

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 1235 OF 2008

APPELLANT :-

1. Maharashtra State Road Transport Corporation Through Divisional Controller, Division Office, Station Road, Nagpur

...VERSUS...

RESPONDENT :-

1. Nasim Begum Wd/o Mohd. Shami
Aged about 35 yrs.
R/o 297, Wardhaman Nagar,
Near Babulban Masjid, Nagpur
2. Ku. Rabina Begum D/o Mohd. Sami
Aged about 14 yrs.
3. Ku. Shabina Parveen D/o Mohd. Sami
Aged about 12 yrs.
4. Ku. Shabina Banoo D/o Mohd. Sami
Aged about 10 yrs.
5. Ku. Samina Parveen D/o Mohd. Sami
Aged about 9 yrs.
6. Mohd. Irfan s/o Mohd. Sami
Aged about 7 yrs.

Respondents No.2 to 6
C/o Respondent No.1 being
Natural Guardian

Ms. Bhagyashri V. Reddy, Advocate for the appellant.
Shri Firoz Khan, Adv. h/f Shri S.S. Mujumdar, Advocate for respondent Nos.1
to 5.

CORAM : V. G. BISHT, J.

RESERVED ON: 31/03/2022

PRONOUNCED ON: 18/04/2022

J U D G M E N T

1. This is an appeal under Section 30 of the Employees Compensation Act, 1923 (“the Act”) by the appellant employer (original non-applicant) questioning the legality of the judgment rendered in WCA Case No.95/96 on 11.05.2005 by Commissioner, under the Act, First Labour Court, Nagpur directing appellant to deposit compensation amount of Rs.1,86,900/-.

2. The applicant No.1 is widow of late Shri Mohd. Shami s/o Ismail Miyan who was working with the non-applicant as helper and was attached to the Divisional Workshop at Nagpur. The applicant Nos. 2 to 5 are daughters of applicant No.1.

3. According to applicants deceased workman was on duty on 21.12.1995 and at about 4.30 PM complained of pain in the chest. He was admitted in the Medical College and Hospital by

the non-applicant but he died on the same day. According to applicants the death was due to heavy work which the deceased workman was doing and thus, the accident occurred during and in course of employment and therefore, she claimed compensation in the sum of Rs.1,86,900/- by way of compensation.

4. Non-applicant-MSRTC resisted the application by denying that the death of the deceased workman occurred during and in course of his employment because of the heavy work load. However, the non applicant does not dispute that the deceased workman was a helper. It denied that deceased was doing heavy work and died due to strain and work load during the course of his employment.

5. After hearing both the parties, the Commissioner directed non-applicant to pay the legal heirs of deceased workman compensation in the sum of Rs.1,86,900/-. Therefore, the present appeal.

6. Ms Bhagyashri V. Reddy, learned counsel for the

appellant, submits that although the deceased workman was working as a labour but his death did not take place because of the heavy work load during the course of employment. According to learned counsel, the applicant did not examine any witness to substantiate that because of heavy work load the death of deceased workman occurred. Learned counsel invited my attention to xerox copy of the postmortem report, which is not disputed by other side, wherein the cause of death is given as “coronary insufficiency leading to myocardial infarction associated with pulmonary tuberculosis on right side” (natural cause of death). According to learned counsel, the Commissioner failed to appreciate the evidence properly and wrongly awarded compensation which in the aforesaid circumstances is liable to be set aside. Learned counsel also placed reliance in ***Jyothi Ademma v. Plant Engineer, Nellor and another*** AIR 2006 SC 2830 and ***Puppala Naga Malleswara Kumar and Ors. vs. M. Rambabu & another*** 2012 (2) T.A.C. 657 (A.P.).

7. Shri Firoz Khan, learned counsel for respondents, on the other hand, vehemently opposed the submissions by

contending that as far as nature of duty of deceased workman is concerned, the same is not disputed. It is also not disputed that during the course of employment the deceased suffered chest pain followed by heart attack leading to his death. The death was essentially during and in the course of employment. The Commissioner was absolutely justified in awarding the compensation which needs no interference. The appeal being devoid of merit, the same is liable to be dismissed argued learned counsel. Learned counsel also placed reliance in ***Zubeda Bano and others Vs. Maharashtra State Road Transport Corporation and others*** MANU/MH/0237/1989 and ***Shantabai and Others Vs. the Chairman, Vaidyanath Sahakari Sakhar Karkhana Ltd. and others*** MANU/MH/1713/2019.

8. Section 3 of the Act carves out the circumstances under which the employer is liable for employees compensation. Section 3(1) reads thus:-

“Employer’s liability for compensation

(1) If personal injury is caused to a employee 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 employee 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 employee having been at the time thereof under the influence of drink or drugs, or

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

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

Following expressions used in the Sections are noteworthy:- (1) personal injury, (2) accident and (3) arising out of and in the course of employment. One cannot dispute that death is a personal injury and if it has occurred by heart attack then it is an accident is now well established by series of judicial pronouncements.

9. It is also not disputed that the death in the instant case had taken place in the course of employment only. The controversy needs to be settled whether the death in question was arising out of employment or not? Applicant No.1 i.e. widow of the deceased employee stated in her evidence (Exh.13) that while her husband was discharging the duties he suffered heart attack. I have already pointed out that there is no dispute that death occurred in the course of employment. It is also pertinent to note here that the non-applicant-employer has come with a theory that the death was not due to stress or extraneous conditions arising out of nature of employment. However, it is not disputed that the deceased was a helper. Equally important aspect of the present case is that the non-applicant has not examined any witnesses in order to show the nature of employment i.e. to say what exactly the deceased was performing duties since admittedly he was employed and attached with the Divisional Work Shop. It can be necessarily inferred that he was expected of doing heavy works in regard to the nature of duties performed in the work shop. All this was within special knowledge of the non-applicant. The non-applicant ought to have produced material which was within its

special knowledge to show that there was no proximal nexus between the death and nature of employment of the deceased. Not a single witness is examined by the non-applicant. The legal heirs who are helpless widow and children and had no access to that material which was within the special knowledge of the non-applicant- MSRTC. Non production of record and non examination of any witness must lead to drawing adverse inference against MSRTC.

10. Having regard to the fact that the deceased was helper and died in the course of employment, I hold that the death of deceased arose “out of and during the course of his employment” as contemplated under Section 3 of the Act and hence the death was compensable by the employer- MSRTC.

11. Though the Commissioner has not appreciated the evidence from the angle as discussed by me but has come to a right conclusion that non-applicant had not been able to prove that the strain or stress was not the reason of the death. I do not find any illegality in the findings recorded by the Commissioner.

12. I have perused the ratio lead down in ***Jyothi Ademma v. Plant Engineer, Nellore and Another (supra)*** in that case there was evidence to the effect that the job of the deceased was only to switch on or off and the doctor had also clearly opined that there was no scope for any stress or strain in his duties. Therefore, the case is distinguishable on the facts. Similar is the situation with other judgments relied by learned counsel for the appellant.

13. On the other hand, in ***Zubeda Bano and others Vs. Maharashtra State Road Transport Corporation and Ors, (supra)*** it has been held by Division Bench of this Court that if it is proved that the death cause was out of and during employment, then legal heirs are entitled to compensation under the Act. I have already pointed out that the applicants have been able to prove that the death arose out of and during the course of employment of the deceased.

14. As far as the cause of death given in the postmortem report is concerned, it may be that the cause of death is shown as natural cause arising out of coronary insufficiency leading to

myocardial infarction associated with pulmonary tuberculosis on right side but it remains a fact that the death occurred out of and during the course of employment and therefore, much emphasis can not be given on the findings of the postmortem report.

15. For the aforesaid reasons, I do not find merit in the appeal. Hence the following order:-

O R D E R

The First Appeal is dismissed with costs.

JUDGE

manisha