

Tejubai and ors. Vs. General Manager, Western Railway and ors.

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SooperKanoon Citation : sooperkanoon.com/738925

Court : Gujarat

Decided On : Aug-20-1982

Reported in : II(1984)ACC233; (1982)2GLR787

Judge : I.C. Bhatt, J.

Appellant : Tejubai and ors.

Respondent : General Manager, Western Railway and ors.

Judgement :

I.C. Bhatt, J.

1. The appcllants-original claimants in Compensation Case No. 43 of 1980 have filed the present appeal, as their claim was rejected by learned Civil Judge (S.D.) and Ex-Offieio Commissioner appointed under the Workmen's Compensation Act, at Nadiad (hereinafter referred to as 'the Commissioner'), by his judgment and award dated 11-9-1981. A few relevant facts of the case are as under.

2. The applicant No. 1--appellant No. 1 herein is the wife and application Nos. 2 to 5--application Nos. 2 to 5 are sons and daughter of Sabebshh Vajesinh Mahida who was serving as Diesel Assistant, in the grade of Rs. 290-350, plus allwances in Western Railway with head-quarters at Godhra. According to the applicant Sahebsinh died during the course of employment and the present applisation, being his heirs, are entitled to receive cpmensation of Rs. 23,100/-. The

deceased was serving in the Western Railway as Diesel Assistant and his main duty was to assist the driver of the goods train, as Assistant Driver. The deceased was on duty on 16-5-1976 with good train No IUK 23/10 from Godhra to Ahmedabad, namely, Bajwa. The said train started from Gpdhra at about 11-p.m. and when it reached Bear Bajwa, deceased complained of chest pain and he was perspiring. He took rest for some time and thereafter the train went ahead towards Ahmedabad, but when the said train reached Anand, the deceased felt severe pain in the chest and hence his companion driver Maganlal S. Makwana took him to the Railway Hospital at Anand for treatment. The deceased was admitted in the hospital at about 4.00 a.m. on 17-5-1976 and after some time he was discharged and, directed that he should go for further treatment at Godhra. From the hospital he was taken to his relative's place in Anand who was staying in railway quarters. He again developed some pain and therefore, doctor was called, but before the doctor could reach he died at the quarter of his relative Ajitsin. According to the applicants the deceased died because of heart failure while he was on duty, during the course of employment of opponent Nos. 1, 2 and 3 and as such the opponents were liable to pay compensation on the basis of his salary. The applicants claimed Rs. 23,100/- towards compensation and as nothing was deposited towards compensation within one month the applicants are also entitled to claim penalty and interest thereon. The applicants orally as well as in writing requested the opponents for payment of compensation on 18-3-1977, 9-2-1978 and 15-4-1979, but nothing was paid.

3. The said application was resisted by the opponents by Ex. 17 wherein it was inter alia, contended that there is no dispute about the accident and that the deceased was working as workman under the Workmen's Compensation Act and that he died during the course of his employment and also that the applicants are the heirs and dependents of the deceased, but the main contention of the opponents was that no cause of action has arisen because the deceased neither died during the course of employment nor has it arisen out of it but the deceased met with natural death out of heart failure due to hypertension on 17-5-1976 at about 15-30 hours. Therefore, the application should be dismissed.

4. In view of the pleadings of the parties, the Commissioner had raised the issues and came to the conclusion that the deceased had died natural, but act of the death caused on account of exertion put up by the employee during the course of his duties of employment. The Commissioner finally dismissed the application with no order as to costs. Being aggrieved by the said judgment and order of the learned Commissioner, the applicants have preferred this First Appeal.

5. Mr. J.M. Patel, learned Counsel appearing for the appellants has mainly contended that the deceased died during the course of employment under respondent Nos. 1, 2 and 3 on 17-5-1976 and that the appellants are entitled to claim compensation amount of Rs. 23,100 with interest and costs. On the other hand learned Counsel Mr. R. P. Bhatt for the respondents has strongly urged that the deceased died natural death due to heart failure and therefore, the death of the deceased cannot be attributed as an accident or injury during the course of his employment with the respondents. The applicants--appellants would not be entitled to any amount of compensation as claimed by them.

6. At this stage I may mention some of the undisputed facts on the record of the case.

7. There is no dispute that deceased Sahebsinh V. Mahida was serving as Diesel Assistant in the grade of Rs. 290/350, with the respondents. There is no dispute that the deceased was working as workman under the Workmen's Compensation Act. There is also no dispute about the fact that he died during the course of his employment and that the applicants-appellants are his heirs. Therefore, the only question for my determination will be whether deceased died a natural death or because of an accident as provided under the Workmen's Compensation Act and whether the deceased died during the course of his employment as a result of an injury or accident.

8. The evidence on this point is of appellant No. 1 Tejubai widow of Sahebsinh v. Mahida Ex; 13. She has stated that on 16-5-1976 her husband had left Godhra for his duty on goods train which was to reach Kankaria (Ahmedabad) via Bajwa and the driver of the goods train was Maganbhai. She has further stated that they had started from Godhra at 11-00 p.m. When they reached Bajwa deceased was in

distress. From Bajwa they went towards Anand and at Anand the deceased was admitted in the railway hospital. After treatment, deceased was asked to go home but he did not reach home and died at Anand. She has also stated that her husband was getting pay of Rs. 600 per month. She has further stated that deceased had no ailment of any kind before he died. She has also stated that the applicants are the dependents of the deceased. She has no personal knowledge about what had happened at Anand. Therefore, her evidence would not be of much assistance regarding the happening at Bajwa or at Anand.

9. The important evidence is of Maganlal Sunderlal Makwana, Ex. 31, who was driver of the goods train and the deceased had accompanied him on 16-5-1976. This witness clearly states that when the train reached Bajwa, the deceased complained of chest pain and he was in distress and was perspiring. Therefore, after the deceased felt better, they proceeded towards Ahmedabad. In the train after Bajwa, the deceased had to do the work of meter reading and engine checking. While doing that work he again complained of pain in the chest and therefore, the train was stopped at Anand and the deceased was taken to the doctor at Anand and after taking another Assistant, this witness proceeded towards Ahmedabad.

10. In the cross-examination this witness has stated that between Bajwa and Anand the deceased was taking normal strain and he had not over-strained himself.

11. There is another witness Ajitsinh Sadhusinh Paj, relative of the deceased. He had gone to see the deceased in the hospital at Anand on 17-5-1976. On inquiring from the deceased, this witness was told by the deceased that he was ill and therefore he was admitted in the hospital. The deceased had told the witness that he had pain in the chest and that he was in distress. Thereafter he was treated by the doctor and after some time he was relieved by the doctor and this witness had taken the deceased to his house. After some time the deceased had some pain and therefore, they had gone to call the doctor, but before the doctor could reach Sahebsinh had died. This witness stays in the railway quarters near railway dispensary. Dr. Kalyani, who treated the deceased in the railway hospital is also

examined at Ex 25. He had issued the death certificate. As per the certificate the cause of death of deceased was failure of heart. He had examined the deceased and he says that deceased had hypertension. In cross-examination he has stated that the deceased had blood-pressure and he had advised him rest. However, he stated that he had not noted how much was the hypertension.

12. This is in short the evidence of all the witnesses. It maybe noted that the opponents have not led any evidence and have passed a pursis that they did want to lead any evidence.

13. Now considering the totality of the evidence, it is amply clear that the deceased was on his duty while he received heart attack. He first complained of chest-pain near Bajwa as is clearly stated by Maganlal in his evidence. Therefore, it is clear that the deceased had suffered this pain while he was on duty at Bajwa and in the employment of Railway Administration. If the deceased had remained at his residence and had he not taken strain of journey and performed his duty as narrated by Maganlal --driver of the train, the deceased possibly, would not have received the chest pain and if at all he would have received the chest pain and had he been at his residence, he would have received best possible treatment immediately. The deceased got chest pain at Bajwa, thereafter he performed his duties and near Anand again he got chest pain and thereafter he was admitted in the hospital at Anand. Thus, the deceased could not get treatment immediately when he received the chest pain at Bajwa for the first time. If the deceased could have got treatment at the first chest pain, perhaps he could have survived and this unfortunate event for the appellants would not have arisen. Thus, this injury or accident has been caused to the deceased when he was on duty and therefore, it can never be suggested that the deceased had not died during the course of his employment. The injury was caused to the deceased workman out of and during the course of his employment first at Bajwa and then at Anand. It is really surprising how the Railway Administration is taking a stand that the deceased met with a natural death due to heart failure, but not arising during the course of the employment,

14. It can safely be presumed that had the deceased not travelled and had not taken strain of performing his duties on that day between Bajwa and Anand and had the deceased got immediate treatment on his first complaining of chest pain, possibly the deceased might not have suffered subsequent chest pain near Anand and might not have died. No authority would be necessary for coming to the conclusion on these facts that the deceased had died by an accident or injury arising out of and in the course of his employment with the respondents. The word 'accident' means an untoward mishap which is not expected or designed by the workman. 'Injury' means physiological injury. Accident and injury are distinct in cases where accident is an event happening externally to a man but accident may be an event happening internally to a man and in such cases 'accident' and 'injury' coincide. Such cases are illustrated by failure of heart, bursting of an aneurism and the like, while the workman is doing his normal work. 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. In the instant case the balance of probabilities are in favour of the deceased and in view of the evidence on record it can safely be held that more probable conclusion is that there was a connection between injury and employment. It is not in dispute that the deceased was a workman in the employment of the respondents and he died during the working hours and medical certificate revealed that he died as a result of heart failure. From the evidence it is clear that he was engaged in the work and he died during the course of his duty. It is evident from the evidence of Maganlal that after leaving Bajwa, the deceased had performed his duties of meter reading and engine checking and while performing these duties the deceased complained of chest pain and therefore, the train was stopped at Anand. Even though such work may not be very strenuous, the question for consideration is whether the employer would be liable in these circumstances. As stated above, the word 'accident' has been construed in a wider sense as connoting a mishap or untoward event, external or internal, not expected or designed by the victim. The accident in the instant case was failure of heart. It is obvious that the accident was in the course of his employment, but the crucial point is whether it can be said to arise out of his employment within the meaning of Section 3 of the Act. The learned Commissioner held that the deceased died with natural death out of heart failure

due to hypertension and it could not be said to arise out of the employment. This view is not correct because in the present case it is clear from the evidence on record that there was connection between the injury to the deceased and his employment with the respondents. The deceased did receive injury at Bajwa and near Anand because of strain of work done by him between Bajwa and Anand and this strain of work, particularly after he complained chest pain at Bajwa, did in fact contribute to accelerated and hastened the injury. Because had the deceased remained at his home in Gadhra and had he not gone on duty, possibly he might not have received this injury and might not have died. Therefore the deceased received injury during the course of his employment with the respondents. The respondents are certainly liable to pay compensation to the appellants--heirs of the deceased under Section 3 of the Workmen's Compensation Act, 1923. If any authority is needed in the instant case, I may refer to a case in *Maekinnon Mackenzie and Co. Pvt. Ltd. v. Ibrahim Mohammad Issak* 1969 ACJ 422 (SC), wherein the Supreme Court held that the words 'arising out of employment' mean that during the course of the employment injury has resulted from some risk incidental to the duties of the service, which unless so engaged the workman would not otherwise have suffered. In view of such a situation and the fact that the deceased discharged his duties of meter reading, engine checking etc. even after chest pain at Bajwa, it can never be argued on behalf of the railway administration that the deceased had not met with an accident during the course of his employment. Therefore, in view of state of evidence on record and in view of the above position I hold that Sahebsinh Mahida received injury and died during the course of his employment with the respondents. The applicants-appellants are therefore, entitled to compensation. There is no dispute regarding the monthly salary of the deceased. Therefore, the appellants would be entitled to full claim of Rs. 23,100 by the way of compensation with interest and costs.

15. In the result, this appeal is allowed. The respondents-opponents are liable to pay an amount of Rs. 23,100 by way of compensation to the appellants with interest at the rate of 6% from the date of the accident, i.e., 17-5-1976 till payment with cost throughout. The respondents are directed to deposit the amount as aforesaid, within a period of eight weeks from the date of receipt of the certified copy of this judgment.

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