IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2004

CORAM

THE HONOURABLE MR.B.SUBHASHAN REDDY, THE CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE K.GOVINDARAJAN

C.M.A.No. 2934 of 2004

1. The Superintending Engineer,
Mechanical-II,
Tamil Nadu Electricity Board,
Mettur Thermal Power Station,
Mettur Dam-636 406,
Salem District.

2. The Chief Engineer,
Tamil Nadu Electricity Board,
Mettur Thermal Power Station,
Mettur Dam-636 406,
Salem District. ... Appellants

-Vs-

Tmt.Sankupathy ... Respondent

Prayer : Appeal against the award dated 7.6.2004 passed by the Commissioner, Workmen's Compensation (Deputy Commissioner of Labour at Salem) made in W.C.No.141 of 2003.

!For Appellant :: Mr.S.Rajeswaran

^For Respondent :: ---

:JUDGMENT

(Judgment of the Court was delivered by
K.GOVINDARAJAN, J.)

The Tamil Nadu Electricity Board has filed the above appeal under Sec.30 of the Workmen's Compensation Act, 1923, hereinafter referred to as 'the Act', questioning the order of the learned Deputy Commissioner of Labour, Salem, made in W.C.No.141/2003, dated 7.6.2004, fixing the compensation payable to the claimants.

2. According to the claimant, one Ardhanari, who was working under the appellants died on 19.3.2000 when he was proceeding to work. At the time of his death, he was aged about 41 years and earning a sum of Rs.4,229/ as monthly salary. On that basis, the claimant claimed a sum of R.2,50,000/- as compensation. The same was resisted by the appellants on the ground that the death of ;the employee was not due to the employment or in the course of employment and so the claim petition cannot be sustained.

3. Learned Deputy Commissioner, Salem, relying on various decisions held that the deceased employee died when he was proceeding to work which has to be taken that he died in the course of employment and so the respondents therein are liable to pay the compensation. Questioning the same, the above appeal is preferred.

4. Learned counsel for the appellants submitted that since the employee died when he was proceeding to work and not in the course of employment, it cannot be said that the death was due to the employment or in the course of employment. The said submission cannot be countenanced.

5. The point for consideration in this case is:-
"Whether the death of the employee while he was proceeding to work could be construed as the death caused in the course of employment?"

6. To appreciate the issue, it is beneficial to extract relevant provision, namely, Sec.3(1) of the Act, which reads as follows:-

"3. Employer's liability for compensation:- (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:
Provided that the employer shall not be so liable -
(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;
(b) in respect of any injury, not resulting in death, or permanent total disablement caused by an accident which is directly attributable to -
(i) the workman having been at the time thereof under the influence of drink or drugs, or
(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or
(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman."

7. The expression "injury" under Sec.3 of the Act has not been defined in the Act but it is of wide import. "personal injury" spoken to in Sec.3(1) of the Act may be leading to death or disablement or impairment of parts of the body and mind in either of which event, the employer is liable to pay compensation if the conditions laid down in Sec.3(1) of the Act are

satisfied. The three conditions for attracting the provisions of Sec.3(1) of the Act are that death or injury must be caused to a workman; the said injury must have been caused by accident; and the accident must arise out of and in the course of employment. It is well settled that if the injury or death from the point of view of the workman who dies or suffers the injury is unexpected or without design on his part, then the death or injury would be by accident although it was brought about by a heart attack or some other cause to be found in the condition of workman himself.

8. Though the Act has colonial origin, it is a legislation protecting the disabled workman without resting on the mercy or grace of the employer by way of the workman continuing in service. Since the Act is a welfare legislation, it is expected that the provisions would receive liberal interpretation so as to advance the object and purpose of the Act.

9. The employer's liability has been spelt out under Sec.3 of the Act. The words "arising out of and in the course of employment" are the key words mentioned in the said provision and the Courts have interpreted the same elaborately. The distinction between the two phrases as held by the Courts that the phrase "in the course of employment" suggests the point of time, that is, the injury must be caused during the currency of employment, whereas the other expression "out of employment" means that there must be some sort of connection between employment and injury caused to the workman as a result of the accident. There is no difficulty in accepting such interpretation of the said two phrases, but to the modern methods of working industrial undertakings, such narrow interpretation does not satisfy their requirements, as it is a difficult task to determine the exact place of employment of a workman. Therefore, the Courts have adopted applying "the principles of notional extension of employer's premises". Applying the above said principle, the place of accident has to be construed as the place of duty of the workman concerned even if he had not reached the actual place of work.

10. In a case where the employer had permitted the workman to travel in buses to go to his place of work and after his duty hours to his residence and when the bus met with an accident as a result of which the workman was thrown out of road and injured, the Apex Court in the decision in B.E.S.T. Undertaking v. Mrs.Agnes, , AIR 1964 S.C. 193, held that the wife is entitled for compensation. To come to such conclusion, the Apex Court dealt with the case as follows:-

"(12) Under S.3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an

employee to use only a particular means of transport extends the area of field of employment to the course of the said transport. Though at the beginning the word "duty" has been strictly construed, the later decisions have liberalised this concept. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion. But none of the decisions cited at the Bar deals with a transport service operating over a large area like Bombay. They are therefore, of little assistance, except in so far as they laid down the principles of general application. Indeed, some of the Law Lords expressly excluded from the scope of their discussion cases where the exigencies of work compel an employee to traverse public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority.

(13) .. .. ..

(14) Bombay is a city of distances. The transport service practically covers the entire area of Greater Bombay. Without the said right, it would be very difficult for a driver to sign on and sign off at the depots at the schedule timings, for he has to traverse a long distance. But for this right, not only punctuality and timings cannot be maintained, but his efficiency will also suffer. D.W.1, a Traffic Inspector of B.E.S.T. Undertaking says that instructions are given to all the drivers and conductors that they can travel in other buses. This supports the practice of the drivers using the buses for their from home to the depot and vice versa. Having regard to the class of employees it would be futile to suggest that they could as well go by local suburban trains or by walking. The former, they could not afford, and the latter, having regard to the long distances involved would not be practicable. As the free transport is provided in the interest of service, having regard to the long distance a driver has to traverse to go to the depot from his house and vice versa, the user of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty. He is not exercising the right as a member of the public, but only as one belonging to a service. The entire Greater Bombay is the field or the area of service and every bus is an integrated part of the service. The decisions relating to accidents occurring to an employee in a factory or premises belonging to the employer providing ingress or egress to the factory are not of much relevance to a case where an employee has to operate over a larger area in a bus which is in itself is an integrated part of a fleet of buses operating in the entire area. Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshop factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adopted to meet its peculiar requirements. While in a case of a factory, the premises of the employer which gives ingress or egress in the factory is a limited one, in the case of a city transport service, by analogy, the entire fleet of buses forming the service would be the "premises". An illustration may make out point clear. Suppose, in view of the long distances to be covered by the employees, the Corporation, as a condition of service, provides a bus for collecting all the drivers from their houses so that they may reach their depots in time and to take them back after the day's work so that after the heavy work till about 7 p.m., they may reach their houses without further strain on their health. Can it be said that the said facility is not one given in the course of employment? It can even be

said that it is the duty of the employees, in the interest of the service to utilize the said bus both for coming to the depot and going back to their homes. If that be so, what difference could it make if the employer, instead of proving a separate bus, throws open his entire fleet of buses for giving the employees the said facility? They are given that facility not as members of the public but as employees; not as a grace but as of right because efficiency of the service demands it. We would, therefore, hold that when a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment. (15) We, therefore, agree with the High Court that the accident occurred to Nanau Raman during the course of his employment and therefore his wife is entitled to compensation. No attempt was made to question the correctness of the quantum of compensation fixed by the High Court."

11. Following the "notional extension principles" laid down in the said decision while construing similar facts, the learned Judges of the Madhya Pradesh High Court in (1) Dudhiben Dharamshi v. New Jahangir Vakil Mills Ltd., 1976 A.C.J. 136, (2) the Division Bench of the Bombay High Court in Parvatiammal Dharmalingam v. Divisional Supdt. Central Railway,1988 ACJ 752, (3) the learned Judge of the Madhya Pradesh High Court in G.M., Western Railway v.Chandrabai, 1992 ACJ 496, and (4) the learned Judge of the Orissa High Court in General Superintendent, Talcher Thermal Station v. Bijuli Naik, 1994 ACJ 1054, held that if an employee sustained injury or death while he was proceeding to work, it should be construed as the accident occurred during the course of employment.

12. In view of the well settled principles of law, we are of the opinion that the Deputy Commissioner of Labour is correct in awarding compensation holding that the death of the employee occurred in the course of employment. Hence this appeal is dismissed. No costs. C.M. P.No.16597/2004 is also dismissed.

Index:yes
Internet:Yes

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