CASE NO.:
Appeal (civil) 4778 of 2006

PETITIONER:
Shakuntala Chandrakant Shreshti

RESPONDENT:
Prabhakar Maruti Garvali & Anr

DATE OF JUDGMENT: 10/11/2006

BENCH:
S.B. SINHA & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T
[Arising out of SLP(C) No. 19222 of 2005]

S.B. Sinha, J.

Leave granted.

Prakash Chandrakant Shreshti (hereinafter called 'the deceased') was working as a Cleaner in Vehicle No. MH 09A 9727. The said vehicle belonged to Respondent No. 1. He was travelling in the said vehicle in the night of 27.9.2002. He suddenly developed chest pain. He was admitted to Government hospital, Mangaon where the doctor declared him dead. Indisputably, the incident had occurred while deceased was performing his duties.

Appellant herein, the mother of deceased filed a Claim Petition under the Workmen's Compensation Act, 1923 (for short, 'the Act') before the Commissioner for Workmen's Compensation which was registered as WCA/SR/19/2003. The vehicle being insured with the United India Insurance Company, it was also impleaded as a party.

The fact that at the time of his death, the deceased was discharging his duties is not disputed. The autopsy was conducted wherein the cause of death was opined as Cardiac arrest due to Rupture Aortic Aneurysm. No injury on his body was found. The only evidence which was brought on record was by way of deposition of Appellant. It was alleged :

"\005My son died while working in the vehicle of R-1 and due to the strain of work\005"

A copy of the Claim Petition has not been placed before us. We, therefore, are not sure as to whether there was any requisite pleading. The first Respondent, however, in his objection stated :

"...It is further true that the said vehicle is used for carrying the milk and on 27.9.2002 at about 9.15 hours, the driver of the said vehicle Parasharam Chandrakant and the deceased\026cleaner Prakash Chandrakant came to the Tavarewadi Chilling Centre for bringing the milk from Kolhapur, at that time, the deceased-Cleaner while getting down from the said vehicle got pain in the chest and sat on the ground and immediately the driver of the said vehicle taken him to dispensary to Government Hospital, Mangaon. The Doctor of the said Hospital stated that deceased-Cleaner died due to Cardiac arrest. It is true that the said deceased died in the course of his employment under this Respondent No. 1."

The Insurer raised a plea of collusion between the employer and Appellant in its written statement. It, however, need not be adverted to.

The Commissioner for Workmen's Compensation raised several issues. The issue with which we are concerned is Issue No. 2, which is as under :

"2. Whether the accident occurred during the course of employment and out of Employment?"

The Workmen's Compensation Commissioner did not analyze the evidence on record. It did not arrive at a finding that the deceased met with an accident. It proceeded on the basis that deceased being a workman, it was obligatory on the part of the first Respondent to maintain registers under the provisions of the Minimum Wages Act.

The Commissioner, however, dealt with the legal issue as regards meaning of 'accidents and injury', observing :

"15. The more usual case of an accident is an event happening externally to a man. The less obvious cases of accident are strain causing rupture, bursting of aneurism, failure of muscular action of the heart, exposure to draught causing chill, exertion in a stokehold causing apoplexy, shock causing neurasthenia etc. Lord Atkin called them as "Internal Accident". In such cases, it is hardly possible to distinguish in time between the 'accident' and 'injury'. The rupture is an accident, at the same time injury leading to death or incapacity at once or after a lapse of time. Thus in cases of internal accidents, "Accidents" and "Injury" coincide.

16. What the Act, therefore, really intends to convey is what might be expressed as an 'accidental injury'. But the common factor in all cases of accident, whether 'internal' or 'external' is some concrete happening at a definite point of time and incapacity resulting from happening.

17. An accident happening to a person in or about any premises at which, he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of employment."

Legal propositions are not in dispute. What is in dispute is whether the deceased died of an accidental injury in the course of and out of employment.

An appeal was preferred thereagainst before the High Court by Respondent No. 3 under Section 30 of the Act. The said Appeal has been allowed by reason of the impugned judgment. The High Court opined that the findings of the Workmen's Compensation were perverse and inconsistent with the material on record as also bereft of any reason.

It was held:-

"There is no material evidence to show that the deceased workman was suffering from a heart ailment. There is also no evidence to demonstrate that the workman was put through a sudden stressful condition in the course of his duties, which brought on a cardiac arrest. In the face of these circumstances, the reasoning

of the Commissioner that the workman died as a result of an accident during and in the course of his employment, is difficult to be sustained."

Extensive reference was made by the High Court in its judgment to the decisions of this Court in Regional Director, ESI Corporation and Another v. Francis De Costa and Another [(1996) 6 SCC 1] and Saurashtra Salt Mfg. Co v. Bai Valu Raja Raja and Others [AIR 1958 SC 881], to opine that the death of the workmen was not during the course of his employment.

Learned counsel appearing on behalf of Appellant would submit that the High Court committed a manifest error in arriving at the said finding insofar as it failed to take into consideration that by reason of the strain of work, the cause of the death was accelerated. As the Commissioner of the Workmen's Compensation Commission arrived at a finding of fact, it was urged, the same could not have been interfered with by the High Court in exercise of its jurisdiction under Section 30 of the Act as no substantial question of law arose for its consideration.

Mr. Nandwani, however, supported the judgment of the High Court.

The said Act was enacted to provide for payment by certain classes of employers to workmen for compensation against injury by accident. The term 'accidental injury' has not been defined under the Act. The liability of the employer for payment of compensation, however, would arise if a personal injury is caused to a workman by accident arising out of and in the course of his employment. What is necessary for attracting the charging provision contained in Section 3 of the Act is that (i) an injury must be caused to a workman; (ii) such injury must have been caused by an accident; and (iii) it arose out of or in the course of his employment.

Before we analyze the provisions of the Act, we may notice that in the Complaint Petition, there was no allegation that (i) the deceased met with his death by reason of any strain of work; and (ii) Appellant had no personal knowledge as regards quantum of or nature of work required to be performed by the deceased; and (iii) as to how service strain during his services was caused.

The deceased had admittedly suffered a massive heart attack. Nothing has been brought on record to show that the heart attack was caused while doing any job. Even according to employer, he at the relevant time was merely getting down from the vehicle.

The driver of the vehicle who was brother of the deceased was the best witness to state as to under what circumstances the deceased met with his death or whether the death was occurred due to some strain. He did not examine himself. The doctor who performed post mortem examination was also not examined.

Sufferance of heart disease amongst young persons is not unknown . A disease of heart may remain undetected. A person may suffer mild heart attack but he may not feel any pain. There must, thus, be some evidence that the employment contributed to the death of the deceased. It is required to be established that the death occurred during the course of employment.

This Court in E.S.I. Corporation (supra) referred to with approval the decision of Lord Wright in Dover Navigation Co. Ltd. v. Isabella Craig, [1940 AC 190], wherein it was held :

"Nothing could be simpler than the words 'arising out of and in the course of employment'. It is clear that there two conditions to be fulfilled. What arises 'in the course of the employment is to be distinguished from

what arises 'out of the employment'. The former words relate to time conditioned by reference to the man's service, the latter to casualty. Not every accident which occurs to a man during the time when he is on his employment - that is, directly or indirectly engaged on what he is employed to do - gives a claim to compensation, unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified\005"

We are not oblivious that an accident may cause an internal injury as was held in Fenton (Pauper) v. J. Thorley & Co. Ltd., [1903 AC 443], by the Court of Appeal :

"\005I come, therefore, to the conclusion 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."

Lord Lindley opined :

"The word "accident" is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word "accident" is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish careless from other unintended and unexpected events."

There are a large number of English and American decisions, some of which have been taken note of in ESI Corporation (supra), in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act.

The principles are :

(1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment.

(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.

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.

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.

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.

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

The deceased was traveling in a vehicle. The same by itself can not give rise to an inference that the job was strenuous.

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.

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 therefor.

In Saurashtra Salt Manufacturing Co. (supra), this Court held :

"\005It is well settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of national extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends upto point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable."

In General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes [AIR 1964 SC 193], referring to the decision of Court of Appeal in Jenkins v. Elder Dempster Lines Ltd. [(1953) 2 All ER 1133], this Court opined therein that a wider test, namely, that there should be a nexus between accident and employment was laid down. It also followed the decision of this Court in Saurashtra Salt Manufacturing Co. (supra).

This Court in ESI Corporation (supra) was dealing with a case where the Respondent met with an accident while he was on his way to his employment. The accident occurred at a place which was about 1 K.M. away from the factory.

In Mackinnon. Mackenzie & Co. (P). Ltd. v. Ibrahim Mahammad. Issak [AIR 1970 SC 1906], this Court held :

"5\005To 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\005"

The question recently has been considered by a Bench of this Court in Jyothi Ademma v. Plant Engineer, Nellore, [2006 (7) SCALE 28] wherein it was opined :

"The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In Fenton v. Thorley & Co. Ltd. (1903) AC 448, 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 A.C. in Trim Joint District, School Board of Management v. Kelly (1914) A.C. 676 as follows:

"I think that the context shows that in using the word "designed" Lord Macnaghten was referring to designed by the sufferer". "

Learned counsel appearing on behalf of Appellant seeks to distinguish this decision stating that therein the job of the workman was merely to 'switch on and switch off' and thus there has been no scope of stress and strain in his duties and that the workman had been suffering from a heart

disease. But in this case also job of a cleaner was not strenuous and in any event far less that of driver of the vehicle.

Only because the cause of death was due to heart attack, the same by itself may not be a ground to arrive at a conclusion that an accident had occurred resulting in injury.

The nature of duty of the deceased was that of a helper. Per se that the duties would not be such which could cause stress or strain. If an additional duty were required to be performed by him, the same was required to be clearly stated.

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 fact 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.

Section 30 of the said Act postulates an appeal directly to High Court if a substantial question of law is involved in the appeal.

A jurisdictional question will involve a substantial question of law. A finding of fact arrived at without there being any evidence would also give rise to a substantial question of law. From the order passed by the Commissioner, it appears, he has not arrived at a finding that the job involved any stress or strain. It was merely stated that he was working as a Khalasi in a truck which was going to Tavarewadi Village from Kolhapur to get the milk. The autopsy was conducted at Chandgad District Hospital. The driver Prashant Chandrakant Shreshti admittedly brought him to hospital. He was his brother. The post mortem examination commenced from 6.30 a.m. on 28.9.2002 and ended at 7.30 a.m. on the same day. From the post mortem report, it appears that in the accompanying report, it is stated that the death was due to sudden heart attack. When exactly the death took place is not known. It will bear repetition to state that under what circumstances the death took place is also not known. There was also no pleading in this behalf. The Commissioner came to the conclusion that the death took place during the course of the employment but then no evidence has been brought on record to show that it had a causal connection between accident and serious injury so as to fulfill the requirements of the terms "out of employment". Indisputably, there has to be an proximate nexus between cause of death and employment. A stray statement made by Appellant that the deceased had died while working in the vehicle and stress or strain of the work did not appear to have any foundation. Admittedly she was not present at the spot. She had also no personal knowledge. All these facts she had admitted in cross-examination.

This vital aspect of the matter was required to be considered by the High Court so as to arrive at a finding as to how the said accident has arose or not.

A question of law would arise when the same is not dependent upon examination of evidence, which may not require any fresh investigation of fact. A question of law would, however, arise when the finding is perverse in the sense that no legal evidence was brought on record or jurisdictional facts were not brought on record.

We are not oblivious of the proposition of law as was stated by Frankfurter, J. in J.J.O' Leary, Dy. Commnr., Fourteenth Compensation Distt. v. Brown-Pacific-Maxon Inc. [95 L. Ed 483 : 340 US 504 (1950)] that

the court will not disturb a finding of an Administrative Tribunal when two views are possible and only because the appellate court can take a contrary view. But in the instant case, the Commissioner did not go into the jurisdictional facts not arrived at any finding based on any legal evidence in regard to the causal connection between the employment and the death.

We, therefore, are of the opinion that ultimate conclusion of the High Court may be correct. We although would not, thus, interfere with the impugned judgment, but would direct that in event any amount has been paid to Appellant the same need not be refunded.

The Appeal is dismissed subject to the observations made hereinbefore