Quraisha Bibi (Smt.) Vs Shipping Corporation of India Ltd.

Court: Calcutta High Court

Date of Decision: July 10, 2002

Acts Referred: Workmens Compensation Act, 1923 â€" Section 3

Citation: (2003) ACJ 1942 : (2003) 1 AnWR 504 : (2002) 95 FLR 1179 : (2003) 1 LLJ 963

Hon'ble Judges: Joytosh Banerjee, J; D.K. Seth, J

Bench: Division Bench

Advocate: Kamalkrishna Das and Krishnav Banik, for the Appellant;Jayanta Bhattacharya, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.
This appeal is directed against the judgment and order dated June 2, 1998 passed in Claim Case No. 122 of 1992 by the

learned Judge, in the Court of the Commissioner for Workmen''s Compensation, West Bengal, Calcutta.

Facts:

2. The appellant had lodged a claim under the Workmen''s Compensation Act on account of her husband''s death. She alleged that this death was

due to injury suffered by her husband while in his employment on board the vessel Chatrapati Shivaji belonging to the Shipping Corporation of

India Limited. The injury, according to her, is related to the stress and] strain suffered by her husband in the course of his employment. The

husband had boarded the vessel, after he was found fit on medical examination in terms of Section 98 of the Merchants Shipping Act, on March

29, 1990. ; On board, he was found ill and was signed off on August 23, 1990. Thereafter, his treatment was arranged by the respondent. The

husband of the appellant died on January 13, 1991. According to her, the death was the result of an injury, which is causally related to the

employment. As such it is a case within the scope and ambit for grant of compensation under the Workmen''s Compensation Act.

The respondent, on the other hand, had denied that the death was related to any injury in course of employment. According to them, the husband

of the appellant died out of the ailment, which is wholly unconnected with, employment. There is no exceptional circumstances to relate the death

to any injury sustained during the course of employment. Relying on various documents, it was contended that it was a death out of a disease

wholly unconnected with the employment and not as a result of any stress and strain.

Submission on behalf of the Appellant:

3. Learned counsel for the appellant points out that this question involves substantial question of law, since the ascertainment of the relevance of the

disease with the injuries sustained in course of employment is a question of inference which gives rise to substantial question of law and not a

question of fact as such. He argued conversely that the learned Judge had omitted to consider certain material facts in order to relate the injury to

employment. He had overlooked certain material facts available on record. He had come to an inference on the basis of such material facts, which,

in law, could not have been arrived at. Such drawing of an inference is a question of law. In the present case, it is definitely a substantial one.

Therefore, the appeal is maintainable u/s 30 of the Workmen''s Compensation Act, as contemplated in Sub-section (3) thereof. He further

contends that in the present case, the husband of the appellant was found to be fit and only then he was signed in on March 29, 1990. He fell sick

on board on August 23, 1990, namely, within five months during voyage. According to him, the reasonable presumption would be that when a

person declared fit fell sick, it must be due to stress and strain on voyage in course of employment. Therefore, the learned Judge had failed to

appreciate the material and draw proper inference from the facts disclosed. The report that the husband of the appellant died out of cancer as has

been sought to be made out on behalf of the respondents, according to him, cannot be sustained in view of the fact that the Medical Officer or the

Doctor, who had examined or issued the said certificate, was not examined. As such the said medical certificate cannot be said to have been

proved. Therefore, it could not have been marked exhibit and could not have been relied upon. A document, which could not have been admitted

into evidence, if relied upon results into perversity, which is again a substantial question of law. He next contends that in a case under the

Workmen''s Compensation Act when it is asserted that the injury related to employment, the onus or burden is discharged, particularly, when the

witness could not have any occasion to be on board or voyage to ascertain the truth. In such a case, assertion by such witness would be sufficient

discharge of the burden or onus to prove that the injury related to employment and causally connected therewith. In such circumstances, the

burden or onus shifts onto who is supposed to rebut such a presumption by leading adequate evidence. According to him, the employer has failed

to discharge the onus or burden and has failed to bring on record sufficient materials to rebut such presumption that the injury was sustained in

employment.Therefore, the Judge has failed to pass an award, which he ought to have passed on the basis of the materials on record. He then

contends that the documents that have been produced, particularly, the Continuous Discharge Certificate (in short CDC) shows that the victim was

physically and medically fit. The learned Judge ought to have drawn inference from the said CDC in favour of the claimant and ought not to have

relied upon the report of the Medical Officer either on board or of the Nursing Home where the victim was admitted. Reliance on a document,

which prevailed upon by CDC is also a cause, which brings the question within the scope and ambit of substantial question of law. He has relied

upon various decisions in support of his contention to which reference would be made at appropriate stage.

Submission on behalf of the Respondent:

4. Mr. Jayanta Bhattacharyya, learned counsel for the respondent, on the other hand, points out relying on Section 30 of the Workmen''s

Compensation Act that unless the matter involves a substantial question of law, no appeal u/s 30 of the said Act could be maintained. According to

him, no substantial question of law is involved in the present case. He points out that there was sufficient material produced by the employer. Some

of those documents were marked exhibits without any objection. Once it is marked exhibit, it is not open to the appellant to question the validity of

this document. As such, reliance thereon now cannot be questioned except the ground that reliance was placed on inadmissible evidence. He then

contends that in the present case, sufficient evidence was led on behalf of the employer and these are sufficient to rebut a presumption, if there be

any. Therefore, the argument contrary thereto cannot be sustained. He also contends that the claimant has not been able to discharge the burden or

onus lay upon her to prove the case that the injury related to employment. Unless there are sufficient materials, it cannot be said that the claimant

has been able to discharge the onus or burden and that the case was proved so as to call upon the employer to rebut the same. He then contends

that in Schedule 3 of the Act, item 23 prescribes lung cancer as one of the diseases as occupational disease. But in the present case, lung cancer, is

not the disease out of which the victim had died. From the medical certificate, it appears that the victim died of cancer. It cannot be said to be

occupational disease. It is not a case of the claimant that the victim had been engaged in handling hazardous cargo on board so as to attract the

said disease. Finding of fitness may not be able to detect sufferance from cancer and the cancer as it is may be a disease, which cannot develop in

five months and become so fatal to kill a person. He also contends that the stress and strain of the employment cannot contribute to the aggravation

of the disease. If it is cancer, it was undetected. There is nothing to show even on Medical Jurisprudence that the stress and strain of employment

could result into cancer or aggravates cancer. He further contends that assuming but not admitting that the death was not due to cancer, even then

on board, it was found that the victim suffered from anaemia and lump in stomach. Lump in stomach cannot develop out of stress and strain

suffered through employment nor can anaemia be said to be so. Therefore, according to him, the questions raised by the appellant are not shown

to erode the credibility of the judgment and order appealed against. He has also relied on two decisions to which reference would be made at

appropriate stage.

5. We have heard the learned counsel for the respective parties at length.

The question:

6. The moot question that is to be decided is whether in the facts and circumstances of the case, the injury could be related to the employment as a

cause of death and whether the case involves a substantial question of law in order to maintain the appeal.

Discharge of burden by claimant''s witness: Rebuttal:

7. We may first deal with the question of real connection of the allied disease with the employment. Admittedly, the facts are more or less admitted.

In the claim petition, the claimant had simply pointed out that the victim was on board Chatrapati Shivaji. Due to heavy strain of work, he fell sick

in deep sea and was ultimately signed off on medical ground at Sikkalpo and then was admitted in May Flower Nursing Home at Calcutta. In her

deposition, she had repeated the same thing without specifying as to how the stress and strain in course of employment could be causally

connected with the alleged injury. She had only pointed out that her husband was engaged in the vessel Chatrapati Shivaji where he fell sick on

August 23, 1990 and was repatriated to Calcutta. After undergoing treatment for three months, he died on January 13, 1991. The sickness has

been caused due to heavy strain and stress of work. In cross-examination, she had admitted that she had no knowledge what was the cause of

sickness. She also pointed out that she was not informed about the nature of the disease her husband was suffering from. He had also stated that

she was not aware of the contents of the claim petition. From these materials on record, it cannot be said that the claimant was able to establish

that the injury was casually connected with the employment so as to enable the Court to come to the conclusion that the claimant had been able to

discharge the burden or onus lay upon her. But at the same time, it can be contended that it was not for her to say about the facts of which it was

not possible to acquire any knowledge directly. Therefore, in such a case, though such an assertion is made that the injury was related to

employment, it may be presumed that onus or burden has been sufficiently discharged. The normal principle of Evidence Act could not be said to

be attracted in such a case when the proceeding is under a special Statute conferring benefit on the claimants as such. Inasmuch as, if strict

principles of the Evidence Act are employed, in that event, no claimant would be able to succeed in a case, once the victim dies in deep sea or

suffers any injury in voyage in deep sea. Therefore, the assertion that the injury was related to employment is sufficient to discharge the onus or

burden. In such a case, it is the employer who was to rebut such presumption by leading adequate evidence. In the present case, the employer had

produced a log book and various other documents and adduced the same into evidence and those were marked exhibits. Whether on those

materials the presumption said to have been rebutted or not, we will examine later. But at the moment, we may deal with the admissibility of the

document so produced. In the present case, the log book was produced and was marked exhibit and there is nothing to indicate that any objection

to it was taken. At the same time, medical certificate was also proved without objection and were marked exhibit. Similarly, the CDC produced by

the claimant also marked exhibit. Once a document is marked exhibit, unless it is shown that it was objected to or that it was not properly admitted

into evidence or that such document is otherwise inadmissible, it cannot be said to be inadmissible in evidence. In the present case, we do not find

any material to support the contention of the learned counsel for the appellant to conclude that the evidence admitted in the proceedings were

inadmissible. Therefore, the reliance on such evidence cannot be said to be an infraction of law and substantial question of law.

Drawing of inference: Question of law:

8. Admittedly, an inference drawn on the basis of a material on record is a question of law. It may become substantial question of law when the

Court draws some inference, which, in law, cannot be drawn. But it has to be examined on the basis of the materials on record that might be

available before the Court. In the present case, the inference that was to be drawn is as to whether the injury related to employment or is causally

connected with it. In fact, such an inference is definitely a question of law. Therefore, we cannot agree with the contention of Mr. Bhattacharyya to

the extent that this appeal does not relate to a substantial question of law. We find the appeal maintainable.

Injury related to employment:

9. In order to determine the question, in case of death or injury related to a disease, whether the disease related to employment, the Court has to

examine the following factors: (1) Whether the disease is contracted in course of employment; (2) whether the injury is related to the occupational

hazard undertaken in course of employment; (3) whether the stress and strain of the job undertaken in course of employment was the reason for

development of the disease; (4) whether the reason for development of the disease is connected with the nature of employment; (5) whether the

stress and strain has aggravated the disease, though not connected or developed due to the nature of the employment; (6) whether the disease is so

peculiarly or exceptionally coupled with the employment that anyone undertaking such job would be exposed to such disease; (7) whether the

disease and the resultant death was causally connected with the employment; (8) whether the employment is a contributory cause or has

accelerated the death; (9) whether the death was due not only to the disease but the disease coupled with the employment; (10) in respect of a

pre-existing disease, whether it can be said that the disease was aggravated or accelerated by reason of the employment or its stress and strain;

(11) whether the disease was the result of any added peril to which the workman by his conduct exposed himself and which peril was not involved

in the normal performance of the duties of his employment; (12) whether the disease is common to mankind and could be contracted by person

unconnected with the kind or nature of the employment; (13) if the death is due to a disease the workman was suffering from, as a result the wear

and tear of the employment, then no liability can be fixed on the employer. However, each case has to be examined and assessed on the basis of

peculiarity of the facts of each case. Now, we may examine as to whether the injury could be related to employment. Admittedly, the victim was

found fit when he was signed in on March 29, 1990. But such declaration or fitness normally does not carry out any test to detect if a person

suffers from cancer. Therefore, the Medical Certificate in terms of Section 98 of the Merchants Shipping Act in declaring the victim medically fit at

the time of signing in would not lead us to hold that the cancer had developed due to stress and strain on board after he had signed in and the

victim was not suffering from cancer before he was signed in on March 29, 1990. It has been contended that the disease might have been

aggravated due to stress and strain but there cannotbe any question of aggravation of cancer other than occupational disease due to stress and

strain in order to give rise to lump in stomach within five months. Thus, it is very difficult to relate cancer unless it comes within item 33 of Schedule

3 of those groups of occupational diseases resulting from the hazards of employment. Admittedly, in the present case, there is nothing nor any

allegation has ever been made to contend that the victim did undertake to handle any hazardous cargo which could result into the development of

the disease. The question that the medical certificates are incorrect cannot be gone into by this Court, once these were admitted in evidence

without any objection. On board after having been found ill, the victim was medically examined. The report submitted pointed out a lump in

stomach and anaemia. He was treated in Nursing Home where he was recorded to have died of cancer. It is virtually conceded by the learned

counsel for the appellant that the cancer cannot be related to stress and strain undergone through employment. But stress and strain has resulted in

death of the husband of the claimant. Therefore, it can be connected with the employment and as such, it is causally connected.

Mr. Bhattacharyya, learned counsel for the respondent, has referred to the decision in National Insurance Company Limited v. Susanta Das 1999

(2) CHN 226. In the said decision, this Court refused to interfere on the ground that the Judge had relied on the uncontroverted evidence adduced

on behalf of the employer and, therefore, it was a finding of fact based on evidence for which there is no scope for interference in an appeal u/s 30

of the Workmen''s Compensation Act. This decision applies only in case where the Court comes to findings that it does not involve any substantial

question of law and that it involves only question of fact. How far this decision would be applicable in the present case may be examined. As

discussed above, in the present case, we have found that the appeal involves question of law and as such this proposition of law does not help us

having regard to the facts and circumstances of this case.

Mr. Bhattacharyya had also relied on the decision of Parle Products Limited Vs. Subir Mukherjee, In this said decision, the test for determination

as to whether the accident could be held to have arisen out of employment is that the workman is, in fact, employed or performing the duties of his

employment at the time of accident. Another test would be that the accident occurred at or about the place where the performance of his duties

required him to be present. It is a case where the accident involved the reason common to all humanity and did not involve any peculiarity or

exceptional damage resulting from the nature of employment or where the accident was the result of an added peril to which the workman, by his

own conduct, exposed himself and which peril was not involved in the normal performance of the duties of his employment This decision had relied

on the decisions in the case of Armstrong Withworth & Co. v. Redford 1920 AC 757 at 780. Mcculhum v. North Umbrain Shipping Company

1932 147 LT 361 and Cardillo v Liberty Mutua Ins. Company 330 US 469. In order to arrive at the above conclusion, it had also relied on a Full

Bench derision of the Assam High Court in Assam Railways and Trading Co. Ltd. Vs. Saraswati Devi and Smt. Rita Devi and Others Vs. New

India Assurance Co. Ltd. and Another, .

If we analyze the said decision, we find that it had pointed out some ingredients on the basis of which the question is to be tested. Here the alleged

injury has been alleged to have taken place in the vessel which test is satisfied, but whether the injury was the result of a peculiar or exceptional

damage resulting from the nature of employment or whether it was the peril involved in the normal performance of duties of his employment. As it

appears that the death having occurred on account of cancer, it is a reason common to all humanity. Therefore, it cannot be said to be a peculiar or

exceptional damage resulting from the nature of employment as discussed above. It is neither an added peril involved in the normal performance of

the duties. On the other hand, it was quite natural to contract disease outside the scope and nature of employment and if accident occurs due to

such disease, it cannot come within the purview of the Workmen''s Compensation Act.

Learned counsel for the appellant, on the other hand, relied on the decision in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmed

Issak, . In the said decision while i dealing with Section 3 of the Workmen''s Compensation Act, 1923, the Apex Court had held as follows:

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It is well established that under this section there must be some causal connection between the death of the workman and his employment. If the

workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a

result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has

accelerated the death or if the death was due not only to the disease but the disease coupled with the employment then it could be said that the

death arose out of the employment and the employer would be liable.

4. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be

accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in Clover Clayton & Co. v. Huges where

the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. A post mortem examination showed that there was a large

aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have

burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The Company Court Judge

found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such

as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both by

the Court of Appeal and the House of Lords:

No doubt the ordinary accident,"" said LORD LOREBURN, L.C. ""is associated with something external: the bursting of a boiler or an explosion in

a mine, for example. But it may be merely from the man''s own miscalculation, such as tripping and falling. Or it may be due both to internal and

external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the

human frame itself, such as straining of muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight, it would properly be

described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident.

With regard to LORD MACNAUGHTEN''S definition of an accident being ""an unlocked for mishap or untoward event which is not expected or

designed"" it was said that an event was unexpected if it was not expected by the man who suffered it, even though every man of common sense

who knew the circumstances would think it certain to happen.

A plain reading of the said decision shows that if the disease is the result of wear and tear of his employment, no liability can be fixed on the

employer. If the employment contributes to the cause or acceleration of death and that the death is due not only to the disease but the disease

coupled with the employment, then it could be said that death arose out of the employment. However, if we apply the test, in this case, we cannot

say that the disease was coupled with the employment nor that it could have been accelerated.

I Learned counsel for the appellant had relied on the decision in Assam Railways and Trading Company Limited v. Saraswati Devi 1958 (65) ACJ

394 . In the said case, it was held that a person having died of heart attack, but having regard to the nature of the work it could not be related to

the disease though heart attack preceded the fall. Therefore, this decision does not help us in the present case where the death can be remotely

connected with the employment when the death occurs due to cancer, which is a disease about which nothing can be predicted. Learned counsel

for the appellant had also relied on the decision in United India Insurance Co. Vs. C.S. Gopalakrishnan and Another, This judgment has dealt with

the question at length relying on various decisions. In the said decision, it was held that the stress and strains due to the work is contributory to the

death and as such is causally connected with the employment. This principle is not in dispute. But the question is as to how the principle can be

attracted in given facts and circumstances of the case. Applying the said test, we are unable to satisfy ourselves that in the present case, the injury

could be connected to employment and that it had happened due to stress and strains undertaken by the husband of the appellant in course of his

employment.

In the case of Zubeda Bano and others Vs. Maharashtra State Road Transport Corp. and others, it was held that in the absence of any direct

evidence about happening of the incident and that since the employer failed to examine any witness or produce any record to substantiate its plea

that the employer is not responsible, an adverse inference ought to have been drawn against the corporation and in such circumstances, it was held

that the death of the deceased arose out of and in course of employment. But this decision is distinguishable in the facts and circumstances of this

case. Inasmuch as, here the employer had adduced evidence and put material -documents and as such no adverse inference can be drawn.

The learned counsel for the appellant had also relied on the case of United India Insurance Co. Ltd. Vs. Yasodhara Amma and Another, . In the

said case, Kerala High Court held that a person having become actually ill in course of employment though such illness was not a; serious injury to

the heart, yet it could be related to since stringently driving of the vehicle from one place to another accelerated his illness and resulted into death.

Thus, there was direct evidence to come to the conclusion that the stress and strains related to the employment and resulted into an accident. Such

ingredients are absent in the present case. On the other hand, as we have already found that stress and strains cannot result into cancer, therefore,

this decision does not help us. He had relied on the decision in Tejubai v. General Manager, Western Railway, Bombay and Ors. 1983 (46) FLR

1 . This case also concerns a Driver driving in the Railways. While so driving, he felt pain at one station and he took rest. Then the train proceeded

to another station and again he felt pain and then he was taken to Hospital. However, he was discharged from the Hospital but subsequently he

developed pain and died at the Railway quarter. In this case, it was held that it was connected with the employment. As discussed above, the facts

are distinguishable where we cannot connect injury with the employment.

Conclusion:

10. As discussed above, in the present case, applying the test enumerated, the disease could not be causally connected with the employment on

the basis of the material available on record. Neither it would be established that the death was due to the acceleration or aggravation of the

disease on account of employment. Nor the disease could be coupled with the nature of hazard of the employment nor was it a result of peril to

which the employee was exposed.

ORDER

11. For all these reasons, we are unable to persuade ourselves to agree with the contention of the learned counsel for the appellant. The appeal,

therefore, fails and is accordingly dismissed.

12. There will be no order as to costs.

13. Let the Lower Court records, if arrived, be sent down forthwith.

14. Xerox certified copy of this order, if applied for, be given within 7 days.