

The Manager Vs. Easwary

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Court : Kerala

Decided On : Mar-06-2014

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : The Manager

Respondent : Easwary

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE P.D.RAJAN THURSDAY, THE6H DAY OF MARCH201415TH PHALGUNA, 1935 MFA.(WCC Act) No. 37 of 2013 (B) AGAINST THE

ORDER

DATED2003-2012 IN WCC NO.97/2001 OF THE COMMISSIONER FOR WORKMEN'S COMPENSATION (DEPUTY LABOUR COMMISSIONER), KOTTAYAM APPELLANT/OPPOSITE PARTY: -----

THE MANAGER KALLAR ESTATE, MUNNAR POST, IDUKKI. BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR SRI.P.GOPINATH SRI.P.BENNY THOMAS SRI.K.JOHN MATHAI SMT.THUSHARA JAMES

RESPONDENT/APPLICANT: ----- EASWARY, W/O.LATE M.PAUL, FACTORY DIVISION, KALLAR ESTATE MUNNAR POST, IDUKKI DISTRICT. BY ADV. SMT.A.K.PREETHA THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON0603-2014, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: I.A.NO.880/2013 IN M.F.A.(WCC Act) no.37/2013 DISMISSED SD/- K.T.SANKARAN, JUDGE63/2014 SD/- P.D.RAJAN, JUDGE \TRUE COPY/ AHZ/ K.T.SANKARAN & P.D.RAJAN, JJ.

----- M.F.A. (WCC Act) NO.37
OF2013----- Dated this the 6th day of March,
2014

JUDGMENT

K.T.Sankaran, J.

The husband of the respondent was employed as a driver in Kallar Estate near Munnar. On 23.3.1998 at 7.30 am., the husband of the respondent reported for duty, put his signature in the Attendance Register and he was ready for work. Immediately he fell unconscious. He was taken to the hospital in Kallar Estate and thereafter, to the General Hospital, where he died of myocardial infraction. No compensation was paid to the widow of the driver. Therefore, she had to approach the Court of the Commissioner for Workmen's Compensation, Kottayam in W.C.C.No.97 of 2001. She claimed a sum of 1,54,008/- as compensation.

2. The appellant/opposite party entered appearance and filed written statement denying the averments in the application. The M.F.A. (WCC Act) NO.37 OF2013::

2. :: appellant raised a contention that the deceased had not attended duty on 23.3.1998 and hence no accident was occurred and no injury was sustained during the course of employment. It was contended that the death of the respondent's husband was a natural death and therefore, compensation was not payable.

3. Before the Court of the Commissioner for Workmen's Compensation, AW1 to AW4 were examined and Ext.A1 wage slip was produced on the side of the applicant. The Deputy General Manager of Nallathanni Estate was examined as RW1 on the side of the employer.

4. The Commissioner held that the deceased was a disciplined driver who had worked on all off days including weekly off, that on 22.3.1998 he worked till late in the evening and again on 23.3.1998 morning, he went for his duty at 7.30 am. The Commissioner also held that the deceased husband of the applicant (respondent herein), was a workman as defined under Section 2(1) (n) of the Workmen's Compensation Act and that he died of heart M.F.A. (WCC Act) NO.37 OF2013::

3. :: attack on 23.3.1998 morning due to the stress and strain arising from his duties as a driver on 22.3.1998 late evening. It was also held that the accident occurred during and in the course of employment.

5. We have also perused the evidence adduced by the parties. The oral evidence in the case would disclose that the workman had strenuous duties on the previous days and nights. He reached home at about midnight on 22.3.1998. The evidence would disclose that not only he acted as the driver but he removed one load of sand to the premises of the factory during the night on 22.3.1998. While the sand was being removed, an accident occurred, as a result of which the sand fell on the road. That sand was removed and taken to the premises of the factory later. The incident which took place on 22.3.1998, which made him to stay in the premises of the employer at late hours, did not deter him from reporting for duty at 7.30 am. on 23.3.1998, on which date, he breathed his last. M.F.A. (WCC Act) NO.37 OF2013::

4. ::

6. In spite of all these facts, the Manager of Nallathanni Estate, the representative of the employer, raised all sorts of untenable and uncharitable contentions. RW1, the Deputy General Manager, Nallathanni Estate, deposed that on 23.3.1998 the deceased did not work in the Estate. At the same time, it was admitted by RW1 that on that day the deceased came to the office at 7.30 a.m., appeared before the Vehicle-in-charge and put his signature in the Attendance Register. It was also admitted that the deceased was paid his wages on 23.3.1998.

7. The learned counsel for the appellant relied on the decision in *Jyothi Ademma v. Plant Engineer, Nellore* : (2006) 5 SCC513 and contended that the applicant is

not entitled to any compensation.

8. The learned counsel for the respondent relied on the two Division Bench decisions of this Court in Shah v. Rajankutty :

2005. (3) KLT1014 and National Insurance Company Ltd. v. P.V. Sheeja and others :

2011. (3) KHC642 = 2011 (3) KLT561 M.F.A. (WCC Act) NO.37 OF 2013::

5. ::

9. In Shah v. Rajankutty :

2005. (3) KLT1014 the Division Bench held thus: "2. Next ground is that the workman died due to heart attack and, therefore, it is a natural death and it is not due to an accident arising out of his employment. Accident is not defined in the Workmen's Compensation Act, 1923. Therefore, the word 'accident' should be understood in the popular and ordinary sense as denoting 'an unlooked for mishap or an untoward event which is not expected or designed'. While explaining the word "accident" contained in the Workmen's Compensation Act in England, Lord Atkinson had observed as follows in *Clover, Clayton & Co. Ltd. v. Hughes* (1910 AC242: "I think, the meaning put upon the word "accident" in *Fenton v. Thorley* (1903 AC443, must now be accepted in all cases turning on the construction of the phrase "injury by accident" used in the Workmen's Compensation Act, 1906, as its true meaning, namely, "an unlooked for mishap or an untoward event which is not expected or designed". It must exclude disease. What is 'unlooked for' or 'unexpected' must, in every case, exist either in the external influences to which the sufferer is subjected, or in the effect upon him which those influences produce." M.F.A. (WCC Act) NO.37 OF 2013::

6. :: A death due to a natural disease (other than an occupational disease) is not an accident. Death of a workman by disease is not synonymous with accident. It is a natural death and not accident. But, the sudden death from the point of view of workman, who dies unexpectedly during the course of employment, without any disease is an 'accident'. Self inflicted injuries and suicide are not accidents. Here,

the workman fell down with head load, collapsed and died due to heart failure. In *United India Insurance Co. Ltd. v. Yashodhara Amma* (1989 ACJ1075, a Division Bench of this court considered an identical matter. In that case, a driver started plying the vehicle in normal circumstance, but, developed symptoms of heart attack en route (in the course of employment) and consequently died and it was held that the case attracted S.3(1). It was held in that case that the driver's illness, though not an external injury, was a serious injury to the heart and insurance company is liable to pay compensation. Similar view was expressed by other benches as can be seen from *National Insurance Co. Ltd. v. Balawwa* ((1994) 1 LLJ433(Kant), *Hindustan Steel Constructions Ltd. v. Nuralsha Khatoon* (1993 ACJ501(Pat), *Sundarbai v. General Manager Ordnance Factory* (1976 ACJ346(MP); 1982 (2) LLJ149(Mad))." M.F.A. (WCC Act) NO.37 OF2013::

7. ::

10. In *National Insurance Company Ltd. v. P.V.Sheeja and others* :

2011. (3) KHC642= 2011 (3) KLT561 a Division Bench of this Court held thus: "9. It is further necessary to consider the decision of the Apex Court in *Jyothi Ademma v. Plant Engineer, Nellore*, 2006 (3) KLT426(SC). Therein, the deceased was working in Nellore Thermal Station. He died at the work spot. The job of the deceased was only to switch on and off and the doctor had opined that there was no scope for any stress or strain in his duties. More importantly, in the said case, it was brought on record that the deceased was suffering from chest disease and was being previously treated for the disease. It is important to notice the following observations of the Apex Court: "6. Under S.3(1) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies 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 M.F.A. (WCC Act) NO.37 OF2013::

8. :: 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.

7. The expression 'accident' means an untoward mishap which is not expected or designed. 'Injury' means physiological injury. In *Fenton v. Thorley & Co. Ltd.*, 1903 AC448 it was observed that the expression 'accident' is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane AC, in *Trim Joint District, School Board of Management v. Kelly*, 1914 AC676 as follows: 'I think that the context shows that in using the word 'designed' Lord Macnaghten was referring to designed by the sufferer.' 10. In the facts of this case, we must notice that the deceased was admittedly an employee. He was employed as a driver of a stage carriage. He was aged 39 years. The evidence of AW2 Conductor which has been accepted, would show that while working as a M.F.A. (WCC Act) NO.37 OF2013::

9. :: driver and clearly in the course of employment, he complained of acute chest pain, he sweated all over and he collapsed. Though he was taken to hospital, the doctor found him dead. The evidence would further show that the doctor opined that he died of heart attack. There is absolutely no evidence on record to show that the deceased had a history of heart disease. Here, we must remind ourselves the age of the deceased which is 39. We are also not to be unmindful of the suddenness with which death overtook the deceased. In short, the death was relatively swift and life was snuffed out in the space of a very short period of time. It can be clearly characterised as unexpected. An unexpected mishap from the point of view of the deceased, therefore, can be characterised as an accident. Further, as held by this Court, only a casual connection or nexus is necessary. Here, the employee was a driver of a stage carriage. It would be unrealistic to think that the job of a driver of a stage carriage does not involve stress and strain, particularly in the context of the competition which is a ground reality, and the very job of driving, particularly bearing in mind the time schedules which are imposed on stage carriages, makes stress unavoidable. It is certainly not like a person who merely switches on and off, as was the case in the decision in *Jyothi Ademma v. Plant Engineer, Nellore*, 2006(3) KLT426(SC)." M.F.A. (WCC Act) NO.37 OF2013::

10. ::

11. In the aforesaid two Division Bench decisions, all the relevant decisions including the decision in *Jyothi Ademma v. Plant Engineer, Nellore* :

2006. (5) SCC513 were referred to.

12. In view of the settled principles of law and in the light of the evidence on record, we do not find any error or infirmity in the order passed by the Commissioner. All the questions raised in the Memorandum of Appeal are held against the employer. The Miscellaneous First Appeal is, therefore, dismissed. (K.T.SANKARAN) Judge (P.D.RAJAN) Judge ahz/

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