IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2052 of 2009

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SAIDABANU ABDULKARIM RANGREJ & ORS.

Versus

MANAGER EVERCHEM DYES INDUSTRIES & ANR.

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Appearance:
MR DS VASAVADA(973) for the Appellant(s) No. 1,2,3
MRS MUMTAZ SAIYED(5187) for the Defendant(s) No. 1
UNSERVED EXPIRED (R) for the Defendant(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 10/04/2026

JUDGMENT

1. Being aggrieved by the Judgment and Order dated 19.1.2009 passed by the Labour Court, Ahmedabad in Workman Compensation Case No.58 of 1998, the appellant – claimants have preferred this first appeal u/s 30 of the Workman's Compensation Act, 1923 (in short "the Act").

2. Brief facts of the case are as under:-

2.1 That on 31-12-1997 the deceased viz. Abdulbaksh Rangrej went to his job. He was working as Boiler attendant in the premises of Respondents. The nature of duty of deceased was such that he had to expose with hazardous chemicals while manufacturing Tinopol and he also had to lift the boxes containing such tinopol. That on the said ill-fated day, all of sudden, while on duty, the deceased received cardiac arrest and complaining about the Chest Pain to co-workers. Since, his condition was worsened, he was shifted to the VS Hospital, where he died at around 2:30.

2.2 The claimants preferred WC Fatal Case Application No.58 of 1998 before the learned Workman Commissioner, Labour Court, Ahmedabad seeking compensation, which was dismissed.

2.3 Being aggrieved, the claimants have preferred present appeal.

3. Heard learned advocate Mr. Sachin Vasavada for the appellant. Though respondent No.2 has expired, but is survived by respondent No.1.

4. Learned advocate Mr. Vasavada would submit that the learned Workman Commissioner ought to have called for the pm report of the doctor and ought to have framed the issue whether the death of the deceased occurred because of sheer toil and hard work in lifting the heavy boxes containing Tinopol and constant exposure with hazardous chemicals while manufacturing said Tinopol and ought to have held that the deceased died because of the nature of work and there was a casual connection between death and nature of work and ought to have awarded the compensation with interest to the appellants. He would further submit that the learned Workman Commissioner without looking into vital evidence, erroneously held that the deceased passed away only because of hard work and constant exposure to the hazardous chemicals in manufacturing tinopol. He would further submit that the deceased had complained of physical work load and which may be converted into mental stress and trauma being root cause of the heart disease. In view of above, he prays to allow this First Appeal.

5. In the present matter, the learned Workman Commissioner has raised following questions of law as substantial questions of law:-

> *"1 Whether the applicants prove that they are the dependants of the deceased Abdul Karimbax Rangrej?*
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> *2. Whether the applicants prove that deceased met with an employment injury on 31.12.97?*
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> *3. Whether the applicants prove that on the date of accident deceased was drawing salary of Rs. 2000/- p.m. and was 52 years of age?*
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> *4. Whether the applicants prove that accident occurred during the course of and out of the employment? If yes, Whether the applicants are entitled for compensation as claimed?*
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> *5. Whether the opponents prove that there was no employment injury occurred to the deceased while on duty on 31.12.97?*
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> *6. Whether the opponents prove that deceased expired due to heart attack at his residence on 31.12.97?*
>
> *7. Whether the opponents fails to deposit the amount of compensation, if any ordered ? If yes, Whether the opponent is liable to pay the amount of interest or penalty on the amount as claimed for?*
>
> *8. What order?"*

6. On perusal of the averments made by the claimants, it appears that the claimants averred nexus of death of the deceased with employment injury on the ground that deceased was suffering physical load as well as mental stress and trauma, which resulted into death of the deceased. To

prove such averment, claimants as well as co-worker entered into the witness box and examined themselves as Exhs.9 and 19 respectively. None of them have in unequivocal terms deposed that the deceased was suffering from physical and mental stress and trauma, which resulted into cardiac arrest being root cause of death of the deceased while he was in employment. Even in the present case, the claimant has not produced any evidence on record to suggest that the deceased was suffering from physical stress and trauma and which has developed heart disease.

7. In furtherance to the aforesaid, the claimants did not lead any evidence to link the aforesaid nexus of death with the employment injury or to establish that the aforesaid injury was an injury arising out of the employment of the deceased or it is occupational disease arising out of and in the course of the employment.

8. Heart disease is not unknown in this country, may it remain undetected, but its development is not unknown in this country. That the deceased while was in duty, suffered heart attack and expired and prior to it, at no point of time, he had any complaint of physical stress and trauma or angina pain being result of physical and mental stress and trauma being root cause of heart disease. In absence of specific evidence thereof, non-granting of compensation in favour of the claimant by the learned Workman Commissioner is fair, practicable and right approach.

9. Learned advocate Mr. Vasavada failed to point out that

the deceased was not suffering from any disease prior to his death during the employment, which suggests that the death of the deceased due to heart attack is occupational disease arising out of and in the course of his employment, as presumably, he was suffering from physical and mental stress and trauma.

10. The Hon'ble Apex Court in case of **Mackinnon Mackenzie And Company Private Limited Versus Ibrahim Mahmmed Issak, 1969 (2) SCC 607**, held that it is a burden upon the claimants to prove that the accident or occupational disease was arising out of and in the course of the employment. Though, the claimant is not required to prove by leading direct evidence, but the onus to prove that injury by accident or occupational disease arose out of and in the course of the employment, rest upon the claimants and essentially, it can be proved by inferring when the facts proved justify the inference. The findings of the Hon'ble Apex Court in para 5 and 6 reads as under:-

> *"**5.** To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment' mean "in the course of the work which the workman is employed to do and which is incidental to it". The words 'arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered". In other words, there must be a causal relationship between the accident and the employment. The expression "arising out of*

employment" is again not confined to the mere nature of the employment. The expression applies to employment as such - to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises 'out of employment'. To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. In Lancashire and Yorkshire Rly. Co. V/s. Highley, 1917 AC 352, Lord Summer laid down the following test for determining whether an accident "arose out of the employment":

"There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the Statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury- If yea, the accident arose out of his employment. If nay, it did not, because, what it was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. To ask if the cause of this was within the sphere of the employment or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was acting, or should have been in the position in which he was, whereby in the course of that employment he sustained injury."

6. *In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove it by direct evidence. Although the*

> *onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead L. C. in Lancaster V/s. Blackwell Colliery Co. Ltd., 1918 WC & IR 345 observed:*
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> "*If the facts which are proved give rise to conflicting inferences of equal degrees or probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour.*"

11. A worthy assistance can also be taken from the authority of the Hon'ble Apex Court in case of **Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali & Anr., (2007) 11 SCC 668,** wherein the Hon'ble Apex Court while referring to its earlier judgment and the definition of "accident" was pleased to dismiss the claim made by the claimants on the ground that the deceased had not died due to external injury. The Hon'ble Apex Court examined the issue in detail, including the meaning and scope of the word "arising out of and in the course of employment." In paragraph 20 to 26, the Hon'ble

Supreme Court has held as under :-

> *“20.Sufferance of heart disease amongst young persons is not unknown . A disease of heart may remain undetected. A person may suffer mild heart attack but he may not feel any pain. There must, thus, be some evidence that the employment contributed to the death of the deceased. It is required to be established that the death occurred during the course of employment.*
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> *21.This Court in E.S.I. Corporation (supra) referred to with approval the decision of Lord Wright in Dover Navigation Co. Ltd. v. Isabella Craig, [1940 AC 190], wherein it was held :*
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> *“Nothing could be simpler than the words `arising out of and in the course of employment'. It is clear that there two conditions to be fulfilled. What arises `in the course of the employment is to be distinguished from what arises `out of the employment'. The former words relate to time conditioned by reference to the man's service, the latter to casualty. Not every accident which occurs to a man during the time when he is on his employment - that is, directly or indirectly engaged on what he is employed to do - gives a claim to compensation, unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified”.*
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> *22. We are not oblivious that an accident may cause an internal injury as was held in Fenton (Pauper) v. J. Thorley & Co. Ltd., [1903 AC 443], by the Court of Appeal :*
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> > *"I come, therefore, to the conclusion that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed."*
> > *Lord Lindley opined :*
> > *"The word "accident" is not a technical legal*

term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word "accident" is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish careless from other unintended and unexpected events."

23. There are a large number of English and American decisions, some of which have been taken note of in ESI Corporation (supra), in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act.

24. The principles are :

(1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment.

(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.

25. Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus,

has to be arrived at, inter alia, having regard to the nature of the work and the situation in which the deceased was placed.

26. There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction."

12. In view of above, no substantial question involves in the matter in absence of any evidence to prove that the deceased died due to occupational disease arising out of and in the course of the employment. Furthermore, no pm report, which is very vital in these type of cases, is produced to support the case of the claimants.

13. Resultantly, present First Appeal fails and stands dismissed. Consequently, CA, if any, does not survive and stands disposed of accordingly.

14. However, it is clarified that the dependency benefit given to the original claimants uptil now, if any, shall not be recovered.

15. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

SHEKHAR P. BARVE