



CMA No. 230 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **05.07.2023**
PRONOUNCED ON : **07.07.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 230 of 2022
and
C.M.P. No. 1573 of 2022

The Management,
Universal Transport,
Thirunallar Road,
Patchur, Karaikal.

...Appellant

Versus

A. Vijayalakshmi

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, 1923 seeking to set aside the final award dated 01.10.2021 passed in W.C. No. 2 of 2016 on the file of the learned Additional Commissioner under the Employee's Compensation Act, 1923 at Office of Labour Officer, Perunthalaivar Kamarajar Administrative Complex, Mathagadi, Karaikal by allowing this appeal.

For Appellant : Mr. Samratt.

For Respondent : Mr. N.G.R. Prasad for



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M/s.Row & Reddy.

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J U D G M E N T

The above appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 [hereinafter referred to as 'the Act' for the sake of convenience], aggrieved by the final award dated 01.10.2021 passed by the learned Additional Commissioner under the Act.

2. The respondent / claimant had filed a claim petition before the Additional Commissioner who had passed the impugned order claiming that her husband, Mr.Anthony, was employed as a driver in the appellant's concern and during the course of his employment, he suffered an illness; that he was asked to drive the vehicle without any rest or an alternative driver and as a consequence of which the deceased became ill and died on 27.01.2016.

3. The Additional Commissioner found that the employee died during the course of his employment and directed the appellant to pay a sum of Rs.6,65,160/- towards compensation for the death of the



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respondent's husband and additional compensation of Rs.5,000/- towards funeral expenses and in total a sum of Rs.6,70,160/- together with interest at 10% per annum on the compensation amount from the date of filing the claim to till the date of deposit / payment. Aggrieved by the said order, the appellant / employer has filed the instant appeal.

4. (a) The learned counsel for the appellant submitted that the order passed by the Additional Commissioner suffers from non-application of mind; that the vehicle driven by the respondent's husband belonged to one Indhumathi; that since the said Indhumathi was not impleaded in the claim petition, the claim petition ought to have been dismissed; that in any event, the Additional Commissioner failed to take into consideration Ex.P.5, the medical report which reveals that the deceased was a chronic alcoholic as a result of which he had decompensated chronic liver disease and hence, it cannot be said that the death was in the course of the employment. The appellant, therefore, cannot be made liable to pay compensation.

(b) The learned counsel relied upon the Judgment of this Court in

Savamalai Coffee Estate P.Ltd. Vs.Parukutty and Ors. in C.M.A.



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No.2809 of 2016 dated 14.07.2017 in support of his submission that in the absence of any evidence to show that the appellant died due to the nature of work done by him or due to the stress or strain during the course of employment, the compensation cannot be awarded. The learned counsel further submitted that on facts, the respondent failed to establish that the death was caused by stress or strain during the course of employment, and hence the claim petition ought to have been dismissed. Further, he submitted that the burden is on the claimant to show that the death occurred during the course of employment.

5. (a) Mr. N.G.R. Prasad, learned counsel for the respondent, per contra, submitted that it is the admitted case of the appellant in the counter filed by them to the claim petition that the respondent's husband drove for long hours covering a long distance. The appellant had admitted that the respondent's husband drove the lorry from Karaikal to Kadappa in Andhra Pradesh to unload the charcoal and drove the lorry on the same day from Kadappa to Karaikal. In light of the admission made in the counter, the learned counsel submitted that it has to be assumed that the respondent's husband died due to the stress and strain of the employment. The learned counsel further submitted that even



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assuming that the respondent's husband was an alcoholic and had liver disease if it is shown that the disease was aggravated and his death was accelerated due to the nature of the employment, he would be entitled to compensation under the Act.

(b) The learned counsel relied upon the Judgment of the Honourable Supreme Court in *Param Pal Singh Through Father Vs. National Insurance Company and another* reported in (2013) 3 *Supreme Court Cases 409* wherein the Honourable Supreme Court had held in similar facts and circumstances that the death of the employee had occurred due to the continuous driving and hence he was entitled to compensation.

(c) The learned counsel further submitted that an appeal under Section 30 of the Act would lie before this Court only if there is a substantial question of law involved in the appeal. The points raised by the learned counsel for the appellant are factual in nature, which was well considered by the Additional Commissioner. Hence the appeal, which does not raise any substantial question of law, is liable to be dismissed.



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6. This Court perused the pleadings and materials on record.

Admittedly, the respondent's husband was driving the lorry from Kadappa to Karaikal, where he felt uncomfortable near Gudiyatham and was admitted to a hospital at Gudiyatham in the afternoon on 27.01.2016. Thereafter, on the advice of the doctors, he was shifted to Government Hospital, Vellore and in spite of the treatment, he died on the same day. It is also an admitted fact that the respondent's husband had driven the lorry from Karaikal to Kadappa to transport the charcoal and thereafter had loaded the goods from Kadappa and was on the way to Karaikal on the same day. However, in the appellant's counter in the claim petition, it is stated that the appellant did not compel the respondent's husband to drive the vehicle without any rest. They also stated that the respondent's husband ought to have been careful knowing his health condition, ought not to have driven the vehicle continuously; and hence, the appellant cannot be liable for his death. It is also the appellant's case that the respondent's husband was a chronic alcoholic and suffered from decompensated chronic liver disease. This Court finds that Ex.P.5 confirms the said fact. However, the doctor had also opined that there was a respiratory failure.



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7. In light of the above facts, it has to be seen whether the death of the respondent's husband was caused as a result of an accident during the course of his employment with the appellant. The Judgment of the Honourable Supreme Court in ***Param Pal Singh's case (cited supra)*** would give an answer to the above question. The facts of the said case are similar to the facts of the instant case. The employee in the said case had driven the heavy vehicle for nearly 1152 km continuously. The Honourable Supreme Court held, based on the decisions of the English Courts, that an unlooked for mishap or an untoward event which is not expected or designed should fall within the definition of accident; and that if such untoward or unexpected event had occurred in the course of his employment resulting in a personal injury to the employee, the same would be governed by the provisions of Section 3 of the Workmen's Compensation Act. The relevant observations of the Honourable Supreme Court are extracted hereunder for better understanding;

“24. However, there are decisions of the English Court as early as of the year 1903 onwards stating that an unlooked for mishap or an untoward event which is not expected or designed should be construed as falling within the definition of an “accident” and in the event of such “untoward” “unexpected” event resulting in a



personal injury caused to the employee in the course of his employment in connection with the trade and business of his employer, the same would be governed by the provisions of Section 3 of the Workmen's Compensation Act. Such a legal principle evolved from time immemorial got the seal of approval of this Court and for this purpose we can refer to the celebrated decision in Ritta Farnandes [1969 ACJ 419 (SC)] . After referring to the decision of the House of Lords in Clover, Clayton & Co. Ltd. v. Hughes [1910 AC 242 : (1908-10) All ER Rep 220 (HL)] this Court in Ritta Farnandes [1969 ACJ 419 (SC)] referred to the relevant passage in the decision of the House of Lords in para 4, which reads as under:

“4. Even if a employee dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in Clover, Clayton & Co. Ltd. v. Hughes [1910 AC 242 : (1908-10) All ER Rep 220 (HL)] where the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. A post-mortem examination showed that there was a large aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have



been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and the House of Lords : (AC p. 246)

'... No doubt the ordinary accident[, "said Lord Loreburn, L.C."] is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident.'

With regard to Lord MacNaughten's definition of an accident being 'an unlooked for mishap or untoward event which is not expected or designed' it was said that an event was unexpected if it was not expected by the man



who suffered it, even though every man of common sense who knew the circumstances would think it certain to happen.”

The facts of that case are stated in Paragraph No. 19 of the said Judgment, which is extracted hereunder;

“19. On merits to retrace the facts, the deceased Jeet Singh alias Ajit Singh was employed as truck driver by the second respondent. His services were utilised for driving the truck belonging to the second respondent bearing No. DL IG 8255. The deceased was driving the said truck in connection with the commercial transport operation of the second respondent from Delhi to Nimiaghat on 17-7-2002. According to the claimant when the truck reached nearabout Nimiaghat, District Giridih, the deceased felt giddy and, therefore, parked the vehicle on the roadside near a hotel and soon thereafter he is stated to have fainted.”

8. Thus, it can be seen that the facts are very similar to the facts on hand. This Court is of the view that though Ex.P.5 reveals that the employee had a pre-existing disease, the disease was aggravated because



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of driving for long hours. The observations made by the Honourable Supreme Court in the above case are squarely applicable to the facts of this case. The Judgment of this Court relied upon by the learned counsel for the appellant in *Savamalai Coffee Estate P.Ltd.'s case (cited supra)* may not be applicable to the facts of the instant case. In that case, the employee, after doing his normal work, returned to his home at 09.30 p.m., nearly after six hours after completing his work and suffered a heart attack. Further, in the said case, there was no evidence to show that there was additional stress or strain caused to the employee. In such circumstances, this Court had held that the employer is not liable to pay compensation. As stated earlier, in the instant case, admittedly, the workman became ill while he was driving a lorry. There is also an admission that he had driven the lorry continuously for long hours. The Additional Commissioner had gone into the facts and held that in view of the admission and evidence on record, it is highly probable that the death of the employee arose in the course of his employment. This Court finds that there is no infirmity in the said finding of the Additional Commissioner.

9. Further, in view of the admission made by the appellant that the



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deceased drove the vehicle attached to the respondent, it is clear that the employee was employed under the appellant. Hence, non impleading of the owner of the vehicle would not affect the claim petition in any manner.

10. It is also pertinent to point out here that the appellant has raised questions which are factual in nature, and the questions of law raised by the appellant cannot be considered substantial questions of law for entertaining this appeal. Therefore, this Court is of the view that the factual finding of the Additional Commissioner cannot be set aside, especially when this Court holds that it is justified and there is no substantial question of law involved in the instant appeal. It is submitted that the appellant has already deposited the award amount. Hence, the respondent is entitled to withdraw the same with accrued interest.

11. For all the above reasons, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Office of Labour Officer,
Perunthalaivar Kamarajar Administrative Complex,
Mathagadi,
Karaikal.



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SUNDER MOHAN, J

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Dated: 07.07.2023