



CMA No. 1761 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **21.08.2023**
PRONOUNCED ON : **28.08.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1761 of 2023

BCS Computers,
Represented by Proprietor,
Ohm Sivashankaram,
No.6/1, vasuki 5th Street,
Erode Taluk and District,
Pin Code 638 001.

...Appellant

Versus

1.Mrs. S. Anitha

2.Minor Darshini

(Minor rep. by Natural Guardian is mother
1st respondent Mrs. Anitha)

3.V.S. Deivanai

4.V.M. Shanmugam

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30(1) of the Workman Compensation Act, 1923 against the order passed by the Commissioner of Employees Compensation, Coonoor at Erode in E.C. Case No. 30 of 2018 dated 10.03.2023.

For Appellant : Mr. R. Ganesh.

For Respondents : Mr. N. Manoharan.



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J U D G M E N T

The above appeal has been filed challenging the award of compensation in E.C. No. 30 of 2018 dated 10.03.2023.

2. The appeal arises under the following circumstances;

(a)The respondents filed a claim petition before the Commissioner of Employees Compensation stating that the deceased was working as a Service Engineer with the appellant; that on 15.03.2017 in the afternoon between 12 pm and 1 pm, when the deceased was doing the work of installing CCTV cameras in the premises of appellant's client at Perumanallur, the deceased swooned and he was taken to the hospital; that inspite of treatment, he died on 18.03.2017 at the hospital; that the scan report reveals that he had had intracerebral bleed; that the death was caused due to stress and strain in the employment and hence, the appellant was liable to pay compensation of Rs.25,00,000/-.

(b)The appellant filed a counter denying the averments made in the claim petition and stated that the deceased was never under stress and strain due to employment; that the deceased had earlier on 19.10.2001



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met with a major road accident and sustained severe injuries on his head and face; that the deceased had suffered 30% disability due to the accident and had been taking continuous medical treatment; that the deceased had several complications due to the road accident mentioned above and those complications had triggered the cerebral haemorrhage suffered by the deceased; that therefore, there was no causal connection between the death and the employment and prayed for dismissal of the claim petition.

(c)The Commissioner on the basis of evidence adduced on either side held that the deceased died during the course of employment; that although he was suffering from a pre-existing ailment, the stress and strain of the employment accelerated the death and hence, the appellant is liable to pay a compensation of Rs.6,90,080/- under the Employee's Compensation Act (hereinafter referred to as 'the Act' for the sake of convenience).

(d)Aggrieved by the above said award, the appellant has filed the instant appeal.



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3. (a) Mr. R. Ganesh, learned counsel for the appellant submitted that in the claim petition filed by the respondents, the fact that the deceased met with a major road accident, suffered medical complications and was taking continuous treatment was suppressed; that the deceased was only doing a managerial job and no stress or strain has been established to claim compensation under the Act; that the doctor who had treated the deceased had confirmed that the cerebral haemorrhage was due to high Blood Pressure and had nothing to do with the employment and prayed for setting aside the award of the Commissioner.

(b) The learned counsel relied upon the following Judgments;

(i) Judgment of the Honourable Apex Court in ***Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and another*** reported in ***(2007) 11 Supreme Court Cases 668***;

(ii) Judgment of the Honourable Apex Court in ***Jyothi Ademma Vs. Plant Engineer, Nellore & Anr.*** reported in ***AIR 2006 Supreme Court 2830***;

(iii) Judgment of this Court in ***M/s. Savamalai Coffee Estate P Ltd., Vs. Parukutty and others*** in ***C.M.A. No. 2806 of 2016 dated***



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14.07.2017;

WEB COPY (iv) Judgment of this Court in ***Branch Manager Vs. Rani and others*** in ***C.M.A. No. 399 of 2022 dated 21.07.2022;***

4. (a) Mr. N. Manokaran, learned counsel for the respondents submitted that even assuming that the deceased had a pre-existing ailment if it is shown by a preponderance of probability that the employment accelerated the death then it could be treated that the death was in the course of employment; that strict rules of evidence are not applicable in a claim petition filed under the Act; that liberal interpretation has to be given to the provisions of the Act which is beneficial legislation; that the causal connection between the employment and death can be inferred and that the finding of the Commissioner on facts are not liable to be set aside since the appellant has not raised any question of law much less a substantial question of law and prayed for dismissal of the appeal.

(b) The learned counsel relied upon the following Judgments;

(i) Judgment of the Bombay High Court in ***Laxmi Atmaram Vs. Chairman and Trustees, Bombay Port Trust*** reported in ***AIR 1954 Bom***



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(ii) Judgment of the Bombay High Court in ***Divya Kaluji Vs. Silver Cotton Mills Ltd.***, reported in ***AIR 1956 Bom 424***;

(iii) Judgment of the Gujarat High Court in ***Shantaben Thakor Vs. New Raipur Mills Ltd.***, reported in ***AIR 1968 Guj 118***;

(iv) Judgment of this Court in ***Thiru T. Shanmuga Mudaliar and Ors. Vs. Noorjahan and Ors.*** reported in ***(2003) 1 MLJ 366***;

(v) Judgment of this Court in ***The Management, Universal Transport Vs. A. Vijayalakshmi*** in ***C.M.A. No. 230 of 2022 dated 07.07.2023***.

in support of his submissions. He also relied upon the following Judgments to show that an order of the Commissioner cannot be interfered unless there is a substantial question of law involved in the appeal.

(i) Judgment of the Honourable Apex Court in ***Golla Rajanna and Others Vs. Divisional Manager and another*** reported in ***(2017) 1 Supreme Court Cases 45***;

(ii) Judgment of the Honourable Apex Court in ***North East Karnataka Road Transport Corporation Vs. Sujatha*** reported in ***(2019)***



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11 Supreme Court Cases 514;

(iii) Judgment of the Honourable Apex Court in *C.Manjamma and another Vs. Divisional Manager, New India Assurance Company Limited* reported in (2022) 6 Supreme Court Cases 206;

5. The admitted facts are that the deceased / husband of the first respondent was employed as a Service Engineer in the concern belonging to the appellant. The factual finding rendered by the Commissioner holding that the deceased was a workman cannot be interfered with. The deceased while in employment had suddenly collapsed on 15.03.2017 and was admitted to the hospital and died on 18.03.2017 in the hospital. The findings recorded by the hospital in the Emergency Assessment Form marked as Ex.R.17 reads as follows; *“Patient found unresponsive around 12.30 p.m. / 15.03.2017 in the workplace”*. The question is whether the deceased died due to an accident in the workplace. It is settled law that if the deceased had died due to the stress and strain in the employment, it is deemed to be a death arising out of an accident. Therefore, the question is whether the death of the deceased was due to a natural cause or due to the stress and strain in the employment. It is a case of the appellant that the deceased had met with a major accident in the year 2001 and the respondents have suppressed this vital fact which



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would have a bearing in the case; and that the death therefore cannot be said to be due to stress and strain in the employment and it is due to a deterioration of his health pursuant to the major accident in the year 2001. It is also the submission of the learned counsel for the appellant that the first respondent/wife who was examined as PW1 feigned ignorance of the accident which is highly improbable and exposes the falsity of her evidence. This Court is of the view that in a claim petition under the act, a hyper-technical approach cannot be made while appreciating the evidence. The Act being beneficial, the claim petition has to be decided taking into consideration the intention and object of the Act. Therefore, in the facts of the case, this Court is of the view that even assuming that the respondents had intentionally suppressed an earlier ailment, the same would not have any bearing while adjudicating the claim petition, since the appellant had let in evidence to prove the ailment of the deceased due to an earlier accident.

6. From a reading of the aforesaid Judgments relied upon by the learned counsels on either side, the following principles emerge;

(a) An unlooked mishap or untoward incident which is not expected or designed, should be construed as an accident.



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(b) If the accident or untoward incident results in personal injury caused

to the employee in the course of his employment in connection with the business of his employment, the same would be governed under the Employee's Compensation Act.

(c) If the deceased was suffering from any particular disease and due to wear and tear of his employment he dies, no liability would be fixed on the employer.

(d) If the deceased suffers a disease in the employment and the stress and strain in the employment has accelerated the death then, the employer would be liable.

(e) It is not necessary that the respondents should establish that the workman died as a result of an exceptional strain or some exceptional work.

(f) The respondents must establish the causal connection of employment with death with cogent evidence and the same cannot be the subject matter of surmises and conjectures.

7. Therefore, in a claim petition of this nature, usually the following questions have to be answered:

(a) Whether the deceased died due to a natural cause?



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(b) Whether the deceased who had a pre-existing ailment had died only due to normal wear and tear of his employment?

(c) Whether the deceased died due to the stress and strain in the employment.

In the first two cases, the employer would not be liable. If stress and strain are established then the employer would be liable. There is a very thin line of difference between the “wear and tear” and ordinary “stress and strain” in employment. As stated earlier, the Courts have held that exceptional stress or strain need not be established.

8. The facts show that the deceased travelled nearly 50 kms on a bike and he was carrying on his regular job allotted to him. There are two views possible in the instant case (i.e.,)

(i) He had stress and strain in the employment on account of the long travel on a bike that had accelerated the death since he suffered from a serious ailment due to a major accident earlier.

(ii) That he was only carrying on his regular job on a fateful day and the travel at best would only be a normal wear and tear in the employment.



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In the facts, it is seen that the Tribunal had taken the former view.

If two views are possible, then the view in favour of the employee has to be preferred, the act being welfare and beneficial litigation. There are Judgments on either side as regards whether the employment itself would cause stress and strain or not. For instance in ***Shantaben Thakor's case (cited supra)***, the Court held that mere lifting of empty boxes by a workman whose job was to carry the boxes can be said to be due to stress and strain in the employment. Therefore it would depend on the facts and circumstances of each case. In the instant facts, this Court is of the view that the pre-existing ailment of the deceased due to an accident in the year 2001 coupled with the ordinary stress and strain on the fateful day has accelerated the death. Further in an appeal which can be entertained only when there is a substantial question of law, a plausible view taken on facts cannot be interfered with. Hence, this Court is of the view that there is no reason to interfere with the finding of the Tribunal awarding compensation to the deceased. In such view of the matter, the appeal is liable to be dismissed.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Commissioner of Employee's Compensation,
Coonoor at Erode.

SUNDER MOHAN, J

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