THE STATE DISTILLERIES CORPORATION

v.

MARY NONA

COURT OF APPEAL.
RATWATTE, P. AND TAMBIAH, J.
C. A. 3/79 - WORKMEN'S COMPENSATION C3/G/7/78.
JANUARY 21, 1981.

Workmen's Compensation Ordinance (Cap. 139), section 3 – Death of workman owing to heart attack – Employed as lorry driver working long hours – Medical evidence – Whether "accident" arising out of and in the course of his employment.

The deceased workman who was a lorry driver employed by the appellant-Corporation died of an heart attack in the course of his employment. According to the medical evidence the heart attack was sudden and it was possible that the long hours of driving which the workman had done could have contributed to heart disease. It was submitted on behalf of the appellant that the Deputy Commissioner of Workmen's Compensation had misdirected himself in law in holding that the workman's death was due to an "accident arising out of" his employment.

Held

In the light of the medical evidence that lorry driving being strenuous work causes tension and that long hours of driving can cause heart disease and in the absence of evidence that the workman even without being engaged on such work would none the less have died of heart attack, it was reasonable to conclude that the work he was engaged upon brought about his death. The workman's death was therefore due to an "accident" within the meaning of section 3 of the Ordinance arising "out of" his employment.

Cases referred to

(1) *Clover Clayton & Co. v. Hughes, (1910) A. C. 242.*
(2) *Mailenthi Nona v. Peiris de Silva & Co. (1952) 54 N.L.R. 188.*
(3) *Fenton v. Thorley, (1903) A.C. 443.*
(4) *Charles Appu v. The Controller of Establishments, (1946) 47 N.L.R. 462; 33 C.L.W. 24.*

APPEAL from the Workmen's Compensation Tribunal.

Lyn Weerasekera, for the appellant.

O Palliyaguru, for the respondent

Cur. adv. vult.

March 3, 1981.

TAMBIAH, J.

This is an appeal against an award of compensation by the Deputy Commissioner for Workmen's Compensation.

The deceased workman was a lorry driver employed by the appellant-corporation. He joined the Corporation on 7.1.75. At the time of his death, he was just over 56 years of age. The appellant-Corporation, at the inquiry, admitted that Albert died of a heart attack in the course of his employment on 24.3.78.

According to the Assistant Regional Manager of the Corporation, the duty hours of the deceased were from 8 a.m. to 5 p.m., but generally the drivers work from 8.30 a.m. to 6.30 p.m. The deceased has worked on Saturdays and Sundays and on some Poya-days too. He had worked on 23.3.78 from 8.30 in the morning to 8.30 p.m. On 24th March, 1978, he commenced work at 8 a.m.

The witness stated that the Corporation was unaware whether the deceased had any previous heart ailment. The deceased had taken 5 days sick leave in 1975, 6 days medical leave in 1976 and 1 day sick leave in 1978, but it was not on account of any heart disease; it was for some stomach ailment. On 9.2.77, he was 55 years and reached the age of retirement; on his application on 20.12.76, his services were extended. The Corporation would not have extended his services, if he was a heart case.

Dr. Tissera performed the postmortem on the deceased on 23.4.78 at 2.30 p.m. According to him, the deceased died of an obstruction of blood clot on the left coronary artery. He mentioned several matters that could cause the blood clot—age, size of the body, food, drinking and smoking habits, tension, family burdens, mental condition, type of work, whether sedentary or hard, pre-existing diseases like diabetes, hypertension, etc. But he also added, that long hours of driving is strenuous work for drivers; it causes tension and can cause heart disease. The driving of the lorry could have contributed to the blood clot. The doctor was unable to say whether the deceased had a previous heart condition. He stated the heart attack was sudden. The deceased was a well-nourished man and there was no smell of liquor in the contents of his stomach.

Upon these facts, the Deputy Commissioner has held that the employment of the deceased contributed to the death of the deceased and has awarded to the respondent, the widow, a sum of Rs. 12,900 as compensation and Rs. 105 as costs.

In arriving at his decision, the Deputy Commissioner was guided by the test laid down by Lord Loreburn, L. C. in *Clover Clayton & Co. v. Hughes* (1). In this case a workman suffering from an advanced aneurism of aorta was doing his work in the ordinary way by tightening a nut with a spanner. This ordinary strain caused a rupture of the aneurism, resulting in his death. In considering whether the rupture arose out of the employment, Lord Loreburn, L.C. stated at p. 281:

> "It may be that the work has not, as a matter of substance, contributed to the accident, though in fact the accident happened while he was working. In each case the arbitrator ought to consider whether, in substance, as far as he can judge on such a matter the accident came from the disease alone, so that whatever the man had been doing it would probably have come all the same, or whether the employment contributed to it. In other words, did he die from the disease alone or from the disease and employment taken together, looking at it broadly? Looking at it broadly, I say, and free from over nice conjectures: Was it the disease that did it or did the work he was doing help in any material degree?"

The test laid down by Lord Loreburn, L.C. was cited with approval by Rose, C. J. in *Mailenthi Nona v. Peiris & de Silva & Co.* (2). In this case too the deceased workman, a carpenter by trade, who was suffering from a fatty degeneration of heart, died while being engaged upon his work and the question that arose was whether death was due to the disease alone or whether the employment contributed to it.

It seems to be that the Deputy Commissioner has erred in applying the test laid down by Lord Loreburn, L.C. in Hughe's case to the facts in the present case. In the 2 cases cited above, the workmen met with their death whilst at work, but each of them had a pre-existing disease. There is no evidence that the deceased workman had any previous heart ailment and the doctor's opinion is that it was a sudden heart attack.

The question that the Deputy Commissioner had to decide was whether the deceased workman's case fell within the ambit of section 3 of the Workmen's Compensation Ordinance. Two questions arise for determination under this section—

(1) whether the workman's death was caused by an "accident", and

(2) whether the accident is one that arose "out of" his employment and in the "course of " his employment.

Learned counsel for the appellant-Corporation submitted that the Deputy Commissioner had misdirected himself in law in holding that the workman's death was due to an "accident arising out of" his employment.

In *Fenton v. Thorley* (3), where the House of Lords held that a rupture caused to a workman by over-exerting himself in turning a wheel, was an accident. Lord Macnaghten, at p. 448, defined an "accident" as "an unlooked for mishap or an untoward event, which is not expected or designed." The other Lords who partook in the decision in the case, agreed in substance with Lord Macnaghten's definition of "accident" in his speech. I find no difficulty in coming to the finding that the workman's death was due to an "accident" within the meaning of section 3 of the Ordinance.

The appellant-Corporation conceded that Albert died of a heart attack in the course of his employment. The only matter that remains to be decided is whether the heart attack arose "out of" his employment.

The words "out of" involve the idea that the accident arises out of a risk incidental to the employment. The question is whether the nature of the employment was such that the likelihood of a heart attack was connected with and incidental to the employment. (*see Charles Appu v. The Controller of Establishments,* (4)).

There is no evidence that the deceased workman had a pre-existing heart disease. There is also no evidence that by reason of his bulky body or of his food, drinking and smoking habits or of mental stress and strain or of pre-existing disease like diabetes, hypertension, etc., he was a person prone to a heart attack. But there is evidence that lorry drivers of the Corporation generally work from 8.30 a.m. to 6.30 p.m. and that the deceased workman

had worked on Saturdays, Sundays, and on some Poya-days too. Even the day before he died, he had worked from 8.30 a.m. to 8.30 p.m. The medical evidence is that lorry driving is strenuous work, it causes tension and that long hours of driving can cause heart disease. In the absence of evidence to show that even without the work this workman was engaged on, he, none the less, would have died of a heart attack, it is reasonable for me to conclude that the work he was engaged upon, brought about his death.

The appeal is dismissed with costs fixed at Rs. 315.

RATWATTE, P.—I agree.

Appeal dismissed.