

(1965) 09 BOM CK 0004
In the Bombay High Court
Case No : First Appeal No. 339 of 1963

Employees" State Insurance Corporation	APPELLANT
Vs	
Indian Textile Mills	RESPONDENT

Date of Decision : 21-09-1965

Acts Referred:

Employees State Insurance Act, 1948 — Section 66
Factories Act, 1948 — Section 21, 21(1), 22(1)

Citation : (1965) 09 BOM CK 0004

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Judgement

1. This is an appeal by the Employees" State Insurance Corporation against the decision of the learned Judge, Employees" Insurance Court, Bombay, who dismissed the application of the Corporation under S. 66 of the Employees" State Insurance Act for reimbursement by the respondent-mills of a sum of Rs. 6,092.50 being the disablement benefit paid by the Corporation to the worker Hirba Mahadu (hereinafter referred to as the injured person) who was employed as a machine-man in the mills and who was insured under the Employees" State Insurance Scheme. On 19 August 1960, at about 9 p.m., when the injured person was trying to put the belt in one of the pulleys on the main shafting machine which was on the belt slipped from the pulley and rounded the right hand of the injured person. The injured person was entangled in the belt and was dragged with the result that serious injury was caused to his right hand and the right hand had to be amputated. According to the Corporation, there were no under guards for the overhead belts in the department which were running at a low height and the said injury was caused by the negligence of the mills in not providing under guards to the overhead belts and the mills had contravened S. 21(1) (iv)(b) of the Factories Act. The Corporation claimed that the injury caused to the injured person was attributable to this negligence.

2. The respondent-mills disputed this claim although the injury to the injured person, when he was trying to put up the belt on the main shaft, was admitted.

It was their case that the absence of guards on the main shafts did not amount to any negligence on their part. They stated that the main shafts were not to be provided with guards. The defence was that the Factory Inspector had visited the factory but had never suggested putting up guards on such main shafts. It was their case further that the practice and instructions in fixing belts in such cases were that the motor was to be first stopped and then alone the belts were to be fixed. In this case the injured person did not stop the motor but he "jumped and held himself up with the support of the eye through which cloth is carried fixed in the wooden tixler."

3. The learned Judge of the Insurance Court held that the Corporation had not proved that the injury was caused to the injured person due to the negligence of the respondent-mills in not providing a safety guard. On this finding the learned Judge held that the Corporation was not entitled to be reimbursed. The learned Judge found that the belt was horizontal and at a height of 9 feet 6 inches. He found that at that height it was beyond the reach of any workers working on the ground. As to the contention of the Corporation that it would have been accessible to a worker standing on the beam from which the shaft is only 3 feet 9 inches. The learned Judge found that a worker would climb the beam only for carrying out repairs to the shaft or for mounting the belt. In other words, the learned Judge held that the necessity of standing on the beam for the purpose of replacing the belt would arise only for the purposes of repairs to the shaft or for replacing the belt. These acts, the learned Judge observed, came under the proviso to S. 21(1)(iv)(b) of the Factories Act.

Section 21(1)(iv)(b) of the Factories Act is as follows :-

"21. (1) in every factory the following, namely, -

* * *

(iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, namely :

* * *

(b) every part of transmission machinery;

* * *

shall be securely fenced by safeguards of substantial construction which shall be kept in position while the parts of machinery they are fencing are in motion or in use."

4. The proviso to Sub-section (1) of this section is as follows :-

"Provided that for the purpose of determining whether any part of machinery is in such position or is of such construction as to be safe as aforesaid, account shall not be taken of any occasion when, it being necessary to make an

examination of the machinery while it is in motion or, as a result of such examination, to carry out any mounting or shipping of belts, lubrication or other adjusting operation while the machinery is in motion, such examination or operation is made or carried out in accordance with the provisions of Sub-section (1) of S. 22."

Sub-section (1) of S. 22 is as follows :-

"22. (1) Where in any factory it becomes necessary to examine any part of machinery referred to in S. 21 while the machinery is in motion, or as a result of such examination, to carry out any mounting or shipping of belts, lubrication, or other adjusting operation while the machinery is in motion, such examination or operation shall be made or carried out only by a specially trained adult male worker wearing tight-fitting clothing whose name has been recorded in the register prescribed in this behalf . . . ;"

5. The operative part of Clause (iv)(b) of Sub-section (1) of S. 21 provides that every part of the transmission machinery must be securely fenced by safeguards of substantial construction. It requires that such safeguards of substantial construction shall be kept in position while the parts of the machinery they are fencing are in motion or in use. The proviso makes an exception to this absolute requirement of securely fencing every part of the transmission machinery by safeguards and keeping the safeguards in position, in the special circumstances mentioned in the proviso. The proviso can apply on an occasion when it is necessary to make an examination of the machinery while it is in motion, and when as a result of such examination it is necessary to carry out any mounting or shipping of belts, lubrication or other adjusting operation while the machinery is in motion. On such occasion, the proviso provides that the absolute requirement in Clause (iv)(b) of Sub-section (1) of S. 21 may not be taken into account. Even on such an occasion, the examination or operation is to be made or carried out in accordance with the provisions of Sub-section (1) of S. 22. Under S. 22(1) it can be carried out only by a specially trained adult male worker wearing tight-fitting clothing whose name has been registered in the register prescribed in this behalf. While such a trained worker is to carry out such an examination, there are other restrictions imposed in S. 22(1) which have got to be complied with. In the present case it is nobody's case that an occasion arose for making an examination of any part of the machinery in motion or the carrying out any mounting or shipping of belts, etc., as a result of such examination, had become necessary. There is not dispute between the parties that the injured person was working on the machine when the upper belt slipped out from the pulley and for replacing it he mounted a horizontal piece of wood. He was attempting to replace the belt in the pulley while the shaft was in motion, but the moment he inserted the belt on the pulley on the shaft the belt at the other end slipped out and entangled his right hand. The only dispute is whether this injury was caused as a result of the negligence of the mills. It was not the case of the mills at any stage that the injury occurred when an examination of the

machinery in motion, as contemplated by the proviso, was undertaken. The learned Judge has observed that at the height at which the belt on the shaft was, it was not easily accessible to a worker working on the ground and that it was accessible to a worker climbing the beam to repair or mount it and therefore it must be assumed that the worker did it for the purpose of repairing or mounting the belt which had slipped out. Assuming that it was done for repairing the belt which had slipped out, the repairing is not of the type contemplated by the proviso to S. 21(1). Indisputably this was not the occasion when the mills had thought it necessary to carry out the examination of the machinery while it was in motion. Equally undisputed is the fact that this was not an occasion when as a result of such examination the mounting or shipping of the belts, etc., was necessary. In the ordinary course of the routine work the belt slipped out and the worker on his own attempted to replace it, when the belt on the other side slipped out and caused injuries to the injured person. It is difficult to understand how under these circumstances the view taken by the learned Judge that the act came under the proviso can be upheld.

6. The learned Judge has also held that the danger arising from the slipping of the belt from the shaft was not foreseen and that no guard was contemplated or ordered to be placed for this belt at any time before. In his view there was no danger from the belt when the workers worked on the ground. In my view, there is no scope for the view taken by the learned Judge that there is no obligation to put a guard on a transmission machinery if that part of the machinery is not easily accessible. Section 21(1)(iv)(b) of the Factories Act prescribes an absolute requirement to be complied with and that requirement is that every part of the transmission machinery shall be securely fenced by safeguards of substantial construction. It also requires that when the parts of the machinery are in motion the safeguards shall be kept in position. The view, therefore, that because no danger was contemplated if the worker worked on the ground is irrelevant to the main question whether the mills had complied with the absolute requirement of the section.

7. The injured person was examined on behalf of the Corporation. His evidence is that the upper belt slipped out from the pulley and for replacing it he got up on a horizontal piece of wood. The shaft was in motion and he was replacing the belt as usual in the pulley. By the time he inserted the belt on the pulley on the shaft the belt at the other end slipped off and entangled his right hand. His right hand was thereupon broken. According to him there was no underguard for this belt. This evidence is supported by the accident report made by the mills soon after the accident. It is not disputed that the pulley on the shaft on which the belt was mounted was a dangerous part of the transmission machinery. All that was suggested in the cross-examination of the injured person was that there would be no danger from the pulley or shaft when a worker would be working on the ground. A belated attempt was made by the mills in the letter which they wrote to the Regional Director of the Corporation on 22 June 1961 to show that the accident occurred causing injury to the injured person because he disobeyed a

specific direction given to him not to replace the belt without stopping the motor running the shaft. This would suggest that the direction was given because replacing the belt when the pulley is in motion was dangerous. In view of the absolute requirement of S. 21(1) it was obligatory on the mills to put an underguard to every part of the transmission machinery. That such an underguard was not put is undisputed, and if there was no compliance with the requirements of the section, which are absolute, the conclusion must follow that there is a contravention of the rule which is made for the safety of workmen working on dangerous machines in a factory.

8. Sri Paranjape contended that even assuming that it was necessary to put an underguard, on the ground that it was dangerous part of the transmission machinery, the mills cannot be held liable to reimburse the Corporation unless the injury is sustained by the employee by reason of the negligence of the employer to observe any of the safety rules laid down by or under any Act. Sri Paranjape says that even if contravention of a safety rule is established and even if it is possible to draw an inference of negligence from such a contravention, the injury must be shown to have been caused as a result of such negligence. In other words, Sri Paranjape says that the injury should have been caused as a direct result of the negligence of the employer. He contends that on the facts of this case the belt was horizontal. The evidence of the worker himself is that while working on the ground there was no danger. If the worker himself had not mounted the beam in order to replace the belt on the pulley, the slipping of the belt would not have caused any injury to the worker. The injury, therefore, in this case, according to Sri Paranjape, is the result of the worker's own negligence in mounting the beam for replacing the belt, while the pulley was in motion, and was not the result of the negligence of the mills in providing an underguard to the belt. Sri Paranjape points out that the main belt is at a height of 9 feet 6 inches from the ground, and the wooden beam on which the injured person was standing was 3 feet 9 inches below the shaft. It is only because the worker stood up on the beam he came in proximity of the dangerous part of the transmission machinery, which would not have happened if the worker had stood on the ground, in which case distance between the belt and the ground would have been 9 feet 6 inches. It is well-settled that the requirement of providing a safeguard is with a view to protecting not only workmen who are diligent and careful but also those who may in the course of their employment act inadvertently or even inefficiently or foolishly. It was contended by Sri Paranjape that this was not a case of inadvertence or inefficiency, but it was a clear case of disobedience of a specific direction given by the mills to the worker. In his examination-in-chief the injured person has stated that he attempted to replace the belt while the pulley on the shaft was in motion, as was usually done in such cases. It has been brought out in the cross-examination of the worker that replacing of the belt is usually done when the motor is on, although it is also possible to mount the belt on the pulley after stopping the motor. In the cross-examination of the worker nothing is suggested to indicate that any such specific

direction that the belt should not be mounted on the pulley without stopping the motor was given. In the accident report which was submitted by the mills soon after the accident the mills have clearly stated that the accident was not caused on account of wilful disobedience of the injured person to an order expressly given or to a rule expressly framed for the purpose of securing the safety of employees. It is pertinent to note that the accident occurred on 19 August 1960, the accident report was given on the very next day, on 20 August 1960, but, for the first time, in their letter addressed to the Corporation dated 22 June 1961, i.e., nearly after ten months, mills have stated that the worker had disobeyed specific directions given in the factory that the motor running the shaft must first be stopped in all cases of lifting, fixing and refixing the belt. No one has been examined on behalf of the mills to give evidence for establishing that any such directions were ever given. The fact that in the cross-examination of the worker himself it has been brought out that the normal practice was to replace the belt when the motor is on shows that this was probably the practice which was usually followed. Under these circumstances, it is impossible on the evidence in this case to hold, as Sri Paranjape wants me to do, that the accident was caused not by the negligence of the mills but by the act of the injured person in disobeying the specific directions given by the mills. There is no doubt on the evidence in this case that the injury can be connected directly with the negligence of the mills in failing to provide a safeguard, with regard to which there is an absolute requirement in S. 21(1)(iv)(b) of the Factories Act.

9. It was also faintly argued by Sri Paranjape that in the manner in which the belts were fixed it was not possible to provide an underguard. This again is nobody's case. All that was urged before the learned Judge was that this was not considered to be a necessity by the Factory Inspector also because the distance between the belt and the ground was considerable and there was no danger when the workmen worked on the ground. It has not been suggested either to the Factory Inspector or to the injured person in his cross-examination that an underguard was incapable of being fixed, nor was it suggested that even if an underguard had been fixed the accident could not have been avoided. Sri Paranjape attempted to argue that an underguard could not have avoided the accident. No foundation for such an argument has been made in the evidence. On the contrary, the evidence has proceeded on the basis that there was no danger because of the distance between the belt and the ground. Under these circumstances, I am unable to accept Sri Paranjape's contention that an underguard could not have been provided or even if it had been provided the accident could not have been avoided.

10. In the concluding part of his order the learned Judge has observed that S. 21 of the Factories Act does not require the employer to guard anything when the worker was not likely to come in contact with the machinery which is in motion. He has also observed that the obligation arises only when the machinery is in motion. According to him, if there is no possibility of the worker coming in contact with the machinery when it is in motion or in use, and if anything slips

down from a rotating or moving machine, it is not the responsibility of the employer to protect a worker against a danger arising from such a situation. The learned Judge has put it in the following way :

"He is required to provide a safety guard which shall be kept in position while the parts of machinery they are fencing are in motion or in use. So the employer is to guard against any worker coming in contact with the machinery when it is "in motion" or "in use." It does not hold the employer responsible for guarding against anything beyond that Now that word "in motion." in my view, refers to motion of a part or parts of the machinery when the machinery is functioning. I do not think that the motion of any broken part when it falls down is beyond the region of its normal movement. In the present case, when the belt slipped and fell down, it moved beyond its region of movement when the machine is functioning. The motion contemplated by S. 21 is the motion of a machine in its proper working condition and not that of a broken machine."

11. With respect, I am unable to uphold this construction of the section as given by the learned Judge. On a plain reading of the section, there is no warrant for such a construction. As I have already said, there are two separate obligations arising under the section. One is that already part of the transmission machinery shall be securely fenced by safeguards of substantial construction, and the other is that such safeguards shall be kept in position while the parts of the machinery they are fencing are in motion or in use. Where is the warrant in the section for the view that if something goes wrong with the machinery while it is in motion and a part of it slips down, there is no obligation on the employer to protect a workman from injury arising under these circumstances ? The sole object of the section is to see that safeguards which are normally fenced must be kept in position while the machinery is in motion. The protection is therefore available either when the worker comes in contact with a machinery in motion or when anything falls out of the machinery while in motion and the worker suffers. The basic idea is that the safeguard must be in position so that the rotating or moving part of the machinery is incapable of causing any injury. I am unable to agree with the view that any such limitation can be read in the section as the learned Judge has done. The learned Judge has again stated his interpretation in the following words :

"My view of S. 21(1) is to guard any part of human body coming in contact of the machinery in its danger zone while . . . (sic) is functioning and not of any part of the machinery . . . (sic) its normal course and hitting the worker outside the region of its functioning."

12. It must be remembered that Clause (iv)(b) of Sub-section (1) of S. 21 expressly provides that every part of the transmission machinery shall be securely fenced by safeguards of substantial construction "unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced." The protection is to every person employed in the factory and not every workman working on the

machine, over which a safeguard is to be provided. If the idea underlying the section is to protect every person employed in the factory, it is difficult to agree with the view that persons who are not likely to come in contact with the machinery are not sought to be protected by the absolute requirement of putting a safeguard of substantial construction. The present case is governed by Clause (iv)(b) of Sub-section (1) of S. 21 of the Factories Act, which refers to every part of the transmission machinery which is required to be securely fenced. I am, therefore, unable to uphold the conclusion of the learned Judge that there was no negligence on the part of the mills in not providing a safeguard to this transmission machinery which is required to be protected by the section.

13. In this view of the matter, the order passed by the learned Judge dismissing the application of the Corporation will be set aside, the application of the Corporation for reimbursement by the mills of a sum of Rs. 6,092.50 will be allowed and a decree will be made in favour of the Corporation for that sum. The respondent-mill shall pay to the Corporation the said sum claimed by them. The respondent-mills will pay the appellant Corporation's costs throughout.