

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2013

CORAM:

THE HONOURABLE MRS.JUSTICE **S.VIMALA**

C.M.A.No.2144 of 2006
and M.P.No.1 of 2006

G.Amsaveni, Proprietor,
Sree Harikrishna Brick Works,
No.125, Chinthamani Road,
Chennai 600 102

... Appellant

..Vs..

Mrs. V.Komala
Wife of (Late) Varadhan
@ Varadharajulu

... Respondent

Civil Miscellaneous Appeal filed under Section 30 of The Workmen Compensation Act, to set-aside the order of the Deputy Commissioner of Labour I, Chennai – 6, the authority under the Workmen Compensation Act, dated 26.09.2005, in W.C.No.357 of 2003 (order copy being served on 31.03.2006).

For Appellant : Mr. Balan Haridas
For Respondent : Mr. S.Haridoss

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J U D G M E N T

Murder, whether tantamounts to accident, is the issue raised in this Appeal? If so, whether the accident (of murder) arose out of and in the course of employment, is yet another issue raised.

2. The applicant (respondent herein) filed W.C.No.351 2003, claiming compensation of Rs.8,00,000/-, in respect of death of her husband Varadhan @ Varadharajalu.

2.1. The deceased was working as a watchman under the appellant-Amsaveni. He was paid a sum of Rs.2,800/- per month, as salary, and Rs.50/- as batta per day. He was aged 57 at the time of the accident. While the deceased was on watchman duty, in the appellant's brick's chamber, he was murdered.

2.2. The claim was disputed on the ground that the deceased was murdered on account of some personal enmity by some unidentified persons and therefore, it has nothing to do with the employment. It was contended that it was neither an accident nor it arose in the course of employment.

2.3. The Tribunal gave a finding that there was relationship of employer and employee between the appellant and the respondent and that, the accident of murder took place in the course of employment and therefore, the appellant is liable to pay a sum of Rs.1,82,162/-, as compensation.

2.4. This judgment is under challenge in this Appeal.

3. The first contention of the learned counsel for the appellant is that, neither the death of Varadhan was on account of an accident nor it arose in the course of employment and therefore, the appellant is not liable to pay any compensation.

3.1. Four conditions are to be fulfilled before a claimant is entitled to compensation, and the claimant has to prove the existence of all four conditions.

These conditions are as follows:-

- (i) there must be personal injury to the workman;
- (ii) personal injury must have been occasioned by an accident;
- (iii) accident must have arisen out of and in course of employment; and
- (iv) injury must have resulted either in the death of the workman, or his total or partial disablement for a period exceeding three days.

4. Whether the claimant has proved those conditions is the issue to be considered.

4.1. The fact that the deceased Varadhan was working as watchman in the work place of the appellant is not under dispute. It is also not in dispute that Varadhan was murdered on 18/19.07.2003 by some unidentified persons. Therefore, it is evident that the incident of murder was in the course of

employment.

4.2. It is not in dispute that the deceased died on account of murder. Whether the murder would amount to accident is the issue to be considered?

The term 'accident' is neither defined under Employees Compensation Act nor under The General Clauses Act. Therefore, the dictionary meaning alone has to be taken into account. According to the Black's Law Dictionary, the term 'accident' means, unforeseen untoward incident, which was not reasonably anticipated. The deceased workman could not and did not reasonably could have anticipated that the unforeseen incident (murder) would happen to him and therefore, it is an accident, as per the definition.

4.3. It is the case of the appellant that there is no causal connection between the murder and the employment and therefore, the appellant is not liable. In order to appreciate this contention, it is necessary to look into the circumstances under which the murder is said to have taken place. The deceased is aged about 57. He had been working, as a Night Watchman, for a meager amount of Rs.700/- per week. Admittedly, the incident had taken place in the night. It is said to be an open place with a small hut. During night hours, in case of emergency, there seems to be no protection available to the watchman.

4.4. As per the averments stated in the First Information Report, Ex.A-1, the Accountant, Padmanabhan, working under the appellant, had informed the wife of the deceased that there had been an accident to the deceased and on this information, the wife of the deceased had gone there to see her husband. Only on going to that place, on enquiry, she came to know that at about 12.30 am on 18.07.2003, on hearing cry from the deceased, Balakrishnan had gone there, along with some others in the chamber, and found that the deceased was fighting for life. This is the description of the incident. Nobody has seen (according to the First Information Report), somebody committing murder of the deceased. However, it is within the knowledge of the persons, who had been employed in the chamber, to say who committed murder and for what purpose the murder was committed. According to the available materials, investigation had not been completed at that time. When the incident of murder had taken place, in the work place, then the presumption would be that the murder would have been on account of the employment, in the absence of any other evidence pointing out that it could not have been on account of employment. Considering the fact that there is no evidence to show that the murder was out of private dispute between the deceased and somebody else or out of some other motive like murder for gain or sex or property dispute and considering the fact that the incident had taken place in the workplace and the persons, who could have

deposed about the incident remaining mute, then the inference is that the murder should have been out of and in the course of employment. Under such circumstances, this Court concur with the findings of the Tribunal that the murder is an accident and that, it took place out of and in the course of employment.

4.5. In the case of **United India Insurance Co. Ltd., v. Kanshi Ram**, reported in **2006 ACJ 492 (Delhi)**, it was held that the murder occurred to the driver of the truck, arose out of and in the course of employment, and that the murder would tantamount to accident. Therefore, this Court holds that the claimant is entitled to compensation, as the injured died out of and in the course of employment.

5. In the result, the award passed by the Deputy Commissioner of Labour I, Chennai, in W.C.No.357 of 2003, dated 26.09.2005, is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs.

27.11.2013

Index : Yes / No
Web : Yes / No
srk

To

1. The Deputy Commissioner of Labour I, Chennai – 6
2. The Section Officer, V.R.Section, High Court, Madras

S.VIMALA, J.,

srk

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