



C.M.A(MD)No.50 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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1.E.S.I. Corporation,
Sub Regional Office,
Sindhupoonthurai,
Tirunelveli-627 001.

2.The Manager,
Local E.S.I. Corporation,
Branch Office,
Tuticorin-628 001.

... Appellants/Respondents 1 & 2

Vs.

1.Rani

2.Mahalakshmi

3.Banumathi

... Respondents 1 to 3/Petitioners 1 to 3

4.The Manager,
Madurai Coats,
Beach Road,
Tuticorin-628 001.

... 4th Respondent/3rd Respondent



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Prayer : This Civil Miscellaneous Appeal filed under Section 82 (2) E.S.I. Act, 1948, to set aside the fair and decretal order of the Labour Court, Tirunelveli in E.S.I.O.P.No.02 of 2010, dated 07.03.2012.

For Appellant : Mr.C.Karthik
For R-1 & R-2 : Mr.M.Jerin Mathew
For R-3 : No appearance
For R-4 : Mr.T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in E.S.I.O.P.No.02 of 2010, wherein the respondents 1 to 3 herein have filed a petition before the E.S.I. Court for the compensation and the retirement benefits. The E.S.I Court allowed the petition and directed the respondents to disburse the death benefits of the deceased Esakkiappan to his dependants. As against the order passed by the Labour Court, the present Civil Miscellaneous Appeal has been filed by the respondents 1 and 2.



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2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

3. The brief averments of the petition before the Labour Court are as follows:

The deceased is the husband of the first petitioner. The second and third petitioners are daughters of deceased Esakkiappan. The said deceased Esakkiappan was working in the third respondent Spinning Mill and he is a permanent employee. He was earning a sum of Rs.6,000/- per month. While so, on 03.03.2006, when he was on duty, at about 07.20 A.M due to accident, he suffered from vomiting and giddiness. Immediately, he was taken to E.S.I Hospital and thereafter, he was on rest for two days. After two days, he was in the house. At that time, again he suffered from giddiness. Immediately, he was taken to Hospital, where the Doctor examined him and reported that he was suffering from cardiac arrest and brain stroke. Immediately, he was taken to Trivandram Sree Chitra Tirunal Institute for Medical Sciences and Technology and admitted as in patient from 04.03.2006 to 14.03.2006, where he died on 14.03.2006. At that time of death, he was only 45 years. When the request was made for medical



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expenses and E.S.I pension benefits, the second respondent refused for the same. But not given any written reply. The deceased Esakkiappan spend more money for his medical expenses and thereby, the petitioners are entitled to the above said medical expenses and the pension benefits. Therefore, they filed a petition.

4. The counter filed by the second respondent and adopted by the first respondent are as follows:

It is true that the averments made in paragraph Nos.1 and 2 there is no any required forms submitted to the respondents and there is no any information in respect of the contention of the paragraph No.3 of the affidavit. As per the letter, dated 06.03.2006, the deceased Esakkiappan, on 03.03.2006, at the first shift at about 07.20 A.M, he vomited and became nervous and he was initially treating in the E.S.I Hospital at Tuticorin and thereafter, no report received, since it was disease. Further the petitioner have not made any request before the authorities. The petition mentioned incident does not come under the definition of accident. Therefore, the petitioners are not entitled to the benefits of family dependant benefits. Already the authorities have paid a sum of



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Rs.2,500/- on 12.04.2006 for the funeral expenses. In respect of medical bills, the petitioners could approach the appropriate authorities and this respondent is not an appropriate authority. The injury means physical injury. But in this case, there is no any physical injury. The deceased sustained brain stroke. There is no any stress and strain to the deceased due to the work load. The deceased died within 20 minutes, after starting the work. Hence, the petition is liable to be dismissed.

5. Before the Labour Court on the side of the petitioners, P.W.1 was examined and Exhibits P.1 to P.9 were marked. On the side of the respondents, R.W.1 was examined and no documents were marked.

6. The Labour Court after considering the evidences adduced on both sides, allowed the application in respect of the death benefits to the defendants and dismissed the petition, in other aspects. Aggrieved over the above said order, the E.S.I authorities have preferred this Civil Miscellaneous Appeal on various grounds.



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7. The learned Counsel appearing for the appellants / respondents 1 & 2 would contend that the appellant felt giddiness and vomiting and then he was taken to E.S.I dispensary, Tuticorin for treatment and after giving first aid at E.S.I dispensary, the employer has not reported it as an accident, since it is only sickness in nature and the petitioner had also not made any representation to the E.S.I authorities for grant of accidental benefit. The incident will not come under the terms and definition of accident. Hence, the petitioner is not entitled to any benefits like family dependant benefits. The deceased did not die due to the accident out of and in the course of employment and he was suffered from giddiness and vomiting. Hence, no dependant benefits given to the petitioner. Moreover, the petitioner did not make any representation to the E.S.I authorities for grant of accidental benefits. The petitioner can approach the concerned authorities for medical expenses by producing the medical bills. Since the accident did not occur out of and in the course of employment and the petitioner suffered brain stroke, the petitioners are not entitled to any compensation from the respondents. The petitioner will not come within the definition of Section 2 (8) of the E.S.I Act and the regulation 74. As per Section 52-A of E.S.I Act, the present petitioner will not come under



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the purview of Section 52-A of E.S.I Act. But the Labour Court has not considered the above said aspects and erroneously allowed the application.

Therefore, the order passed by the Labour Court is liable to be set aside.

8. The learned Counsel appearing for the respondents 1 to 3 / petitioners 1 to 3 would contend that the deceased was working under the third respondent employment and the third respondent establishment is covered under the E.S.I Act. The deceased died due to the brain stroke, since he was working under the heavy stress and strain due to the heavy work load. Therefore, the petitioners, who are dependants of the deceased are entitled to the family dependant benefits. But the respondents failed to disburse the amount. Thereby, they approached the Labour Court and before the Labour Court, the petitioner was examined as P.W.1 and also produced documents Exhibits P.1 to P.9. The Tribunal after elaborate discussion, fairly came to a conclusion that due to the long tenure of work, the petitioner was affected brain stroke and thereby, allowed the application. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.



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9. This Court had heard both sides and perused the records.

10. This Court at the time of admitting the appeal, framed the following substantial question of law:

"In view of Section 54-A read with third schedule of the E.S.I Act, 1948, read with Regulation 74 of E.S.I (General) Regulation, 1950 framed thereunder, was it correct for the Lower Court to hold that injured person was died. Injured person that giddiness and vomiting and dying of Brain Tumor can be declared as having died of occupational disease is total disregard specific provisions in the Act and Regulations."

11. In this case, there is no dispute that the deceased was working under the third respondent and the third respondent was covered under the E.S.I Act and it is also not disputed that the deceased was suffering from giddiness and vomiting on the date of 04.03.2006 while he was in the course of employment. Thereafter, he was treated in the E.S.I Hospital and thereafter, he was taken to various hospitals. After few days he died in the hospital during the course of treatment. According to the respondents 1 to 3 / petitioners 1 to 3, the deceased was working under the third respondent



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and due to heavy work, due to the long duration of work and due to heavy stress and strain, his brain was affected and thereby, he felt vomiting and giddiness and then died in the hospital. Therefore, the deceased died during the course of employment and the death was arisen out of the accident in the employment. According to the appellants / respondents 1 and 2, the deceased died due to the vomiting and giddiness and thereafter, he died due to brain stroke and the same is not related to his employment and he died due to sickness and the death was not occurred arising out of the employment. Therefore, the petitioners have not entitled to any benefits.

12. In this context, on the side of the petitioners, they examined P.W. 1 and he deposed about the facts of the case and there is no dispute that the deceased died during the course of employment. Though deceased was died due to vomiting and giddiness and brain stroke, it is admitted fact that he was working for more than 17 years in the third respondent Mill and thereby, he was affected due to the nature of work and due to the affect of brain, he felt vomiting and giddiness and thereafter, he was admitted in the hospital. As per Section 2 (8) of the E.S.I Act, the employment injury



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means a personal injury to an employee caused by accident or occupational disease arising out of and in the course of his employment, being in insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India. In the case on hand, the deceased was working more than 17 years and thereby, due to his long tenure of his work and due to stress and strain, he sustained brain stroke, slowly and on the date of incident, he fell giddiness and vomiting and then died.

13. In this context, it is relevant to refer the case law of *[Shakuntala Chandrakant Shreshta Vs. Prabakar Maruthi Garvali]* reported in AIR 2007 SC 248, wherein the Hon'ble Supreme Court after relying the judgment of the Hon'ble Supreme Court in *Mackinnon Mackenzie and Company Private Limited Vs. Ibrahim Mahammad Issak* reported in AIR 1970 SC 1906 and held that the words arising out of employment are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. In



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other words there must be a causal relationship between the accident and the employment. The expression arising out of employment is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises out of employment. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. The said judgment is squarely applicable to this case, because in this case, the workman was worked more than 17 years and he would affect by the brain stroke slowly.

14. Further in the same case, the Hon'ble Supreme Court discussed about the word 'accident' and held that with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident.



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15. In the case on hand also, the deceased died unexpectedly due to vomiting and brain stroke. Therefore, the contention of the appellant that the deceased not died due to accident is not acceptable.

16. Further it is not necessary to sustain injury on the date of employment and there is a presumption under Section 51-A of E.S.I Act. In this case, it is admitted fact that deceased died due to brain stroke and there is no contra evidence adduced by the respondent that the deceased had some other ailment prior to death. As per Section 51-A, there is a presumption and thereby, due to the long tenure of the work, the petitioner would affect by the brain stroke slowly and thereafter, he felt giddiness and vomiting. It is not the case of the respondent that the deceased was not worked on the date of incident. Therefore, this Court is of the opinion that the deceased died due to occupational disease. Since the deceased died immediately after two days from the date of incident, there is no chance to have certificate by the medical board to that effect.



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17. The learned Counsel appearing for the respondents had relied upon the following judgments:

i) ***C.Indira Vs. Senthil and Company and Others reported in 2009***

(2) ***L.L.N 302***, wherein this Hon'ble Court by referring the judgment of Hon'ble Supreme Court has held as follows:

"14. It is not the case of the respondents that the petitioner's husband was previously suffering from heart related disease. The first respondent also admittedly claimed funeral expenses by submitting claim form in Form 25A as required under Regulation 95-E and a sum of Rs.3,000/- was paid to the petitioner towards funeral expenses of the petitioner's husband. Hence the respondents 2 to 4 cannot deny the knowledge about the death of the petitioner's husband. Non-furnishing of report in Form-16 as required under Regulation 68 by the first respondent cannot be put against the petitioner, particularly when the matter was investigated by the Branch Manager by visiting the premises where the incident had occurred."

ii) ***Bhagyashree Bharguram Mahadik Vs. The Employees State Insurance Corporation and Another reported in CDJ 2013 BHC 1514***, wherein the Hon'ble High Court of Bombay in paragraph Nos.8 to 11 has held as follows:



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"8. The Madras High Court further proceeded to observe at paragraph Nos.12 & 13 as under:-

12. The object of the Employees' State Insurance Act, 1948 (Act 34 of 1948) is to provide certain benefits to the employees or dependants in case of sickness, maternity and employment injury, etc., to give effect to Article 1 of the Universal Declaration of Human Right, 1948, which assures human sensitivity of moral responsibility of every state that all human beings are born free and equal in dignity and rights. In recognition of the said rights only Act 34 of 1948 was enacted and the same is to be liberally construed as it is a social legislation."

13. The Supreme Court in the decision reported in AIR 1986 SC 1686 (Regional Director, Employees' State Insurance Corporation, Madras Vs. South India Flour Mills (P) Ltd.,) in paragraph 13 held as follows:

The Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. To hold that the workers employed for the work of construction of buildings for the expansion of the factory are not employees within the meaning of Section 2(9) of the Act on the ground that such construction is not incidental or preliminary to or connected with the work of the factory will be against the object of the Act. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose



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*benefit the enactment has been made
(Emphasis Supplied)*

9. It is not the case of the respondents that the petitioner's husband was previously suffering from heart related disease. The entire defence of the respondents is that the petitioner's husband died due to heart attack and it is not an employment injury.

10. There is no evidence produced to rebut the presumption that the death has arisen out of the employment. Even the Senior State Medical Commissioner on whose opinion is relied upon by the respondent has just stated "It is a natural death, there is no involvement of stress and strain of work." It is just a cryptic opinion.

11. In the light of the Madras High Court judgment and the quotation from the decision of the Punjab and Haryana High Court and in particular that there is no controversy with regard to the death of the petitioner's husband other than the one stated by the petitioner and the medical report relied by both the parties, presumption under Section 51-A of the Act squarely applies to the facts of this case and it has to be held that the death of the petitioner's husband has happened only during the course of the employment and in the factory premises / rest room, by applying Notional Extension Theory. The petitioner is therefore, entitled to get the dependants' benefits."



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18. In view of the above said judgments and as discussed above, this Court is of the opinion that the order passed by the Labour Court is in order. In this context, the Tribunal also elaborately discussed about all the aspects and fairly came to a conclusion that, the petition is liable to be allowed. Therefore, in view of Section 54-A read with Regulation 74, the order passed by the Tribunal is correct by holding that the injured person was died and the brain tumor can be declared as having died of occupational disease. Thus the substantial question of law is answered.

19. In view of the above said discussions, this Civil Miscellaneous Appeal has no merits and deserves to be dismissed. In the result, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

15.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

- 1.The Labour Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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