(2015) 07 SHI CK 0050

High Court of Himachal Pradesh

Case No: FAO No. 213 of 2015

Savitri Devi	APPELLANT
Vs	
Bharti Filling Station and Others	RESPONDENT

Date of Decision: July 28, 2015

Acts Referred:

- Workmens Compensation Act, 1923 - Section 2, 2(1)(m), 2(1)(n), 2(h), 2(vi)

Citation: (2015) 3 LLJ 662 : (2016) 1 ShimLC 64

Hon'ble Judges: Rajiv Sharma, J

Bench: Single Bench

Advocate: Sanjeev Bhushan, for the Appellant; Rahul Mahajan, Advocates for the Respondent

Final Decision: Allowed

Judgement

Rajiv Sharma, J
This appeal is instituted against the order dated 23/9/2014, rendered by the learned Commissioner, Employees'' Compensation, Solan, H.P. in WCA Petition No. 26/2 of 2011.

2. Key facts, necessary for the adjudication of this appeal are that the appellant has filed petition to claim compensation under Workmen Compensation Act 1923 (hereinafter referred to as the Act) against respondent No. 1-owner of the tanker and respondent No. 2, being Insurance Company. The petitioner''s son, namely, Sanjeev Kumar was working as driver with respondent No. 1. He used to drive tanker in the year 2001. On 10.8.2001, he had gone to Ambala at Indian Oil Corporation Ltd. He suffered heart attack due to heavy exertion. He died on the spot in the vehicle itself. The petitioner was fully dependant on the deceased. The monthly wages of the deceased were Rs. 3000/- per month. He was also paid Rs. 80/- per day as daily allowance. Thus, his monthly total wages were Rs. 5400/-. His age was 27 years.

3. The claim petition was resisted by respondent No. 1. Respondent No. 1 denied that the deceased was working with him as driver. The Insurance Company also contested the petition. According to the reply filed by the Insurance company-respondent No. 2, there was no casual connection between the death and work of the deceased.

4. The learned Commissioner framed the issues on 26.9.2007. The learned Commissioner dismissed the petition on 23.9.2014. Hence, this appeal.

5. The appeal was admitted on 24.6.2015, however, inadvertently, there is no reference to the substantial questions of law framed at page 6 of the paper book. In view of this, the appeal would be deemed to have been admitted on substantial questions of law framed at page 6 of the paper book.

6. Mr. Sanjeev Bhushan, Advocate, on the basis of the substantial questions of law framed, has vehemently argued that there was connection between the work and death of the deceased. He then contended that the learned Commissioner has not appreciated the oral as well as documentary evidence in right perspective. On the other hand, Mr. Rahul Mahajan, Advocate, for respondent No. 1 has supported the order of the Commissioner dated 23.9.2014.

7. I have heard learned counsel for the parties at length and gone through the records and order very carefully.

8. The petitioner has appeared as PW-1. She has led her evidence by filing affidavit Ext. PW-1/A. She has placed on record identity card vide Ext. PW-1/B and driving licence Ext. PW-1/C. PW-2 Vishal Gupta, deposed that he was working as Deputy Manager in Indian Oil Corporation. He has brought certain records pertaining to the tanker. The deceased was found unconscious in the oil tanker. The dead body was taken to hospital and post mortem was also conducted. The form No. 25-35 was filled up by the concerned I.O. vide Ext. PW-5/A. The I.O. has also recorded the statements of some witnesses vide Ext. PW-5/B and PW-5/C. The I.O. has proved post mortem report vide Ext. PW-5/E. PW-3 Ram Chand has also deposed that the deceased was working as driver with respondent No. 1.

9. The petitioner has duly proved that the deceased was working as driver with respondent No. 1 and he had gone to Ambala. The learned Commissioner has given findings that the doctor who has conducted the post mortem has not been examined and it was for the petitioner to prove by leading cogent evidence that the deceased died of heart attack induced by heavy stress and strain of work.

10. It has come in Ext. PW-5/A that deceased died of heart attack. In post mortem report Ext. PW-5/E, though doctor who has conducted the post mortem has not been examined, but in one of the columns, the cause of death has been shown to be heart attack, as information furnished by the police. In mark P-4, Sh. Naveen Kumar has deposed that they reached the Depot at 8:00 A.M. He was working as cleaner

with the deceased. When they were taking tanker inside the Depot at 9:30 A.M., the deceased told him that he had pain in the chest and thereafter, he became unconscious. In para 3 of the claim petition, it is specifically averred that the deceased died due to heavy exertion and heavy duty/work, while he was discharging duties of respondent No. 1.

11. The deceased was employed as a driver by respondent No. 1. He used to go to Indian Oil Corporation Depot at Ambala. He reached Ambala at 8:00 A.M. in the morning. Thus, he had driven the vehicle during night time. He was taking the tanker at 9:30 A.M. inside the Depot. He complained of chest pain and thereafter he became unconscious. The principal cause of the death of the deceased was due to heart attack. There is casual link between the duties discharged by the deceased and the death. The death has been caused by stress and strain since the petitioner used to drive the tanker even at odd hours.

12. In the case of Broach Municipality vrs. Raiben Chimanlal and others, reported in 1989 Lab. I.C. 73, the learned Single Judge has held that where the workman was working as driver in the appellant-Municipality and was driving the tractor attached with a trailer in which dirt and filth was being collected from different parts of the town and was being dumped in a particular place in the town from morning 7 AM up to about 3:00 P.M. every day and it was proved in the case that on the date of incident, the workman was on duty from 7:00 A.M. onwards, in these circumstances, the Court has observed that it can be inferred that strain of work would contribute and aggravate the heart disease. It has been held as follows:

"3. In this appeal it is contended on behalf of the appellant-Municipality that the nature of the duty to be performed by the deceased workman was not such that it can be the cause or contributing factor for aggravation of the disease. Therefore, it cannot be said that the workman died due to accident which arose out of and during the course of employment. The contention cannot be accepted for the simple reason that as found by the learned Commissioner for Workmen''s Compensation, the workman was working as Driver and was driving the tractor attached with a trailor in which dirt and filth was being collected from different parts of the town and was being dumped in a particular place in the town. The deceased workman was required to do this work from morning 7 a.m. up to about 3 p.m. every day. It is proved in the case that on the date of incident, the workman was on duty from 7 a.m. onwards. Simply because the work did not require continuous driving for all the duty hours, it cannot be said that the driving of a tractor would not be a contributory or aggravating cause for the cardiac failure or for myocardial infraction. Academically it may be said that heart-attack may also be sudden one. But ordinarily, it has got to be inferred that strain of work would contribute and/or aggravate the heart disease. In this connection reference may be made to the decision of this High Court in the case of Amubibi Vs. Nagri Mills Co. Ltd., (1976) ACJ 507 : (1977) 18 GLR 681 : (1977) 2 LLJ 510 rendered by D.A. Desai, J. (as he then was).

In that case also the workman had died due to heart failure. He was working in a textile mill. Therein it is observed as follows:

"Leaving aside any technical consideration, common course of human conduct or common sense knowledge tells us that coronary insufficiency is generally the consequence of strain, extra work, fatigue. In the case of workman working on a loom in an artificial atmosphere of humidity (formerly called sweated labour) he is shown to have died on account of coronary insufficiency. Heart failure would be preceded by some sort of heart ailment, may be heart attack. In any event, if strain of work causes insufficiency that strain itself would be cause of death and it would be personal injury suffered by an employee in course of his employment."

The aforesaid observations would squarely apply to the facts and circumstances or the present case also. The deceased workman was performing his duty as a driver; from 7 o''clock in the morning. He worked up to 2 o''clock. By no stretch of reasoning it can be said that his work did not involve stress and strain. He was required to drive the tractor with trailer and had to move from place to place in the town for collecting the dirt and refuse. Then he was required to unload the same in a particular place in the town. Such type of work would certainly aggravate the disease. If the performance of duty during the course of employment aggravates the disease, then the death can certainly be attributed to the employment injury which he receives on account of strains of the work performed by him. Furthermore, the seat of the driver of a tractor remains incessantly trembling and there will be vibrations in the body of the driver which would also definitely aggravate the heart-disease. In this view of the matter, the learned Commissioner for Workmen''s Compensation has correctly applied the Principle laid down by this High Court in the aforesaid decision."

13. In the case of United India Insurance Co. Vs. C.S. Gopalakrishnan and Another, (1989) 1 ACC 524 : (1989) ACJ 794 : (1989) 2 ILR (Ker) 231 : (1989) 2 ILR (Ker) 192 : (1989) 2 LLJ 30 , the Division Bench of the Kerala High Court has held that though it is necessary that there should be a casual connection between the employment and the death in the unexpected way in order to bring the accident within S. 3, it is not necessary that it should be established that the workman died as a result of an exceptional strain or some exceptional work that he did on the day in question. If the nature of the work and the hours of work caused great strain to the employee and that strain caused the unexpected death, it can be said that the workman died as a result of an accident. It has been held as follows:

"10. Though it is necessary that there should be a casual connection between the employment and the death in the unexpected way in order to bring the accident within Section 3, it is not necessary that it should be established that the workman died as a result of exceptional strain or some exceptional work that he did on the day in question. If the nature of the work and the hours of work caused great strain to the employee and that strain caused the unexpected death, it can be said that the

workman died as a result of an accident which has arisen in the course of his employment.

18. Of course, in this case, there may have been no clear evidence as to the fact whether the death occurred directly due to the strain and stress of the work the deceased was doing on the day previous to the fatal incident. But, considering the circumstances proved in the case, it is only natural and probable to infer that the workman was put to great strain and stress in discharging his duties. From the evidence discussed by the Commissioner, it is clear that the workman was asked to do work for more hours than what he was statutorily bound to do.

23. Taking the evidence adduced in the case and the circumstances involved in the case, we feel that it has been established in the case that there was a casual connection between the death of the deceased and the work done in the course of his employment. We are of the opinion that from the evidence it is possible to infer that the strain of the work contributed to the fatal accident. Though the workman died due to heart failure, we are certain that it is not necessary that the workman was actually working at the time of his death and that the death must occur while he was working or had just ceased to work. Further, we find that the evidence shows a great probability which satisfies in a reasonable manner that the strenuous work contributed to the fatal accident. This finding of the Commissioner is not unreasonable which requires interference by this Court."

14. In the case of General Superintendent, Talcher Thermal Station Vs. Bijuli Naik, (1994) ACJ 1054 : (1993) 76 CLT 699 , the learned Single Judge of the Orissa High Court has held that the deceased suffering coronary thrombosis and dying of the same had close connection with his strenuous work in the factory and employer was liable to pay compensation. It has been held as follows:

"7. In the other Supreme Court case, : General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, AIR 1964 SC 193 : (1963) 7 FLR 310 : (1963) 2 LLJ 615 : (1964) 3 SCR 930 also the question of notional extension of employer''s premises was under consideration. In that case, the employee after finishing his work for the day at 7.45 p.m. at Jogeshwari Bus Depot boarded another bus in order to go to his residence at Santa Cruz and the said bus collided with a stationary lorry parked at an awkward angle as a result of which he was thrown out on the road and was injured and died at the hospital. The Supreme Court held in that case that the accident occurred during the course of his employment and, therefore, his wife was entitled to compensation. In the said case, the Apex Court observed that 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. This being the ratio and the employee in the instant case having died at the factory gate while coming to join his duty for the general shift at 8.00 a.m. a couple of minutes before 8.00 a.m. the theory of notional extension must apply. But the crucial question that arises for consideration is whether the nature of work which the deceased was doing can be said to have any connection with the coronary thrombosis which the deceased suffered and on account of which he ultimately succumbed. The doctor in his evidence has stated that strenuous physical work may cause coronary thrombosis and even for 3 or 4 months prior to the death, the deceased had been coming to him complaining of chest pain and the doctor had treated him five days prior to the occurrence for chest pain. The claimant, the widow of the deceased, in her evidence had stated that on Saturday evening the deceased came back from office and complained of chest pain and the Commissioner on consideration of other evidence has held that the deceased was doing strenuous physical work in the factory. In this state of affairs, the ultimate conclusion that the deceased suffered from coronary thrombosis and ultimately died of the same has a close connection with his strenuous work in the factory, cannot be said to be erroneous in any manner and in the facts and circumstances of the case, the Commissioner rightly came to the conclusion that the injury suffered by the deceased has a direct connection with the employment in question. In this view of the matter, I find hardly any justification for interference by this Court with the impugned order of the Commissioner. This appeal accordingly fails and is dismissed but in the circumstances, without any order as to costs."

15. In the case of Mines Manager Vs. Waheedul Haque Abbasi, (1994) ACJ 334 : (1999) 3 LLJ 437 , the learned Single Judge of the Madhya Pradesh High Court has held that the death of workman due to heart failure while on duty is an accident, certain manifestations of heart condition from the effect of strain or over exertion of work constitute an accidental injury within the Act. It has been held as follows:

"11. Death of workman due to heart failure while on duty is an accident within the meaning of Section 3 of the Act. Certain manifestations of heart condition from the effect of strain or overexertion of work constitute an accidental injury within the Act. In the cases of heart failure during the course of employment the claimant dependant cannot be expected to give evidence of strain or overexertion experienced by the deceased while at work in the course of employment leading to the heart attack and death. In the nature of things and in fairness it could only he expected of the employer to give evidence about the previous history of the deceased''s health and his health condition in the course of his employment prior to the occurrence of death. There is, however, no evidence led by the employer which could throw light on the question whether the death by heart attack occurred as a result of employment or otherwise. To my mind, if the matter is allowed to be shrouded in mystery because of the paucity of evidence, the employer cannot be

given the advantage of it. In the case of Amubibi Vs. Nagri Mills Co. Ltd., (1976) ACJ 507 : (1977) 18 GLR 681 : (1977) 2 LLJ 510 , where a workman going to work at 3.30 p.m., was found dead on the floor at 5.30 p.m., by coronary insufficiency, it is permissible to infer that the death was due to strain out of work and fatigue in doing the work and that the strain led to the coronary condition. Relying on this decision, I hold that the death of the deceased employee occurred on account of personal injury in an accident arising out of and in the course of his employment. In this view of the matter agreeing with the finding of the learned Commissioner, I uphold the award. This appeal, filed by the employer, is, therefore, dismissed with no order as to costs."

16. In the case of Mst. Param Pal Singh through Father Vs. National Insurance Company and Another, (2013) 1 ACC 637 : (2013) ACJ 526 : (2013) 1 AD 610 : AIR 2013 SC 974 : (2013) 116 CLT 65 : (2013) 137 FLR 1 : (2013) 136 FLR 848 : (2013) 1 JT 140 : (2013) 1 LLJ 520 : (2013) 1 LLN 32 : (2013) 2 RCR(Civil) 480 : (2012) 12 SCALE 566 : (2013) 3 SCC 409 : (2013) 2 SCT 604 : (2013) AIRSCW 283 , their lordships of the Hon''ble Supreme Court have held that the deceased being professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. It has been held as follows:

"21. On behalf of the first respondent its Divisional Manager filed his proof affidavit while on behalf of the second respondent one Anil Sharma was examined. As far as the employment of the deceased was concerned, the Commissioner has noted that the FIR which was marked as Exhibit AW1/1 disclose that the second driver Bhure Singh himself admitted therein that the deceased was the senior driver who was driving the vehicle at the time of his death. As regards the said piece of evidence contained in AW1/1 nothing was brought out in his evidence either by way of trip sheet or attendance register or payment of wages register or any other document to show that the deceased was not in the employment of the second respondent at any point of time or on the fateful day. The Commissioner also noted that there was no cross-examination of WW1/A Santokh Singh on that issue. On the other hand RW. 1 Anil Sharma in his cross-examination admitted that a sum of Rs. 10,000/- was given to the family of the deceased for cremation purposes. Therefore, the issue relating to the employment of the deceased by the second respondent as found to have been established before the Commissioner cannot be assailed.

29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due

to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an ''untoward mishap'' can therefore be reasonably described as an ''accident'' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer''s trade or business."

17. In the case of Rani Kour and Others Vs. Jagtar Singh and Another, (2012) ACJ 2072 , the learned Single Judge of the Madhya Pradesh High Court, Indore Bench, has held that Commissioner was justified in holding that heart attack to the driver was due to service strain. It has been held as follows:

"[7] Here in the present case, there was pleading in this behalf in para 1 of the claim petition. The deceased Manoharsingh was working as a driver in a truck which was going to Borali Badnawar village from Borowa to unload molasses. From the evidence it has come on record that on 12.4.2006 the deceased came from Punjab and he stayed for five minutes at his home and thereafter due to pressure of work he again left for Borali for unloading of molasses of Oasis Distillery. Rani Kour, AW 1, wife of the deceased, and Ramesh, cleaner of the vehicle, in their statement have very categorically stated that deceased had gone to Punjab. As per autopsy report, the death was due to heart attack. The Commissioner after appreciating the evidence of Rani Kour, appellant No. 1, and Ramesh, cleaner, arrived at a finding that heart attack was due to service strain and held that deceased had suffered massive heart attack. The record shows that heart attack was caused while doing his job. The learned Commissioner gave a finding that appellants by cogent evidence have proved that deceased had died while he was working in the vehicle and cardiac arrest has occurred because of stress and strain.

[9] On perusal of the material available on record this court is of the view that the learned Commissioner has not committed any legal error in awarding compensation to the appellants. The finding recorded by the Commissioner is based on application of evidence on record which required no interference. No substantial question of law is involved in the cross-objection filed by the respondent No. 2. Cross-objection has no merit and is accordingly dismissed."

18. In the case of Oriental insurance Co. Ltd. vs. Sumanbai and others, reported in 2014 ACJ 2354 (Vol. 4) , the learned Single Judge of the Madhya Pradesh High Court, Indore Bench, has held that driver while driving the truck developed chest pain and

he was taken to hospital where he was declared dead. The Commissioner found that death occurred during the course of employment and directed the employer and insurance company to pay compensation. The learned Single Judge has held that the Commissioner was justified in awarding compensation against the employer and Insurance Company since the death arose out of and in the course of employment. It has been held as follows:

"[11] In a recent and latest decision reported in Mst. Param Pal Singh through Father Vs. National Insurance Company and Another, (2013) 1 ACC 637 : (2013) ACJ 526 : (2013) 1 AD 610 : AIR 2013 SC 974 : (2013) 116 CLT 65 : (2013) 137 FLR 1 : (2013) 136 FLR 848 : (2013) 1 JT 140 : (2013) 1 LLJ 520 : (2013) 1 LLN 32 : (2013) 2 RCR(Civil) 480 : (2012) 12 SCALE 566 : (2013) 3 SCC 409 : (2013) 2 SCT 604 : (2013) AIRSCW 283 , their Lordships analysed the entire case-law relating to the expression "injury caused by an accident arising in and out of employment" in the context of section 3 of the Workmen''s Compensation Act. It is also a case of professional truck driver who suffered heart attack while in employment, i.e., when driving the truck, like the case in hand, and was immediately taken to hospital but in vain. After reviewing the two judgments and various English authorities it was held as under:

"Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was causal connection of the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45-year-old driver meets with his unexpected death, maybe due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1, 152 km away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an ''untoward mishap'' can therefore be reasonably described as an ''accident'' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer''s trade or business."

[12] Having regard to the evidence placed on record there stands established and proved that the deceased was actually driving the truck and that in the course of such driving activity he had a heart attack. In such circumstances, we are convinced that the conclusion of the Commissioner for Workmen''s Compensation that death of the deceased was in an accident arising out of and in the course of his employment with the respondent No. 7 was perfectly justified and this appeal deserves to be dismissed and is hereby dismissed with costs throughout. Counsel''s

fee Rs. 5,000 if certified."

19. In the case of The Managing Director, Karnataka State Road Transport Corporation Vs. Smt. Jayalakshmi and Others, (2014) 4 ACC 852 : (2014) ACJ 2490 : (2014) 2 AKR 423 : (2014) 142 FLR 978 : (2014) ILR (Kar) 2067 : (2014) 6 KarLJ 512 : (2014) 2 KCCR 1243 : (2014) 2 LLN 689 : (2014) LLR 952 , the learned Single Judge of the Karnataka High Court, has held that driver who was forced to attend duty for 36 to 40 hours with a short gap of 6-7 hours aggravated his pre-existing heart condition and the stress and strain of work led to sudden heart failure. It has been held as follows:

"[13] In the matter on hand, admittedly the workman was driver working in Karnataka State Road Transport Corporation. The Conductor of the bus PW-2, who had slept alongwith the deceased workman at the time of incident in the bus, has specifically deposed before the Commissioner that the deceased informed the officials of the appellant Corporation in the morning of 6.10.2006 at the time of reporting for duty itself that he is having chest pain and that he is not able to drive the bus; despite the same, the officials of the appellant Corporation insisted the driver that he should drive the vehicle on that day because of lack of drivers strength on that particular day. The officials of the appellant Corporation insisted that the deceased shall complete the trip. Because of such pressure by the officials, the deceased went on duty during the relevant day. The very fact, that the deceased was made to drive the bus from morning till evening of 6.10.2006 on Route No. 99 and that he was again instructed to drive the bus from the evening of 6.10.2006 till next day as aforementioned on the route Arasikere-Shimoga-Mysore-Arasikere, clearly reveals that the death has occurred while he was on duty. It is not open for the driver to leave the bus at Shimoga bus station and come back to his home at Arasikere which is about more than 150 kilometers from Shimoga. Since the deceased was entrusted with the bus and as he was directed by the higher officials to drive back the bus from Shimoga to Mysore at 4 a.m. on the next day i.e., 7.10.2006, the argument of the learned counsel for appellants that the death was not while the deceased was on duty, cannot be accepted. The work was entrusted to the deceased at 8 a.m. on 6.10.2006 and it was to continue till the next day evening (i.e., approximately for about 36-40 hours) though there was a short gap of about 6 to 7 hours at Shimoga. As is clear from the evidence of PW-2, the deceased was suffering from headache, chest pain when he reached Shimoga from Mysore on the night of 6.10.2006. Immediately he went to medical shop and purchased some pills and consumed the same for relief from headache. Unfortunately, the deceased suffered massive heart attack while asleep in the bus during the night intervening between 6.10.2006 and 7.10.2006. Hence the Commissioner for Workmen''s Compensation is justified in concluding that the death was direct result of continuous and heavy work entrusted to the deceased and that the deceased died during the course of duty. It is the specific evidence of PW-2 that in the morning of 6.10.2006 itself the deceased had complained that he is suffering from chest pain.

Despite the same, the officials of the Corporation forced the deceased to drive the bus because of dearth of drivers'' strength on that day. Such evidence of PW-2 Conductor is not even controverted in the cross-examination. On the other hand in the cross-examination PW-2 has denied the suggestion of the appellant Corporation that the work undertaken by the deceased was not strenuous. From the aforementioned uncontroverted evidence of PW-2, it is clear that the deceased was suffering from stress & strain because of heavy pressure of work on that day.

[14] In the matter on hand, the stress and strain suffered by the deceased did mainly contribute to or accelerate the injury. If the deceased were to take rest on 6.10.2006 without attending the work, probably he would have saved his life. But he was forced to work since morning of 6.10.2006. When he reached Shimoga during night of 6.10.2006, he was completely exhausted and immediately he took some pills. Unfortunately, he lost his life while in sleep. Thus the case on hand is the finest example relating to direct connection between injury and employment and loss of life due to strain of ordinary work. The stress & strain did contribute to and accelerate the injury see the judgment in the case of Jyothi Ademma Vs. Plant Engineer, Nellore and Another, (2006) ACJ 2165 : AIR 2006 SC 2830 : (2006) 110 FLR 776 : (2006) 6 JT 300 : (2006) 3 LLJ 324 : (2006) 7 SCALE 28 : (2006) 5 SCC 513 : (2006) SCC(L&S) 1166 : (2006) 3 SCR 400 Supp : (2006) 2 UJ 1062 : (2006) AIRSCW 3949 : (2006) 5 Supreme 427 .

[15] In the cross-examination, it is also brought out that since two weeks prior to his death, the deceased was suffering from chest pain. The post-mortem report amply makes it clear that the death was due to cardiac failure as a result of coronary insufficiency consequent to chronic coronary artery disease. Therefore the circumstances as brought out by the claimants clearly reveal that the death was caused as a result of failure of the heart which is because of strain and stress of the work. Stress and strain has resulted in sudden heart failure and the death has occurred during the course of employment. The preexisting heart condition of the deceased was aggravated by the strain of work of the deceased and the same has resulted in his death.

[16] Sri D''Sa sought to contend that the deceased driver died naturally i.e., due to heart attack. But the material on record amply reveals that the workman was forcibly engaged to work on particular day which accelerated his death. From the evidence available on record, it is clear that the 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 and the same has resulted in his death. The death of the workman was not due to the disease from which he was suffering, but on account of factors coupled with employment. Aforementioned facts have led the Commissioner to conclude that the death occurred as consequence of and in the course of employment. Hence the Commissioner for Workmen''s Compensation is justified in awarding compensation. Accordingly, no interference is called for.

The question of law is answered accordingly. Appeal fails and the same stands dismissed. The amount in deposit shall be disbursed in favour of the respondents."

20. In the case of M/s. Kalyan Roller Floor Mills Pvt. Ltd. Vs. U. Neelamma, U. Uma Sekhar and U. Vinod Kumar, (2014) ACJ 1661 : (2014) 2 ALD 67 : (2014) 2 ALT 445 : (2014) 1 AnWR 838 : (2014) 141 FLR 410 : (2013) 4 LLJ 651 : (2014) LLR 285 , the learned Single Judge of the Andhra Pradesh High Court has held that the contention that deceased never complained of any chest pain and discomfort while working as driver and he suffered heart attack after reaching home, therefore, there is no nexus between the accident and the employment, held that the incident of the deceased suffering from chest pain due to strenuous work is closely connected with the nature of employment and there is close nexus between death of the deceased and his employment. It has been held as follows:

"[10] Learned counsel placed strong reliance upon a decision of this Court in Depot Manager, APSRTC, Karimnagar Vs. Gurrapu Anjamma, (2000) 1 ACC 648 : (2001) ACJ 1885 : (1999) 6 ALD 101 : (1999) 5 ALT 684 wherein the conductor of a RTC bus while on duty suffered chest pain and died due to cardiac infraction. In the said case also, this Court considered various decisions and came to the conclusion that the death had occurred out of and during the course of employment. This court also considered various other decisions where strenuous driving of the vehicle was one of the causes, which lead to death and the case of conductor, on hand, was considered in the light of the ratio of various decisions and it was held that the death has occurred during and in the course of employment.

[11] Learned counsel for the respondents also relied upon a latest decision of the Supreme Court in Mst. Param Pal Singh through Father Vs. National Insurance Company and Another, (2013) 1 ACC 637 : (2013) ACJ 526 : (2013) 1 AD 610 : AIR 2013 SC 974 : (2013) 116 CLT 65 : (2013) 137 FLR 1 : (2013) 136 FLR 848 : (2013) 1 JT 140 : (2013) 1 LLJ 520 : (2013) 1 LLN 32 : (2013) 2 RCR(Civil) 480 : (2012) 12 SCALE 566 : (2013) 3 SCC 409 : (2013) 2 SCT 604 : (2013) AIRSCW 283 where various principles laid down under different judgments were reviewed and considered by the Supreme court and it was held that there was close connection to the death of the deceased with that of his employment as truck driver. On facts, it was found that the heavy vehicle driver had driven the vehicle for about 1200 KMs and while he had stopped the vehicle on road side of a nearby hotel, he, thereafter, immediately fainted and was taken to the hospital where he was found brought dead.

Thus, the occupation as a heavy vehicle driver was said to be a contributory factor resulting in accelerated death and as such, the death was attributable to and in the course of employment. A Division Bench judgment of the Madras High Court in P. Kalyani Vs. The Divisional Manager, Southern Railway (Personal Branch), (2004) 2 ACC 388 : (2004) ACJ 185 : (2003) 2 CTC 546 : (2004) 101 FLR 405 : (2004) 1 LLJ 49 : (2003) 3 MLJ 314 is relied upon, which was a case relating to an employee, who was called to attend night duty, was found dead on the platform of the station, which is

just before he joined duty. The employer disputed the liability on the ground that the deceased was not on duty and was found lying unconscious on railway platform. The Division Bench considered that the strain caused accelerated or hastened death and it cannot be said that the death was not on account of or in the course of employment.

[12] In the light of these rival contentions and the legal position placed on record by the learned counsel on either side, I have examined the evidence, on record, afresh to find that the deceased being driver of the lorry transporting factory products, all of which are in the powder form, is one of the contributory factors, as, admittedly, the driver and cleaner have to be present when the lorry is being loaded or unloaded, which is bound to produce powdered dust. Moreover, the nature of the job required the deceased to be away from home, on duty, driving the lorry for days together, as stated by P.W. 1 in her statement. On the fateful day also, immediately after the deceased had returned home from duty, around midnight he suffered chest pain to which he succumbed. As has been found in the latest judgment of the Supreme Court in PARAM PAL SINGH''S case (5 supra), the incident of the deceased suffering from a massive chest pain is closely connected with the nature of employment. The close nexus between the death of the deceased and employment being evident, the learned Commissioner was right in holding that the death occurred during the course of employment or arising out of employment and as such, was justified in granting compensation to the claimants under the Act. That finding of the Commissioner, therefore, does not deserve any interference."

21. Mr. Rahul Mahajan, Advocate, for respondent No. 1-owner, has also argued that the daily allowance could not be added in the income. The learned Single Judge of the Orissa High Court in the case of Divisional Manager, Oriental Insurance Co. Ltd. vs. M/S. Giriwal Transport Corporation and others, reported in 1994 Lab. I.C. 2655, has held that "bhatta" (daily allowance) towards food was considered to be part of wages.

22. In the case of New India Assurance Company Limited Vs. Smt. Sughra and Others, (2006) 4 ACC 642 , the Division Bench of the Allahabad High Court has held that daily allowance given for the purpose of food is privilege and benefit and the same can be estimated in terms of money. It has to be included in wages of workman while calculating compensation. It has been held as follows:

"15. In the case of Oriental Insurance Co. Ltd. v. Shyamsundar Rohldas and Ors. II (2000) ACC 599 : 2000 Vol. 3 TAC 290 (Orissa), similar question arose with respect to daily allowance paid towards diet. The learned Single Judge of the High Court, after taking into consideration, the definition of wages given in the Act and also following the judgment of the Supreme Court in the case of Divisional Manager, Oriental Insurance Company Ltd. v. Girlwal Transport Corporation and Ors. 1994 LAB I.C. 2655, held that daily allowance of Rs. 25 towards food was to be considered as part of the wages. In the case of Luizina Cyril Vaz v. Caltex (India) Limited, reported in

1973 Vol. 27 FLR 321, the Bombay High Court held that the word wages or remuneration or earning would include all that a workman gets as incidental to his employment and that Food Allowance, Overseas Allowance, Devaluation Supplement and overtime wages paid to a seaman, who is workman as defined in Section 2(1)(n) of the Workmen''s Compensation Act, 1923, in addition to his basic wages, are privileges or benefits which are capable of being estimated in money and are, therefore, wages within the meaning of Section 2(1)(m) of the Act. In the instant case also, the amount of daily allowance given for the purpose of food or which may be termed as diet expenses per day is a privilege and benefit which can be estimated in terms of money and, therefore, it would be included in the definition of ''wages'' as per the definition of wages given in the Act."

23. In the case of Basantabai and another Vs. Shamim Bee and another, (2012) ACJ 1858 , the learned Single Judge of the Madhya Pradesh High Court, Indore Bench, has held that ''bhatta'' received by deceased should form part of his income while computing compensation. It has been held as follows:

"[3] In respect of income of the deceased it is submitted that deceased was working as cleaner on the truck bearing registration No. MP 13-E 0553 and during the course of employment he met with an accident in which he sustained grievous injuries. During the treatment on 10.10.2005 he died at Government Hospital. Mandsaur. At the time of death he was 18 years of age and his salary was Rs. 4,000 per month. Apart from his salary he was getting the dainik bhatta of Rs. 50 per day. Exhs. P1 to P7 are the documents in respect of wages of the deceased. Learned counsel for the appellants submits that Basantabai in her statement has deposed that income of the deceased was Rs. 3,000 per month, but she in her evidence has not stated that the deceased was not getting Rs. 50 per day as bhatta and submitted that the learned Commissioner wrongly disbelieved the said part of the evidence and assessed his income at Rs. 3,000 per month. [4] On the other hand, Mr. M. Upadhyay, learned counsel for respondent insurance company, supported the order passed by Commissioner and submitted that bhatta is not a part of wages as defined in clause (m) of sub-section (1) of section 2 of the Workmen''s Compensation Act, 1923. This question was considered by the Division Bench of Madhya Pradesh High Court at Gwalior Bench in the case of Smt. Shakuntala and Others Vs. Kanna Dangi and Others, (2007) ACJ 2486 : AIR 2007 MP 237 : (2007) 3 MPLJ 499 . Para 11 which is relevant reads as herein-below:
To determine the question whether the bhatta (daily allowance) is a part of wages for computing the compensation under Motor Vehicles Act and ultimately to determine the question of wages of a driver, we have to consider the evidence and if it has come in the evidence that he was also getting Rs. 50 per day as daily allowance, whether the same can form part of wages. The term ''wages'' has been defined in many Central Acts, such as, under the Payment of Wages Act, 1936; the Minimum Wages Act, 1948, the Industrial Disputes Act, 1947; and under the

Workmen''s Compensation Act, 1923, which are as under:

Payment of Wages Act, 1936:

Section 2(vi)--''wages'' means all remuneration (whether by way of salary allowance, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and include--

(a) xxx

(b) xxx

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name):

(d) xxx

(e) xxx

Minimum Wages Act, 1948:

Section 2(h)--''wages'' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include--

(i) the value of

(a) xxx

(b) any other amenity of any service excluded by general or special order of the appropriate Government;

(ii) xxx

(iii) any travelling allowance or the value of any traveling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) xxx

Industrial Disputes Act, 1947:

(rr) ''wages'' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment and includes:

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) xxx

(iii) xxx

Workmen''s Compensation Act, 1923:

(m) ''wages'' includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

From a bare reading of the definitions of ''wages'' under the Minimum Wages Act, 1948, Industrial Disputes Act, 1947 and the Workmen''s Compensation Act, 1923, it is amply clear that the ''wages'' means all remuneration whether by way of salary, allowance or otherwise expressed in terms of money or capable of being so expressed, payable to a person employed in respect of his employment or of work done in such employment and includes any additional remuneration, any travelling allowance or the value of any travelling concession or any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment, shall form part of the wages. These definitions are quite exhaustive and it prima facie appears that any amount paid to the driver either as additional remuneration payable in terms of employment or any travelling allowance or any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment, would be included in the definition of ''wages''. Therefore, any bhatta or daily allowance that is paid to the driver under any special contract as additional remuneration or as daily allowance may be considered as part of the wages but if any sum is paid for defraying any expenses towards food as and when the driver will go outside the city then it may not form part of the wages. For that the claimant has to prove that the amount of daily bhatta is paid as additional remuneration or as travelling allowance and it may depend from case to case and on the nature of the vehicle as well as the nature of duties and if it is found proved that the bhatta is paid as additional remuneration under the terms of contract for the purposes mentioned in the definition of ''wages'' then as per the evidence on record the court may include the aforesaid bhatta as part of wages.
[6] For the above-mentioned reasons, the substantial question of law No. 2 framed by this court is answered in favour of the appellants by holding that bhatta is part of the wages for the purpose of computation of compensation."

24. In the instant case, the learned Commissioner has come to the wrong conclusion that there was no connection between the work and death of the deceased. The very fact that the deceased was working as a driver and that too of oil tanker, his job

was full of stress and strain. It was not necessary for the petitioner to prove that her son was suffering from heart ailment before the accident. The Court can take judicial notice that at times the person may die due to first massive heart attack. The learned Commissioner has come to a wrong conclusion that the deceased has not died due to stress and strain while driving the oil tanker. It was not necessary for the claimant to examine the doctor in view of material placed on record. The substantial questions of law are answered accordingly.

25. The petitioner is the legal heir of the deceased and is entitled to compensation amount and penalty as under:

(1) Age 27 years, salary Rs. (4000 - 2000) = Rs. 2000 per month, for the purpose of compensation i.e. Rs. 2000 x 213.57 = 4,27,140.

(2) Simple interest @ 12% per annum from 10.8.2001, till date, comes out to Rs. 7,15,629.18.

(3) Penalty @ 20% comes out to Rs. 85,428.

(4) Total amount comes out to Rs. 12,28,197.18. (Twelve lacs twenty eight thousand one hundred and ninety seven only).

26. Accordingly, the appeal is allowed. The appellant is entitled to compensation of Rs. 12,28,197.18, as computed hereinabove. The Insurance Company is directed to pay the principal amount as well as interest but the penalty has to be borne by the employer i.e. respondent No. 1. The awarded amount be deposited in the Registry of this Court within four weeks.