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Madras High Court

Case No: C.M.A. (NPD) No. 2735 of 2002

Manager, Valparai Estate, Valparai	APPELLANT
Vs	
Smt. Alamelu	RESPONDENT

Date of Decision: Nov. 7, 2008

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: K.M. Vijayan and King and Partridge, for the Appellant; S.M. Ravichandran, for the Respondent

Final Decision: Dismissed

Judgement

S. Palanivelu, J.
The following are the allegations found in the claim petition:

Nallaiah, a workman employed by the opposite party, received personal injury by accident arising out of and in the course of his employment, resulting in his death on the 16th day of February, 2001. While he was in his house a wild elephant attacked him, when he sustained injury and died in the Tata Tea Central Hospital, Urulikal. The claimant is his wife and dependent. The monthly wage of the deceased was Rs. 2,000/- and he was 55 years at the time of his death. Hence a sum of Rs. 1,35,560/- + Rs. 1,000/- is claimed.

In the counter statement filed by the opposite party, it is stated as under:

An employer is liable for compensation only if personal injury is caused to a workmen by accident arising out of and in the course of his employment. In the present case Nalliah was attacked by a wild elephant, while he came out of his house on hearing a noise from outside. Unfortunately, the elephant that was standing in front of his house, attacked him. Nalliah immediately was rushed to the Tata Tea Central Hospital, where he expired an hour later. The said accident did not occur during the course of or out of his employment and hence this opposite party is not liable for payment of compensation, since it is

admitted that the accident occurred outside Nalliah''s house and it did not take place during the course of and out of employment. The average monthly wages of the deceased worked is only Rs. 1,833.34 and not Rs. 2,000/-. Hence, the petition has to be dismissed.

2. After considering the oral evidence on record and the facts available, the District Labour Commissioner, Coimbatore, reached a conclusion that Nalliah died in the course of and out of his employment under the opposite party and his wife is eligible to get compensation of Rs. 12,34,667/- from the opposite party.

3. While admitting the civil miscellaneous appeal, this Court framed the following substantial questions of law:--

1. Whether the alleged accident arise out of and in the course of employment of the deceased under the appellant?

2. Whether the employer is liable to pay workmen''s compensation for any accident occurred to a workman while lie was residing in the accommodation provided by the employer, after his duty hours, other than an accident due to collapse of the house or as a result of a natural calamity not on account of the fault on the part of any occupant of the house?

3. Whether on the facts and circumstances of the case reasoning and findings of the Commissioner for Workmen''s Compensation are perverse?

4. Learned Counsel for the appellant would argue in vehemence that the authority below has not considered the import of the requirements of concerned provisions of law, but has decided that the accident occurred in the course of and out of employment which is palpably wrong and that the settled principles would enlighten the Court that the attending circumstances should have been considered in the light of the legal consequences of the provisions.

5. Conversely, learned Counsel for the respondent/claimant Mr. S.M. Ravichandran would contend that it is an admitted fact that having provided residential quarters to the worker Nalliah as per the special statutes, the responsibility saddled upon the appellant by the authority is proper.

6. Concedingly on 16.2.2001, at 10.00 p.m. while Nalliah was inside the house, he came out from the house on hearing a noise outside and saw a wild elephant standing, which attacked him and thereby caused him injury. He was rushed to the hospital where he breathed his last. It is the bottom line contention of the respondent that residing in the residential quarters provided by the employer in view of his employment which is incidental to his employment which would qualify the victim or his dependents to get compensation for employment injury. Repelling this argument, it is stated by the appellant that every accident could not be brought under the purview of the "accident occurred in

the course and out of employment" and the present accident could not at all be considered to be an accident, which would not make the employer liable for payment of compensation.

7. As per section 15 of Plantations Labour Act, 1951, it is incumbent upon every employer to provide and maintain necessary housing accommodation to every worker (including his family) residing in the plantation and outside the plantation who has put in six months of continuous service in such plantation.

8. Section 16-A of the Plantations Labour Act, 1951 provides as follows:

16-A. Liability of employer in respect of accidents resulting from collapse of houses provided by him--(1) If death or injury is caused to any worker or a member of his family as result of the collapse of a house provided u/s 15, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation.

9. Rule 43 of Tamil Nadu Plantations Labour Rules, 1955 would make employer responsible to provide housing accommodation as nearly as possible to the place of work.

10. As per section 16-A of Plantations Labour Act, 1951, the accident should not be attributed to either the negligence or the act of the workmen but it should be the outcome of collapse of the house or to a natural calamity. Whether an attack by an elephant could be treated to be a natural calamity is to be decided.

11. Learned Counsel for the appellant would draw attention of this Court to a larger Bench decision of Honourable Supreme Court in The Regional Director, E.S.I. Corpn. and another v. Francis De Costa and another 1992 (65) FLR 316 (SC) : (1991) SCLJ 569, wherein Their Lordships dealt with the situation, wherein an accident took place while the employee was going by bicycle from his house to the factory, which occurred 15 minutes before commencement of duty shift of the employee and he was hit by a lorry belonging to his employer himself. After referring to the earlier decisions of the Supreme Court and U.S. Supreme Court, the Apex Court concluded that in the facts of the case it cannot be said that the injuries suffered by the workman one kilometer away from the factory while he was proceeding to factory was caused by an accident arising out of and in the course of employment. Bettling the law on the subject, the Supreme Court has held as follows:

29. Although the facts of this case are quite dissimilar, the principles laid down in this case are instructive and should be borne in mind. In order to succeed it has to be proved by the employee that, (1) there was an accident, (2) the accident had a casual connection with employment, and (3) the accident must have been suffered in course of employment. In the facts of this case we are of the view that the employee was unable to prove that the accident had any casual connection with the work he was doing at the factory and in any event it was not suffered in the course of employment.

12. While their Lordships referring to an earlier decision of the Supreme Court in Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, , have extracted the very sentence as found in the decision, which reads as follows:--

It is well settled that when a workman is on a public road or 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 notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him

13. Considering the above said observation the Supreme Court has observed that,

In our view, this cannot be a ground for departing from the principle laid down by the aforementioned cases that the employment of the workman does not commence until he has reached the place of employment, what happens before that is not in course of employment.

14. It is also held thus in The Regional Director, E.S.I. Corpn. and another v. Francis De Costa and another 1992 (65) FLR 316 (SC).:

If the employee"s work shift begins at 4.30 P.M. any accident before that time will be "in the course of 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 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.

15. It is further observed in the above said decision that if the employee met with an accident while riding in his 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 the employment. Hence, it is bounden duty of the employee to show that the accident took place during the course of and out of his employment and there must be a casual connection between the employment and the injury.

16. Learned Counsel for the appellant would also garner support from a decision of Supreme Court in Jyothi Ademma Vs. Plant Engineer, Nellore and Another, , in which it is held that u/s 3(1) of the Workmen"s Compensation Act, it has to be established that some casual connection between the cause of death of the workman and his employment and that the expression "accident" means an untoward mishap which is not expected or designed. It is not only the proof required is that the accident has arisen in the course of employment, but it should be shown that it was out of employment also.

17. Learned Counsel for the appellant also cites a decision of Andhra Pradesh High Court in Mummidipalli Syamaladevi Vs. Regional Director, ESI Corporation and Others, , in which it is held that employment of a workman does not commence until he has reached the place of employment and from not continue when he has left the place of employment, the journey to and prom the place of employment being excluded. In the said case the machine operator in the factory died in the quarters provided by the management of the third respondent due to electric shock. Turning down the plea of the claimant, the High Court of Andhra Pradesh decided that there was no connection between the cause of the death of the employee and his employment as mechanic in the factory.

18. The appellant side also draws attention of this Court to another decision of Supreme Court Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Ltd. and Another, , in which it is decided as follows:

It may not be a correct approach for a superior Court to proceed on the premise that an Act is a beneficent legislation in favour of the Management or the workmen. The provisions of the statute must be construed having regard the tenor of the terms used by the Parliament. The Court must construe the statutory provision with a view to uphold the object and purport of the Parliament. It is only in a case where there exists a grey area and the Court feels difficulty in interpreting or in construing and applying the statute, the doctrine of beneficent construction can be taken recourse to. Even in the cases where such a principle is resorted to, the same would not mean that the statute should be interpreted in a manner which would take it beyond the object and m purport thereof.

19. Learned Counsel for the claimant gathered support from the decision of a Division Bench of this Court Management of Pachamalai Estate Vs. Smt. Mani, , in which an employee while doing work in a drench, had chest pain and died thereafter and the Commissioner for Workmen''s Compensation finding him died due to stress and strain and the nature of the work had accelerated his death and held that the employer was liable to pay compensation. The Division Bench of this Court dismissed the appeal filed by the employer. But in the present case on hand there is no plea that the employee died due to stress and strain.

20. Learned Counsel for the respondent also relied upon another Division Bench Decision of this Court in Divisional Manager, United India Insurance Co. Ltd v. T. Shanmuga Mudaliar and others 2003 (102) FJR 90, wherein the learned Judges finding in favour of the claimants by observing that it may not be possible at all times to produce direct evidence of the connection between the employment and the injury, but if the probabilities are more in favour of the claimant then the Commissioner for Workmen''s Compensation is justified in inferring that the accident did in fact arose out of and in the course of employment. In this decision learned Judges have followed the Principles formulated by the Supreme Court which are as follow:

In Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmed Issak, , the Supreme Court held that (page 1908):

to come within the act,... there must be a casual relationship between the accident and the employment. The expression "arising out of the employment" is again not confined to the mere nature of the employment. The expression applies to employment as such - to its nature, to 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 inquiry 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.

And again in the same judgment, the Supreme Court said (page 1909):

Art the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to Court for relief must necessarily prove it by direct evidence.... It may be inferred when the facts proved justify the inference... It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it.

21. Hence as per the decision of the Supreme Court, it should be established that if an accident had occurred on account of a risk which is an incident to the employment, the claim for compensation must succeed unless the workman has exposed himself to an added peril by his own imprudent act.

22. Learned Counsel for the appellant also draws attention of this Court to a judgment rendered by a learned single Judge of this Court in C.M.A. 720 of 2001 dated 2.1.2008 wherein identical facts are available that the worker, residing in the residential quarters provided by the employer, was stated to have been attacked by a wild elephant and it was decided that the accident took place in the course of and out of employment. The staying of workman in the residential quarters of estate is an incident of employment as plantation worker and that the accident occurred in the midnight while the deceased worker was staying in the residential quarters of employment, which certainly arose out of and in the course of employment, it was further held.

23. In order to succeed to get compensation, the following tests have to be passed by the evidence adduced on behalf of the victim/claimant, as per decision in Francis De Coasia case (cited supra):

1. There was an accident,

2. The accident had a causal connection with the employment, and

3. the accident must have been suffered in the course of employment.

24. Residing in the residential quarters provided to the worker by the employer as per the Plantations Labour Act, 1951 is incidental to the employment. Had the worker not employed in the plantation, he need not have resided in the residential quarters provided by the employer. In orders to perform the statutory obligation, the employer offers residence for the plantation labourers. Unlike other employees, a plantation labour is expected to stay in the house furnished by his employer in order to attend to his work promptly and in appointed time. He could not be expected to reside elsewhere which is far away from the estate, where he is working. To put it differently, only on account of nature of his employment in the estate, the worker stays in the house afforded by his employer. In this context, there is no impediment for the Court to infer that staying in the house allotted by the employer has got nexus with the employment and if any accident took place resulting in employment injury to the worker or any danger to his life, it ought to be held that he suffered the injury in the course of and out of employment, even though he is not at all physically present in the place of employment during the shift earmarked for him.

25. The evidence on record on behalf of the claimant has easily passed the tests formulated by the Supreme Court as aforementioned. As for the facts involved in Francis De Costa"s case (cited supra), the worker left the house and was on the way to his place of employment and the same was about one Km away from the accident. The accident took place at 4.15 p.m. while his duty was to commence from 4.30 p.m. He suffered injuries. Their Lordships were of the opinion that the accident cannot be said to have arisen out of employment, unless it may be shown that the employee was doing something incidental to his employment. The facts in the present case are distinguishable.

26. In the case before the Supreme Court, the worker was on the way to his place of employment, while in this case, the worker was staying in house at odd hours. He got frightened by a noise and came out from the house which is a natural act of an individual in a normal circumstance and thereafter, he met with the accident.

27. While applying the above said principle to the facts of the present case, the staying of worker in the residence arranged by the employer is incidental to his employment. It could be observed that the accident had taken place out of employment and in the course of employment. The facts of the case on hand are also distinguishable.

28. In Ibrahim Mohammed Issak"s case (cited supra), the Apex Court is of the view that if the accident had occurred on account of a risk which is incidental to an employment, the claim of compensation must succeed, unless of course, the workmen has exposed himself to an added peril by his imprudent act. Two requirements have been codified by the Apex Court in this judgment which are as follows:--

1. Whether accident occurred on account of a risk which is incidental to the employment?

2. The workmen, who not exposed himself to an added peril by his own interdicted.

29. As regards this case, as already observed, staying of an workmen in the house granted by an employer is an incidental to his employment and he was exposed to the risk, not by any of his imprudent act but as a common man of diligence, he came out from the house to know what happened outside. Hence the claimants case has gone through these tests too.

30. The Andhra Pradesh High Court in Mummidipalli Syamaladevi"s case (cited supra) has followed the decision of the Apex Court in Saurashtra Salt Manufacturing Co. v. Bai Valu Raja1. In that decision, it has been held that as a rule, the employment of an workman does not commence until he reached the place of employment and does not continue when he left the place of employment. The facts of the case are otherwise. The accident took place during night hours and it is to be noted that staying in the house itself is incident to the nature of his employment and hence, no question of his journey to his shift physically in the estate would arise.

31. The facts and circumstances of each case will have to be analysed and examined cautiously on its own merits to determine whether the accident arise out of and in the course of employment keeping in view the ratio laid down by the Supreme Court.

32. In the light of what are stated above, this Court is of the considered view that the employer is liable to pay compensation as the accident occurred out of and in the course of employment and award passed by the Deputy Commissioner of Labour, Coimbatore does not suffer from infirmity and the same is confirmed. There is no need to dislodge the above observation of the authority below. In fine, this Civil Miscellaneous Appeal is dismissed. No costs.