



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.12.2020

PRONOUNCED ON : 27.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.840 of 2016

AND

C.M.P(MD)No.7912 of 2016

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The Branch Manager,
National Insurance Company Limited,
14.A, Paramathi Road,
Namakkal -637 001.

...Appellant/2nd Respondent

Vs.

1.R.Vijaya
2.R.Sudha
3.Bhuvaneshwari

... Respondents 1 & 2/ Petitioners
... 3rd Respondent / 1st respondent

PRAYER:Civil Miscellaneous Appeal filed under Section 30 (i) of the Workmen Compensation Act, 1923, to set aside the award dated 16.12.2013 passed by the learned Commissioner for Workmen's Compensation, Dindigul made in W.C.No.89 of 2007 and to dismiss the claim as against the Appellant.

For Appellant : Mr.J.S.Murali
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed under Section 30 of the Workman's Compensation Act, challenging the order passed in W.C.No.89 of 2007, dated 16.12.2013, on the file of the Commissioner for Workmen's Compensation, Dindigul.

2.The Appellant / Insurance Company, which was made liable to pay a compensation of Rs.2,84,079/- to the claimants, who are the legal heirs of the deceased Rengaraj, who died in an accident allegedly occurred on 13.03.2006, challenged the liability mulcted on it.

3.The case of the claimants is that the deceased Rengaraj was working as a Driver under the 3rd respondent / 1st respondent, that the said Rengaraj had taken gas in a Tanker lorry bearing Registration No. KA 19 D 6877 to Sivakaumu, that after unloading the same, while he was returning on 13.03.2006 at about 8.45 am, he parked his Tanker lorry in Balagramam, that while he was sitting in the Driver's seat, he had developed chest pain, that he was immediately taken to the Misgitrav hospital, but he died after admission, that the said Rengaraj died due to the accident occurred in the course of and out of the employment under the 3rd respondent /



1st respondent and that since the 3rd respondent / 1st respondent's Tanker lorry was insured with the Appellant / Insurer, both the Appellant / 2nd Respondent, and 3rd Respondent/ 1st Respondent are jointly and severally liable to pay compensation to the claimants.

4.The defence of the Appellant/Insurer is that the deceased Rengaraj had breathed his last not in the course of his employment, that the cause of the death is due to 'cardiac failure secondary coronary artery disease', that there is no nexus between the cause of the death and the employment, that the petitioners have to prove that the deceased Rengaraj was working under the 3rd Respondent /1st Respondent and that the compensation claimed is excessive.

5.During enquiry before the Tribunal, the claimants have examined one Dr.Harikrishnabatt, who translated the FIR from Kannada to Tamil and the 1st claimant Tmt.Vijaya as PW1 and PW2 respectively and exhibited 8 documents as Ex.P.1 to Ex.P.8. The 3rd Respondent/1st Respondent owner of the Tanker lorry had remained ex-parte before the Tribunal. On the side of the Appellant/Insurer, they have examined their Senior Assistant Thiru.Gowthaman as RW1 and marked the copy of the Policy under Ex.R.1.

6.The learned Commissioner for Workmen's Compensation, Dindigul, upon considering the evidence, both oral and documentary, came to the conclusion that the deceased Rengaraj had died due to cardiac failure, while in the course of and out of the employment under the 3rd Respondent and consequently fastened the liability on the Appellant / Insurer directing them to pay a compensation of Rs.2,84,079/-. Aggrieved over the said order, the Appellant/Insurer has come forward with the present appeal.

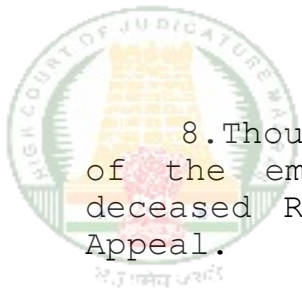
7.The appeal was admitted on the following substantial questions of law:

a) *Whether the Commissioner was erred in awarding compensation to the claimants, when no additional premium was paid to cover the deceased Driver?*

b) *Whether the Commissioner was erred in awarding compensation to the claimants when the death caused to the deceased had not arisen out of and in the course of his employment with the 3rd respondent?*

c) *Whether the Commissioner was erred in holding that the death caused to the deceased was due to the stress and strain as a Driver in the course of his employment, when no evidence was let in on the side of the claimants to prove the cause of death?*

d) *Whether the Commissioner was erred in not holding that the death caused to the deceased was only in a natural manner and without considering the oral and documentary evidence in the proper perspective?*



8. Though the Appellant has originally disputed the relationship of the employer - employee between the 3rd Respondent and the deceased Rengaraj, the same was not pressed into service in the Appeal.

9. The learned Counsel for the Appellant would contend that the death caused to the said Rengaraj, had not arisen out of and in the course of employment with the 3rd Respondent, that the Commissioner has failed to consider that the death caused was not due to stress and strain, that no evidence was let in to prove that the death occurred due to stress and strain in the course of employment, that the Tribunal has awarded the compensation by relying upon the decision of the Orissa High Court in the case of ***Oriental Insurance Company Ltd, Tiruchur Vs Kabutari Devi and Others, reported in 2007 ACJ 2796***, without considering the decision of the Hon'ble Apex Court reported in ***(2007) 11 SCC 668***, wherein it has been held that it is the bounden duty of the claimants to prove that the deceased died due to heart attack only because of stress and strain in the course of employment and that therefore, the Appellant/Insurer is in no way liable for the claim.

10. Before going into further discussion, it is necessary to refer Section 3(1) of the Workmen's Compensation Act, which deals with the employer's liability for compensation, which is extracted hereunder:

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable--

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to--

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

11. The learned Counsel for the Appellant would argue that the Tribunal has relied on the decision of the Orissa High Court, in

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



Oriental Insurance Company Ltd, Tiruchur Vs Kabutari Devi and Others, reported [2007 ACJ 2796], but the dictum therein has been practically overruled by the Hon'ble Apex Court in the decision in reported in **2007 11 SCC 668**, in **Shakuntala Chandrakant Shreshti Vs Prabhakar Maruti Garvali & Another**, whereunder the Hon'ble Apex Court has listed the guidelines in the matter of claim under the Workmen's Compensation Act, as follows:

"There are a large number of English and American decisions, some of which have been taken note of in *ESI Corporation (supra)*, in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act.

The principles are :

(1) There must be a causal connection between the injury and the accident 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 fact of each case.

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.

There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction.

An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.

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



2. nature of employment

3. injury aggravated due to stress and strain The deceased was traveling in a vehicle. The same by itself can not give rise to an inference that the job was strenuous.

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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.

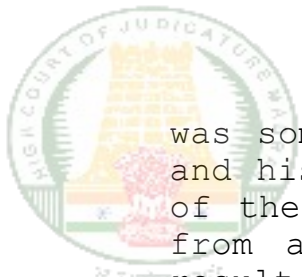
Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefor can be raised. As a person suffering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

12.It is also necessary to refer to the decision relied upon by the Tribunal in **Oriental Insurance Company Ltd, Tiruchur Vs Kabutari Devi and Others**, reported in **2007 ACJ 2796**, which reads as follows:

"Workmen's Compensation Act, 1923, Section 3(1) - Arising out of and in the course of employment-Heart Attack - Driver of Truck after reaching destination while alighting from the Vehicle lost control and fell down - Driver taken to hospital where he was declared dead - Postmortem report indicated that deceased died due to heart stroke - Investigating officer in his final report endorsed that the deceased suffered from heart stroke while going to attend call of nature - Deceased reached in the morning after driving the truck for a long distance at night - Though there is no direct evidence to prove that the deceased suffered from heart stroke only due to stress and strain, it can safely be held that deceased must have suffered from severe stress and strain due to driving to long distance specially in the night - commissioner held that the death of the deceased arose out of and in the course of his employment- commissioner's finding upheld."

13.The Hon'ble Supreme Court in its decision reported in **2006 (5) SCC 513 in Jyoti Ademma Vs Plant Engineer** has held, In paragraph No.6;

<https://hcservices.ecourts.gov.in/hcservices/> "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 deceased, 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 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."

14. In **National Insurance Company Vs A.Saroja and others** reported in **2009 1 MLJ 495**, the Hon'ble Apex Court has held, In paragraph No.20:

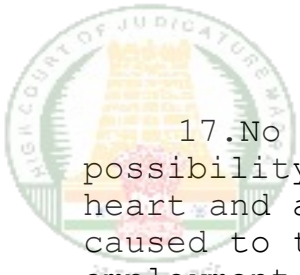
"..... Even an ordinary strain in given circumstances of the case would be enough to cause the injury or death which is found to be in the course of and out of employment, it has to be held that the claimant is entitled for compensation. The claimant is expected in law to show that the workman suffered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

In paragraph No.21:

" Even though there is no plausible medical evidence to portray that the proximate cause for the the death was due to the strain and stress, still the other circumstances found in this case show a casual connection between the employment and the death....."

15. It is now settled that the word 'accident' should be taken to mean a mishap or untoward event, not expected or designed, that if a person suffers heart attack and dies, if necessarily means that there has been an injury to the heart and that even being a mishap not expected or designed, is an accident and that if a workman suffers heart attack, out of and in the course of his employment, then the employer is liable.

16. Even in a case, where the driver was already suffering from some heart ailments, while on his duty, suddenly, developed chest pain and died subsequently and in that circumstances, the death cannot said to be natural death but the death as caused by heart ailments coupled with the employment.



17.No doubt, in heart attack or cardiac failure, there is no possibility to any external injury, but causes serious injury to the heart and as such it cannot be said that there is no personal injury caused to the driver by accident arising out of and in the course of employment.

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18.In the background of the above legal position, let us consider the case on hand. The deceased Rengaraj had alone driven the Tanker Lorry owned by the 3rd respondent along with cleaner, who lodged the complaint before the Police. It is not in dispute that the deceased had taken the goods and delivered the same in Sivagamu, the previous day and returned to the Balaragramam parking area and while he was sitting in the Driver's seat, he experienced chest pain. In the postmortem certificate under Exp2, the Medical Officer has given opinion that the death was due to 'cardiac failure secondary coronary artery disease'. Admittedly there is no evidence to show that the deceased had heart ailments or any other disease prior the said accident.

19.In **Shakuntala Chandrakant's** case cited supra, before the Hon'ble Supreme Court, the deceased was the Cleaner of the lorry and it is necessary to refer the observation of the Hon'ble Supreme Court hereunder;

"Learned counsel appearing on behalf of Appellant seeks to distinguish this decision stating that therein the job of the workman was merely to 'switch on and switch off' and thus there has been no scope of stress and strain in his duties and that the workman had been suffering from a heart disease. But in this case also job of a cleaner was not strenuous and in any event far less that of driver of the vehicle.

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.

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 were required to be performed by him, the same was required to be clearly stated."

20.In that case, moreover, the Hon'ble Supreme Court commented that there was no specific pleading to the effect that the deceased met with his death by reason of any strain of work. But, in the present case, the claimants have raised the necessary pleadings and the same are extracted hereunder for better appreciation:

"5.மூரைவர் லேட் .ரெங்கராஜ் கேஸ் நிரம்பி சிவகாமுவுக்கு கொண்டு

போய் கேஸ் காலி பண்ணிவிட்டு வந்து பாலகிராமத்தில் பார் க்கிங் பண்ணி '



டாங்கரை நிறுத்திவிட்டு டிரைவர் சீட்டில் உட்கார்ந்து இருக்கும் பொழுது ஹை டேட் டிரைவர் ரெங்கராஜ் க்கு நெங்குவல் ஏற்பட்டதால் மிஸ் சித்ரா மருத்துவமனையில் அட்மிட் செய்தவுடன் டிரைவர் ரெங்கராஜ் இறந்துவிட்டார். ஹை டேட் டிரைவர் ரெங்கராஜ் பணியில் இருக்கும் பொழுது அதிக பணியின் காரணமாக அதிக மனஉலைச்சல் ஏற்பட்டும், மனஅலைச்சல் ஏற்பட்டும் அதிக இரத்த அழுத்தம் ஏற்பட்டதால் பணியில் உள்ளபொழுது இந்த விபத்து மரணம் ஏற்பட்டதாகும்.””

As already pointed out, admittedly, the deceased was the only driver of the said tanker lorry during the trip to Sivakamu. Moreover, there is neither pleading nor evidence to show that a second driver had accompanied the deceased at that time. Driving of a heavy vehicle and that too for a long distance is undoubtedly, a tension and strain filled job. It is evident that job of the deceased for that day was not completed, as he was preparing to move the vehicle for returning at that time.

21.Moreover, there is no dispute that the Driver Rengaraj had died because of the Cardiac failure. When the deceased was about to take his return journey, he had chest pain and succumbed to the heart injury. Considering the above, I have no hesitation to hold that due to strain and stress, while discharging the duty as driver, he suffered heart attack during the course of his employment. Hence the contention of the Appellant/ Insurer that the death was not occurred due to the strain and stress in the course of employment and it is only a natural death, cannot be accepted.

22.The Appellant has also not challenged the quantum of the compensation, awarded at by the Tribunal. The Insurer has not canvassed any other reason or ground to impugn the order. Hence, this Court concludes that the appeal is devoid of merits and is liable to be dismissed. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the substantial questions are answered against the Appellant.

25. In the result, the Civil Miscellaneous Appeal is dismissed and the order passed in W.C.No.89 of 2007 on the file of the Commissioner for Workmen's Compensation, Dindigul is confirmed. The claimants are permitted to withdraw the amount deposited with the Commissioner for Workmen's Compensation, Dindigul on due application. Parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)



C.M.A(MD)No.840 of 2016

To

The Commissioner for Workmen's Compensation,
Dindigul.

+1 CC to M/s.J.S.MURALI, Advocate (SR-2284[F] dated 29/01/2021)

C.M.A(MD)No.840 of 2016
and

C.M.P(MD)No.7912 of 2016
27.01.2021

NS (CO)

KB(15.02.2021) 9P 3C