

(1981) 04 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 127 of 1977

Employees' State Insurance Corporation

APPELLANT

Vs

Baboolal and Another

RESPONDENT

Date of Decision : 10-04-1981

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 2(8), 3, 3(1), 82
Limitation Act, 1908 — Section 12, 5

Citation : (1982) ACJ 240 : (1983) JLJ 47

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : N.C. Behal, for the Appellant; V.C. Kokje, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Oza, J.—This appeal has been filed by the Appellant against an order passed by Employees' Insurance Court, Indore in E.S.I. case No. 7/76 dated 20.4.1977.

2. The Respondent No. 1 submitted an application to the E.S.I. Court alleging that he is an employee of the Malwa United Mills, Indore. When he was going to the Mills for performing his duties, he was asked by one Tufansingh and others to strike work but he did not agree to their suggestion and went and joined his duty and when he was returning from his duty at 11 p.m. he was attacked by Tufansingh and others resulting in injury to his hand. He, therefore, prayed for a direction that the Appellant E.S.I. Corporation be directed to treat the injury as an employment injury and give him the benefits to which he is entitled to.

3. This application was contested by E.S.I. Corporation, the present Appellant, on the ground that the injury could not be said to be an employment injury as on that day, he was not on duty. After framing of issues, the learned Presiding Officer of the E.S.I. Court came to the conclusion that the injury was an employment injury and therefore, directed the Appellant Corporation to assess the disability caused by the injury and give the benefits to Respondent No. 1 in

accordance with law. Against this judgment the Appellant Corporation has preferred this appeal.

4. The learned Counsel appearing for the Appellant raised two contentions:

(1) that the Respondent No. 1, on the date of incident, was not on duty and therefore was not an employee; and

(2) that even if the findings arrived at by the Court below are accepted, as the incident occurred at a distance of a little more than a kilometre from the premises of the Malwa United Mills, Indore, it could not be said that the injury was an employment injury and therefore, the view taken by the learned Court below is not justified in law.

5. The learned Counsel for the Respondent contended that the finding about the Respondent No. 1 being on duty on the date of incident and that he returned after finishing his duties at 11 O'clock in the night are findings of fact arrived at by the Court below on the basis of evidence adduced by the Respondent No. 1. The Appellant produced no evidence to controvert those facts and the Court below having come to these findings of fact, this being an appeal u/s 82 of the Employees' State Insurance Act, the findings could not be interfered with.

6. As regard the second question, it was contended by the learned Counsel that the findings arrived at by the Court below are that when the Respondent No. 1 along with others was trying to enter the Mill premises in the after-noon in order to perform his duty as he was instructed by his jobber to do, there was a violent protest by Tufansingh and others who belonged to the rival Union and who had given a call for strike. But inspite of his protest, the findings arrived at by the Court below are that this Respondent No. 1 managed to go inside the Mill premises and performed his duties. At this occasion, the evidence discloses that Tufansingh and others had threatened that they will be seen when they come out and when the Respondent No. 1 was returning after discharge of his duties, he was assaulted by Tufansingh by a sharp edged weapon for nothing except that Respondent No. 1, inspite of the strike call, had gone to the Mill premises for discharge of his duties and therefore, the distance from the Mill premises would not be material but it would apparently be an injury arising out of his employment as apparently there is no evidence to indicate that Tufansingh attacked Respondent No. 1 for any other reason except that he had performed his duties and according to the learned Counsel, therefore, the view taken by the learned Court below could not be said to be erroneous in law.

7. On the first question as to whether on 19.9.1974, the Respondent No. 1 went to perform his duties or not the finding arrived at by the learned Court below is that he under instructions of his jobber went to the Mills and performed his duties. It is also found by the learned Court below that on 19.9.1974 at about 4 p.m. when this Respondent No. 1 along with others was attempting to go to the Mills a protest, to some extent violent protest, was lodged by Tufansingh and when the Respondent No. 1 managed to get into the Mill, he was threatened and

in consequence, on his return journey from the Mills at about 11.15 p.m. BabuTufan (Tufansingh and others) inflicted injuries on his person. The learned Court below also found that these injuries were inflicted only because there was some dispute about working in the Mills and about calling the workers to work in the Mills on 19.9.1974. The learned Court below came to these conclusions after considering the evidence of Respondent No. 1 and other witnesses examined on his behalf. Admittedly, the Appellant Corporation or Respondent No. 2 did not examine any other evidence about the working of Respondent No. 1 in the Mills or about the incident at the Mills gate at about 4 p.m. when this Respondent No. 1 along with others were attempting to enter the Mill premises nor they have examined any evidence about the incident which took place at about 11.15 p.m. These conclusions, therefore, arrived at by the Court below are pure findings of fact. learned Counsel for the Appellant went through the evidence to contend that the Court below should not have accepted this evidence of the Respondent No. 1 and his witnesses. But he frankly admitted that on these relevant facts, no evidence was led by the Appellant Corporation nor any evidence was produced by Respondent No 2. The only evidence which was before the Court was considered and the Court below having come to the findings of fact on the basis of appreciation of evidence, it could not be said that the Court below committed any error.

8. Having gone through the evidence also, I see no error in the conclusions arrived at by the learned Court below. Admittedly, this is an appeal u/s 82 of the Employees' State Insurance Act, 1948. Section 82 reads:

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 Indian Limitation Act, 1908 (XL of 1908), shall apply to appeals under this section.

Sub-clause (2) of this section clearly provides that an appeal shall lie to this Court only if it involves a substantial question of law. It is, therefore, clear that while hearing an appeal u/s 82, it is not possible for this Court to interfere with the findings of fact arrived at by the Court below, only on appreciation of evidence and therefore, the first contention advanced by the learned Counsel for the Appellant could not be accepted.

9. As regards the second question, the findings of fact arrived at are that Respondent No. 1 was instructed by his jobber to go the Mills on 19.9.1974 for performing his duties in weaving-shed. It is also found by the Court below that when this Respondent was taking other colleagues to the Mills, Babu Tufan had threatened and the further finding is that inspite of these threats, the

Respondent No. 1 went and worked in the Mills upto 11 p.m. It is also found by the Court below that when the Respondent No. 1 was returning after performing his duties at about 11.15 p.m. when he was at a distance of about one kilometre from the Mills gate, he was attacked by Babu Tufan and others and this attack was in connection with the dispute about working in the Mills on 19.9.1974. These findings of fact arrived at by the learned Court below clearly show that inspite of the threats, this Respondent went and worked in the Mills in discharge of his duties on 19.9.1974 and as threatened, on his return journey, only because of this dispute, he was attacked by Babu Tufan resulting in injury. These findings, therefore, could not be assailed and on these findings it is to be found as to whether this would bring the injury within the definition of "employment injury" as defined in Section 2 Sub-clause (8) of Employees' State Insurance Act. Sub-clause (8) of Section 2 provides:

(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.

The words used in this definition "arising out of and in the course of his employment" are words identical with the words used in Workmen's Compensation Act, Section 3 where the words used are "accident arising out of and in the course of his employment" and these words have been considered by their Lordships of the Supreme Court in a number of cases. The learned Counsel for the parties placed reliance on Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, , General Manager, B.E.S.T. Undertaking v. Mrs. Agnes 1958 A.C.J. 473 (S.C.) and Mackinnon Mackenzie and Co. Pvt. Ltd. v. Ibrahim Mahommad Issak 1969 A.C.J. 422 (S.C.). The learned Counsel for the Appellant specially placed reliance on a decision of Kerala High Court reported in Regional Director, E.S.h Corporation, Trichur v. K. Krishnan 1976 A.C.J. 457 (Kerala).

10. The phrase "in the course of his employment" has been considered in all these cases where it was considered as to whether the "course of employment" would continue only during the period when the employee is on the premises of his employment in connection with the discharge of his duties and a doctrine of notional extension of his place of work has been considered in all these cases in the light of the facts of that case and it was on this basis, it appears, that the contention advanced by the learned Counsel for the Appellant was that as the incident occurred about a kilometre away from the Mills gate even by this doctrine of notional extension, it could not be said that the place where the incident occurred would fall within the ambit of the place of employment and therefore, the injury could not be said to have been caused in the course of employment and therefore, the view taken by the Court below is erroneous in law and thus it was contended that it involves a substantial question of law.

11. In Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, , it was observed:

there is a rule, the employment of a workman was not commenced 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. It is now well-settled, however, that this is subject to the theory of notional extension of the employers premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will 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.

These observations clearly go to show that : "there may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises." And it is in this view of the matter that on the facts of that case, it was held that the workman was not entitled to compensation.

12. In *General Manager, B.E.S.T. Undertaking's case* 1958 A.C.J. 473 (S.C.) their Lordships after considering the English cases held:

Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. Though at the beginning the word "duty" has been strictly construed the later decisions have liberalized this concept. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion. But none of the decisions cited at the Bar deals with the transport service operating over a large area like Bombay. They are therefore of little assistance, except in so far as they laid down the principles of general application indeed, some of the law Lords expressly excluded from the scope of their discussion, cases where the exigencies of work compel an employee to traverse public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority.

And after discussing the facts of the case in hand, their Lordships observed:

Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshops, factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adopted to meet its peculiar requirements.

In this case, therefore, the question of notional extension was considered and in the context of the facts of that case their Lordships held that an employee going for duty to B.E.S.T. and using a bus will be in the course of employment.

13. In *Mackinnon Mackenzie and Co. Pvt. Ltd. v. Ibrahim Mahommad Issak* 1969 A.C.J. 422 (S.C.), their Lordships observed:

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.

And it is in this case that the phrase "arising out of employment" has been considered and it was observed:

there must be a causal relationship between the accident and the employment.

It is this test which will have to be applied to the facts of this case, as their Lordships in this case has quoted a passage from *Lancashire Railway Co. v. Highley* 1917 A.C. 352 where it was observed:

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 conversely, was an added peril and outside the sphere of the employment....

And it is in this context that if it is applied to the facts of the present case, the answer will be that if this Respondent No. 1 under instructions of his jobber had not gone to perform the duties inspite of the threat given by Babu Tufan, he would not have received these injuries. It is, therefore, plain that these injuries, therefore, will be injuries sustained because of his employment thereby falling within the mischief of the phrase arising out of his employment. It is not in dispute that the evidence discloses that there was no other reason for Babu Tufan to assault the Respondent No. 1 except that he attended his duties inspite of the protest by Babu Tufan and inspite of the threat communicated by him and his group and in view of these findings, the view taken by the Court below that the injury will be an "employment injury" as defined in Section 2(8) of Employees' State Insurance Act could not be said to be erroneous. The Kerala

case 1976 A.C.J. 457 (Kerala) on which reliance was placed by the learned Counsel for the Appellant is a case where a workman proceeding towards his residence alone on a public road after finishing his work at the factory was knocked down by a taxi and on these facts their Lordships felt that it could not be said to be an "employment injury", apparently because this workman was going back home on a public high way. The accident that had occurred had nothing to do with the employment nor any question of notional extension could be brought in and therefore, this case will be of no help so far as the facts of this case are concerned.

14. I, therefore, see no reason to entertain this appeal. It is, therefore, dismissed. In the circumstances of the case, parties are directed to bear their own costs.