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