

(2009) ACJ 2345

Calcutta High Court

Case No: F.M.A. No. 452 of 2005

Charan Bala Biswas

APPELLANT

Vs

Shipping Corporation of
India Ltd. and Another

RESPONDENT

Date of Decision: April 18, 2008

Acts Referred:

Merchant Shipping Act, 1958 & Section 98#Workmens Compensation Act, 1923 & Section 3, 3(1)

Citation: (2009) ACJ 2345

Hon'ble Judges: Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Upendra Nath Roy and R. Upadhyay, for the Appellant; Jayanta Bhattacharya, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

This first appeal is at the instance of a claimant in the proceedings under the Workmen's Compensation Act and

is directed against an award dated 5.5.2000 passed by the learned Commissioner, Workmen's Compensation, Second Court, West Bengal in

Claim Case No. 728 of 1994, thereby rejecting the application filed by the appellant.

2. The case made out by the appellant in the application claiming compensation may be summed up thus:

(a) One Moni Mohan Biswas, since deceased, the husband of the appellant, was a donkeyman/greaser, C.D.C. No. 20031, a workman

employed by the respondent, received personal injury by an accident on 18.4.1991, arising out of and in course of his employment, resulting in his death on 23.8.1992.

(b) The cause of the injury was that while the deceased was working under the respondent in the vessel, named Ex-MV "Vishva Pankaj", due to

strenuous nature of the duty, he suddenly became sick and fell down in the ship at the Bombay Port, causing serious injury in his chest. After the

said accident, he was hospitalised at St. George Hospital, Bombay and thereafter was transferred to May Flower Nursing Home, Calcutta for

further treatment and ultimately, he was declared permanently unfit for sea service by the respondent on 3.9.1991. Lastly, he expired on

23.8.1992 due to the said accident.

(c) The monthly wages of the deceased varied between Rs. 4,600 and Rs. 4,700. The applicant, accordingly was entitled to receive a lump sum

payment of Rs. 2,94,367 (death compensation as per N.M.B. Agreement, 1992).

3. The application was contested by the respondent by filing written statement and the defence taken by the respondent may be summarised thus:

(i) The respondent was not an employee in Shipping Corporation of India Ltd. He only served for a particular period under the article of

agreement and at the time of his death he had no connection whatsoever with Shipping Corporation of India Ltd.

(ii) The application was barred by limitation and the ground taken for condonation of delay was not true.

(iii) It appeared from the record that on 18.4.1991, the deceased suffered from myocardial infarction and he was properly treated at Bombay and

thereafter at Calcutta. Subsequently, on 3.9.1991 he was declared unfit for sea service. Thereafter, on 23.8.1992 when he was not under the

employment of Shipping Corporation of India Ltd. he died due to cardiorespiratory trouble which in no way can be attributed to any injury during

his employment.

4. At the time of hearing, the appellant gave evidence in support of her claim, while Gunendra Nath Ghosh, an Assistant Manager attached to

Shipping Corporation of India deposed in opposing the claim of the appellant.

5. The learned Commissioner, by the award impugned herein, dismissed the claim application on the ground that there was no material to show

that there was any accident arising out of the employment and it appeared that the deceased died long after the termination of his service. The

learned Commissioner, however, found that the appellant had made out sufficient cause for not filing the application within the period of limitation.

6. Being dissatisfied the claimant has come up with the present appeal.

7. Mr. Roy, learned advocate appearing on behalf of the appellant, laboriously contended before us that it was apparent from the materials on

record that due to, strenuous work of a donkeyman/greaser, the employee had fallen on the floor of the ship resulting in a heart attack. According

to Mr. Roy, the learned Commissioner totally overlooked the fact that exhausting nature of the duty of a donkeyman/greaser is the cause of the

death of the employee, which arose out of his employment.

8. In support of his contention, Mr. Roy relied upon a decision of a Division Bench of this Court in the case of Shipping Corporation of India Ltd.

Vs. Kasturibai Pati, and that of the High Court of Kerala in the case of Chief Secretary, State of Kerala Vs. Ramaniamma and Another, .

9. Mr. Bhattacharya, the learned advocate appearing on behalf of the respondent has opposed the aforesaid submission of Mr. Roy and has

contended that it has been clearly established from the materials on record that the employee had a heart attack for which he was adequately

treated at the cost of the employer and long thereafter, even after the termination of his service, he breathed his last and, therefore, the widow of

the employee was not entitled to claim any compensation for the said death.

10. Therefore, the question that falls for determination in this appeal is whether the learned Commissioner committed any substantial error of law in

dismissing the claim application in the facts and circumstances of the case?

11. In order to attract the provision of payment of compensation under the Workmen "s Compensation Act (hereinafter to be referred to as "the

Act") for death, it is necessary that there must be a personal injury caused to a workman by an accident arising out of and in course of his

employment resulting in death as provided in Section 3 of the Act.

12. In the case before us, it has appeared from the evidence on the record that on 18.4.1991 the workman while he was working in the ship all of

a sudden, started perspiring profusely and felt pain in the middle of his chest. He was immediately sent to St. George Hospital, Bombay, where the

illness was diagnosed to be myocardial infarction. He was treated in the said hospital for some days and subsequently, he was sent to Calcutta and

was admitted in May Flower Nursing Home. It further appears that the employer declared him unfit for the sea service on 3.9.1991 in view of his

heart trouble and thereafter on 23.8.1992 he died due to such heart ailment.

13. It is true that no material has been placed before the court showing that there was any accident in the ship on 18.4.1991 nor was there any

evidence of apparent injury on the body of the employee. If an employee in the course of his employment simply suffers a heart attack, that fact by

itself, cannot be a ground for getting compensation in terms of Section 3 of the Act unless such heart attack is the outcome of an accident arising

out of or in course of his employment.

14. In this connection, we may profitably refer to the following observations of the Apex Court in a recent decision in the case of Jyothi Ademma

Vs. Plant Engineer, Nellore and Another, in dealing with a case of heart attack during employment:

Under Section 3(1) it has to be established that there was some causal connection between the death of the workman and his employment. If the

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

wear and tear of the 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 also the disease coupled with the employment, then it can be said that death arose out

of the employment and the employer would be liable.

(Emphasis added)

15. In the case before us, it is not the case of the employer that the workman was previously suffering from any heart disease. According to

Section 98 of the Merchant Shipping Act, 1958, there is no scope of employing a medically unfit person in the employment of the ship and once a

seaman is found to be medically unfit to perform the nature of duties he is entrusted with, the employer has a duty to declare him as unfit for the

job. In this case, after the workman had a heart attack, he was declared unfit. Therefore, we can reasonably presume that he had no heart ailment

prior to 18.4.1991, the date of heart attack; otherwise, the employer would not permit him to do the job in question.

16. It has further been established that the nature of job of a donkeyman/greaser is a strenuous job and for that reason, after the illness had been

discovered, he was never allowed to join and ultimately, declared unfit for the job.

17. Therefore, we can safely conclude that the employee not having any prior heart ailment and he having been required to do the tiring job of a

donkeyman/greaser, "the employment is a contributory cause or has accelerated the death" and "the death was due not only to the disease but also

the disease coupled with the employment" even if he had any previous heart disease at all and in that situation, the employer was liable to pay

compensation as laid down by the Apex Court in the aforementioned case. In that particular case before the Supreme Court, the workman was

suffering from heart ailment and it was further established that his duty was only to switch on and switch off the machines which was not at all

strenuous job and for that reason, by applying the aforesaid test, the Supreme Court held that the death had no connection with his employment; in

the case before us, the workman was found to have no previous ailment and that is why he was entrusted with the job but the moment he was

found to have heart attack, he was declared unfit in view of the tediousness of the job and thus, the employment is the contributory cause of or at

least, has accelerated the death.

18. We also do not find any substance in the contention of the employer that as at the time of death, the deceased was not an employee of

Shipping Corporation of India Ltd., it had no liability. The law does not require that at the time of death, the victim must be in the roll of

employment. All that is necessary is that the accident must be in course of and arising out of the employment, which is the contributory cause or

which has, at least, accelerated the death of the workman and the claim application must be presented within the period of limitation; if, however,

the same is filed beyond the period of limitation the delay must be satisfactorily explained. In this case, the learned Commissioner has condoned the

delay being satisfied with the explanation given by the appellant and the employer has not challenged such finding before us. Even if the same had

been challenged, there was no scope of interference with the finding of the Commissioner in this appeal where we can interfere only in case of

substantial error of law committed by the learned Commissioner.

19. The finding of the learned Commissioner on the question of condonation is quite reasonable and, at any rate, cannot be branded as a perverse

finding nor is such finding based on no evidence.

20. On consideration of the entire materials on record we find that the learned Commissioner while dismissing the claim of the appellant did not

properly construe the meaning of the phrase "accident arising out of and in course of employment" in the light of the decision of the Supreme Court

in the case of Jyothi Ademma Vs. Plant Engineer, Nellore and Another, which amounted to substantiate error of law and accordingly we set aside

the order impugned.

21. There is no dispute that the monthly wages of the deceased varied between Rs. 4,600 and Rs. 4,700 at the time of the accident. The applicant,

accordingly, is entitled to receive a lump sum payment of Rs. 2,94,367 as death compensation as per N.M.B. Agreement, 1992.

22. We, accordingly, allow this appeal and direct respondent to pay Rs. 2,94,367 as death compensation with interest from the date of filing the

application at the rate of 12 per cent per annum till 31.12.1999 and thereafter at the rate of 8 per cent per annum till the actual payment. The

amount be paid within two months from today.

23. In the facts and circumstances, there will be however, no order as to costs.

Rudrendra Nath Banerjee, J.

24. I agree.