



2023:KER:65782

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

SATURDAY, THE 28TH DAY OF OCTOBER 2023 / 6TH KARTHIKA, 1945

MFA (ECC) NO. 136 OF 2018

AGAINST THE ORDER DATED 25.01.2018 IN ECC NO.405 OF 2016(WCC

NO.196 OF 2007) IN THE COURT OF EMPLOYEES COMPENSATION

COMMISSIONER (INDUSTRIAL TRIBUNAL), THRISSUR

APPELLANTS/APPLICANTS:

1 LEELA
AGED 56 YEARS
W/O. LATE VASU, VAMBILIKUNNEL HOUSE,
P.O.ENGINEERING COLLEGE, THRISSUR.

2 SARITHA
D/O.LATE VASU, VAMBILIKUNNEL HOUSE,
P.O.ENGINEERING COLLEGE, THRISSUR.

BY ADV.
V.C.MADHAVANKUTTY

RESPONDENTS/OPPOSITE PARTIES:

1 M.K.SUKUMARAN
S/O.KUTTAN, MANGAPARAMBIL HOUSE, PONNORE,
PARAPPUR, THRISSUR - 680006.

2 THE ORIENTAL INSURANCE COMPANY LTD.
GUUVAYOOR ROAD, KUNNAMKULAM, THRISSUR - 680 006.

BY ADVS.
SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN
SMT. MAYA N R, GOVERNMENT PLEADER

THIS MFA (ECC) HAVING COME UP FOR FINAL HEARING ON
19.10.2023, THE COURT ON 28.10.2023 DELIVERED THE
FOLLOWING:



MFA (ECC) No.136 of 2018

P.G. AJITHKUMAR, J.**“C.R.”**

M.F.A(ECC) No.136 of 2018

Dated this the 28th day of October, 2023**J U D G M E N T**P.G.Ajithkumar, J.

This is an appeal under Section 30 of the Employees Compensation Act, 1923. The appellants assail the order of Employees Compensation Commissioner (Industrial Tribunal), Thissur in E.C.C No.405 of 2016 (WCC No.196 of 2007).

2. The appellants are the widow and daughter of Sri.Vasu who died on 01.02.2006 following an accident. He was driving taxi car bearing Registration No.KEH 9783 along the Swaraj Round, Thrissur on the said date. At about 12.15 p.m he felt chest pain and collapsed resulting in the car dashing against an electric post. He was rushed to the Aswini hospital, Thissur, but he succumbed to the injuries. The doctor who examined him informed that Sri.Vasu died due to heart attack. The appellants filed a claim petition before the Employees Compensation Commissioner under the Employees Compensation Act claiming compensation from the 1st



MFA (ECC) No.136 of 2018

respondent, who is the owner of the vehicle and the 2nd respondent, the insurer. The 1st respondent did not chose to contest the matter. The 2nd respondent resisted the claim on several grounds. It was admitted that the vehicle was insured. But it was contended that the 1st respondent was not the owner having transferred the vehicle in favour of Sri.Vasu as early as on 17.03.2004. The further contention of the 2nd respondent was that the death was due to heart attack and not on account of an accident arising out of and in the course of the employment.

3. The appellants tendered oral evidence and documentary evidence. AWs 1 and 2 were examined and Exts. A1 to A5 were produced. The 2nd respondent produced Ext.M1, which is the insurance policy in relation to the vehicle involved in the incident. The learned Commissioner raised following issues;

1. Whether there was any employer-employee relationship between the first opposite party and the deceased?
2. If the first issue is found in favour of the applicants, whether there was any 'causal connection between



MFA (ECC) No.136 of 2018

the death of the deceased and his employment?

3. Whether the opposite parties are liable to pay compensation, interest and funeral expense to the applicants?
4. If found liable what is the amount of compensation, percentage of interest, funeral expense liable to be paid by the opposite parties to the applicants?
5. Orders as to costs?

4. After considering issues 1 to 3 together, the learned Commissioner answered that the appellant failed to discharge their initial burden that the death of Sri.Vasu was the result of an accident and in the course of his employment. In the light of that finding, other issues were not answered and the application was dismissed.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent. The 1st respondent did not chose to appear before this Court.

6. In the impugned order, the definite findings are that the deceased Sri.Vasu was an employee of the 1st respondent and while driving car bearing Registration No.KEH 9783 he met with the accident on 01.02.2006. On the basis of the



MFA (ECC) No.136 of 2018

evidence tendered by AW1 and from the fact that the registration certificate of the vehicle stands in the name of the 1st respondent, the learned Commissioner had arrived at such a finding. Ext.A2 is a copy of the registration certificate. I am of the view that there is nothing in evidence to take a different view. What remains is whether or not the finding that the death of Sri.Vasu was not on account of the accident arising out of and in the course of his employment is correct.

7. AW2 is a witness to the incident. He stated that Sri.Vasu was exhausted since he had to replace a tyre of his car on the morning of the fateful day and that resulted in his falling ill and the car driven by him dashing against an electric post on the road side. The 2nd respondent has no contest also about the accident. Therefore it stands proved that while Sri.Vasu was driving car bearing Registration No.KEH 9783, he was involved in an accident at around 12.15 p.m on 01.02.2006 and when he was taken to Aswini hospital, he was pronounced dead.

8. Acting upon the opinion given by the doctor that the cause of death of Sri.Vasu was heart attack, the learned



MFA (ECC) No.136 of 2018

Commissioner concluded that his death has not even a casual connection with his employment. The Apex Court in **Param Pal Singh v. National Insurance Co. Ltd and another [2013 ACJ 526]** considered a similar question. There, the deceased was driving a truck. He felt chest pain. He stopped the truck safely. Immediately he was rushed to the hospital. But he died. After postmortem it was opined that the cause of the death was heart attack. In that factual background it was contended that death of the deceased was due to natural causes and the death had no casual connection to his employment. The Apex court expounded the proposition of law in relation to the liability of the employer under Section 3(1) of the Employees Compensation Act as follows:

“The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause, that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his



MFA (ECC) No.136 of 2018

lifespan. Such an 'untoward mishap' can therefore be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employers' trade or business."

9. In the instant case, it has come out that the deceased was driving cars for about 40 years. He was aged 60 years at the time of death. A person involved in the avocation of driving for such a long period suffered a heart attack while he was driving the car. The heart attack he suffered while driving had resulted in the accident of his car hitting an electric post. The proximate reason for the death may be heart attack. But, had he not suffered a heart attack, such an accident would not have happened.

10. The view taken by the Apex court is that the employer was liable to compensate even if the deceased was not actually driving the truck. When in the course of his driving, he felt discomfort and later, in the hospital, he died due to heart disease, he being a driver for long years subjected to its stress and strain, the death would amount an accident arising out of and in the course of his employment.



MFA (ECC) No.136 of 2018

The position here is more in favour of the appellants. Following discomfort, the deceased collapsed on the driver's seat and the accident ensued, resulting in his death. In the light of the law laid down by the Apex court, it can only be held that the death of Sri.Vasu was in the accident arising out of and in the course of his employment with the 1st respondent.

11. The learned Commissioner took the view that the death of Sri.Vasu has no casual connection with his employment by relying on the decisions of the Apex Court in **Regional Director, ESI Corporation and another v. Francis D.Costa and another [1996 (6) SCC 1], Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Another [AIR 2007 SC 248] and Branch Manager, National Insurance Co.Ltd v. Shahina and others [2017(5) KHC 407]**. In the said decisions, the law laid down is not different. It was held that there must be a casual relationship between the accident and the employment. If the accident had occurred on account of the risk, which can be termed as an incident of employment, the accident can be



MFA (ECC) No.136 of 2018

said to be one arose out of and in the course of the employment. Such a beneficial interpretation is apposite since the Employees Compensation Act is a social legislation intended to compensate employees of certain classes of employers for injury by accident. In the light of the law laid down by the Apex Court in **Param Pal Singh** (supra); facts of that case are similar to this case, there is no escape but to find that Sri.Vasu died in the accident that arose in the course of his employment. Therefore the contrary findings in the impugned order are liable to be set aside.

12. The learned Commissioner although framed issues including, what shall be the amount of compensation, no finding on the other issues was entered into. It is seen that evidence was let in by the appellants concerning the claim of compensation also. It is true that all the provisions of the Code of Civil Procedure, 1908 are not made applicable to the proceedings before the Employees Compensation Commissioner. But the general principles of trial mandate the Commissioner to answer all the issues, once a full fledged enquiry on all the issues is held. When the learned



MFA (ECC) No.136 of 2018

Commissioner omitted to answer the issue concerning quantum of compensation, the only option is to remand the matter with a direction to the Commissioner to answer the remaining issues.

Accordingly, the order of the Employees Compensation Commissioner, Thrissur, dated 25.01.2018 in E.C.C No.405 of 2016 is set aside by holding that the appellants are entitled to claim compensation on account of the death of Sri.Vasu in the accident occurred on 01.02.2006. The learned Commissioner shall restore the matter on file and decide the remaining issues as expeditiously as possible, at any rate, within four months from the date of receipt of a certified copy of this judgment.

Sd/-

P.G. AJITHKUMAR, JUDGE

PV