



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 07 May 2025**
Judgment pronounced on: 13 May 2025

+ **FAO 71/2021, CM APPL. 6730/2021 & CM APPL. 6731/2021**
M/S NEW INDIA ASSURANCE CO. LTD.Appellant
Through: Mr. Salil Paul, Mr. Sahil Paul
and Mr. Sandeep Dayal, Advs.

versus

SMT. KIRAN BAHADUR AND ORSRespondents
Through: Mr. R.K. Nain, Ms. Pratima N.
Lakra and Mr. Chandan
Prajapati, Advs. for R-1 and R-2

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The present appeal has been preferred by the appellant/insurance company under Section 30 of the Employee's Compensation Act, 1923 ["EC Act"], assailing and seeking the setting aside of the impugned judgment-cum-award dated 27.11.2020 passed by the learned Commissioner, Employee's Compensation, Labour Welfare Centre, Nimri Colony, Ashok Vihar, Phase-IV, Delhi ["Commissioner"], whereby the claim for compensation filed on behalf of respondents No. 1 and 2, being the widow and minor child, respectively, on account of the death of Mr. Dipak Kumar @ Deepak Kumar Bahadur, son of Shri Chandra Kumar @ Chander Bahadur, was allowed.



FACTUAL BACKGROUND

2. In a nutshell, the case of the claimants before the learned Commissioner was that the deceased workman was employed as a driver on vehicle bearing registration No. HR-55-V6454 — a 12-tyre truck — under the present respondent No.3, and that he used to transport goods between Delhi and Kolkata. It was stated that prior to the incident, the deceased had been working continuously, and on his last trip, he had transported a consignment of chicken waste from Delhi to Kolkata. After unloading the said material in Kolkata, he reloaded the vehicle with another consignment of fish destined for Delhi. Owing to the perishable nature of the loaded goods, he had to drive urgently back to Delhi and reached the city at around 12:00 a.m. (midnight) ON 04.01.2018.

3. It was claimed that the deceased was completely exhausted and complained of feeling unwell, upon which he took some medicines and was instructed to stand by for the next trip. However, on the same day, the deceased was found unconscious in his vehicle. Information was given to the police, and his body was taken to the hospital by ambulance, where he was pronounced dead.

4. The claimants contended that the deceased died due to severe exhaustion and stress arising out of and in the course of his employment. Pointing out that the vehicle was insured with respondent No.3, they sought compensation.



5. Respondent No.1/registered owner/insurer [respondent No.3 in the present appeal] acknowledged that the deceased was employed as a driver and that he was on duty as the driver of vehicle bearing registration No. HR-55-V-6454 on 04.01.2018. However, it was contended that the deceased did not die in any “accident,” but rather due to natural causes. Accordingly, it was pleaded that the claimants were not entitled to any compensation.

6. Alternatively, it was pleaded that, in any case, the truck was insured not only for third-party risks but that an additional premium had also been paid towards employee’s compensation for the period from 04.06.2017 to 03.06.2018; and that it was the insurance company which was liable to indemnify the payment of any compensation to the claimants.

7. The appellant/insurance company, which was arrayed as respondent No.2, also filed a written statement and, inter alia, raised preliminary objections to the effect that there existed no relationship of employer and employee between the parties. It further took the same stand as the employer, contending that there was no accident and that the deceased had died a natural death, and hence, no compensation was payable. Based on the pleadings of the parties, learned Commissioner framed the following issues:

- “(i) Whether accident resulting into death of deceased is caused out of and during the course of employment and if so, to what amount of death compensation, the dependents of deceased are entitled to?
- (ii) Relief if any ?



(iii) Whether penalty is imposable u/s-4A (3) and if so the quantum thereof?”

8. Suffice it to state that, upon appreciation of the evidence led by the parties, the learned Commissioner found that the existence of employer-employee relationship between the deceased and the respondent No.3 herein was beyond any challenge. Relying on the decision in **Param Pal Singh v. National Insurance Co. Ltd.**¹, the learned Commissioner held that the exhaustion and stress suffered by the deceased due to long hours of driving were a direct and proximate cause of death, which occurred due to a brain hemorrhage. Accordingly, it was held that the deceased died during the course of his employment.

9. Further, upon finding that the deceased was 47 years of age and earning approximately Rs. 8,000/- per month, total compensation of Rs. 6,52,280/- was awarded under Section 4A(3)(b) of the EC Act, along with interest at the rate of 12% per annum from the date of the accident, i.e., the date of death, till realization. Additionally, upon issuance of notice to the insurer as well as the employer under Section 4A(3)(b) of the EC Act, respondent No.1/employer was directed to pay a penalty to the tune of 25% of the principal amount, i.e., Rs. 1,63,070/-, to the claimants.

10. The appellant/insurance company has preferred the present appeal primarily on the ground that, although the relationship of employer and employee existed between the deceased and the

¹ (2013) 3 SCC 409



employer/insurer, no liability could be fastened under the EC Act on the ground that the deceased died a natural death.

ANALYSIS & DECISION:

11. Having heard the learned counsels for the parties and upon perusal of the record, this Court proceeds to decide the aforesaid primary grievance against the impugned judgment passed by the learned Commissioner. Learned counsel for the appellant/insurance company contended that the substantial question of law arising in the present case is whether the death of deceased occurred due to an accident arising out of and in the course of employment. He alluded to the definition of 'Brain Hemorrhage' as per Modi's Medical Jurisprudence², which provides as follows:

"The pathology of Natural Death-
Causes of sudden natural death-
(iv) Diseases of the Central Nervous System-
Hemorrhage in the various parts of the brain such as internal capsule, cerebellum or pons associated with chronic arteriosclerosis and hypertension, chronic alcoholism predisposes to this condition. Spontaneous rupture of arterial aneurysm of the Circle of Willis or other arterial defects, cysts of III or IV ventricle, a brain abscess following middle ear infection or lung abscess, acute meningeal infections such as Meningococci causing Waterhouse-Friderichsen Syndrome. Other are septic meningitis, viral infections like Polioencephalitis and Rabies. Brain tumors and epilepsy during a severe fit of status epilepticus. "

12. Thus, emphasizing that Brain Hemorrhage, which was the cause of death as per the *post mortem* report, was a natural cause, learned counsel for the appellant/insurance company also then relied on the

² 'A textbook of Jurisprudence and Toxicology', 24th Edition Chapter 18, Page No. 443



decision in **Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali**³ and urged that merely because a workman suffered a heart attack or brain hemorrhage, it does not give rise to an automatic presumption that the same occurred by way of an accident. Learned counsel for the appellant/insurance company relied on the following observations made by the Supreme Court: -

“38. Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. It is now well settled that for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the facts of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question.”

13. Although there is no quarrel with the proposition of law that whether the death arose out of or in the course of employment is a substantial question of law, as it is a jurisdictional question, the case law cited by the learned counsel for the appellant/insurance company is of no assistance to him. It is pertinent to note that the aforementioned decision was given in the context where the deceased, who was working as a cleaner on the truck, suddenly developed chest pain. While being rushed to the government hospital in Mangaon, he was declared

³ (2007) 11 SCC 668



'brought dead.' Upon the filing of the claim petition by his legal heirs, the learned Commissioner did not analyze the evidence on record but proceeded on the basis that since the deceased was a workman, it was obligatory on the part of the respondent/employer to pay compensation.

14. An appeal was preferred before the High Court, which set aside the decision of the learned Commissioner, *inter alia* holding that there was no material to show that the deceased workman was suffering from a heart ailment, and that there was no evidence to demonstrate that the workman was subjected to a sudden stressful condition in the course of his duty, which brought about cardiac arrest. The decision of the High Court therein was then challenged before the Supreme Court, and it is pertinent to refer to the following observations made by the Supreme Court in **Shakuntala Chandrakant Shreshti (supra)**: -

“23. Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, *inter alia*, having regard to the nature of the work and the situation in which the deceased was placed.

24. There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction.

25. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.

26. In a case of this nature to prove that accident has taken place, factors which would have to be established, *inter alia*, are:

(1) stress and strain arising during the course of



employment,

(2) nature of employment,

(3) injury aggravated due to stress and strain

27. The deceased was travelling in a vehicle. The same by itself cannot give rise to an inference that the job was strenuous.

28. Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf.

29. Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefor can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard-and-fast rule can be laid down therefore.”

15. The crux of the aforesaid decision is that it must be shown that there was strain, stress, or extreme exhaustion during the course of employment and that the injury was aggravated due to such stress and strain. The ultimate test is that circumstances must be established to show that the death was precipitated by the stressful nature of the work, as perceived by an ordinary reasonable person.

16. Reference was also invited by the learned counsel for the appellant/insurance company to the decision in **Jyothi Ademma v. Plant Engineer, Nellore**⁴, wherein the deceased workman was suffering from chest pain and was undergoing treatment for the same. His duties involved switching certain machines on and off in the factory, and he died while performing these tasks. In that context, it was

⁴ (2006) 5 SCC 513



held that under Section 3(1)⁵ of the EC Act, it must be established that there was a causal connection between the death of the workman and his employment. If a workman dies as a natural result of a pre-existing disease, or while suffering from a disease dies as a result of the normal wear and tear of employment, no liability would be fastened upon the employer. At the same time, it was also held that if the employment contributed to or accelerated the death—i.e., if the death was not solely due to the disease but due to the disease in combination with the conditions of employment—then it can be said that the death arose out of employment and the employer would be liable.

17. In the present matter, CW-1, the wife of the deceased, reiterated and reaffirmed the averments in her affidavit, stating that her husband

⁵ "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 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 workmen;"

(b) in respect of any injury, not resulting in death or permanent total disablement, caused 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 workmen;"



had returned from Kolkata and was under immense stress and exhaustion. He died soon after returning to Delhi while still within the godown/factory premises of his employer. There was no suggestion in her cross-examination that the deceased had any prior history of heart ailment or that he was undergoing any kind of treatment. CW-2, a co-worker, corroborated the fact that the deceased driver had returned after a long journey and was visibly exhausted, upon which he was advised to rest.

18. From the entire narrative, it is undisputed that he had transported perishable goods from Kolkata to Delhi. While it is unclear whether the truck was refrigerated, judicial cognizance can be taken of the fact that the distance between Delhi and Kolkata is nearly 1,500 km, which typically takes 30–40 hours to cover by road @ a moderate speed of 50-60 Kmph. There is no denying that drivers on long-haul routes endure considerable physical and mental strain, remaining continuously alert and cautious while driving. Such continuous exertion takes a significant toll on the body and mind, especially in the absence of proper rest. Interestingly, learned counsel for the appellant/insurance company at this stage argued that the employers are obligated to engage two drivers for such long routes as per Motor Vehicle Rules, and there must have been a second driver. However, no such plea was raised by the appellant/insurance company during the proceedings or substantiated in evidence, and hence, the argument deserves to be rejected.



19. Without further ado, the proposition of law on this issue has been conclusively settled by the Supreme Court in the case of ***Param Pal Singh (supra)***. In that case, the deceased, a driver, was entrusted with the task of transporting a consignment of goods from Delhi to Nimighat, covering a distance of approximately 1,152 kilometres. During the journey, he felt giddy, parked the truck by the roadside, and immediately fainted. He was rushed to a nearby hospital where he was declared 'brought dead'. The cause of death was determined to be cardiac arrest. In this factual backdrop, the Supreme Court held as under: -

“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 workman 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 workman 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.”

25. In a recent decision of this Court in *Shakuntala Chandrakant Shreshti* [(2007) 11 SCC 668 : (2008) 1 SCC (L&S) 964 : (2006) 4 ACC 769] , the factors to be established to prove that an accident has taken place have been culled out and stated as under in para 26 : (SCC p. 677)

“26. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:

- (1) stress and strain arising during the course of employment,
- (2) nature of employment,



(3) injury aggravated due to stress and strain.”

27. The Madhya Pradesh High Court in *Sundarbai v. Ordnance Factory* [1976 Lab IC 1163 (MP)] Lab IC in para 10 has culled out the principles as under : (Lab IC p. 1168)

“10. On a review of the authorities, the principles insofar as relevant for our purposes may be stated as follows:

(A) ‘Accident’ means an untoward mishap which is not expected or designed by the workman. ‘Injury’ means physiological injury.

(B) ‘Accident’ and ‘injury’ are distinct in cases where accident is an event happening externally to a man; e.g. when a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and in such cases ‘accident’ and ‘injury’ coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work.

(C) Physiological injury suffered by a workman due mainly to the progress of a disease unconnected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence.

(D) The connection between the injury and employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury.

(E) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man might hold that the more probable conclusion is that there was a connection.”

28. Again in yet another celebrated decision of this Court in *Ibrahim Mahmmmed Issak* [(1969) 2 SCC 607 : 1969 ACJ 422] this Court has set down the principles applied in such cases as under in para 5: (SCC p. 611)

“5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words ‘in the course of the employment’ mean ‘in the course of the work which the workman is employed to do and which is incidental to it’. 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 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. In *Lancashire and Yorkshire Railway Co. v. Highley* [1917 AC 352 (HL)] , Lord Summer laid down the following test for determining whether an accident 'arose out of the employment'."

29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was *causal connection* to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45-year-old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

30. Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle



and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that the deceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle on the side of the road near a hotel soon whereafter he breathed his last. In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside.”

20. While the proposition of law laid down by the Supreme Court in ***Param Pal Singh (supra)*** settles any ambiguity regarding the circumstances under which even a natural death may be deemed to have arisen out of and in the course of employment, reverting to the facts of the present case, it stands established that the deceased had undertaken long hours of driving and was in a state of exhaustion. There was no evidence to suggest that he was suffering from any pre-existing ailment, including heart disease. In other words, he was otherwise hale and hearty, but his condition appears to have deteriorated on account of stress and physical fatigue directly attributable to the nature of his employment. One cannot lose sight of the reality that drivers employed in the private sector are often subjected to harsh and exploitative working conditions. This exploitation is exacerbated by the prevailing large-scale unemployment in the country, which leaves workmen vulnerable and often deprived of adequate rest or protections.



21. Incidentally, this Court had an occasion to consider similar circumstances in the case of **Tata AIG General Insurance Co. Ltd. v. Aruna Devi**⁶, where four persons, along with a driver, were engaged in ferrying bricks from Sonapat (Haryana) to CC Colony, Delhi during the cold night of 03.01.2014. One of them, Subodh Dass, complained of uneasiness and eventually succumbed to a cardiac arrest. The learned Single Judge observed that the deceased had continued working despite his condition, owing to fear of losing his employment. Relying on the principles laid down in *Parampal Singh (supra)*, it was held that the coronary artery disease which led to his death bore a direct and proximate nexus to the strenuous working conditions in the harsh winter night, and compensation was accordingly awarded. Similarly, in **Bajaj Allianz General Insurance Co. Ltd. Jarina Begum**⁷, this Court dealt with a case where the deceased, aged about 45 years, employed as a cleaner/helper, was compelled by his employer to accompany a truck to Tumkur, Karnataka despite stating that he was unwell. His condition deteriorated en route, and although he was taken to a hospital, he was declared 'brought dead'. In those circumstances, the Court held that compelling an ailing person to undertake an outstation journey amounted to infliction of stress and strain, aggravating his medical condition and thereby fastening liability on the employer to compensate the legal heirs of the deceased.

⁶ FAO 91/2017 decided on 08.02.2018 [2018:DHC:997]

⁷ 2019 SCC OnLine Del 9045



22. In view of the foregoing discussion, this Court has no hesitation in holding that the present appeal is devoid of merit, and accordingly, the same stands dismissed.

23. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

MAY 13, 2025

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