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C.M.A.No.3400 of 2019

CMA.No.3400 of 2019

and

CMP.No.19991 of 2019

P.T.ASHA,J,

The matter is listed today under the caption "for being mentioned" at the behest of the learned counsel for the appellant. He would submit that the order does not spell out that the balance amount should be refunded back to the appellant.

2. In the light of the above submissions, the following sentence shall be added at the end of the paragraph No.24. "The balance amount with accrued interest in the deposit shall be paid to the appellant".

3.The Registry is directed to sent back the papers to the Commissioner for Employees Compensation I, (Joint Commissioner of Labour I) Chennai.

23.06.2022

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C.M.A.No.3400 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.3400 of 2019

and

C.M.P.No.19991 of 2019

The Management,
Shree Laxmi Jewellery Pvt.Ltd.
New No.148, Bairav Tower,
Usman Road, T.Nagar,
Chennai-600017
(Now at No.60A N.S.C.Bose Road
Sowcarpet, Chennai-600079)

... Appellant/Respondent

Vs

P.Vishalakshi

... Respondent/Petitioner

PRAYER: Appeal filed under Section 30 of the Employees Compensation Act, 1923, to set aside the order dated 04.02.2019 of the learned Commissioner for Employees Compensation I, (Joint Commissioner of Labour-I), Chennai, in E.C.Case No.20 of 2017 and allow the appeal and also to direct the learned Commissioner for Employees Compensation I, (Joint Commissioner of Labour I), Chennai, to refund the deposited amount with interest and other



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charges to the appellant.

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For Petitioner : Mr.P.Ragunathan

For Respondent : Mr.R.Pandian

JUDGMENT

The respondent/Management has filed the above Civil Miscellaneous Appeal challenging the order dated 04.02.2019 passed by the learned Commissioner for Employees Compensation I, (Joint Commissioner of Labour-I), Chennai, in E.C.Case No.20 of 2017.

2.The facts in brief are as follows:

One P.Saravana Kumar was employed in the appellant/establishment. On 31.10.2015, the said Saravana Kumar accompanied by two other employees had gone out for collecting the dues from customers and had returned at 05.30p.m., with the collections. After reaching the shop and remitting the collections, the said Saravana Kumar had gone to the nearby tea shop to have tea and while there he had suffered a chest pain. He was immediately rushed to the hospital where he was administered first aid for 30 minutes.



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However, all efforts given in vain and the said Saravana Kumar suffered a cardiac arrest at 06.40pm.

3.The claimant/mother has filed the Workmen Compensation case stating that since his death has occurred out of and in the course of his employment she was entitled to compensation. It was her contention that her son was earning a salary of Rs.23,500/- per month and that he was 33 years at the time of his death. The petitioner had issued a letter to the employer on 05.04.2016 requesting them to grant compensation of a sum of Rs.10,00,000/- for the death of their son. Despite receiving the letter, the employer, namely the appellant herein did not respond and thereafter, the petitioner sent a notice as prescribed in Form-K to the appellant. Thereafter, the respondent had sent a notice to the appellant dated 15.02.2017, calling upon him to settle the legal dues, such as, compensation, gratuity, etc., however, the appellant had not come forward to settle the account and the claimant was therefore constrained to file the claim before the learned Commissioner for Employees Compensation I, (Joint Commissioner of Labour-I),



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Chennai, claiming compensation of a sum of Rs.8,11,640/- together with interest @12% per annum.

4.The appellant on entering appearance had filed their answer statement in which they have contended that the deceased Saravana Kumar had been reinducted in the appellant establishment on 01.07.2019, where he worked till his death on 31.10.2015 as a Section in-charge. They had denied the said Saravana Kumar worked for a continuous period of 17.03.2010 to 31.10.2015. They had stated that the death of the said Saravana Kumar did not arise out of or in the course of his employment and further, he had not died within the premises of the establishment but had developed chest pain when he had gone out to consume the tea outside the establishment.

5.The appellant had contended that although the appellants had a pantry in their own work place where tea was served free of cost to the staff, the said Saravana Kumar chose to take tea outside. They had



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further contended that after collection of the cash, the said Saravana Kumar had not come back to the office but he was dropped at the tea shop and his death had occurred at a public place. Therefore, it cannot be construed that it has been taken place in the course of his employment or out of his employment.

6.The appellant further contended that the nature of work undertaken by the appellant by no stretch of imagination could be turned as a stressful one and that it had exposed him to risk. Although the appellant emphasised the death of Saravana Kumar, however, it cannot be taken that the death has been taken as a consequence of employment. They therefore contended that the appellant was not liable to compensate the respondent herein.

7.The appellant had further contended that the deceased Saravana Kumar was earning a sum of Rs.22,500/- and therefore, he was not covered by the Employees State Insurance Act and further, he is not an



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employee, as detailed in Schedule II of the Act. They therefore sought to have the claim petition dismissed.

8.The respondent had examined herself as WW1 and she had reiterated the contents of the petition in her proof affidavit. Ex.R.1 to Ex.R.16 were marked. On the side of the appellant, one Chandramouli, an Executive of the HR & Administration Department was examined as RW1 and Ex.R1 to Ex.R.10 were marked.

9.The learned Commissioner Employees Compensation I, (Joint Commissioner of Labour-I), Chennai, after perusing the records, came to the conclusion that the death had occurred out of and in the course of employment and therefore, directed the appellant to pay a sum of Rs.8,06,640/- as compensation together with interest @12% along with a sum of Rs.5,000/- for funeral expenses. Challenging the said order, the appellant is before this Court.



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10. At the time of admission, the following Substantial Questions of Law has been framed:

“(1) Is the Appellant liable for payment of compensation to the respondent in terms of Section 3 of the Employees Compensation Act?

(2) Whether the employment of the deceased fall under item (iii) of the Schedule-II of the Employee's Compensation Act?”

11. The learned counsel for the appellant would rest his arguments on two grounds (a) that the deceased would not come within the purview of the Employee's Compensation Act as his employment does not fall within the ambit of Item (iii) Schedule-II of the Employee's Compensation Act and (b) that the accident has not occurred out of the employment. He would draw the attention of the Court to the fact that neither in the pleadings nor in the evidence has the respondent set out as to how the employment has been the direct cause for the death. He would state that in Para 4 of the petition, the respondent has only



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narrated the activity undertaken by the deceased on the ill-fated day and there is just one reference that the management is aware that the accident had occurred out of and in the course of his employment. Except for this bald statement, nothing has been set out in the pleadings to show the nature of the work and that the death was the direct cause of his employment. He would also take the Court through the proof affidavit which is nothing but the repetition of the claim petition converted into the first person.

12.The learned counsel would submit that in the cross examination, the respondent had admitted that in October 2012, her son has taken a break and left for Trichy and thereafter, rejoined the appellant/establishment on 01.07.2013. During the cross examination, when a specific question was put in this regard, the respondent had answered in the affirmative. He would also submit that the respondent has in her cross examination admitted that when her son called her at 05.30p.m. he was fine. Therefore, he would submit that there was no nexus between the death and the work. He would also submit that



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without there being any proof or pleadings the Commissioner has totally erred in granting the compensation on the ground that the death had arisen on account of the employment. In this regard, he would rely upon the Judgment reported in **(2007) 11 Supreme Court Cases 668 [Shakuntala Chandrakant Shreshti v. Prapbhkar Maruti Garvali and another]** in which the Hon'ble Supreme Court has held that there must be a pleading and proof to show the direct nexus of the employment to the death. He would therefore submit that the order has to be set aside.

13.The learned counsel would however submit that the appellant/Management as a gesture of good will is ready to pay some compensation to the respondent even in the event of this Court coming to the conclusion that the order of the Commissioner has to be set aside.

14.Per contra, Mr.R.Pandian, the learned counsel for the respondent would submit that the respondent has in her pleadings



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stated that her son was involved in the collection of dues from the various customers and that he would leave at around 10.00a.m. and return at 05.30p.m. For several hours, he remains outdoor collecting money from various customers which has definitely caused a physical strain on the respondent. That apart, he would submit that both in their pleadings as well as in the proof affidavit, the respondent has stated that her son was involved in the collection. He would submit that such a job would definitely involve considerable strain and therefore, the Tribunal has rightly come to the conclusion that the employment had direct nexus to the death.

15.The learned counsel would further submit that the deceased would not come within the scheduled “employment” as contemplated under Schedule II of the Employee's Compensation Act. He would submit that the definition of an employee as provided under Section 2(1)(dd)(iii) contemplates that one who is employed in the capacity set out in Schedule II and also includes persons whose contract of employment expressed or implied, in writing or oral. He would further



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submit that by the amendment in Act 45 of 2009 with effect from 18.01.2010 to clause 2 in which definition the “workmen” has been deleted and Section 2(d)(d) has been inserted in its place. He would submit that a perusal of Schedule II would clearly show that the deceased was not in the scheduled mentioned.

16.As regards the second Substantial Question of Law, the learned counsel for the respondent would submit that the employment of the deceased was within the provisions of Schedule-II Clause (iii) which reads as follows:

SCHEDULE II

(See section 2(1)(dd))

*LIST OF PERSONS WHO, SUBJECT TO THE
PROVISIONS OF SECTION 2(1)(DD), ARE
INCLUDED IN THE DEFINITION OF EMPLOYEES*

*The following persons are employees within the
meaning of section 2(1)(dd) and subject to the
provisions of that section, that is to say, any person who
is--*

(i) ...



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(ii)... or

(iii) *employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises*

Explanation.--For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; or”

17.The learned counsel for the respondent would submit that the appellant establishment is running a jewelery business where altering and ornamenting of jewels take place and he would come within the explanation 2(iii). He would also relied upon an unreported Judgment



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of this Court in the case of **National Insurance Company Limited, Bhavani v. A. Saroja and others** in C.M.A.(NPD).No.2338 of 2002 dated 17.09.2008.

18.Heard the learned counsel appearing on either side and perused the papers.

19.The Employee's Compensation Act is a beneficial piece of legislation that has been enacted to compensate the workmen in the event of an injury or death sustained by an accident which has occurred in the course of the employment. In order to attract the charging provision contained in Section 3 of the Act, the following ingredients

are required:

(a)The injuries /death must be caused to the workmen

(b)Such injuries/death must arrive out of in the



course of his employment.

Therefore, the primary case that has to be put forward by the petitioner/claimant is that the death had direct nexus to the employment, i.e., the stress and strain of the employment has resulted in the death of the workmen.

20.In this background, if the pleadings in the present case is examined there is a total lack of such statement. In fact, the only sentence which contains the words “out of and in the course of employment”, is set out in Para 4 which reads as follows:

“4...all efforts were went in vain and the doctor declared that my son died due to cardio respiratory arrest severe pulmonary edema dilated cardio myopathy at 6.40pm and given certificate for that to the burial ground and death was well aware of the owner and the incident occurred arising out of and in the course of his employment resulting in his death on 31.10.2015 and the opposite party employer is liable to pay compensation



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under the Employees Compensation Act, 1923....”

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21.The petition does not even describe the nature of work which the deceased was doing. In fact, the petition does not even state but that collection of dues is the routine work being undertaken by the deceased. On the contrary, the petition would read as if on that particular date the deceased had gone for collection. Further, even in the evidence, the nature of work has not been clarified. In the absence of such pleadings, the Commissioner has proceeded merely on assumptions. In the Judgment cited on the side of the appellant, i.e., in **(2007) 11 Supreme Court Cases 668 [Shakuntala Chandrakant Shreshti v. Prapbhkar Maruti Garvali and another]**. The Hon'ble Supreme Court in Para 13 has stated thus:

*“30.In Saurashtra Salt Manufacturing Co. (supra),
this Court held :*

*"It is well settled that when a workman is on a
public road or a public place or on a public transport he
is there as any other member of the public and is not*



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there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of national extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends upto point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation



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and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable."

Therefore, this Court is constrained to answer the 1st Substantial Question of Law in favour of the appellant.

22.As regards the 2nd Substantial Question of Law, a perusal of Schedule – II (iii) along with explanation the petitioner/respondent would definitely bring the deceased within the provisions of Schedule II Section 2(1)(dd) of the Act. Therefore the 2nd Question of Law is answered in favour of the respondent. However, since the 1st Question of Law is answered against the respondent and in favour of the appellant, this Civil Miscellaneous Appeal has to be allowed and the order passed by the learned Commissioner for Employees



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Compensation I, (Joint Commissioner of Labour-I), Chennai, in
E.C.Case No.20 of 2017, is set aside.

23.The learned counsel for the appellant after the orders were pronounced reported to the Court that the appellant Management is ready to pay a sum of Rs.5,00,000/- to the respondent. The said sum is already in deposit before the learned Commissioner for Employees Compensation I, (Joint Commissioner of Labour-I), Chennai.

24.Therefore, a direction is issued to the learned Commissioner for Employees Compensation I, (Joint Commissioner of Labour-I), Chennai, to disburse the said amount to the respondent as soon as the application in this regard is made along with a copy of this order. The amount shall be paid directly by RTGS to the account of Ms.P.Vishalakshi, S.B.A/c.No.281101000006457, Indian Bank, Kambar Colony, Chennai (2811) Branch, Villianur Taluk, IFSC -IOBA0002811.



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Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.04.2022

Index: Yes/No
Internet: Yes/No
Speaking / Non-Speaking
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To

The Commissioner for Employees Compensation I,
(Joint Commissioner of Labour I),
Chennai.

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