The Superintending Engineer, Maharashtra State Electricity Board, The Executive Engineer, Maharashtra State Electricity Board (O and M), Rural Division and The Assistant Engineer, Maharashtra State Electricity Board (O and M), Sub-Division Vs Smt. Susheela V. Dhongade and Others

First Appeal No. 588 of 1993

Court: Bombay High Court

Date of Decision: June 11, 2004

Acts Referred:
Electricity (Supply) Act, 1948 â€" Section 5#Workmens Compensation Act, 1923 â€" Section 2(1), 3, 30

Citation: (2005) ACJ 1024 : (2004) 5 BomCR 37 : (2005) 104 FLR 607 : (2004) 4 MhLj 997

Hon'ble Judges: Nishita Mhatre, J

Bench: Single Bench

Advocate: Prashant Chavan, instructed by Little and Co, for the Appellant; T.S. Ingale, for the Respondent

Judgement

Nishita Mhatre, J.
This Appeal arises under Workmen''s Compensation Act. The deceased Vishwas S. Dhongade was employed with the

Appellants since 1966. Although designated as. a clerk, he was required to work as a meter reader which involved visiting the premises of the

consumers and reading the meters at various locations. These locations included residential houses, farms and factories in the area. The area

consisted of several villages within a range of 20 to 25 kms. The deceased applied for leave which was sanctioned upto 31.5.1989. On

26.5.1989, since the deceased had returned early from the sanctioned leave, the deceased reported for duty on 26.5.1989. He was served with

an order of transfer which the deceased was aware was going to be issued to him. On receipt of the transfer order, the deceased suffered a heart

attack in the premises of the appellant. Efforts to revive him failed. The heirs of the deceased that is the Respondents herein filed application under

the Workmen''s Compensation Act claiming compensation for the accident which occurred out of and in the course of employment. The

Commissioner granted the application partially. The compensation granted was Rs. 67,776/- alongwith 6% interest and penalty of 50%. This

amount has already been deposited by the appellants as required u/s 30 of the Workmen''s Compensation Act. The amounts payable to all except

the minor respondents have been withdrawn by the respondents.

2. Two contentions have been raised by , Mr. Chavan, learned Counsel for the Appellants, namely, that the deceased could not be considered a

workman under the Workmen''s Compensation Act as he was employed as a clerk. He submits that the Act is not applicable at all to the clerks

and, therefore, no compensation is payable to the respondents. The next contention is that the death of the deceased was not as a result of an

accident arising out of and during the course of employment. He submits that although the death occurred on the premises, it was on a day when

the deceased was on sanctioned leave. Moreover, according to the learned Counsel, there is no evidence on record to demonstrate that there was

any causal connection between the death and employment of the deceased. The learned Counsel relies on the judgment in the case of Mackinnon

Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmed Issak, ; J.F. Pareira Vs. Eastern Watch Company Ltd., in support of the submission that

unless there is evidence to show that there is causal connection between the accident and the employment, the appellants could not be foisted with

the liability of payment of compensation under the Act.

3. On the other hand) Mr. Ingale, learned Advocate for the Respondents, submits that although the deceased was designated as a clerk, he was

made to work as a meter reader which involved strenuous work for the deceased. He submits that the designation is not what is material and

instead what is required to be noticed is the nature of work. According to the learned Advocate, the deceased is covered by the definition of the

workman in Section 2(1)(n) r/w Schedule II of the Workmen''s Compensation Act. He submits that entry (xix) in Schedule II covers the nature of

work that the deceased was performing and, therefore, the respondents are entitled to the compensation granted. The learned Advocate then

submits that the nature of work which the deceased was required to perform was so strenuous that it affected the heart of the deceased and the

transfer order was like the proverbial last straw on the camel''s back. Mr. Ingale submits that in the case of Diva Kaluji Vs. Silver Cotton Mills

Ltd., , the Division Bench of this Court has held that even though there was no clinical examination of the workman and he dies on the spot, such

death can be considered to having been caused due to the nature of employment which was arduous and strenuous.

4. On a perusal of the order of the Commissioner, I find that the Commissioner has erred in coming to the conclusion that the deceased was a

workman since he was a person employed in an occupation ordinarily involving outdoor work of any municipality or of any District Local Board.

There is no evidence on record to show that the appellants are a District Local body. The appellants are established u/s 5 of Electricity (supply)

Act, 1948 and therefore, cannot be considered as a district or local body, much less, a municipality. Therefore, although the deceased was doing

the job of meter reading, the appellants are neither a municipality or District Board) the deceased could not have been considered to be a

workman. However, there is no dispute that the nature of work performed by the deceased was that of meter reading. A meter reader under the

Maharashtra State Electricity Board Service Regulations is considered to be a line staff and a technical person. In any event, what is required to be

considered by the Commissioner under the Workmen''s Compensation Act is not just the nomenclature of the job of the deceased but the nature

of the work that he was performing. Admittedly, the nature of the work was that of meter reading, although the designation given to the deceased

was that of a clerk. Therefore such a person would be covered by entry (xix) in Schedule II of the Workmen''s Compensation Act.

5. The next submission of the learned Counsel for the appellants is that the death occurred in the premises of the appellants. There is no causal

connection between the death and the employment and, therefore) it could not be said that the death was arising out of the employment which is

one of the ingredients of Section 3 of the Workmen''s Compensation Act. On a perusal of the evidence, I find that except the evidence of the

deceased workman that he was required to travel long distances for performing the work of meter reading, there is no evidence of any medical

expert to demonstrate that such work was so strenuous that it could have resulted in the heart attack. The evidence of the wife does indicate that

the workman was required to visit the premises of all the consumers in order to read the meters. These premises were in a radius of about 20 to 25

kms. There is evidence on record to show that he was required to visit residential agricultural and industrial premises in order to read the meters.

However, there is nothing on record to show that the heart attack occurred due to the nature of work performed by the workman concerned.

6. In the case of Mackinnon Mackenzie & Co. Pvt. Ltd. (supra), the Apex Court held that the burden of proof rests on the workman to prove that

the death was caused on account of the employment as well as in the course of employment. The Apex Court has observed that the evidence need

not be direct but can be inferred when the facts proved justify the inference. However, at the same time, the Commissioner must not surmise,

conjecture or guess but draw an inference from the proved facts, so long as it is a legitimate inference. The Apex Court has observed that for the

injury or death to fall within the purview of the Act, the death or accident must arise out of and in the course of employment. The Apex Court has

held if the accident occurs on account of a risk which is an incident of employment, the claim for compensation should succeed unless the workman

has exposed himself to such risk by his own imprudent act. The Commissioner must consider (i) whether the accident arose out of the course of

employment and (ii) whether it arose during the course of employment. In the present case, the Commissioner has not considered whether there is

an accident or death arising out of employment. What weighed with the Commissioner was that the death occurred at the place of employment and

therefore, during the course of employment. Whether the first ingredient was fulfilled has not been considered by the Commissioner.

7. In the case of Bai Diva Kaluji v. Silver Cotton Mills (supra), the Division Bench of this Court considered the case where the workman collapsed

in the weaving department of the Mill after working for about six hours. He was removed immediately to the hospital and at about midnight, he

died. The Doctor who examined the workman was called in to give his expert evidence on behalf of the applicant. He opined that if a weaver

works for about eight hours in a textile mill in the weaving department and collapses, unconscious and dies within about six hours, it is likely that he

must have died of heart failure. The Court has observed that the hypothesis put to the Doctor, that if the workman was suffering from heart disease

and he worked for eight hours on a hot day in the mill it must have obviously caused strain and accelerated his death, was correct. Mr. Ingale urges

that this view should be applied in the present case. However, the submission of Mr. Ingale cannot be accepted because in the instant case there is

no medical evidence at all nor is there any evidence to indicate that the job of meter reading was so strenuous and arduous that it could affect the

heart due to which the deceased was suffering from a heart ailment. There is also no evidence on record to demonstrate that the transfer order was

issued to the workman caused aggravation of the heart disease of the workman, causing him to collapse in the premises of the appellant. Therefore,

there is no causal connection between the heart attack which caused the death of the deceased with the employment. The finding of the

Commissioner that the deceased died out of an accident arising out of and in the course of employment cannot be accepted.

8. However, in the instant case, the appellants have already paid the awarded amount to the respondents. Over 10 years have elapsed since then.

Therefore, in my view, to direct the respondent to return that amount to the appellants would not be proper. Appeal is partly allowed accordingly.

The Appellants shall not recover the amount already paid to the Respondents. The appellants may withdraw any amount which is deposited by

them with the Commissioner for Workmen"s Compensation if not already paid to the Respondents.