
Employees State Insurance Corporation Vs Jameela Bi and Others

Miscellaneous A. No. 815 of 2001

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Aug. 12, 2008

Acts Referred:

Employees State Insurance Act, 1948 " Section 2(8), 51A, 51C, 75, 82

Citation: (2008) ILR (MP) 3218 : (2009) 3 MPJR 182

Hon'ble Judges: J.K. Maheshwari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

J.K. Maheshwari, J.

This appeal is filed u/s 82 of the Employees State Insurance Act, 1948 (hereinafter referred to as Act) assailing the judgment dated 15.03.2001

passed by the Labour Court, Ujjain in Case No. 4/97, by which the respondents were held entitled to get the dependents benefit under the Act.

The case, in brief, is that one Abdul Hafeez, who was a driver in Madhya Pradesh Road Transport Corporation, Ujjain Depot was the member of

Employee State Insurance Scheme (ESI) bearing membership No. 298639. On 28.08.1992, as instructed by the employer, performed his duty as

driver on the vehicle at Sehore-Ujjain Road. After coming back and on surrendering the vehicle, he found some pain, difficulty in breathing and

having vomiting after some rest he proceeded to home, but on the way fell down on the road, and while shifting to hospital, he was declared dead.

In view of the said facts, it was alleged before the Labour Court that the accident took place during the course of employment and being member

of the Insurance Scheme, the dependents are entitled to get the benefit of ESI under the provisions of the Act. It is submitted that the deceased

being member of the scheme, despite the ESI benefits have not been given, therefore, the dependents have invoked the jurisdiction of the Labour

Court, by submitting the application u/s 75 of the Act.

A reply was filed and averred that the death of the deceased Abdul Hafeez had not taken place during employment and there is no connecting

evidence to prove that when he fell down on road, he was on duty. It has also stated that the appellant is not in a position to demonstrate that strain

of work causes heart attack and the said work contributed or aggravated the injury occurred in the course of employment, therefore, the

application filed u/s 75 of the Employees State Insurance Act is not maintainable and liable to be rejected. It has also been averred that the

deceased has died while coming back to his home due to heart fail; however, it cannot be said that accident took place during the course of

employment or while he was on duty therefore, the dependents are not entitled to get any benefit.

Learned Labour Court in the order impugned, recorded the finding, that after surrendering the duty vehicle when the deceased was coming back to

his home, there was a vomiting and later he fell down on road and because he could not have reached to his home and died on the way; however,

it may be presumed that accident took place in the course of employment; and on account of the strenuous work performed by him he was died.

Thus, directions were issued to extend the benefits under the ESI Act to dependents.

Shri Vivek Sharan, learned counsel appearing for the appellant has drawn my attention to the statement of Dr. CM. Puranik (A.W.-3) who opined

the cause of death was due to cardiac-respiratory failure. However, perusal of the statement of the doctor does not reflect any connection of injury

and the accident and on account of the work done by deceased in course of employment. It does not constitute aggravation or strain causing

injury, resulting into cardiac respiratory failure. In absence of any evidence to that effect, it cannot be presumed that on account of strenuous work

during duty hour the injury caused to deceased, which is contributed to death of the employee concerned. Therefore, once the legal evidence is

lacking to establish the aggravated factor contributing death it cannot be held to be an employment injury caused by accident to the deceased

arising out of or in the course of employment, the benefits of the Act to the dependents cannot be granted and the findings recorded by the Labour

Court is without any legal evidence and liable to be set aside. In support Shri Vivek Sharan has placed reliance on a judgment of the apex Court in

the case of Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, . Shri Sharan has further placed a reliance in the case of

Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, and argued that the E.S.I. benefits to the dependents of the

employee may be allowed only when it is proved that the employment injury has suffered ""out of and was in course of the employment. Both the

conditions must be fulfilled by adducing the evidence to claim the benefit under the Act.

On the other hand, Shri S.H. Moyal, learned counsel appearing for respondents No. 1 and 2, has argued with vehemence that the findings

recorded by the Labour Court are based on due appreciation of evidence available on record. However, such findings of fact are not required to

be interfered with, accordingly no substantial question of Law arises for determination as required u/s 82 of the Act, and the findings of fact are not

required to be interfered. Shri Moyal has further relied upon Section 51-A of the Act and argued that once an accident arising in the course of

employment took place and in the absence of evidence contrary, it shall be presumed that it has arisen out of that employment. Therefore, once the

Court has recorded a finding in favour of respondent, it is not liable to be interfered with. Shri Moyal has drawn my attention to the statement of

Dr. C.M. Puranik (AW-3) who has deposed that ordinarily due to strain the cardiac respiratory failure is not possible, but exceptionally it may

happen. Therefore, the present case may fall within the exception, because after immediate resuming of the duty, he met with the heart attack.

Thus, findings as recorded by the Labour Court may be presumed to be correct applying the legal presumption as specified u/s 51-A of the Act. In

view of the said submissions, it is argued that the appeal filed by the appellant is liable to be dismissed.

After having heard the learned counsel appearing for the parties, first it is to be seen whether the death of the deceased was due to employment

injury or not, and to arrive at such a conclusion any cogent legal evidence is available on record. u/s 2(8) of the Act, the word "employment injury"

reads as under:

"Employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his

employment, being a insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial

limits of India.

Bare reading of the said, it is apparent that if a person receives a personal injury during employment caused by an accident or the occupational

disease arising out of and in the course of his employment, it is necessary for grant the ESI benefit to the dependent irrespective of the fact that the

accident is contracted within or outside the territorial limits of India. In the said context the arguments advanced by Shri Moyal to draw the

presumption of death against employer in the course of employment, is required to be taken note for which Section 51-A is reproduced as under:

51-A. Presumption as to accident arising in course of employment.-For the purposes of this Act, an accident arising in the course of an insured

person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

On going through the language of the aforesaid provisions, it is apparent that if an accident occurred to a person, who is in the employment, in that

case, in absence of the evidence to the contrary, it may be presumed to have arisen out of that accident. Thus, in the said context, the facts and

evidence leading to grant of ESI benefit to the dependents may be determinative factor to uphold or set aside the findings of the Labour Court.

Simultaneously, judgment of the apex Court in the case of Shakuntala Chandrakant (supra) may be taken note of, which held as under:

21. 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.

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 therefore 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 therefore.

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.

In the case of Francis De Costa (Supra) the Apex Court has held as under:

In view of the definition of ""employment injury"" in Section 2 (8) of the Employees State Insurance Act, in order to succeed in his claim to

disablement benefit, the employee must prove that the injury he had suffered arose out of and was in the course of his employment. Both the

conditions will have to be fulfilled before he could claim any benefit under the Act. The injury suffered by the respondent in the instant case did not

arise in any way out of his employment. Unless it can be said that his employment began as soon as he set out for the factory from his home, it

cannot be said that the injury was caused by an accident "arising out of...his employment". A road accident may happen anywhere at any time. But

such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing some thing incidental to his

employment.

By using the words "arising out of... his employment", the legislature gave a restrictive meaning to "employment injury". The injury must be of such

an extent as can be attributed to an accident or an occupational disease arising out of his employment. "Out of, in this context, must mean cause by

employment. Of course, the phrase "out of has an exclusive meaning also. If a man is described to be out of his employment, it means he is without

a job. In the context of Section 2 (8), the words "out of indicate that the injury must be caused by an accident which had its origin in the

employment. A mere road accident, while an employee is on his way to his place of employment cannot be said to have its origin in his

employment in the factory.

The other words of limitation in sub-section (8) of Section 2 are "in the course of his employment". The dictionary meaning of the said words

indicates that the accident must take place within or during the period of employment. If the employee's work-shift begins at 4.30 p.m., any

accident before that time will not be "in the course of his employment". The journey to the factory may have been undertaken for working at the

factory at 4.30 p.m. But this journey was certainly not in the course of employment. If employment begins from the moment the employee sets out

from his house for the factory, then even if the employee stumbles and falls down at the doorstep of his house the accident will have to be treated

as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided.

If the employee meets with an accident while riding his own bicycle on the way to his place of work, it cannot be said that the accident was

reasonably incidental to the employment and was in the course of his employment. The deeming provision of Section 51-C, does not come into

play in this case because the employee was not traveling as a passenger in any vehicle owned or operated by or on behalf of the employer or by

some other person in pursuance of an arrangement made by the employer.

In view of the foregoing legal position, now it has to be seen whether as per the pleading and evidence adduced by the dependents the deceased

died due to employment injury suffered "out of or in the course of employment. It has to be further seen whether the death of deceased by Cardiac

arrest as occurred because of stress and strain of duty work.

As per the pleadings and evidence adduced by the dependents makes it amply clear that the deceased Abdul Hafeez was a driver and was in the

employment of M.P. Road Transport Corporation and he was the member of E.S.I. Scheme. On 28.2.92 he was coming back from his duty from

Sehore Ujjain road after surrendering duty vehicle, he found difficulty in breathing and having omitting. After some rest he has proceeded to home,

but he fell down at road and while shifting to hospital he was declared dead. The postmortem report and the statements of the Doctor indicates

that the death was due to Cardio-respiratory failure. The doctor has deposed in his statement that such Cardio-respiratory failure is not possible

due to stress or strain in ordinary course of nature, but it may be possible in exceptional circumstance. To prove exceptional circumstances, no

evidence has been laid by the dependents in this case. It is further seen that after surrendering duty vehicle without reporting to the depot Manager

or In charge regarding his ailment, he was coming back to his home. When he was on the road and coming to home he fell down and ultimately

declared dead. However after surrendering the vehicle and leaving duty premises accident took place on the road, when he was coming to the

home. Such injury cannot be called to be employment injury and the period of coming back to home after surrendering the vehicle cannot be

counted as "Notional period" or duty hours. In the evidence it has also not come on record that deceased was earlier having some cardiac ailment

to his knowledge, prior to the said accident. It has also not reported that he was having some stress and strain during duty hours, however, no legal

evidence has been adduced by the dependents to prove the employment injury ""out of or in the course of employment. In view of the said fact

presumption as specified in Section 51-A of the Act cannot be drawn in favour of the beneficiaries.

In view of the foregoing discussion and in terms of the language of Section 2 (8) and 51-A as well as interpretation put forth by the Apex Court in

the case of Shakuntala Chandrakant as well as Francis De Kosta (supra), I am of the view that the finding recorded by the labour Court to extend

the E.S.I, benefit of death of deceased on account of accident and to grant the compensation cannot be allowed to sustain because it does not

qualify the legal requirement of Section 2(8) and Section 51 (A) of the Act, and in view of the judgments of the Hon"ble Supreme Court.

At this stage, Shri Moyal learned counsel appearing for respondents No. 1 and 2 submits that the employees State Insurance Corporation who is

employer is not suppose to take such a technical objection, once an employee and member of the Scheme died due to heart-attack. He has placed

the reliance on a judgment of Punjab and Haryana High Court in the case of Smt. Haryender Kaur and others vs. Employees State Insurance

Corporation (1987 (55) FLR 772 (P.& H., H.C.). However, Shri Moyal has argued that the claim of the employee should not be defeated merely

for this reason. Reliance has also been placed on the judgment of E.S.I. Corporation Vs. Siara (Smt.) and Another, and argued that the

interpretation should always be in favour of the beneficiaries for whom benefit the enactments have been enacted. After hearing Shri Moyal and

going through the judgment as relied upon, I am of the considered view that in the light of judgment of Apex Court in the case of Francis De Kosta

as well as Shakuntala Chandrakant (supra) such argument is of no substance because no legal, convincing evidence is available on record to show

that this accident was under the employment as discussed herein above. In view of the foregoing, the argument of Shri Moyal is rejected and the

dependents are not entitled to the benefit of ESI Act due to the death of deceased in the facts and circumstances of this case.

In view of the forgoing discussion, I am of the considered view that respondents No. 1 and 2 have failed to establish that deceased Abdul Hafeej

was died due to employment injury as specified u/s 2 (8) of the Act by adducing cogent legal evidence. In such circumstances the presumption u/s

51-A of the Act cannot be drawn in favour of the employee and the finding as recorded by the Labour Court is unsustainable on facts and law.

Therefore, the judgment passed by the Labour Court is liable to set aside.

Accordingly, the present appeal is allowed and the judgment dated 15.03.2001 passed by the Labour Court, Ujjain in case No. 4/97 ESI is set-

aside. Parties are directed to bear their own costs.