

(2017) 10 MAD CK 0092

MADRAS HIGH COURT

Case No: 1098 of 2011

The Joint Director,
E.S.I. Corporation,
Sub-Regional Office

APPELLANT

Vs

S.Suriyanarayanan, &
Ors.

RESPONDENT

Date of Decision: Oct. 10, 2017

Acts Referred:

- Employees State Insurance Act, 1948, Section 26, Section 82(2) - Employees State Insurance Fund - Appeal

Citation: (2017) 10 MAD CK 0092

Hon'ble Judges: J.Nisha Banu

Bench: SINGLE BENCH

Advocate: J.Nisha Banu

Judgement

1. This Civil Miscellaneous Appeal has been filed under Section 82(2) of the Employees State Insurance Act, 1948 against the fair and decretal order of the Presiding Officer, Labour Court, Madurai, passed in E.S.I.O.P.No.66 of 2009 dated 02.06.2011.

2. The case of the petitioners before the Court below is that on 07.12.1982, while their son was working as a spinning Supervisor in Jayajothi Shri Shanmugar Mills Alagar Nagar, Rajapalayam, he met with an accident in Comber Roller Machine and he got injury in his right hand. Their son underwent treatment in the ESI Hospital from 07.12.1982 to 28.02.1983. Thereafter, he was referred to the government hospital, Madurai, wherein, he underwent treatment from 01.03.1983 to 05.03.1983. He was further referred to the Government Hospital, Chennai. While he was taking treatment in the Government Hospital, Chennai, he died on 12.03.1993, as a result of employment injury. The Court

below, after appreciation of evidence and material available on record found that the respondents therein are liable to pay compensation. Aggrieved over the same, the appellant, who is the first respondent before the Court below, is before this Court.

3. Learned Counsel for the appellant would contend that the deceased could not have died due to the employment injury caused on him and the Court below failed to take note of the fact that the deceased died due to chronic renal failure and therefore, they are not liable to pay compensation.

4. Per contra, the learned counsel appearing for the respondents would submit that in view of overwhelming evidence available against the appellant herein, the Court below after perusing the entire materials available on record found that the appellant is liable to pay compensation, which need not be suffered at the hands of this Court.

5. The short points to be decided in this appeal are as follows:-

a. Whether the injury caused during the course of the employment will subsequently cause renal failure and cause death?

b. If so, what will be the compensation payable to the claimants?

6. As far as the first question is concerned, it is relevant to quote the judgment of the Bombay High Court in Kalavati Sakharam Ingulkar Vs. Mahindra Ugine Steel Co.Ltd, in which the workman met with an accident and sustained injury on his right loin with contusion on the right of the back near kidney region. The accident admittedly took place in the course of and arising out of the employment. In the said judgment, the High Court of Bombay has held as follows:-

"4. Shri Kochar, the learned counsel for the appellant, on the other hand, invited our attention to the fact that when the workman was discharged from Lonawala Hospital on 8th February 1978, Dr.Ranade had not given him a fitness certificate. Instead he gave a note for the Medical Officer of the employers to the effect that the workman should be referred to Dr.Bharucha of K.E.M. Hospital, Pune for specialised kidney diseases. According to him the fact that the workman was brought to the employer's dispensary in ambulance on 16th February 1978 for sending him to K.E.M. Hospital was very significant. The fact of the matter was that the workman had not fully recovered even for a day to join his duties after the injury was caused to him due to the accident till his death. The Commissioner was,

therefore; not at all justified in holding that the death was not even attributable to or accelerated by the injury. If the workman was having huge stones in both the kidneys for years and nothing had happened, he could as well have survived for few more years but for the injury.

5. We are inclined to accept the claim of the appellant/original applicant. Our reasons for the conclusion are more than one. The cause of death was stated to be renal failure due to huge bilateral staghorn calculi which means that both the kidneys of the workman had failed. In the absence of direct evidence on record it would only mean that even though the right kidney was operated on 28th February 1978 and the workman had survived upto 4th July 1978, the right kidney was also not functioning properly and the workman perhaps survived because of the left kidney. It was only when the second kidney also stopped functioning after the operation, the patient expired. In other words, if the right kidney of the workman would have survived even if the left kidney had failed. Therefore, it is not quite correct to say that the failure of right kidney had nothing to do with the death. Now coming to the fact that the injury was on the right loin or the right of the back near kidney, the workman passed blood in urine for few days and while discharging him, instead of issuing a fitness certificate Dr. Ranade of Lonawala Hospital sent a note to the Medical Officer of the employer company to refer the workman to Dr. Bharucha of K.E.M. Hospital for specialised kidney diseases. We found it difficult, if not impossible, to accept that huge stones in kidneys of the workman lying therein for years would immediately become a cause of concern all of a sudden and independent of the injury so as to require reference to Dr. Bharucha for specialised kidney treatment particularly as there is evidence of Dr. Bharucha that on admission on 16th February 1978 the workman was put on dialysis for sometime."

7. Added further, let us also discuss the acute kidney injury (previously known as acute renal failure) or AKI - which usually occurs when the blood supply to the kidneys is suddenly interrupted when the kidneys become overloaded with toxins. Process of acute kidney injury include accidents, injuries or complications from injury in which the kidneys are deprived of normal blood flow for extended periods of time. Heart-bypass surgery is an example of one such procedure.

8. Drug overdoses accidental or from chemical overloads of drugs such as antibiotics or chemotherapy may also cause the onset of acute kidney injury. Unlike chronic kidney disease, however, the kidneys can often recover from acute kidney injury allowing the patient to resume a normal life. People suffering from acute kidney injury require

supportive treatment until their kidneys recover function and often remain at increased risk of developing future kidney failure.

9. That apart, from the perusal of the records, it is seen that the deceased was continuously under treatment since the date of accident, i.e. on 07.12.1982 and subsequently, he died on 12.03.1983, as a result of employment injury. The deceased had not fully recovered even for a day to join his duties after the injury was caused to him, due to the accident till his death. The respondent contended that the deceased died due to the chronic renal failure alone and not due to employment injury. However, the court below has rightly observed that the appellant has not denied that the injuries are caused during the course of employment. Needless to mention that the Chapter V of ESI Act deals with benefits. The ESI Act provides different benefits such as maternity and sickness disablement benefit and dependent's benefits. Section 52 A deals with occupational disease. It is seen that in order to get dependent's benefits the dependent's of the deceased can show that the deceased died as a result of employment injury. Though the respondent has repeatedly stated that the death was not due to employment injury, they had not chosen to examine the doctor concerned who treated the deceased to prove that the deceased died due to renal failure. Added further, here is the case, the petitioner was not treated for any renal disease earlier. The renal failure is the consequence of the previous employment injury. Therefore, from the above discussions and observations, this Court safely concludes that the renal failure is the consequences of the employment injury.

10. Let us also keep in mind that the legislation promotes the Directive Principles of State Policy in the Constitution. Under Section 26 of the ESI Act, all contribution paid under the Section shall be paid to the Employees State Insurance Fund. In the light of the above discussions and observations, it is clear that a person had previous injury during the course of employment will subsequently also affect the renal failure. Above all, the Act, being a welfare legislation should be interpreted in favour of the deceased. As such, I have no hesitation to hold that beneficial legislations should be interpreted in such a way that to help the people. Under these circumstances, this Court is of the view that the disease was developed due to work and death was caused due to the injury coupled with the disease. To sum up, I answer the first question in affirmative. Eventually, I find that there is no illegality or infirmity in the order of the Court below and it has perfectly arrived at the decision that the deceased was developed due to work and death was caused due to injury coupled with disease and I answer the second question also in favour of the claimant.

11. In the light of the above, the claimants are entitled to get compensation. The deceased was earning a sum of Rs.800/- per month at the time of the accident. He was 25 years old. Therefore, according to the Workmen Compensation Act, 50% of the monthly wages to be calculated. The relevant factor as per the age of the deceased is 216.91. Accordingly, the deceased is entitled to get a sum of $800/2 \times 216.91 =$

Rs.86,764/-. In addition to which, the deceased is entitled to get Rs.5,000/- towards funeral expenses. Therefore, totally, the claimants are entitled to Rs.91,764/-. But, as per the Act, the minimum amount payable to the workman is Rs.1,20,000/-. Therefore, this Court thinks to fit to award as compensation of Rs.1,20,000/-. Such amount shall be paid to the first and the second claimants of the deceased along with interest at the rate of 12% per annum from the date of accident till the date of realisation. The appellant is directed to pay the said amount directly to the Personal Savings Bank Account Number of the appellants-claimants, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks, thereafter; and in the facts and circumstances of the case, there shall be no order as to costs.

12. Since the accident of the year is 1982 and the parents of the deceased had to litigate this after for more than two decades, the appellant shall take earnest steps to settle the amount to the claimants at the earliest or atleast the time stipulated by this Court. To know the outcome of this case, this matter shall be listed on 30.10.2017 under the caption "for reporting compliance".