CASE NO.:
Appeal (civil) 6201 of 2004

PETITIONER:
Jyothi Ademma

RESPONDENT:
Plant Engineer, Nellore & Anr.

DATE OF JUDGMENT: 11/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court holding that the appellant was not entitled to any compensation under the Workmen Compensation Act, 1923 (in short the 'Act'). The appeal filed by the respondents under Section 30 of the Act was allowed by the High Court. The Commissioner for Workmen's Compensation (in short 'Commissioner') had awarded a sum of Rs.61,236/- by award dated 16.6.2001, which was challenged by the respondents before the High Court.

Background facts in a nutshell are as follows:

Mr. J. Venkaiah, the appellant's husband (hereinafter referred to as the 'deceased workman'), was working in Nellore Thermal Station, Nellore. On 24.9.1994 he died at the work spot. Appellant filed an application before the Commissioner claiming compensation of Rs.1,00,000/-. Her stand in the claim petition was that the death was due to stress and strain closely linked with the employment of the deceased workman and, therefore, attributable to an accident arising out of and in the course of employment. The plea found favour with the Commissioner who made the award as noted above. The respondents filed an appeal under Section 30 of the Act before the High Court. The primary stand was that the deceased workman did not die on account of any injury sustained by him "in any accident arising out of and in the course of his employment". The High Court noted that there was no injury as such, but he died due to heart attack at the work spot. The High Court found that the nature of the job which the deceased workman was doing could not have caused any stress and strain and, therefore, the death due to heart attack can not be said to have been caused by any accident arising out of and in the course of his employment.

In support of the appeal, learned counsel for the appellant submitted that whenever a person dies as a result of heart attack at the work spot, it can be said that he died due to the stress and strain of the working conditions. He, therefore, pleaded that the order of the Commissioner should be restored and that of the High Court be set aside, as the Commissioner had indicated reasons in support of his conclusions.

There is no appearance on behalf of the respondents.

Section 3(1) of the Act which is relevant for the purpose of this case reads as follows:-

"3. EMPLOYER'S LIABILITY FOR COMPENSATION. - (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

Provided that the employer shall not be so liable - (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to - (i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

Under Section 3(1) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear, of the employment no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In Fenton v. Thorley & Co. Ltd. (1903) AC 448, it was observed 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. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane A.C. in Trim Joint District, School Board of Management v. Kelly (1914) A.C. 676 as follows:

"I think that the context shows that in using the word "designed" Lord Macnaghten was referring to designed by the sufferer".

In the present case it has been brought on record that the deceased was suffering from chest disease and was previously being treated for such disease. The High Court also noted that the job of the deceased was only to switch on or off and, therefore, the doctor had clearly opined that there was no scope for any stress or strain in his duties. In view of the

factual findings recorded the High Court's judgment does not suffer from any infirmity.

However, it has to be noted that the amount has already been paid to the appellants, as stated by learned counsel.

Considering the peculiar circumstances of the case, we direct that there shall be no recovery from the appellant of any amount paid, though in view of our judgment she is not entitled to any compensation.

The appeal is accordingly disposed of. No costs.