

(2008) 11 MAD CK 0226

Madras High Court

Case No: Writ Petition No. 12985 of 2004 and W.P.M.P. No. 15114 of 2004

C. Indira

APPELLANT

Vs

M/s. Senthil and Co.

RESPONDENT

Date of Decision: Nov. 6, 2008

Acts Referred:

- Employees State Insurance Act, 1948 - Section 2(6A)(i), 2(8), 2(9), 51A

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: Lakshmi Manickam for M/s. Menon and Goklaney Associates, for the Appellant;
No appearance for 1st Respondent and Ms. S. Jayakumari for Respondents 2 to 4, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

By consent of both sides the writ petition is taken up for final disposal. Prayer in the writ petition is to quash the order dated 18.2.2004 passed by the third respondent declining the request of the petitioner to pay the dependant benefits consequent to the demise of her husband on 30.11.2002.

2. The facts that are necessary for disposal of this writ petition are as follows:

(a) The petitioner's husband by name K.M. Appukuttan was working as Fitter in the first respondent Company, which has got Employees State Insurance coverage for its employees with ESI No. 51-54078-66. The first respondent is a contractor of M/s. Greeves Limited, Chennai.

(b) On 30.11.2002, petitioner's husband reported for duty in the premises of the first respondent at about 8.30 a.m. While he was working at about 10.30 a.m., he felt uneasiness and sought permission from the superiors to go home and the

permission was also granted.

However, due to giddiness, he went to the Workers' rest room to take rest. One of his coworker found him lying unconscious and he immediately took the petitioner's husband to the nearby Nursing Home viz., Ramaiah Nursing Home, where the Doctors declared the petitioner's husband as dead.

(c) At about 2.30 p.m., petitioner's husband's body was brought to the house accompanied by the Proprietor of the first respondent Company by name Sampathkumar, Supervisor Manoharan and some other staff members. According to the petitioner, in spite of the repeated request made by several employees of the first respondent, the Proprietor of the Company did not submit the accident report.

(d) After the body was brought to home, the Doctor examined the body and diagnosed that the death was due to Massive Myocardial Infraction (heart attack). The authorities of the Ramaiah Nursing Home, where the petitioner's husband was taken initially and whose Doctors pronounced him dead, refused to issue death certificate on the ground that they had not treated him and therefore no FIR was filed nor post mortem conducted.

(e) According to the petitioner, her husband died during the course of the employment and his death also occurred in the premises of the factory and therefore she is eligible to receive the dependant benefits under the Employees State Insurance Corporation Act, 1948. The petitioner repeatedly represented to the respondents 2, 3 and 4 and demanded the benefits. On 9.12.2002, the petitioner sent a representation to the second respondent and requested to investigate the case and do the needful. Copy of the same was marked to the respondents 1 and 3. Since no reply was received, the petitioner on 21.1.2003 again requested the second respondent to investigate the matter and pay the dependant benefits, followed by reminder dated 18.2.2003.

(f) On 25.2.2003, the first respondent sent a reply and requested the petitioner to get certain certificates to settle the petitioner's husband's provident fund due and the first respondent submitted Form 25-A for claiming the amount. Petitioner was paid funeral expenses. Petitioner again submitted representation on 6.3.2003 to the first respondent and requested to do the needful by submitting ESI Form-32, As there was no reply, the petitioner sent a counsel notice to the first respondent on 12.5.2003 and stated that the last drawn salary of her husband was Rs. 3,263/-per month and requested to pay compensation as per law. The first respondent issued a reply notice on 21.5.2003 and admitted the death of the petitioner's husband, but took a stand that he died while not on duty and therefore there is no question of any settlement.

(g) Petitioner sent a representation to the 4th respondent on 8.7.2003 for which on 22.7.2003, 4th respondent informed that the case has been referred to the third respondent for necessary action and after getting satisfactory reply from the third

respondent, petitioner can approach the 4th respondent. Third respondent by letter dated 18.2.2004 informed that the petitioner's case was scrutinised and the petitioner's husband's death cannot be termed as employment injury and therefore her request could not be considered. Hence the petitioner filed this writ petition challenging the order dated 18.2.2004 contending that the death has occurred during the duty period and the rest house is part of the factory premises and therefore u/s 51-A of the Employees' State Insurance Act, 1948, there is a presumption regarding the death of petitioner's husband and therefore the respondents are bound to pay his death benefits to the petitioner herein.

3. Respondents 2 to 4 have filed counter affidavit stating that on 30.11.2002 petitioner's husband attended duty at the first respondent Company and at 10.30 a.m. he reported to his Supervisor by name C. Manoharan that he got body pain and got permission to leave the factory. One sweeper by name Issac informed the first respondent that someone was at the rest room outside the gate at unconscious stage. The Supervisor attended the petitioner's husband and he was taken to the nearby clinic, where he was informed that the petitioner's husband was brought dead. First respondent requested the second respondent to arrange for the benefit of the family of the deceased. Second respondent, after receipt of the letters from the first respondent as well as from the petitioner, requested the first respondent to report the occurrence in Form-16 "accident report from the Employer" prescribed under Regulation-68 of the ESI (General) Regulations, 1960, and Form ESIC-32, showing the wages, contributory details so as to investigate the case and to see whether the claimant is entitled to get the benefits under the provisions of the ESI Scheme, but no report was received from the first respondent. The second respondent visited the first respondent's factory and investigated the matter and it was reported that on 30.11.2002, the petitioner's husband reported for duty at 8.30 a.m. while doing his work he felt uneasiness/giddiness and reported to the Supervisor and at about 10.30 a.m. he sought permission to go home and after some time, the sweeper found that the petitioner's husband was lying in the rest room, which was located 40 paces outside the factory gate, in unconscious stage and he was identified by C. Manoharan as K.M. Appukuttan (husband of the petitioner) and taken to the Nursing Home and the Doctor declared him "already dead". It is further stated in the counter affidavit that no accident report in Form-16 was submitted by the first respondent in spite of repeated request. It is also averred in the counter affidavit that the death occurred not during the course of the employment as he went outside the work place. Regarding the nature of work, petitioner's husband performed at the time of reporting giddiness, he was attending to assembling of ball bearing of readymix concrete mixture.

4. The learned counsel appearing for the petitioner submitted that the death of petitioner's husband occurred within the premises of the factory of the first respondent during the course of the employment and there is a presumption u/s 51-A of the Employees' State Insurance Act, 1948. The learned counsel also

submitted that the funeral expense is also paid by the ESI Corporation as the first respondent management was contributing for the ESI Claims on behalf of the workmen, including that of the petitioner's husband and therefore the petitioner is entitled to get dependant benefits under the ESI Act, 1948.

5. The learned counsel for the respondents 2 to 4 on the other hand submitted that the first respondent has not submitted the prescribed forms and the petitioner's husband, after leaving the premises, while taking rest in the rest room of the workers, died and therefore the death of the petitioner's husband cannot be treated as death during the course of the employment.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as respondents 2 to 4.

7. It is not in dispute that the petitioner's husband was employed as Fitter in the first respondent Company and the first respondent Company is covered under the Employees' State Insurance Act, 1948 (Act 34 of 1948) with ESI code No. 51-54078-66. It is also not in dispute that on 30.11.2002 petitioner's husband reported for duty before the first respondent Company at 8.30 a.m. and he attended the work of assembling of ball bearing of readymix concrete mixture and at about 10.30 a.m., petitioner's husband reported giddiness and body pain, pursuant to which he was unable to continue the work and after getting permission from the Superintendent to go home and being unable to move, he lied down in the factory rest room and died due to Massive Myocardial Infraction (Heart attack) as certified by the Doctor.

8. The petitioner, who is the widow of the deceased employee K.M. Appukuttan, is the dependant of the deceased employee as defined u/s 2(6-A)(i) of the Employees' State Insurance Act, 1948.

9. Section 51A of the Employees' State Insurance Act, 1948 (Act 34 of 1948), reads as follows:

"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."

The third respondent/the Regional Director of ESI Corporation, Chennai, through his report dated 12.1.2004 addressed to the 4th respondent/the Director General of ESI Corporation, New Delhi, submitted as follows:

"The Branch Office Manager has forwarded the certificate issued by Ramaiah Hospital has confirmed that the deceased insured person was brought to them on 30.11.2002 at 11 a.m. But they have confirmed the cause of death of the Insured Person on the ground that the Insured Person was not treated by them. But the certificate issued by Dr. Proraikalm, who had come and checked the body at the

residence of the deceased insured person on 30.11.2002 had confirmed that the Insured Person had expired due to "Massive Myocardial Infraction" on the way to hospital from the work spot. As such the case was referred to the Medical Referee for his opinion to confirm the cause of death.

The Medical Referee has opined that the cause of death is "Myocardial Infraction" (heart attack) if there is no contrary evidence.

Though the Insured Person obtained permission to go home as he was not feeling well and left the main gate of the factory, he was found lying unconscious only in the workers' rest room of the factory which is 40 paces of normal walking outside the factory. So we may not hold that the Insured Person had left the factory premises and treat unconsciousness as during the course of employment.

Hence we may decide the case as death due to Employment Injury as per Sec.51A of the ESI Act as the accident occurred during the course of employment and there is no evidence to the contrary."

(Emphasis Supplied)

From the perusal of the above report of the third respondent addressed to the 4th respondent it is evident that during the course of employment the petitioner's husband complained giddiness and body pain and left the factory premises and fell unconscious in the factory rest room and the death shall be treated as employment injury as per section 51A of the Act as admittedly there is no evidence to the contrary.

10. (a) In the decision reported in AIR 1958 SC 881 (Saurashtra Salt Manufacturing Company v. Bai Valu Raja and others) a question arose as to whether a person is to be in employment when actually he left the place of employment. In paragraph 7 the Supreme Court held as follows:

"7. 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. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and re-passes in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will 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."

(Emphasis Supplied)

(b) In the decision reported in ILR (1981) 1 Karnataka 322 (Karnataka State Construction Corporation Ltd., Bangalore v. United India Fire and General Insurance Company, Ltd.) a Division Bench of the Karnataka High Court held that the question when does an employment begin and when does it cease depends upon the facts of each case. But Courts have agreed that the employment does not necessarily and 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. 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.

(c) A Division Bench of this Court in the decision reported in 2004 (101) FLR 405 (P. Kalyani v. Divisional Manager, Southern Railway (Personal Branch), Divisional Office, Madras) considered similar issue of a dying person due to massive heart attack under the Workmen's Compensation Act, 1923. In paragraph 3 the Division Bench held thus,

"3. ...It is the specific case of the applicant that her husband joined the Railways in September 25, 1965 and he was working as Lineman-Grade I under the control of Chief Tractor Foreman, Overhead Equipment, Southern Railway, Ponneri at Ponneri. The applicant's husband was asked to perform night duty i.e., from 10 p.m. to 6 a.m. on November 26/27, 1990, for want of staff since night duty ELC one R. Sriramulu, was under sick list and MCM A. Rahiman was also on leave. It is further stated that at about 23.00 hours M.B. Srinivasan, Signal Inspector/Ponneri found the applicant's husband lying on the end of the Platform No. 1 near the track unconscious. Thereafter, TFO with the available staff at the depot rushed to the spot and had taken the applicant's husband to the Government Hospital, Ponneri where the duty Doctor declared him dead due to massive heart attack. Accordingly, it is specifically stated that this incident had taken place when he was on his way to attend the out of turn night duty on November 26/27, 1990 at about 23.00 hours. The applicant in her evidence as P.W. 1 has corroborated the same. It is stated that; "Vernacular matter omitted."

It is also relevant to note the additional reply statement filed on behalf of the opposite party-Southern Railway. It is admitted that after working in various Grades, the deceased Parthaswarathy was working as Line-man in Grade scale of Rs. 1320-2040 till his death on November 27, 1990. In para 1, sub-para(4) it is stated that, "it is submitted that the said deceased employee was called for to attend night duty by his immediate Supervisor-the Traction Foreman (Over-head Equipments) Ponneri on the night of November 26/27, 1990 while he was availing rest on November 26, 1990..." In para 2 it is stated that, "It is submitted that the late employee Sri R.S. Parthasarathy was booked for night duty on November 26/27, 1990 against the staff casualty...." Though it is stated that the late R.S. Parthasarathy was not on duty and he was found lying in unconscious condition on the platform at

about 23.00 hours on November 26, 1990, it is clear from the reply statement that due to absence of regular employee, the deceased employee R.S. Parthasarathy was called for to attend night duty by his immediate Supervisor Traction Foreman, Ponneri for night duty on November 26/27, 1990. It is also clear that that pursuant to the said direction, the deceased left his home and reached the work-spot at 10 p.m. It is not disputed that his working hours was 10 p.m. to 6 a.m. It is not the case of the Railways that he has to sit in an office room and perform his duty. Since the deceased was working as line-man, Grade-I, he has to look after the overhead equipments by watching the electrical lines etc. It is also not disputed that the platform in Ponnery Railway Station where he was found lying unconscious and had a massive heart attack, forms part of his work spot. In the light of these factual details, if the deceased suddenly gets a heart attack while proceeding to perform his duty, the accident can be nothing but arising out of his employment. The Division Bench decision of the Bombay High Court and the Full Bench of the Assam High Court support our view."

The denial of compensation by the Commissioner by dismissing the Claim Petition was found erroneous and compensation was ordered.

(d) The question as to whether the death arose in the course of employment due to heart attack can be treated as "employment injury" and presumption u/s 51A of the Act, came up for consideration before the Punjab and Haryana High Court in the decision reported in 1995 (3) LLJ (Supp) 593 (Harjinder Kaur & Others v. Employees' State Insurance Corporation, Amritsar), and in paragraphs 4 to 6 it is held as follows:

"4. I have heard the learned counsel for the parties. I find that this appeal deserves to be allowed. Section 2(8) of the Act defines "employment injury" thus:

""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 an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India."

4. Section 51A which was added by Amendment Act No. 44 of 1966 provides thus:

"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."

5. Thus, the moment it is proved that the accident arose in the course of an insured person's employment, it is to be presumed, in the absence of evidence to the contrary, that the accident has arisen out of that employment. The learned trial Judge was, therefore, wrong in requiring proof from the appellants that in spite of the fact that the death of Gian Singh took place in the course of his employment, it had arisen out of that employment. No doubt, this presumption is rebuttable but

there is no evidence worth the name on the record which may be styled as evidence to the contrary...."

11. The object of the Employees' State Insurance Act, 1948 (Act 34 of 1948) is to provide certain benefits to the employees or dependants in case of sickness, maternity and employment injury, etc., to give effect to Article 1 of the Universal Declaration of Human Right, 1948, which assures human sensitivity of moral responsibility of every state that all human beings are born free and equal in dignity and rights. In recognition of the said rights only Act 34 of 1948 was enacted and the same is to be liberally construed as it is a social legislation.

12. The Supreme Court in the decision reported in AIR 1986 SC 1686 (Regional Director, Employees' State Insurance Corporation, Madras v. South India Flour Mills (P) Ltd.) in paragraph 13 held as follows:

"13. The Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. To hold that the workers employed for the work of construction of buildings for the expansion of the factory are not employees within the meaning of section 2(9) of the Act on the ground that such construction is not incidental or preliminary to or connected with the work of the factory will be against the object of the Act. In an enactment of this nature, the endeavor of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made."

(Emphasis Supplied)

13. It is not the case of the respondents that the petitioner's husband was previously suffering from heart related disease. The first respondent also admittedly claimed funeral expenses by submitting claim form in Form 25A as required under Regulation 95-E and a sum of Rs. 3,000/- was paid to the petitioner towards funeral expenses of the petitioner's husband. Hence the respondents 2 to 4 cannot deny the knowledge about the death of the petitioner's husband. Non-furnishing of report in Form-16 as required under Regulation 68 by the first respondent cannot be put against the petitioner, particularly when the matter was investigated by the Branch Manager by visiting the premises where the incident had occurred.

14. In the light of the above uncontroverted facts, the object of enactment of the Employees' State Insurance Act, 1948, as well as the decisions and in particular as there is no controversy with regard to the death of the petitioner's husband other than the one stated by the petitioner as well as the third respondent in his report, presumption u/s 51A of the Act squarely applies to the facts of this case and I hold that the death of the petitioner's husband has happened only "during the course of the employment" and in the factory premises-rest room by applying notional extension theory and consequently the petitioner is entitled to succeed in getting the dependant benefits. The third respondent, without even considering the report

of investigation has chosen to reject the claim of the petitioner on hyper-technical ground without a speaking order. In view of the above findings, the impugned order dated 18.2.2004 rejecting the request of the petitioner treating the death of the petitioner's husband not as "employment injury" cannot be sustained as it is contrary to section 51A of the Act. Hence the impugned order dated 18.2.2004 is set aside. The third respondent is directed to settle the eligible dependant benefits in favour of the petitioner as the petitioner's husband was covered under the ESI code of the first respondent company on the basis of his last drawn salary of Rs. 3,263/- per month. The amount payable to the petitioner shall be calculated and paid to the petitioner, within a period of four weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed. Post this matter before the Court on 8.12.2008 for reporting compliance.