

Mariam Bee Vs. Town and Country Development Authority

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Court : Madhya Pradesh

Decided On : May-06-1983

Reported in : 1(1984)ACC227

Judge : G.L. Oza, J.

Appellant : Mariam Bee

Respondent : Town and Country Development Authority

Judgement :

G.L. Oza, J.

1. This is an appeal under Section 30 of the Workmen's Compensation Act filed by the appellant, the widow of the deceased workmen, against an order dated 23-2-1982, passed by the Workmen's Compensation Commissioner in case No. 70/80.

2. The deceased Gulam Ali was serving with the respondent as a Chowkidar and was posted under Shri Dixit, Assistant Engineer. On 22-3-80, he was directed to remove encroachments and it was alleged by the appellant in the Court below that for that purpose, he had gone with a spade and a pick-axe and on return, as it caused him sufficient strain, he developed pain in his chest and at 9.30 a.m., he died as a result of cardiac failure. It was alleged by the appellant that his wages were Rs. 190.70 p.m. and as he died during the course of his employment, compensation was claimed by the appellant.

3. The claim was contested by the respondent and the learned Commissioner dismissed the claim petition holding that the deceased was not a workman within the meaning of Section 2(n) of the Workmen's Compensation Act (hereinafter referred to as the Act), 1923. The learned Commissioner also dismissed the claim on the ground that death was not as a result of accident. It is against this that the present appeal has been filed.

4. As regards question of monthly wages, the learned Commissioner came to the conclusion that the monthly wages of the deceased were Rs. 188.50 and the appellant claimant would have been entitled to compensation to the tune of Rs. 16,800.00.

5. Learned Counsel appearing for the appellant contended that according to Section 2(n) read with Schedule 11, item (viii) (a) and (c) of the Act, the deceased will fall within the ambit of the definition of workman under Section 2(n) of the Act, as admittedly the deceased was employed as a Chowkidar with the Development Authority and according to the functions that he was expected to perform as a Chowkidar in the light of the functions of the Development Authority which acquires lands, develops roads and other things, he will fall within the ambit of Clause (viii) of Schedule II. It was also contended that apart from the work of the Chowkidar, the evidence in the case discloses that the deceased used to be sent for other work also for working as a labourer and sometimes for demolishing the hutments and houses built unauthorisedly and on the date of the incident itself, as it has abundantly come in evidence, the deceased, along with others, was directed to go for removal of encroachments of houses in a particular locality. However, there is some controversy about the actual operation, but the evidence consistently indicates that the deceased along with others, was directed to proceed for removal of encroachments and on return, he complained of pain in his chest and ultimately died.

6. Post mortem was conducted on his dead body and the medical opinion on the basis of the post mortem examination clearly establishes that he died as a result of heart failure. It was, therefore, contended that the view taken by the learned Commissioner that the deceased would not fall within the meaning of the word

'workman' as defined in Section 2(n) of the Act, is contrary to law.

7. It was also contended by the learned Counsel for the appellant that the learned Commissioner came to the conclusion that the deceased died in the course of employment, but held that he did not die as a result of the employment and in so doing, he committed an error of law as it was contended that the duties of the deceased as they emerged in evidence, were first to report in Office and thereafter go to the site of the scheme where the Development Authority was developing and on that day, after he had reported at the office at 7.30 a.m., he, along with others, was directed to go for removal of encroachments and when he returned from there, was expected to proceed on the site which is also at a sufficient distance, he set down and complained of pain in his chest.

8. It was contended that it has appeared in evidence that his wife was ill and when he visited her, she told him to take leave and he had stated that when he requested his Officer for leave, he was told that if he wanted leave, his services would be terminated. In that mental strain, in spite of the fact that his wife was ill he could not get leave and was performing the functions and in that process going from place to place which ultimately resulted in stress and strain, both mental and physical. It was contended that this, according to the Doctor, was sufficient to cause heart trouble which ultimately resulted in his death and, therefore, the view taken by the learned Commissioner is not justified in law as the death was the direct result of stress and strain of employment and, therefore, it was the result of employment. In this view of the matter, the claim should have been awarded to the appellant.

9. Learned Counsel for the appellant placed reliance on the following cases:

- (i) Satiya and Ors. v. Sub-Divisional Officer, P.W.D. (B. and B.) 1975 M.P.L.J. 247.
- (ii) Sundarbai v. General Manager, Ordinance Factory, Jabalpur, 1976 M.P.L.J. 356.
- (iii) Kikubhai v. The Mafatlal Fire Spinning and . 1981 (2) L and I.C. 1648.

10. Learned Counsel for the respondent, on the other hand, contended that in order to attract Section 2(n) of the Act, read with Schedule II, item (viii), the necessary facts have not been pleaded as it is not indicated that the building which was sought to be demolished, was as contemplated in Clause (a), nor anything else to attract Sub-clause (c) of item (viii) of Schedule II. It was, therefore, contended that the Commissioner was right in coming to the conclusion that the deceased did not fall within the ambit of the definition of workman as defined in Section 2(n) of the Act.

11. As regards death, it was contended that although the death occurred during the course of employment, it could not be said that it occurred on account of or as a result of the employment. It was contended that although an attempt was made by the appellant to suggest that when these persons went for removal of encroachment with pick axe and spades, the persons whose property was to be removed, came out to fight and as the Officers did not reach in time, these persons had to run away and were chased and the deceased, along with his companions, had to run back to save their life. But the evidence clearly shows that there was nothing of this kind, although it was contended that the evidence does show that they were asked to proceed for removal of encroachment and police help also was sought, but as police help was not available, further steps were given up and these persons were recalled and thereafter they were directed to go on their own duties, i.e. at the site and while going the deceased got pain in his chest and ultimately died. This, according to the learned Counsel, (death) could not be connected with the employment, as reporting to the Office in the morning and then going to the site was the normal function that the deceased was performing and in this process, there is nothing to indicate that anything happened which either caused heart trouble or accelerated it. It was also contended that there is no evidence in the case also to indicate that the deceased had any trouble earlier and therefore, it could not be said that a little strain of going from the office to the site accelerated the trouble which ultimately resulted in his death. Learned Counsel placed reliance on a decision reported *Subhadrabai Sukhram and Ors. v. Malwa United Mills Ltd. Indore 1961 M.P.L.J. 80*, and *Parwatibai v. Manager Raj Kumar Mills, Indore 1959 J.L.J. 295*.

12. Clause (viii) of Schedule II of the Act reads as under:

(viii) employed in the construction, maintenance, repair or demolition of:

(a) any building which is designed to be or is or has been more than one storey in height above the ground level to the apex of the roof; or

(b) any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or

(c) any road, bridge, tinnel or canal; or

(d) any wharf, quay, sea-wall or other marine work including any moorings of ships; or persons employed in construction, maintenance etc. of any building, dam;

13. The respondent has not chosen to produce any evidence to indicate what are the functions of this Authority, but it is not in dispute that normally this Authority functions for development of land site for house buildings and also indulges in construction activities. It is also not disputed that development of house sites involves construction of roads, bridges and other things. It is, therefore, apparent that functions the Development Authority indulges in will fall within the ambit of Clause (viii) quoted above.

14. The deceased was employed as a Chowkidar. There are no special terms of employment nor the order of appointment shows that he was expected to perform only particular functions. But the evidence of Mushtaq Ali Khan (A.W. 4) who was looking after the Muster Sheets and was under Shri Dixit under whom the deceased was also working as a Chowkidar, shows that on 22-3-1980, he had instructed the deceased that on 23-3-1980, he had to go for removal of encroachment on the Gupteshwar hillock and had directed him to reach the Office at 7 O' clock in the morning. He has also stated that on 23-3-1980, the deceased, along with others, was present in the Office at about 7.30 a.m. and he had directed them to proceed towards the place where encroachment was to be removed and he went to the police station for police help so that in case of any law and order situation, police help may be available. He further states that he went to the police

station along with a letter of Shri Dixit, but the police refused to help and when he was returning, he saw a crowd near Ratan Nagar beneath a tree and on enquiry, he discovered that Gulam Ali was ill. Thereafter he went and reported it to Shri Dixit who told him to inform his members of his house. There upon he informed the relations of the deceased at about 10.30, but he stated that he did not inform his wife as she was already admitted in the hospital.

15. According to this witness, in Scheme No. 2 (b) where the deceased was posted, cement, iron and other things were coming everyday. There also used to be demolition of structures which were encroachments and the deceased, along with other employees, used to do all these functions and sometimes when extra labour was needed, it was also employed. He also admitted that he was a Muster clerk with the respondent Authority.

16. Apart from this witness, other persons who were working with the deceased have also been examined and they also practically narrated the same story except one who has supported the respondent by saying that when the deceased was complaining of chest pain, he also said that when they went to demolish the structures of the encroachments, the persons who were in occupation of those structures, came out to meet them with violence and, therefore, they had to run and the encroachments could not be removed. In this process, he developed pain in his chest.

17. But apart from this, the evidence about which there is no controversy, clearly shows that the deceased who was employed as a Chowkidar on Scheme No. 2 where Shri Khan was the Muster Clerk, was employed to look after the work in the Scheme and was also employed to work even for removal of encroachments and demolition of structures. From all this evidence, it is clear that the deceased had to discharge all the functions necessary in furtherance of the scheme of the development which was undertaken by the Development Authority and, therefore, it is also clear that the cement and iron for construction of culverts and bridges material for road making and other things also used to be received and this Chowkidar, along with others, had to work in various fields of activities including the demolition of structures, built unauthorisedly on the lands which probably fell

within the Scheme of the Development Authority. In view of this clear evidence and in the absence of any clear evidence led by the respondent about the functions which the Chowkidar was expected to perform, it could not be contended that the deceased fall within the ambit of the definition of Section 2(n) of the Act.

18. Learned Counsel for the respondent led much emphasis on the evidence of one Shri Pillay who was employed as an Overseer. From his evidence it appears that the deceased was working as a Chowkidar and was getting a salary of Rs. 188.50 per month. He has not said anything about the functions of the Development Authority, but he has stated that he was expected to look after the land acquired by the Development Authority also and to see that the trees were not cut by some one.

19. As regards the date of incident, this witness also, admits that Chowkidars were called for purposes of removal of encroachments. But as it could not be done, they were asked to go to their duties. It is, therefore, clear that from the evidence of this witness, it has been established that the deceased, along with others, was called in the morning to go for purposes of removal of encroachments and that they in fact went there, but returned as it could not be performed and later they were directed to go back on the site where they were expected to work and it was at that time that the deceased complained of pain in his chest and ultimately succumbed.

20. Looking to these circumstances, therefore, it is clear that there is nothing in the evidence to indicate that as a Chowkidar, the deceased was supposed to perform the functions which would not attract the provisions contained in Schedule II, Item (viii) of the Act as quoted above and, therefore, it could not be held that he will not fall within the ambit of the definition of Section 2(n) of the Act. This finding arrived at by the learned Court below, therefore, is contrary to law and cannot be maintained.

21. As regards death and its cause, unfortunately the Doctor who performed the autopsy on the deceased could not be examined as he is out of India, but Dr. D.K. Sakalle (A.W. 3) has given his opinion on the basis of the finding in the post mortem report. He has clearly stated that he died on account of heart attack. He

has also stated that this trouble may arise on account of blood pressure, diabetes, tension and other work. According to him, tension is the chief cause.

22. It has appeared in evidence that the wife of the deceased was already admitted in the hospital and she wanted the deceased to take leave, but it appears that leave for such an employee with the respondent was not possible, as it has appeared in evidence that his Officer told him that if he wanted leave, his services would be terminated. It was contended by the learned Counsel for the appellant that for a man who was getting hardly Rs. 185.00 p.m. the threat of loss of employment itself would cause sufficient mental tension and in the circumstances this poor man could not get leave to look after his wife who was admitted in the hospital as that would involve the risk of losing the employment itself. According to the learned Counsel, these circumstances would clearly establish that on the date the deceased succumbed to heart failure, he was performing his duties under such mental tension. It was under these circumstances that first he had to go to the Office from where he was directed to go to the hillock where the encroachments were to be removed and on return, he was directed to go back to the site and this, according to the learned Counsel, was sufficient physical stress, coupled with mental strain that he had on accounts of not getting leave and this was sufficient to cause the chest pain which ultimately resulted in the cardiac attack resulting in his death. The Doctor, in his evidence, has stated that stress and strain may be responsible for such a situation.

23. In *Parwatibai v. Manager Raj Kumar Mills, Indore*, (supra) on which reliance was placed by the learned Counsel for the respondent, no doubt it is held that in the absence of any material to connect the death with the duties, compensation could not be awarded, but in this judgment, His Lordship has referred to a decision reported in *Bal Diva Kalufi v. Silver Cotton Mills Ltd.* : (1956)ILLJ740Bom and observed that the principle of that case could not be applied as the facts did not justify it. In this decision, it was observed as under:

Turning to the authorities cited by learned Counsel, the decision in *Bal Diva Kalufi v. Silver Cotton Mills Ltd.* (Supra) would, at first sight, seem to support the appellant. But the case is really distinguishable on facts. That was a case where a

workman suffering from heart disease after working for eight hours on a hot day in June in a mill in Ahmedabad died of heart failure and it was held that he died of injury by accident arising out of and in the course of his employment. In that case, the expert medical evidence was that if a weaver suffering from heart disease works for about eight hours in a textile Mill in Ahmedabad in the month of June and collapses unconscious and dies within about six hours, then the eight hours work on a hot day must have caused strain and accelerated his death. The learned Chief Justice observed that if the worker was suffering from heart disease, then the fact that he worked for eight hours on a hot day must obviously have caused strain and accelerated his death and, therefore, the deceased died of injury by accident arising out of and in the course of his employment. In the instant case, there is no material whatsoever about the work that Kalu did on the day in question or about the conditions under which he was doing the work.

It is, therefore, clear that this decision turned on the facts as were established in that case.

24. In *Semberbai v. General Manager Ordinance Factory Jabalpur* (Supra) the Division Bench of this Court has considered this aspect again and has considered this decision of our High Court referred to above. In this decision, it was observed as under:

Whittle v. Ebbwvale Steel, Iron and Co. Ltd., was also a case of workman suffering from an advanced heart disease who died while doing his ordinary work. The condition of the workman was such that 'he might have died at any moment,' and 'any work' would have affected him in that condition. Still it was held the workman's death was an accident arising out of his employment as the work that he was doing, contributed to some extent to his death. In *Oates v. Earl Fitzwilliam's Collieries Co.* which again was a case of a workman suffering from heart disease who became seriously ill while at his work and died shortly afterwards, the authorities were reviewed and the legal position was stated in these words: A physiological injury or change occurring in the course of a man's employment by reason of the work in which he is engaged at or about that moment is an injury by accident arising out of his employment and this is so even though the injury or

change occasioned partly, or even mainly by the progress or development of an existing disease if the work he is doing at or about the moment of the occurrence of the physiological injury or change contributes in any material degree to its occurrence. Moreover, this is none the less true though there may be no evidence of any strain or similar course other than that arising out of the man's Ordinary work.

While considering the earlier judgment of this Court referred to above, it was observed in this judgment as under:

I may next refer to *Parwatibai v. Raj Kumar Mills*, a case of our High Court decided by Dixit J. In this case, a workman employed in the Mills who was suffering from heart disease, died of heart attack in the course of his work. Dixit J. decided against the workman's Widow on the view that there was no evidence to establish the association of the accident with the employment. In the course of his judgment Dixit J. said that there was nothing to show 'that the heart attack was due to an exceptional strain of work that Kalu (the workman) did on the day in question.' If by this observation, the learned Judge meant to say that ordinary strain of ordinary work is insufficient to furnish any casual connection between the accident and employment, I am unable to agree. In view of the authorities to which reference has already been made, if the workman is suffering from advanced heart disease, ordinary strain of ordinary work in which he is employed at the relevant time, may be too great for him and may furnish the connection between his death and employment. I may recall here again the words of Lord Loreburn, L.C. in *Huges* case; 'I do not think we should attach any importance to the fact that there was no strain or exertion out of the ordinary'; Reference may then be made to the case of *M. Mackenzie v. I.M. Issak* 1910 A.L. 242, p. 246. In this case which related to a claim for compensation for the death of a missing seaman employed as a deckhand, the Supreme Court held that the words 'arising out of employment' are understood to mean 'a casual relationship between the accident and the employment'.

In this view of the matter, therefore, from the evidence which has been discussed earlier about the physical stress and mental strain that the deceased had at the

time when he suffered the heart attack, ultimately resulting in his death, it could not be said that the death was not as a result of his employment.

25. It was seriously contended by the learned Counsel for the respondent that there is no material to show that there was any trouble or any ailment of heart of deceased earlier. It may be an unfortunate state of affairs that people living below the poverty line in this country, there may be no occasion for them to get a medical examination and in such a situation, it may not be possible to produce any material, but it could not be doubted when it is not disputed that the person succumbed after the stress strain that he had to suffer in the discharge of his duties on that day ultimately resulting in his death and, therefore, it could not be said that it is not a case where there was any cause which accelerated or made the situation worse, but in the circumstances as discussed above, it is plain that there was no other factor except the stress and strain that he had to suffer in the discharge of his duties on that day as a result of which he ultimately succumbed to cardiac failure. In this view of the matter, therefore, in my opinion, the learned Commissioner Committed an error of law in coming to the conclusion that the death could not be connected with the employment.

26. In the light of the discussion, therefore, the appeal is allowed. The order passed by the learned Commissioner is set aside. Instead, it is held that the appellant is entitled to compensation as has been found by the learned Court below on the basis of the salary which has been found after considering the evidence on record, i.e. compensation to the tune of Rs. 16,800.00. The appellant shall also be entitled to costs to this appeal. Counsel' fee Rs. 250.00, if certified.

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