KJ IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9340 OF 2012

Bhagyashree Bharguram Mahadik)
Aged 40 Yrs., Ocupation-Housewife)
Residing at Fakrunissa Chawl No.308)
Room No.9, Kurla (West), Mumbai)....Petitioner

V/s.

1 The Employees State Insurance)
Corporation, through its Directors,)
having office at Lower Parel, Mumbai)

2 The Asstt. Director,)
Employees State Insurance Corporation)
Sub-Regional Office, Thane, ESIS)
Hospital Complex, Wagle Estate,)
Thane-400 604)....Respondents

Mrs.Preeti Walimbe for the petitioner.
Mr.H.V.Mehta for the respondent no.1.

CORAM : V.M.KANADE & K.R.SHRIRAM,JJ

RESERVED ON : **22nd August, 2013.**
PRONOUNCED ON : **5th September 2013.**

JUDGMENT :- (PER : K.R.SHRIRAM,J)

1 Rule. Rule made returnable forthwith and heard finally by consent of parties.

2 This is an unfortunate case of a widow having to knock at the doors of the High Court to recover insurance claim from the respondent no.1-The Employees State Insurance Corporation (ESIC)

for the death of her husband who was working as a Fitter and earning a meager salary of Rs.6500/- per month.

3 The admitted position is that the late husband of the petitioner (hereinafter referred to as the "insured") was registered under the ESIS Scheme by his employers-Dhanwantari Engineers Pvt. Ltd., The insured reported for duty on 27.3.2012 at 8.30 A.M. At about 8.45 A.M. he complained of chest pain and his colleagues took him to a resting area within the factory premises and asked him to rest for a while. As his condition started deteriorating at about 10.45 A.M., he was rushed to the Navi Mumbai Municipal Corporation-NMMC General Hospital at Vashi. The provisional cause of death cum death certificate issued on 27.3.2012 mentions the insured was "brought dead" to the Hospital. Insured was declared as dead by the Medical Officer of NMMC Hospital and the cause of death was mentioned as "Acute Myocardial Infarction". The insured at the time of death was about 50 years old.

4 The employer of the insured raised a claim for the dependents under the ESI Act and the same with supporting documents were filed with the respondents'-office on or about 11.4.2012. However, the respondents rejected the claim by their letter dated 14.5.2012 on the following grounds :-

> "1 The person cannot be treated as an employee under the ESI Act.
>
> 2 The injury sustained by the employee cannot be treated as an Employment injury under the Act.
>
> 3 The Insured Person has died of natural causes, the death is not related to stress and strain of work."

5 It is the case of the petitioner that the rejection of the claim of the respondents is illegal in as much as

(a) that the insured died while in the factory where he was working ;

(b) the death arose during the course of employment ;

(c) the insured was covered under the ESIC scheme.

6 The respondents' Counsel strongly opposed the petition and mentioned at the outset that the ESI Act provided for an alternative remedy under Section 75 of the ESI Act to raise dispute before the Employees' Insurance Court. He also submitted that the insured died by heart attack and he was only working as a Fitter in the Company and could not have died due to natural causes related to stress and strain of work. He has further relied upon the opinion dated 24.4.2012 of Senior State Medical Commissioner where it is mentioned that "It is a natural death, there is no involvement of stress and strain of work". Counsel further submitted that circumstances must exist to establish that death was caused by

reason of failure of heart because of stress and strain of work and heart attack does not give rise to automatic presumption and there was no medical evidence that the cause of death was on account of stress and strain.

7 Mrs. Walimbe learned Counsel appearing on behalf of the petitioner relied upon the judgment of the Madras High Court dated 6.11.2008 in the matter of C.Indira Vs. M/s.Senthil & Amp. Incidently in that case also the deceased was working as a Fitter in the Company. Moreover, in the said case also, the deceased had reported for duty and while working, felt uneasy and went to the workers' rest room to take rest. One of the co-worker found him unconscious and rushed to the nearest Nursing Home where the doctor declared him as dead upon arrival. The doctor concluded in that case also that the death was due to massive heart attack. The facts are almost identical to the present petition. The Hon'ble Madras High Court after considering the entire matter in detail, observed in para-11(d) as under :-

> "The question as to whether the death arose in the course of employment due to heart attack can be treated as `employment injury' and presumption under section 51-A of the Act, came up for consideration before the Punjab and Haryana High Court in the decision reported in 1995 (3) LLJ supp) 593 (Harjinder Kaur & amp & Ors. Vs. Employees' State Insurance Corporation, Amritsar) and in paragraphs 4 to 6 it is held as follows :

4 I have heard the learned counsel for the parties. I find that this appeal deserves to be allowed. Section 2(8) of the Act defines employment injury thus :

`Employment injury' means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment,whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

5 Section 51A which was added by Amendment Act No.44 of 1966 provides thus :

51-A Presumption as to accident arising in course of employment. For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

6 Thus, the moment it is proved that the accident arose in the course of an insured person's employment, it is to be presumed, in the absence of evidence to the contrary, that the accident has arisen out of that employment. The learned trial Judge was, therefore, wrong in requiring proof from the appellants that in spite of the fact that the death of Gian Singh took place in the course of his employment, it had arisen out of that employment. No doubt, this presumption is rebuttable but there is no evidence worth the name on the record which may be styled as evidence to the contrary ;

8 The Madras High Court further proceeded to observe at paragraph nos.12 & 13 as under :-

12 The object of the Employees' State Insurance Act, 1948 (Act 34 of 1948) is to provide certain benefits to the employees or dependants in case of sickness, maternity and employment injury, etc., to give effect to Article 1 of the Universal Declaration of Human Right, 1948, which assures human sensitivity

> of moral responsibility of every state that all human beings are born free and equal in dignity and rights. In recognition of the said rights only Act 34 of 1948 was enacted and the same is to be liberally construed as it is a social legislation."

> 13 The Supreme Court in the decision reported in AIR 1986 SC 1686 (Regional director, Employees' State Insurance Corporation, Madras v. South India Flour Mills (P) Ltd.,) in paragraph 13 held as follows :
>
> The Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. To hold that the workers employed for the work of construction of buildings for the expansion of the factory are not employees within the meaning of section 2(9) of the Act on the ground that such construction is not incidental or preliminary to or connected with the work of the factory will be against the object of the Act. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made (Emphasis Supplied)

9 It is not the case of the respondents that the petitioner's husband was previously suffering from heart related disease. The entire defence of the respondents is that the petitioner's husband died due to heart attack and it is not an employment injury.

10 There is no evidence produced to rebut the presumption that the death has arisen out of the employment. Even the Senior State Medical Commissioner on whose opinion is relied upon by the Respondent has just stated "It is a natural death, there is no

involvement of stress and strain of work." It is just a cryptic opinion.

11 In the light of the Madras High Court Judgment and the quotation from the decision of the Punjab & Haryana High Court and in particular that there is no controversy with regard to the death of the petitioner's husband other than the one stated by the petitioner and the medical report relied by both the parties, presumption under Section 51-A of the Act squarely applies to the facts of this case and it has to be held that the death of the petitioner's husband has happened only during the course of the employment and in the factory premises/rest room, by applying Notional Extension Theory. The petitioner is therefore, entitled to get the dependents' benefits.

12 In view of the above findings the impugned communication dated 14.5.2012 rejecting the request of the petitioner treating the petitioner's husband death as not an employment injury, has to be set aside. The impugned communication is set aside.

13 The respondents are directed to settle the eligible dependents benefits in favour of the petitioner in accordance with law. The amount payable shall be calculated and paid to the petitioner within a period of four weeks from the date of receipt of

copy of this order. There shall be no order as to costs. Petition is accordingly disposed of. Rule made absolute in the above terms.

(K.R.SHRIRAM,J) **(V.M.KANADE,J)**