1977 GLR 681 : 1977 (2) LLJ 510

GUJARAT HIGH COURT

Hon'ble Judges:D.A.Desai, J.

Amubibi, Wd/o.Sheikhamu Sheikhmahomed Versus Nagri Mills Company Limited

FIRST APPEAL No. 658 of 1967 ;
Application No. 116 of 1960 ; *J.Date :- AUGUST 10, 1976

- EMPLOYEES COMPENSATION ACT, 1923 Section - 30(1)

WORKMEN'S COMPENSATION ACT, 1923 - S. 30(1) - expression 'substantial question of law' in S. 30(1) - meaning of - jurisdiction of High Court - clear violation of provisions of Evidence Act - non-consideration of material circumstances - involvement of substantial question of law - workman died on account of coronary insufficiency - applicant claimed compensation on ground that deceased died on account of injury suffered in accident arising out of and in course of his employment - liability of employer to pay compensation - held, expression 'substantial question of law' would cover case in which Commissioner had clearly misdirected himself on question of law - substantial question of law would be involved, if such finding results in gross injustice by defeating claim of workman - substantial question of law fully made out - this court can interfere with miscarriage of justice - if, workman shown to have died on account of coronary insufficiency one safely assume that it was result of strain or fatigue caused by continuous work - respondent is directed to pay compensation with interest - appeal allowed.

Imp.Para: [6] [7] [10]

Cases REFERRED TO :

1. Ramlal Jawahirlal V. Smt. Leela Bai And Others, 1972 2 LLJ 598
2. Sarat Chatterjee & Co. (Pvt.) Ltd. V. Khairunnessa, 1968 1 LLJ 320

Cited in :

1. (Referred To) :- Oriental Insurance Company Limited Vs. Budhabhai @ Ramanbhai Shanabhai, 2009 (5) GLR 3991 : 2009 JX(Guj) 786 : 2009 GLHEL_HC 222170
2. (REFERRED TO) :- Broach Municipality Vs. Raiben Chimanlal And Others, 1986 GLH 697 : 1986 (2) GLR 881 : 1993 (3) LLJ 90 : 1989 LabIC 73 : 1987 (54) FLR 93 : 1987 ACJ 698 : 1986 (2) CLR 398 : 1986 GLHEL_HC 201914
3. (REFERRED TO) :- Amri Naran W/o Naran Kara And Another Vs. Suken Employees Coop, Society Limited, 1986 GLH 730 : 1986 (2) GLR 1221 : 1993 (3) LLJ 92 : 1987 LabIC 1197 : 1987 (54) FLR 130 : 1987 ACJ 451 : 1987 (2) LabLN 704 : 1986 GLHEL_HC 200559
4. (Referred to) :- Sakinabibi Vs. Gujarat State Road Transport Corporation, 1993 (1) ACC 171 : 1990 GLHEL_HC 222407

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5. (REFERRED TO) :- Chiman Surakhia Vasava Vs. Ahmed Musa Ustad And Others, 1986 GLH 812 : 1986 (2) GLR 1083 : 1993 (3) LLJ 431 : 1987 (54) FLR 85 : 1987 (1) SLR 126 : 1987 (1) CurLR 311 : 1987 ACJ 161 : 1987 (1) TAC 31 : 1986 (2) LabLN 921 : 1986 (2) ACC 9 : 1986 GLHEL_HC 202330
6. (referred to) :- Gangaben Wd/o.Chhaganbhai Havabhai Vs. Regional Director, E.S.I.Corporation, 1995 (2) GLR 1506 : 1995 (2) GCD 742 : 1996 (3) LLJ 901 : 1996 ACJ 330 : 1997 (1) TAC 25 : 1995 (2) LabLN 1174 : 1997 (1) ACC 292 : 1996 (1) ACC 542 : 1995 GLHEL_HC 203554
7. (Referred to) :- Shubham Shipping Services Private Limited Vs. Sale Osman Sama, 2015 (1) GLR 11 : 2014 JX(Guj) 504 : 2014 AIJEL_HC 231484
8. (Referred to) :- Oriental Fire And Genl.Ins.Company Limited Vs. Sunderbai Ramji, 1999 (3) LLJ 265 : 1992 LabIC 1020 : 1992 ACJ 907 : 1992 (1) ACC 104 : 1990 GLHEL_HC 216289

Equivalent Citation(s):

1977 GLR 681 : 1977 (2) LLJ 510
JUDGMENT :-
D.A.DESAI, J.

1 Laws proverbial delay can be a cause of untold misery agony and torture to a poor litigant is best illustrated by the facts of this case.

2 Appellant is the original applicant before the Commissioner for Workmens Compensation Ahmedabad. She is the widow of one Shaikhamu Shaikhmahomed an unfortunate mill hand who happened to be engaged and employed by the respondent company. While serving with the respondent he was on duty on 3rd August 1960 in the second shift which commenced around 3.30 P.M. Shaikhamu left his house at 3-00 P.M. to report for duty at the textile mills of the respondent company. He entered the weaving department at the time appointed for starting of the second shift. He worked upto 5-30 P.M. when he was found lying in a passage near the weaving loom on which he was working. His colleague at the nearby loom one Ahmadbhai Avadhbhai Exh. 10 saw deceased Shaikhamu lying and he was taken to the dining shed where on examination he was found to be dead. Dead-body was taken to the Civil Hospital. One Dr. L. H. Acharya Ex. 12 carried out post mortem examination copy of the post-mortem notes is Ex. 12. He preserved viscera and sent it to the Chemical Analyser. In the meantime on receipt of the his to pathology report he gave his opinion as to the cause of death as heart failure due to acute coronary insufficiency. Subsequently he changed his opinion on receipt of the report of the Chemical Analyser and stated that death was due to arsenic poison. Applicant is the widow of the deceased. She filed application for recovering compensation from the employer respondent. To say the least the matter was scandalously conducted in that application was made on 3rd December 1960 and the Written Statement filed by the respondent was recorded on 27th January 1961 The matter was adjourned to as many as on 81 occasions commencing from 27th January 1961 and ending with 19th August 1967. An application made by the dependent widow for a paltry compensation of Rs. 3 500 before the Commissioner for Workmens Compensation was kept pen- ding for six years and was adjourned on as many as 81 occasions. This is sufficient to bring the judicial process into disrepute. To add to the agony I may also note that evidence was recorded in September 1962 and there- after matter was adjourned for five years before final order could be pronounced. To say the least this disc oses not only sorry but scandalous state of affairs.

3 The applicant claimed compensation on the ground that deceased Shaikhamu her husband died on account of an in jury suffered in an acci- dent arising out of and in course of his employment and therefore the employer is liable to pay the compensation.

4 At this stage it is necessary to note the facts which are not in dispute. Deceased Shaikhamu was a permanent employee of the respondent company. Presumably he must be serving with them for a long time. He reported for duty on 3rd August 1960 at 3-30 P M. when the second shift starts. He was attached to Looms Nos. 125 and 126. He took over from his colleague who was working in the first shift started operating the looms and he worked upto 5-30 P.M. when at that time his colleague working on the adjoining loom one Ahmadbhai Avadhbhai Exh. 10 saw him lying in the passage near the loom. He was taken to the dining shed where he was declared dead. These facts are not in dispute.

5 First question is whether the applicant has discharged the burden which rests on her to show that deceased Shaikhamu died on account of an injury suffered by him in an accident arising out of and in course of his employment. This was the gravamen of charge of Mr. A. N. Divecha learned Advocate who appeared for the respondent company. It was urged that there must be some causal connection established between the injury suffered in an accident and the employment of the workman and the risk must be incidental to the nature of employment. In support of this submission he relied on a decision of the Rajasthan High Court in MESSRS. RAMLAL JAWAHIRLAL V. SMT. LEELA BAI AND OTHERS 1972 II LLJ. 598. He also relied on a decision of the Division Bench of the Calcutta High Court in SARAT CHATTERJEE & CO. (PVT.) LTD. V. KHAIRUNNESSA 1968 I LLJ. 329. Apart from the authorities requirement of sec. 3 of the Workmens Compensation Act which speaks of employers liability for compensation cleary spells out a duty on the person claiming compensation to establish causal connection between the injury and the employment. In other words acci- dent must arise in course of employment meaning thereby as integral and in severable part of employment and the risk of injury must be incidental to employment itself. But having said this it must be made distinctly clear that word accident and injury need not be understood in a narrow constricted sense. By accident some times we mean some collision something which causes external injury. Accident generally must be understood as something unforeseen uncomprehended or that which could not have been foreseen or comprehended injury must be understood to mean that which imperils life or causes pain. Even where an employee is suffering from a disease and if employment causes acceleration of the disease either by strain or fatigue incidental to employment employer would none-the-less be liable for compensation. This again is well established by a catena of decisions.

6 Before applying this well established principle to the facts of this case let me dispose of one more contention of Mr. Divecha that it is not open to me to interfere with the findings of fact recorded by the learned Commissioner as the scope of appeal under sec. 30 of the Workmens Compensation Act is narrow and well defined. In other words it was urged that no appeal shall lie against an order made by the Commissioner un- less substantial question of law is involved in the appeal. What constitutes `substantial question of law has always been the subject matter of controversy in different Courts. In a very recent decision of the Division Bench of this High Court in Letters Patent Appeal No. 158 of 1973 decided on 6 February 1973 it has been observed that the expression substantial question of law used in the proviso to sec. 30(1) of the Act would cover a case in which the Commissioner had clearly misdirected himself on a question of law as to whether a notice of claim as required by law had been served on the employer. Examining the question as to whether a finding of fact can be interfered with the Division Bench observed that it is settled legal position that the

findings of fact in a case under Work-mens Compensation Act if it has been arrived at on th basis of circumstantial evidence without considering material circumstances which ought to have been considered or ignoring material circumstances or on mere conjectures or far-fetched inferences could surely be said to have been vitiated by error of law and a substantial question of law would be involved if such finding results in gross injustice by defeating the workmens claim which should have been allowed.

7 I would presently point out as to how the learned Commissioner completely misdirected himself by taking into consideration evidence which was wrongly admitted in record and on which he based the whole finding. If that evidence is held not to be properly admitted in record the finding recorded by the learned Commissioner would fall to the ground. The learned Commissioner has observed that the viscera preserved by Dr. Acharya who carried out post mortem examination was sent to the Chemical Analyser. He further observed that the Chemical Analyser sent his report. Chemical Analysers report was found as part of some bunch of documents which was though tendered but not proved by Dr. Acharya. This bunch is marked Exhibit 14. This Exhibit 14 included other documents. Now the Chemical Analysers report only records his opinion. That opinion is recorded in a report submitted by him. Chemical Analyser is an expert. Therefore his report contained the opinion of an expert. And this opinion of expert has been admitted in evidence and relied upon by the learned Commissioner without examining the expert. Can there be greater violation of provisions of the Evidence Act 6 to put it other way if hide-bound rules of Evidence Act did not apply and in fact should not apply to the proceedings under the Workmens Compensation Act was the Commissioner justified in looking at a scrap of paper thrown into the record by a person not authorised to do so and containing opinion of a person whose identity remained undisclosed ? Chemical Analyser reached his conclusion that the viscera of deceased Shaikhamu disclosed presence of arsenic in the quantity of 1.3 grains. He recorded his opinion based on observation in a report. That report is brought on record without examining the Chemical Analyser. A very feeble attempt was made to urge that no objection was taken to the Commissioner reading this report. I have already pointed out at the commencement of the judgement how the learned Commissioner has utterly carelessly dealt with this matter. The recorded evidence in 1962 and delivered judgement in 1967 Within these 5 years at what time he looked at the report it is difficult to gather. But assuming that he did look at the report to the knowledge of the applicant the applicant was represented by a member of the local trade union. We will have to assume that he was well versed in the intricate provisions of the Workmens Compensation Act and the Evidence Act. He knew or was presumed to know that an opinion of an expert is inadmissible unless expert is examined and gave reasons in support of the opinion. He could be cross-examined and probably in cross-examination he could be thoroughly exposed. 1 would presently point out some circumstances which honestly speaking have generated grave doubt in my mind about the truthfulness of the contents of this report. But even leaving aside that doubt for the time being and assuming that the report of the Chemical Analyser can be looked in as piece of evidence it has to be proved in the same manner in which an opinion of an expert is required to be proved. It can only be done except of course by consent of parties in the manner prescribed by law namely by first furnishing a copy to the other side. Conclusions therein recorded must be supported by reasons for the conclusion. The report must set out the test carried out to reach a conclusion and then offering himself for cross-examination. What the learned Commissioner has done is something which is unparalleled in a judicial proceeding. He reads the report and he does not care to find out who proved the report. And look at the interesting thing that the evidence discloses. Dr. Acharya who is not the author of the report reads a report made by some other expert whose personal identity remains undisclosed all throughout the proceedings. And by

reading it he says that he has now changed his earlier opinion and has acquired or adopted the opinion of some one who claimed to be Chemical Analyser and carried out same test. I need not illustrate distortion of evidence more brutally than what I have done here. To put it briefly the report of the Chemical Analyser is not proved. Dr. Acharya cannot read it. Dr. Acharya is not the author of the report. He cannot base his conclusion on a report of some other person. He cannot adopt that conclusion as his own because he has not carried out experiment himself. He did not know what tests were carried out. If in law I can read somebodys letter and give evidence on it there cannot be a worst case of hearsay evidence. Dr. Acharyas evidence would be good enough as hearsay evidence that deceased died on account of arsenic poisoning. Now the learned Commissioner has wholly based his judgement on a piece of paper not duly proved having no evidentiary value and non-suited the applicant after keeping the applicant awaiting for six long years. If this case does not permit me to interfere keeping in view the limited jurisdiction under sec. 30. I think sec. 30 should be ignored for all purposes. There could not he a better case where substantial question of law has been fully made out If I do not interfere with the miscarriage of justice I would be failing in my duty.

8 Just for the purpose of record I may also refer to all earlier precedent that occurred in the same manner. One Chothaji Becharji who was serving in Shri Arbuda Mills Limited reported for duty in the second shift commencing from 3-30 P.M. and worked there till 7-30 P.M. when he went to answer the call of nature. He was found lying in a lavatory unconscious after his absence came to light and inquiry was made and he was declared dead. Post mortem examination was done and viscera was preserved in which arsenic poison was recovered to the extent of 1.8 grain. Same defence of the company namely that this was a case of suicide. Same judgement by the same learned Commissioner matter being approached in the same illegal manner. First Appeal unfortunately came to be dismissed. The matter came in Letters Patent Appeal before a Division Bench of this High Court and examining both the ambit and scope of sec. 30 and right of the Court to interfere with at the Latters Patent Appeal stage it was held that the Court should and must interfere to redress the wrong. I am fortunate that this is First Appeal and the finding can be reversed. That precedent should help me to reach the same conclusion as far as the technical contention about the jurisdiction of this Court to interfere with the findings of fact is concerned.

9 Having disposed of all the contentions of Mr. Divecha it is now necessary to take a fresh look at the facts Respondent company does not say that on days just preceding the day on which deceased Shaikhamu died at the place of his service he was absent or he was not keeping well Even the applicant his widow does not say so The employee came to the place of service hale and hearty and he worked for a period of two hours when he fell unconscious just at the place where he was working. Dr. Acharya who had the benefit to carry out post mortem examination gave his opinion both from his own personal observation and finding and relying upon the his to pathologists report that the probable cause of death was heart failure due to acute coronary insufficiency. This opinion is the opinion of a person who carried out post mortem examination made his own observation filled in all the details in the notes of post mortem examination and reached and recorded a conclusion. A shifting of position that he adopted subsequently by relying on some other inadmissible scrap of paper may be ignored.

10 Mr. Divecha further contended that even if the deceased died on account of heart failure due to acute coronary insufficiency it is a case of natural death and there is no material to come to the conclusion that deceased died on account of an injury suffered by him in an accident arising out of and in course of his employment. This argument assumes that every

time when an employee claims compensation under the Workmens Compensation Act he must show some injury possibly of tangible character. He must show that the injury was caused on account of some accident which must again be of tangible nature. He must also show that no other cause of death intervened in the case. In other words injury was causa causans and not causa sine qua non .I am afraid that is not expected of the workman. The dependant of the workman has shown that workman reached the place of his service. He worked. In Dr. Acharyas estimate he was about 55 years of age. Mr. Divecha urged that at that age people naturally die even after the extended expectancy of life. I have no quarrel with Mr. Divecha that people may die or should die at the age of 55. But the deceased went to the place of his service. Not one question was asked in the cross-examination either of the widow or to the colleague who was working on the adjoining loom as to what happened between these two hours. Unfortunately deceased is not available to tell us his story. Leaving aside any technical consideration common course of human conduct or commonsense knowledge tells us that coronary insufficiency is generally the consequence of strain extra work fatigue. In the case of workman working on a loom in an artificial atmosphere of humidity (formerly called sweated labour) he is shown to have died on account of coronary insufficiency. Heart failure would be preceded by some sort of heart ailment may be heart attack. In any event if strain of work causes insufficiency that strain itself would be cause of death and it would be personal injury suffered by an employee in course of his employment. There is nothing to suggest that the man was unhappy at home that he had some personal problems that it caused mental strain. Here is a sweated labour working for eight hours on two looms standing all throughout and found lying unconscious at the place of service and the Doctors first and honest opinion was heart failure on account of acute coronary insufficiency. It would only mean that deceased died on account of personal injury in an accident arising out of and in course of his employment. No other conclusion is possible. It is not possible to reach any other conclusion. On this conclusion the dependant of the employee is entitled to an award of compensation as claimed in the application.

11 The applicant claimed compensation in the amount of Rs. 3500. It is denied for last 16 years and for excuses and causes which are thoroughly unjust. Therefore the amount must be paid by the respondent company with interest at the rate of 6 per cent. per annum from the date of application till realisation. Respondent do also pay costs before the Commissioner and in this Court.

12 The appeal is accordingly allowed. Respondent to pay Rs. 3500 with running interest at the rate of 6 per cent per annum from the date of application till realisation and costs both before the Commissioner and in this Court. Costs quantified at Rs. 300 before the Commissioner and Rs. 300 before this Court.

13 Order accordingly.

Shri K. S. Nanavati
Sr. Advocate