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C.M.A.No.2854 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2854 of 2018

And

C.M.P.No.21705 of 2018

United India Insurance Company Limited
Branch office No.2, Dr.Sankaran Road,
Namakkal District.

... Appellant

Vs.

1.Kokila
2.Minor.Sundaramoorthy
3.Minor.Prithiviraj

(2nd and 3rd Minors rep. by
1st respondent/ Mother)

4.Veerappan

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, to set aside the order passed in copy of the petition in W.C.No.366 of 2015, Old no.245 of 2013 on 11.12.2017 by the Commissioner For Employees Compensation at Coonoor, Nilgris District and be pleased to dismiss the above claim.



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For Appellant : Mr.J.Chandran
For Respondents : Mr.T.S.Arthanareeswaran for R1 to R3
R4 – (Died)
vide endorsement in the notice paper

J U D G M E N T

The second respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the order passed in W.C.No.366 of 2015, Old no.245 of 2013 on 11.12.2017 by the Commissioner For Employees Compensation at Coonoor, Nilgris District.

2.The learned counsel appearing for the appellant submitted that the respondents 1 to 3 filed claim petition before the Commissioner For Employees Compensation at Coonoor, claiming compensation of Rs.10Lakhs for the death of the first respondent's husband Ramakrishnan alleging that on 26.09.2011 at about 03.00 a.m., the deceased Ramakrishnan during the course of employment as driver of the lorry bearing Registration No.TN 28 AA 7227 owned by the fourth respondent, developed chest pain due to work pressure and was taken to Coimbatore Hospital, however, he died on the same day.



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3.The learned counsel appearing for the appellant further submitted that after adjudication, the Court of Commissioner for Employees Compensation/ Deputy Labour Commissioner, Coonoor, fixed a sum of Rs.5,61,816/- + Rs.5,000/- for funeral expenses as compensation and directed the appellant to deposit a sum of Rs.5,66,816/- before the Court of Commissioner for Employees Compensation, by way of demand draft drawn in favour of the Deputy Labour Commissioner, Coonoor, within a period of 30 days and also directed to deposit interest at the rate of 12% from the date of accident till the date of deposit of the compensation amount of Rs.5,61,816/-, by way of demand draft drawn in favour of Deputy Labour Commissioner, Coonoor, within a period of one month from the date of receipt of a copy of the order. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant further submitted that admittedly, the deceased was employed under the fourth respondent and the subject vehicle was insured with the appellant. However, the deceased died not due to the accident and he did not sustain any injury. Only if the deceased had met with



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accident,

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sustained injury or died, the appellant is liable to pay compensation, however, in the present case, the deceased died due to work pressure during the course of employment. The learned counsel further submitted that as per Section 3(1) of the Workmen Compensation Act, 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. Hence, the Court of Commissioner for Employees Compensation directing the appellant to deposit the compensation amount is not sustainable one.

5.Per contra, the learned counsel appearing for the respondents 1 to 3/ claimants submitted that the very same issue was considered by this Court in the case of National Insurance Co. Ltd., Namakkal Vs. Pappathi and others [C.M.A.No.1383 of 2014, dated 22.04.2014] and submitted that the word "accident" employed in [Section 3](#) of the Act must be interpreted as any untoward incident or any unexpected accident taking place during the course of employment.

6.The learned counsel appearing for the respondents 1 to 3/



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claimants further submitted that in the present case, the deceased was

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in continuous employment with the fourth respondent as driver which is evident from the evidence of one Selvaraj/ co-driver employed along with the deceased who gave complaint before the law enforcing agency stating that on 16.09.2011 himself and the deceased took the lorry owned by the fourth respondent from Udumalaipetti and after loading paper on 17.09.2011 they went to Nagpur and after reaching Nagpur, on 19.09.2011 at about 9.00 a.m., they unloaded the paper and on 20.09.2011 they loaded cotton bale and went to Kerala and on 24.09.2011 at 12.00p.m., they unloaded the cotton bale and they started from Kerala, Trishur on 25.09.2011 and reached Coimbatore Srivari Roadways and they took rest. At that time on 26.09.2011 at about 3a.m., the deceased developed chest pain and was taken to Hospital, however, he died and further submitted that the evidence of the co-driver makes it clear that the deceased died during the course of employment and applying the ratio laid down by this Court in National Insurance Co. Ltd., Namakkal Vs. Pappathi and others [C.M.A.No.1383 of 2014, dated 22.04.2014], the impugned order warrants no interference.



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7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 3 and perused the materials available on record.

8. The issue that arises for consideration in this appeal is that if a person died during the course of employment whether he is entitled for compensation if the deceased did not die during accident.

9. It is useful to extract hereunder Section 3(1) of the Workmen Compensation Act:

"3. Employer's liability for compensation.

—

(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



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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 workman."

10.The very same issue was considered by this Court in the case of ***National Insurance Co. Ltd., Namakkal Vs. Pappathi and others [C.M.A.No.1383 of 2014, dated 22.04.2014]***, the relevant portion of which reads as follows:

*"8. In the **New India Assurance Co. Ltd., Vs. Sarasu and others**, reported in 2005 (3) MLJ 146, the respondents 1 to 3 therein, made a claim for compensation under **Section 3** of the Workmen's Compensation Act, 1923 for the death of a workman, who died in an accident which arose in the course of employment. He was a heavy vehicle driver and was on duty as a co-driver. He received*



massive heart attack. He was taken to a Government hospital, where, he was pronounced dead by the duty

doctor. The appellant Insurance Company, resisted the claim on the ground that it is for the claimants to prove that the deceased Workman died during and in the course of employment. On the basis of materials available on record, the Commissioner for Workmen's Compensation, found that the workman died on account of heart attack, which occurred during the course of his employment while he was working as a driver.

10. However, learned counsel for the appellant therein, restricted his arguments with reference to the question whether the Deputy Commissioner of Labour, Salem was justified in coming to the conclusion that the driver died of heart attack during the course and arising out of employment and that the said condition would not fall under the ambit of employment injury, resulting in death. Testing the correctness, this Court, at para No.6, held as follows:

"On a perusal of [Section 3](#) of the Workmen's Compensation Act, we find that the word "accident" employed in [Section 3](#) of the Act must be interpreted as any untoward incident or any unexpected accident taking place during the course of employment. As noted earlier, the Commissioner has recorded a finding that



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the workman developed severe chest pain while he was discharging his duty and having

been informed of the same, the co-driver rushed him to the hospital, where he was pronounced dead. The said finding recorded by the Deputy Commissioner of Labour, Salem is purely a question of fact. We do not find any error in the said finding recorded by the authority, which calls for any interference by us in this appeal in exercise of our power under [Section 30](#) of the Act. Therefore, we will have to proceed on the basis that the workman died on account of heart attack suffered by him in the course of his employment."

11. Further, considering the question as to whether, heart attack suffered by the deceased would be considered as a personal injury suffered by a workman, on account of and in the course of employment, a learned judge of this Court, after referring to [Section 3 \(1\)](#) of the Act, held as follows:

"From a reading of [Section 3\(1\)](#) of the Act, it would emerge that an employer is liable to pay compensation in accordance with the provisions of the Act, to a workman if such



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workman suffers from personal injury by an accident arising out of and in the course of employment. Therefore, the question is, what should be the attached or given to the words "personal injury caused to a workman by an accident"

12. In the judgment cited *supra*, this Court has also considered a similar issue, which came up for consideration before the Division Bench of Karnataka High Court in [The Divisional Controller, North Vs. Sangamma And Ors](#), reported in 2005 ACJ 455, wherein the Hon'ble Division Bench held as follows:

"Therefore, if a workman suffers from a personal injury unexpectedly or suddenly and such personal injury suffered by the workman can be attributed to the work undertaken by the workman or has some connection to the nature of duties discharged by a workman, such an injury suffered can be treated as a result of and in the course of his employment."

13. In [Jyothi Ademma Vs. Plant Engineer](#), reported in 2006 (4) MLJ 154 (SC): 2006 (5) SCC 513, the Supreme Court, at Paragraph No.6 of the judgment held as follows:

"6. Under [Section 3\(1\)](#) it has to be established that there was some causal connection



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between the death of the workman and his employment. If the workman dies as a natural result of the disease 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 a 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 [Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another](#), reported in AIR 2007 SC 248 : 2007 (7) MLJ 615, the Supreme Court affirmed the legal principles enunciated in the leading case of Francis De Costa's and set out the principles of law to be applied in the matter of compensation under [Workmen's Compensation Act](#). In the above reported judgment, a cleaner of a vehicle, who was travelling in it, suddenly developed chest pain and was admitted to a Government Hospital. In spite of intensive treatment, he died in the



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hospital. Mother of the deceased filed a claim petition under the [Workmen's Compensation Act](#), before the Commissioner for Workmen's Compensation. The only evidence which was brought on record by way of

deposition of the mother of the deceased was that her son died while working in the vehicle of the Respondent No.1 and due to the strain of work, he died. The driver of the vehicle deposed that the deceased, while getting down from the said vehicle, got pain in the chest and was taken to the hospital. The Doctor certified that the cleaner died due to cardiac attack. The Insurance Company raised plea of collusion between the employer and the mother of the employee. The Commissioner of Workmen's Compensation passed an award in favour of the claimant. On appeal, the High Court opined that the findings of the Commissioner for Workmen's Compensation were perverse and inconsistent with the material on record. On further appeal, the Supreme Court, upon consideration of various decisions and in particular, the leading case reported in [Regional Director, ESI Corporation and another v. Francis D.Costa and another](#) reported in 1996 (6) SCC 1, formulated the following guidelines in the matter of a claim, under the Workmen's Compensation.

11.Applying the ratio laid down by this Court in National



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Insurance Co. Ltd., Namakkal Vs. Pappathi and others [C.M.A.No.1383 of 2014, dated 22.04.2014], the appeal filed by the appellant Insurance Company is mis-conceived.

12.The civil miscellaneous appeal is dismissed. The order made in W.C.No.366 of 2015, Old no.245 of 2013 on 11.12.2017 by the Commissioner For Employees Compensation at Coonoor, Nilgris District, is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

12.11.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Commissioner For Employees Compensation at Coonoor,
Nilgris District.



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M.DHANDAPANI,J.
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