

The Divisional Controller, Nekrtc Vs. Marembree and ors.

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Court : Karnataka

Decided On : Oct-07-2003

Reported in : I(2004)ACC136; ILR2003KAR4221

Judge : S.R. Nayak and ;Ram Mohan Reddy, JJ.

Acts : The Workmen's Compensation Act, 1923 - Sections 2 and 3

Appeal No. : MFA No. 1658/2003

Appellant : The Divisional Controller, Nekrtc

Respondent : Marembree and ors.

Advocate for Pet/Ap. : H.R. Renuka, Adv.

Disposition : Appeal dismissed

Judgement :

Ram Mohan Reddy, J.

1. This appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 (for short 'the Act') by the original - employer directed against the Judgment and award passed by the Commissioner for Workmen's compensation (for short Commissioner) on 3.1.2003 in W.C.No. 1061/2001.

2. The material facts leading to the present appeal are as under:

The applicant No. 1 is the widow of the deceased Latif, applicants -2 and 3 are the minor children of the deceased. The applicants jointly preferred an application for compensation due to the death of Latif out of and in the course of employment from the appellant-Corporation. The deceased was a driver of the appellant-Corporation appointed on 7.1.1982. The accident in question arose on 19.11.2001, at about 7 a.m. The deceased was incharge of the bus belonging to the appellant-Corporation discharged his duties of driving the said bus from Bellary on 17.11.2001 reached Mysore at 6 a.m. on 18.11.2001. Thereafter, the deceased drove the vehicle on its return journey to Bellary, by starting at 7 p.m., from Mysore and reached Bellary on 19.11.2001 at 7 a.m. While at the bus-stand at Bellary in the bus itself, the deceased Latif complained of acute pain in the chest and by the time, he was removed to the hospital, he was declared dead. The deceased Latif died due to a heart attack. The applicants filed the application for compensation as the death of Latif was due to personal injury sustained by him out of and In the course of employment with the appellant-Corporation.

3. The appellant-Corporation resisted the application by filing the written-statement and contended that the deceased-workman had died a natural death. It was, thus, denied that the deceased had died due to injury arising out of and in the course of his employment with the appellant. It was also denied that the applicants were entitled to.

4. In view of the facts and circumstances of the case and the pleadings of the parties, the Commissioner settled six issues for decision making. For the purpose of this appeal, the appellant having questioned the findings on issue No. 2, alone, it will be sufficient to cull out the said issue, which reads thus:

5. The applicants relied upon the evidence of the widow of the deceased Smt. Marembee and also the documents exhibited in the application.

6. On appreciation of the evidence on record, both oral and documentary, the Commissioner held that the workmen had died due to the injury in the course of employment and awarded a compensation of Rs. 3,06,180- to the applicants under Section 3 of the Act.

7. Being aggrieved by the judgment and award, the appellant-Corporation has filed this Miscellaneous First Appeal questioning the finding on issue No. 2 that the workmen had died due to the injury in the course of employment. The controversy therefore, in this appeal is circumscribed in a very narrow compass. The only question that requires to be determined whether in the facts and circumstances of the case, the death of the workman due to heart attack can be termed as a employment injury under Section 3 of the Workmen's Compensation Act, 1923? If not, what order?

8. The deceased - workmen was working as a driver. He was assigned with duties to drive the bus on 17.11,2001 at about 8 p.m. to depart from Bellary to reach Mysore at 6 p.m. on the next day that is 18.11.2001. Thereafter, he drove the vehicle on its journey from Mysore commencing at 7 p.m. on the said date and reached Bellary at 7 a.m. on the next day that is 19.11.2001. After having reached Bellary and passengers had alighted from the bus, the deceased complained of acute pain in the chest and immediately, he was removed to the hospital. He was declared dead due to heart-attack on arrival at the hospital it is an admitted fact that the deceased died in the course of his employment with the appellant-Corporation. The deceased died while he was on his duty and when he was in the bus.

9. The contention of the appellant-employer is that the deceased-driver had died a natural death and that the death cannot be said to be out of employment. The question is whether personal injury sustained by the deceased could be said to be injury attributable or referable to employment or not? The Commissioner was pleased to find that the deceased workman died due to personal injury arising out of and in the course of his employment.

10. Cardiac arrest or heart failure cannot perse be termed as accidents to grant compensation to the legal representative of a workman who died because of the same whilst merely on duty. In order to claim compensation under Section 3 of the Act, it is necessary to prove that the injury or resultant death as the case may be is caused to the workman by an accident arising out of and in the course of employment with the employer. Therefore, the use of word 'out of employment'

emphasize a casual connection between the employment and the accidental injury. It is well settled position of law that under Section 3 of the Act, it must be shown that there was a proximate cause and nexus between personal injury and accident during the course of employment. In the present facts and circumstances of the case, it is an admitted fact that there was a casual connection between the death and the employment whether deceased died while on duty. But what is sought to be challenged is, that the deceased driver died a natural death, due to heart-attack. The Commissioner, after having examined and appreciated the evidence on record has come to the conclusion that the death was attributable to the employment. This finding of fact remains unassailable.

11. It is well established that it is not necessary for the dependents of the deceased workman to prove that the deceased was engaged in some exceptional work of a particular kind which had caused excess strain on the deceased so as to result in his death. If the work in which the workman was engaged was likely to accelerate death, it could be said that there was proximate nexus between the death and employment. The finding of the Commissioner that there was casual connection between death and work of the deceased cannot therefore be dislodged and moreover, there is no contra evidence placed by the appellant-Corporation to counter such a finding.

12. On the evidence available on record in the present case, it has to be held, without demur, that the deceased workman had died of heart attack, there being a pre-existing heart condition which was aggravated by the strain of the work of the deceased which resulted in his death. The fact that the deceased workman's unexplained or apparently natural death had occurred during the course of employment, having established casual connection between the nature of employment and death, the employment was attributable cause accelerating the death. That the death of the workman was not only due to the disease from which he was suffering but on account of factors coupled with employment, has led the Commissioner to conclude that the death occurred as consequence of and in the course of employment. Therefore, both, the conditions entitling the applicants to claim compensation under Section 3 of the Act are fully satisfied. The contentions raised by the appellant - Corporation is one without any merit.

13. Under Section 30 of the Act, an appeal will lie only if it raises a substantial question of law and not otherwise. The finding that the deceased was the person who suffered an accidental injury or not, is a pure findings of fact giving rise to no substantial question of law. Therefore, we are of the view, that the question is rightly decided by the Commissioner and no interference is called for with the impugned judgment and award on the ground that the question raised in the appeal is wrongly decided by the Commissioner.

The appeal is dismissed at the stage of admission without notice to the respondents. No order as to costs.

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