(2005) 11 MAD CK 0062

Madras High Court

Case No: C.M.A. No. 360 of 1997

Madras Dock Labour Board		APPELLANT
	Vs	
K. Geetha, K. Jayanthi and K. Srinivasan		RESPONDENT

Date of Decision: Nov. 29, 2005

Acts Referred:

- Workmens Compensation Act, 1923 - Section 3, 3(1)

Citation: (2007) ACJ 839 : (2006) 1 LLJ 1053 : (2006) 1 MLJ 83

Hon'ble Judges: S.R. Singharavelu, J; M. Karpagavinayagam, J

Bench: Division Bench

Advocate: G. Venkataraman, for Aiyar and Dolia, for the Appellant; A.R. Gokulnath, for the Respondent

Final Decision: Dismissed

Judgement

M. Karpagavinayagam, J.

C. Kannaiyan, R.P. Mazdoor, a workman employed by the Madras Dock Labour Board, went for duty to the Port on 3.2.1994 for the II shift between 2 p.m. and 10 p.m. While performing his duty, he fell into the sea and drowned. The dead body was taken out of the sea water on 6.2.1994. The officials of the Dock Labour Board informed the family members of the said Kannaiyan about the same. The widow, daughter and son of the deceased filed an application before the Commissioner for Workmen''s Compensation, claiming compensation of Rs. 1,15,916/- The Commissioner, after enquiry, passed an order awarding Rs. 75,824/- as compensation. Aggrieved by this order, the Madras Dock Labour Board has filed this appeal.

2. The substantial questions of law on the basis of which this appeal has been filed, are as follows:

1) Whether the deceased Kannaiyan died in an accident which arose out of and in the course of his employment under the Appellannt/Board?

2) Whether the Commissioner for Workmen''s Compensation was justified in invoking the principles of notional extension when the facts in this case do not justify such approach?

3. Elaborating the above questions of law, Mr.G.Venkataraman, the learned counsel appearing for the appellant, would make the following contentions:

"The deceased was allotted to work for the vessel Vishwa Kamudhi which was berthed at SQ.3 during the II shift on 3.2.1994 between 2 p.m. and 10 p.m. The dead body of Kannaiyan was found on 6.2.1994 only at the bottom of JD.1 in the vessel Jagradhika. The said Kannaiyan was not posted to work at JD.1. The evidence adduced by the Dock Labour Board would clinchingly establish that no accident involving Kannaiyan took place resulting in his death on 3.2.1994 when he was working in the vessel Vishwa Kamudhi at SQ.3. Since the evidence shows that he completed the work on 3.2.1994 in the vessel Viswakamudhi and it was only thereafter on 6.2.1994, his dead body was found at the bottom of JD I at a distance of 1 k.m. away from SQ.3., the Commissioner for Workmen''s Compensation should not have presumed and held that the deceased could have fallen into sea at SQ.3 and hence the principle of notional extension is applicable as there is nothing to show that the accident arose out of and in the course of employment."

4. The learned counsel for the appellant would cite the decisions in Mackinnon Mackenzie & Co. v. I.M. Issak 1970 (1) LLJ 16 and The Regional Director, E.S.I. Corporation v. Francis De Costa 1997 (1) LLJ 48.

5. In reply to the above contentions, Mr.A.R.Gokulnath, the learned counsel for the respondents, would make the following contentions:

"There is clear evidence to show that the deceased was an employee working under the Dock Labour Board and attended the work for the shift between 2 p.m. and 10 p.m. on 3.2.1994 and did not come back home and on the other hand, his dead body was found at the bottom of JD.1 which was parked very near to SQ.3 and as such, under the principles of notional extension, it must be presumed that the deceased fell into the sea and died due to the accident arose out of and in the course of his employment."

6. The learned counsel for the respondents would cite the following authorities to substantiate his contentions:

1) Shanmuga Mudaliar, T v. Noorjahan 2003 I L.L.J.776 Mad DB;

2)P. Kalyani v. Divisional Manager, Southern Railway 2004 ACJ 185 Mad DB;

3) The Superintending Engineer, Mechanical-II, Tamil Nadu Electricity Board and Another Vs. Smt. Sankupathy, Mad First Bench.

7. We have carefully considered the submissions made by the counsel for the parties. Before dealing with the questions of law, let us now see the principles laid down by the Supreme Court in 1970 (1) L.L.J.16 (supra) and 1997 (1) L.L.J.48 (supra) cited by the counsel for the appellant, which are as follows:

(A) In 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. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference.

(B) As a rule the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. There might be some reasonable extension in both time and place to this principle. A workman might be regarded as in the course of his employment even though he had not reached or had left his employer''s premises in some special cases. The facts and circumstances of each case would have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.

8. Let us now see some of the important observations made by the Division Benches of this Court in the decisions cited by the counsel for the respondents:

(I) In Thiru. T. Shanmuga Mudaliar Vs. Smt. Noorjahan, Mohd. Amsad, Apsana Parveen and The Divisional Manager, United India Insurance Co. Ltd., the Division Bench would state as follows :

"The word "accident" has not been defined under the Act. But the definition given to this word by Lord Macnaghten in the case of Fenton v. Thorley and Co. Ltd. 1903 AC 443 has been accepted as a most appropriate meaning of the word. He has defined accident "as denoting an unlooked for mishap or an untoward event which is not expected or designed. ... 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 applicant then the Commissioner is justified in inferring that the accident did in fact arise out of and in the course of the employment."

(II) In P. Kalyani Vs. The Divisional Manager, Southern Railway (Personal Branch), it is observed that "It is safe to presume that strain had contributed to or accelerated or hastened the accident. Even in the absence of direct evidence, if the probabilities are more in favour of the applicant, considering the object of the Act, the Commissioner is to infer that the accident did in fact arise out of and in the course of employment."

(III) In The Superintending Engineer, Mechanical-II, Tamil Nadu Electricity Board and Another Vs. Smt. Sankupathy, the Division Bench held that "It is well settled that if the injury or death from the point of view of the workman who dies or suffers the injury is unexpected or without design on his part, then the death of injury would be by accident although it was brought about by a heart attack or some other cause to be found in the condition of workman himself. ... The words "arising out of and in the course of employment" are the key words mentioned in Section 3 of the Act. The distinction between the two phrases as held by the Courts that the phrase "in the course of employment" suggests the point of time, that is, the injury must be caused during the currency of employment, whereas the other expression "out of employment" means that there must be some sort of connection between employment and injury caused to the workman as a result of the accident. ... Therefore, the Courts have adopted applying "the principles of notional extension of employer''s premises". Applying the above said principle, the place of accident has to be construed as the place of duty of the workman concerned, even if he had not reached the actual place of work."

9. In the light of the principles laid down by this Court as well as the Supreme Court, let us now look into the facts of the case on hand.

10. According to the claimants, Kannaiyan, the deceased, a workman employed by the Madras Dock Labour Board went for the duty on 3.2.1994 to attend his II shift between 2 p.m. and 10 p.m. He did not turn up. Only on 6.2.1994, the family members were informed about the death of Kannaiyan whose body was taken out from sea on 6.2.1994 in a highly decomposed state. Since he went for the duty on 3.2.1994 and his dead body was found in the Port premises where he was working, the Madras Dock Labour Board is liable to pay the compensation.

11. On the other hand, the said claim has been opposed by the appellant stating that the deceased came and attended the work on 3.2.1994 for the II shift only under Arumaidurai in the vessel SQ.3, but his dead body was found at the bottom of JD.1 on 6.2.1994 and admittedly, he was not on duty either on 3.2.1994 or subsequent to that in JD.1 and therefore, it cannot be contended that he died due to accident arose in the course of and out of his employment.

12. At the outset, it shall be stated that the fact that the deceased was employed by Madras Dock Labour Board has not been disputed. Similarly, the fact that the deceased came to attend the work in the Dock Labour Board for II shift in Vishwa Kamudhi vessel on 3.2.1994 and did not go back home after finishing the work is also not in dispute.

13. However, it is strange to see that the original stand taken by the Management as contained in para 8 of the counter is that C.Kannaiyan worked on 3.2.1994 and returned home and he was not posted work in the ship Jag Radhika on 4.2.1994. This stand was ultimately given up, as no evidence has been let in by the

Management to prove the same.

14. Another curious stand taken by the Dock Labour Board, as contained in para 4 of the counter, is that one of the employees of M/s. M.G.M. informed A.S.M. that one unknown person climbed up the vessel Jag Radhika of JD.1 and fell into the sea on 6.2.1994 at about 9.50 p.m. i.e. 21.50 hours and based on the information, the A.S.M. and others made a search immediately at JD.1. By this stand, the Management wanted to show to the Commissioner that it was not an accident, but a case of suicide. Unfortunately, this stand was also given up, as no such employee was examined to show that the deceased climbed up the vessel in JD.1 and fell into the sea.

15. On the other hand, during the course of enquiry, Dock Labour Board has taken the stand that he was not employed in JD.1 and he was employed only in SQ.3 and as such, it cannot be said that he died in the accident arose out of and in the course of his employment.

16. While dealing with this aspect, it is beneficial to extract the relevant provision, namely, Section 3(1) of the Workmen''s Compensation Act, which reads as follows:

"3. Employer''s liability for compensation:-- (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable--

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death, or permanent total disablement caused by an accident which is directly attributable to --

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman."

17. The expression ''injury'' u/s 3 of the Act is of wide in import. The words ''personal injury'' as contemplated in the section may be leading to death or disablement or impairment of parts of the body, etc. In that event, the employer is liable to pay compensation if the conditions laid down in Section 3(1) of the Act are satisfied. There are three conditions in the said provision. They are as follows: (i) death or

injury must be caused to a workman; (ii) the said injury must have been caused by accident; and (iii) the accident must arise out of and in the course of employment.

18. As held by the Supreme Court, to come within the Act, there must be an actual relationship between the accident and the employment. But, the expression "arising out of employment" is 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 injury 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.

19. In this case, as indicated above, though there are attempts by the Dock Labour Board by mentioning that somebody climbed in JD.1 vessel and fell into the sea as if it was a suicide, the Dock Labour Board did not venture to examine any person to prove the same.

20. Of course, it is true that the burden of proof relating to the death caused by accident would rest upon the workman to prove that the accident arose out of employment as well as in the course of employment. But, it is not necessary for the workman who comes to the Court to prove it by direct evidence. It may be inferred when the facts proved justify the inference. Though it is impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference, the evidence must be such as it would induce a reasonable man to draw the said inference.

21. In this case, the deceased went for duty and did not turn up. The dead body was found in the sea at the bottom of the vessel. Merely because he was posted to work in the vessel SQ.3 and not in JD.1, it cannot be said that he was not in the course of his employment, especially when both the vessels were standing in the same area and distance between the two vessels is only 1 K.M. On going through the deposition given by the appellant''s witness Shanmugam, Administrative Officer, Madras Dock Labour Board, it is obvious that he admitted in the cross-examination that there is no written rule prohibiting the workers to work in the other places also other than the allowed place inside the port.

22. As laid down by this Court, the phrase "in the course of employment" suggests the point of time, that is, the injury must be caused during the currency of employment. Similarly, the other expression "out of employment" means that there must be some sort of connection between employment and injury caused to the workman as a result of the accident.

23. In this context, it would be worthwhile to refer to the observation made by the First Bench of this Court in the decision reported in 2004(5) CTC 321 (supra) which is as follows:

There is no difficulty in accepting such interpretation of the said two phrases, but to the modern methods of working industrial undertakings, such narrow interpretation does not satisfy their requirements, as it is a difficult task to determine the exact place of employment of a workman."

24. In the light of the above observation, it shall be concluded that the Commissioner has correctly adopted applying "the principles of notional extension of employer''s premises" and held that the Dock Labour Board is liable to pay the compensation.

25. In view of what is stated above, though there is no direct evidence with reference to the accident, it has to be held on the basis of the materials available on record that the incident took place due to the accident and the deceased died while he was in the course of and out of his employment.

26. Under those circumstances, the appeal is devoid of merits and the same is dismissed. No costs.