Reserved On : 20/03/2026
Pronounced On : 02/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 656 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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EMPLOYEES STATE INSURANCE CORPORATION
Versus
SUDHABEN RAMANBHAI PATEL & ORS.

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Appearance:
MR SACHIN D VASAVADA(3342) for the Appellant
MS ASHA H GUPTA(1025) for the Respondent

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

CAV JUDGMENT

1. Being aggrieved by the Judgment and Order dated 3.12.2010 passed by the ESI Court, Ahmedabad in ESI Application No.78 of 2005, the appellant – ESI Corporation has preferred this first appeal u/s 82 of the Employees' State Insurance Act, 1948 (in short "the Act").

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

2.1 Deceased Ramanbhai Shivabhai Patel was covered under the insurance being No.37/4060376 and he was working as Fitter mechanic in Bajaj Processors. On 6.9.2004, deceased

Ramanbhai, while was working in second shift with hale and hearty condition, suddenly at around 4:45 in late afternoon, complained of chest and abdomen pain. Thereafter, he slept in the corner of the working department. Since, his condition was worsened, he was shifted to the Hospital, where the doctor declared him dead at around 6:30 p.m.

2.2 In the hospital, postmortem of the deceased was carried out, whereby cause of death recorded in the postmortem was cardiac respiratory arrest due to coronary heart disease.

2.3 The claimant initially preferred an application before the ESI Corporation vide letter dated 2.2.2005, which was rejected vide letter dated 2.4.2005 by the ESI Corporation.

2.4 Being aggrieved, the claimant preferred ESI Application No.78 of 2005 before the ESI Court seeking compensation, which was allowed.

2.5 Being aggrieved, the ESI Corporation has preferred present appeal.

3. Heard learned advocate Mr. Sachin Vasavada for the appellant Corporation and learned advocate Ms. Asha Gupta for the respondent claimant.

3.1 Learned advocate Mr. Vasavada for the appellant referred to the judgment of this Court rendered in First Appeal No.5069 of 2023 and submitted that this Court has believed that injury of heart attack or heart disease being

reason of death, is not an employment injury and therefore, the claimant is not entitled to claim any compensation. He would further submit that the facts of the present are identical to the facts of the case mentioned in First Appeal No.5069 of 2023 and thus, applying the ratio to the facts of the present case, the ESI Court has committed serious error in granting dependency benefit to the claimant.

3.2 Learned advocate Mr. Vasavada would further submit that the substantial question involved in the matter is as to whether heart attack being simplicitor cause of death can be considered as employment injury within section 2(8) of the Act? He would further submit that 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. He would further submit that the heart disease is not unknown in this country, may it remain undetected, but its development is not unknown in this country. He would further submit 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, granting of compensation in favour of the claimant by the ESI Court is an erroneous approach.

3.3 Learned advocate Mr. Vasavada submits that the findings of cause of death cannot be considered as injury arose out of the employment and therefore, the learned Court

has committed manifest error in granting dependency benefit.

3.4 Upon above submissions, he prays the Court to allow this First Appeal and quash and set aside the impugned order passed by the ESI Court.

4. Having objected to the arguments of learned advocate Mr. Vasavada, learned advocate Ms. Asha Gupta vehemently submitted that the learned ESI Court has passed well reasoned order in line of object and purpose of the ESI Act. She would further submit that a specific pleading has been made by the appellant 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. She would further submit that necessary ingredients as defined in section 2(8) of the Act are pleaded and established in the matter.

4.1 Referring to section 51A of the Act, learned advocate Ms. Gupta would submit that presumption as to accident arising in course of employment runs in favour of the claimant. The ESI Corporation is required to rebut this presumption by leading evidence. She would further submit that though the ESI Corporation has submitted report of the State Medical Officer at Mark 6/8, such report is not signed by any medical officer. Even, the original report has not been produced and the ESI Corporation has not led evidence of any of the officers, who has prepared such report to the effect that the deceased has expired due to natural cause. In view of above, she would submit that since the ESI Corporation has

failed to dislodge statutory burden upon it, as against that, the claimant has successfully established his claim and in that circumstances, no substantial question of law arise in the matter.

4.2 Upon above submissions, learned advocate Ms. Gupta prays to dismiss the First Appeal.

5. Having heard learned advocates for the respective parties and considering the record and proceedings, let refer section 82 of the Act being governing provision to file present First Appeal, as under:-

> *"82. Appeal.*
> *(1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.*
> *(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.*
> *(3) The period of limitation for an appeal under this section shall be sixty days.*
> *(4) The provisions of sections 5 and 12 of the [Limitation Act, 1963] shall apply to appeals under this section.*
> *If any substantial question of law is involved, appeal before the High Court from an order of the ESI Court is maintainable. In the present matter, the ESI Corporation has raised following substantial question of law."*

6. If any substantial question of law is involved, the appeal shall iie before the High Court from an order of an Employees' Insurance Court. In the present matter, the ESI corporation has raised following questions of law as substantial questions

of law:-

> *"(a) In, facts of present case and in view of the ESI Act, Rules and Regulations, WHETHER the ESI Court is right and justified in ignoring the vital statutory provision about employment injury / stress which causes a death to Insured Person? AND can the opponent be given the disablement benefit as the deceased died only because of disease for which the deceased was suffering since long?*
>
> *(b) WHETHER the ESI Court is right and justified in not believing the evidences of doctors of ESI Corporation and is it right and justified in ignoring the evidences produced by ESI Corporation?*
>
> *(c) WHETHER the diverse findings and conclusions of the ESI Court are right and justified and based on without leading evidences or they are contrary to the weight of evidence on record AND WHETHER the ESI Court is right and justified?"*

7. Before examining that the aforesaid questions as substantial questions of law of not, let refer the judgment of the Hon'ble Apex Court in case of the ESI Corporation Vs. M/s Radhika Theatre, rendered in Civil Appeal No.312 of 2023 to mark object and purpose of the ESI Act. Para 6 and 6.1 are relevant, which reads as under:-

> *"**6.** While answering the aforesaid issues/questions the object, purpose and preamble of the ESI Act is required to be referred to and considered. The Preamble of the ESI Act is as under: -*
>
> > *"An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto."*

6.1 Thus, the ESI Act being a social welfare legislation, any interpretation which would lean in favour of the beneficiary should be given. The object and purpose of the ESI Act has been elaborately considered by this Court in the case of Bangalore Turf Club Limited (supra). After considering catena of earlier decisions under the ESI Act, it is observed and held that ESI Act should be given liberal interpretation and should be interpreted in such a manner so that social security can be given to the employees. In paragraph 16 to 21, it is observed and held as under: -

> "*16. The primary rule of interpretation of statutes may be the literal rule, however, in the case of beneficial legislations and legislations enacted for the welfare of employees, workmen, this Court has on numerous occasions adopted the liberal rule of interpretation to ensure that the benefits extend to those workers who need to be covered based on the intention of the legislature.*
>
> *17. The ESI Act is a welfare legislation enacted by the Central Government as a consequence of the urgent need for a scheme of health insurance for workers. It would be beneficial to reproduce the Preamble of the ESI Act in this context. It is as under:*
>
> "*An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto*"
>
> *18. In ESI Corpn. v. Francis De Costa [1993 Supp (4) SCC 100 : 1994 SCC (L&S) 195] , this Court held that : (SCC pp. 105-06, paras 5-6)*

"5. The Act seeks to cover sickness, maternity, employment injury, occupational disease, etc. The Act is a social security legislation. It is settled law that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction. The court must seek light from loadstar Articles 38 and 39 and the economic and social justice envisaged in the Preamble of the Constitution which would enliven meaningful right to life of the worker under Article 21. The State is enjoined under Article 39(e) to protect the health of the workers, under Article 41 to secure sickness and disablement benefits and Article 43 accords decent standard of life. Right to medical and disability benefits are fundamental human rights under Article 25(2) of the Universal Declaration of Human Rights and Article 7(b) of the International Convention on Economic, Social and Cultural Rights. Right to health, a fundamental human right stands enshrined in socio-economic justice of our Constitution and the Universal Declaration of Human Rights. Concomitantly right to medical benefit to a workman is his/her fundamental right. The Act seeks to succour the maintenance of health of an insured workman. The interpretative endeavour should be to effectuate the above. Right to medical benefit is, thus, a fundamental right to the workman.

6. Moreover, even in the realm of interpretation of statutes, rule of law is a dynamic concept of expansion and fulfilment for which the interpretation would be so given as to subserve the social and economic justice envisioned in the Constitution. Legislation is a conscious attempt, as a social direction, in the process of change. The fusion between the law and social change would be effected only when law is introspected in the context of ordinary social life. Life of the law has not been logic but has

been experience. It is a means to serve social purpose and felt necessities of the people. In times of stress, disability, injury, etc. the workman needs statutory protection and assistance. The Act fastens in an insured employment, statutory obligation on the employer and the employee to contribute in the prescribed proportion and manner towards the welfare fund constituted under the Act (Sections 38 to 51 of the Act) to provide sustenance to the workmen in their hours of need, particularly when they become economically inactive because of a cause attributable to their employment or disability or death occurred while in employment. The fact that the employee contributed to the fund out of his/her hard-earned wages cannot but have a vital bearing in adjudicating whether the injury or occupational disease suffered/contracted by an employee is an employment injury. The liability is based neither on any contract nor upon any act or omission by the employer but upon the existence of the relationship which employer bears to the employment during the course of which the employee had been injured. The Act supplants the action at law, based not upon the fault but as an aspect of social welfare, to rehabilitate a physically and economically handicapped workman who is adversely affected by sickness, injury or livelihood of dependents by death of a workman."

19. A three-Judge Bench of this Court, in reference to the ESI Act, in Transport Corpn. of India v. ESI Corpn. [(2000) 1 SCC 332 : 2000 SCC (L&S) 121] , held that : (SCC pp. 357-58, paras 27-28)

"*27. Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters*

in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intention should be preferred to the one which would frustrate it. .

28. Dealing with this very Act, a three-Judge Bench of this Court in Buckingham and Carnatic Co. Ltd. v. Venkatiah [AIR 1964 SC 1272] speaking through Gajendragadkar, J., (as he then was) held, accepting the contention of the learned counsel, Mr Dolia that : (AIR p. 1277, para 10)

'10. . It is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. This position cannot be disputed. But in dealing with the plea raised by Mr Dolia that the section should be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act.'"

20. In Bombay Anand Bhavan Restaurant v. ESI Corpn. [Bombay Anand Bhavan Restaurant v. ESI Corpn., (2009) 9 SCC 61 : (2009) 2 SCC (L&S) 573] , it was observed that : (SCC p. 66, para 20)

"20. The Employees' State Insurance Act is a

beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects."

21. The legislature enacted the ESI Act to provide certain benefits to employees in case of sickness, maternity in case of female employees, employment injury and to make provision in certain other matters in relation thereto. The provisions of the ESI Act apply to all the factories other than seasonal factories. The State Government with the approval of the Central Government is authorised to make the provisions of the ESI Act applicable to any other establishment or establishments. The provisions of the ESI Act provide that all employees in factories or establishments to which the ESI Act applies shall be insured in the manner provided under the ESI Act. Since the ESI Act is passed for conferring certain benefits to employees in case of sickness, maternity and employment injury, it is necessary that the ESI Act should receive a liberal and beneficial construction so as to achieve legislative purpose without doing violence to the language of the enactment."

8. Thus, liberal rule of interpretation is required to be adopted by the Court, as the Act provides for benefit to the employee in case of sickness, maternity and employment injury. It is an admitted fact that deceased Ramanbhai was serving as employee and was covered under the ESI Act. It is further an admitted fact that on 6.9.2004 deceased Ramanbhai, while was working in second shift with hale and hearty condition, suddenly at around 4:45 in late afternoon, complained of chest and abdomen pain. Thereafter, he slept in the corner of the working department. Since, his condition was worsened, he was shifted to the Hospital, where the doctor on duty declared him dead at around 6:30 p.m. The autopsy report indicates that rigor mortis was present all over the body, brain and meninges are found congested, no internal injury was seen, even both the lungs were congested. The heart was sent to histopathology examination. The cause of death was pending till report of heart from histopathology comes. The report of histopathology recorded following reasons for cause of death:-

> *"Right and left coronary arteries thickened and shows moderate decree of atherosclerosis."*

9. On perusal of the averments made by the claimant, it appears that the claimant 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 led to thicken the coronary artery and ultimately resulted into death of the deceased. To prove such averment, claimant as well as co-worker entered into the

witness box and examined themselves as PW 1 and PW 2. The claimant deposed that her husband was suffering from physical and mental stress and trauma, however, except that, she did not pledge any other evidence to prove that cardiac arrest being root cause of death of the deceased was employment injury. PW 2 Gokulbhai Ramdin deposed about work of fitter. He has deposed that the fitter was required to lift and put down heavy goods through machine chain pulley block. He has further deposed that routine work is for eight hours. In the present case, the deceased joined in second shift at 4 o'clock. Normally, 10 to 15 times, the employee has to operate machine chain pulley block for lifting and putting down heavy goods. He also deposed that at the time of the work, around 40 decree temperature was generally maintained. Apart from the aforesaid evidence, no other evidence has been produced by the claimant to link the nexus of death with the employment injury.

10. Section 2(8) defines employment injury, which reads as under:-

> *"2(8) " 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."*

11. It means that it should be a personal injury to an employee either caused by an accident or an occupational

disease arising out of and in the course of the employment.

12. The Hon'ble Apex Court in case of **Regional Director,E.S.I.Corporation Versus Francis De Costa, 1996 (6) SCC 1**, interpreted words "arising out of his employment". In para 5 to 8,10,11 and 13, the Hon'ble Apex Court reads as under:-

> *"**5.** That the first respondent has suffered a personal injury is not in dispute. The only dispute is whether the injury will amount to "employment injury" within the meaning of Sec. 2(8), so as to enable respondent to claim benefit under the Act. The definition given to "employment injury" in sub-sec. (8) of Sec. 2 envisages a personal injury to an employee caused by an accident or an occupational disease "arising out of and in the course of his employment". Therefore, the employee, in order to succeed in this case, will have to prove that the injury he had suffered arose out of and was in the course of his employment. Both the conditions will have to be fulfilled before he could claim any benefit under the Act. It does not appear that the injury suffered by the employee in the instant case arose in any way out of his employment. The injury was sustained while the employee was on his way to the factory where he was employed. The accident took place one kilometer away from the place of employment. Unless it can be said that his employment began as soon as he set out for the factory from his home, it cannot be said that the injury was caused by an accident "arising out of ..... his employment". A road accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment.*
>
> ***6.** In our judgment, by using the words "arising out*

of ... his employment", the legislature gave a restrictive meaning to "employment injury". The injury must be of such an extent as can be attributed to an accident or an occupational disease arising out of his employment. "Out of", in this context, must mean caused by employment. Of course, the phrase "out of" has an exclusive meaning also. If a man is described to be out of his employment, it means he is without a job. The other meaning of the phrase "out of" is "influenced, inspired, or caused by : out of pity; out of respect for him". (Webster's Comprehensive Dictionary - International Edition - 1984). In the context of Sec. 2(8), the words "out of" indicate that the injury must be caused by an accident which had its origin in the employment. A mere road accident, while an employee is on his way to his place of employment cannot be said to have its origin in his employment in the factory. The phrase "out of the employment" was construed in the case of South Maitland Railways Proprietary Ltd. V/s. James, 67 CLR 496, where construing the phrase "out of the employment", Stake, J., held - "the words 'out of' require that the injury had its origin in the employment".

***7.** Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Sec. 2(8) of the Act. The word "accident ... arising out of ... his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment.*

***8.** The other words of limitation in sub-sec. (8) of Sec. 2 are "in the course of his employment". The dictionary meaning of "in the course of" is "during (in the course of time, as time goes by), while doing" (The Concise Oxford Dictionary, New*

Seventh Edition). The dictionary meaning indicates that the accident must take place within or during the period of employment. If the employee's work-shift begins at 4-30 p.m., any accident before that time will not be "in the course of his employment". The journey to the factory may have been undertaken for working at the factory at 4-30 p.m. But this journey was certainly not in the course of employment. If `employment' begins from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the doorstep of his house, the accident will have to be treated as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided.

10. *Under the Employees' State Insurance Act, 1948, a Tribunal has been set up to decide, inter alia, any claim for recovery of a benefit admissible in this Act. A reference lies to the High Court on a question of law. In other words, the decision of the Insurance Court set up under the statute is final and binding, so far as the findings of fact are concerned. But, if any error of law has been committed, the Courts are expected to correct it and to give guidance to the Insurance Court.*

11. *Construing the meaning of the phrase "in the course of his employment", it was noted by Lord Denning that the meaning of the phrase had gradually been widened over the last 30 years to include doing something which was reasonably incidental to the employee's employment. The test of "reasonably incidental" was applied in a large number of English decisions. But, Lord Denning pointed out that in all those cases the workman was at the premises where he or she worked and was injured while on a visit to the canteen or other place for a break. Lord Denning, however, cautioned that the words "reasonably incidental" should be read in that context and should be*

limited to the cases of that kind. Lord Denning observed :

"Take a case where a man is going to or from his place of work on his own bicycle, or in his own car. He might be said to be doing something `reasonably incidental' to his employment. But, if he has an accident on the way, it is well settled that it does not `arise out of and in the course of his employment'. Even if his employer provides the transport, so that he is going to work as a passenger in his employer's vehicle (which is surely `reasonably incidental' to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment. It needed a special `deeming' provision in a statute to make it `deemed' to arise out of and in the course of his employment (See Sec. 8 of the 1965 Act)."

13. *The meaning of the words "in the course of his employment" appearing in Sec. 3(1) of the Workmen's Compensation Act, 1923, was examined by this Court in the case of Saurashtra Salt Manufacturing Co. V/s. Bai Valu Raja. There, the appellant, a salt manufacturing company, employed workmen both temporary and permanent. The salt-works was situated near a creek opposite to the town of Porbandar. The salt-works could be reached by at least two ways from the town, one an overland route nearly 6 to 7 miles long and the other via a creek which had to be crossed by a boat. In the evening of 12.6.1952, a boat carrying some of the workmen, capsized due to bad weather and overloading. As a result of this, some of the workmen were drowned. One of the questions that came up for consideration was whether the accident had taken place in the course of the employment of the workers. S. Jafer Imam, J., speaking for the Court, held :*

"As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and

from the place of employment being excluded."

After laying down the principle broadly, S. Jafer Imam, J., went on to observe that there might be some reasonable extension in both time and place to this principle. A workman might be regarded as in the course of his employment even though he had not reached or had left his employer's premises in some special cases. The facts and circumstances of each case would have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension. But, examining the facts of the case, in particular, after noticing the fact that the workman used a boat, which was also used as public ferry for which they had to pay the boatman's dues, S. Jafer Imam, J., observed :

"*It is well settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends up to point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. But the Commissioner for Workmen's Compensation and*

> *the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable.*"

13. The cause of death recorded by the Medical Officer, Ahmedabad reads as under:-

> *"From gross postmortem finding and report of histopathology, final cause of death is cardio respiratory arrest due to coronary heart disease."*

14. The claimant 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.

15. Learned advocate Ms. Asha Gupta vehemently argued 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. I am totally unimpressed by such contention. It is the employee who was to establish the exclusive link or nexus of injury and death whereby injury or occupational disease was arising out of and in the course of the

employment.

16. 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 claimant 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 claimant 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:*
>
> "*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.*"

17. 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 claimant 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.

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 :

"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".

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 :

> *"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."

18. In view of above, the substantial question involves in the matter is that 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, whether under the ESI Act can grant dependency benefit? The question is answered in favour of the ESI Corporation that in absence of evidence proving the nexus between the occupational disease arising out of and in the course of the employment and death. The ESI Act cannot grant any dependency benefit to an employee.

19. Resultantly, present First Appeal is allowed. Impugned Judgment and Order dated 3.12.2010 passed by the ESI Court, Ahmedabad in ESI Application No.78 of 2005 is hereby quashed and set aside. ESI Application No.78 of 2005 is dismissed. Consequently, CA, if any, does not survive and stands disposed of accordingly.

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

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

(J. C. DOSHI,J)

SHEKHAR P. BARVE