

(1972) 11 BOM CK 0001

In the Bombay High Court

Case No : Letters Patent Appeal No. 49 of 1969

Gajanan Bhan Magat

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 21-11-1972

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(15B), 2(8), 51
Workmens Compensation Act, 1923 — Section 3

Citation : (1973) 27 FLR 277 : (1974) 2 LLJ 163

Hon'ble Judges : R.M. Kantawala, C.J.;S.B. Bhasme, J

Bench : Division Bench

Judgement

Kantawala, C.J.—This appeal arises out of an application made by Gajanan Bhan Magat the appellant, under the Employees' State Insurance Corporation (Act No. 34 of 1948) (hereinafter referred to as "the Act") for benefit in respect of employment injury. The appellant was employed as an assistant electrical performance in India United Mills Nos. 2 and 3 at Bombay. On December 9, 1956 he was working on the day shift and a coolie named Shankar Bhiva was working under him. The appellant happened to reprimand Shankar for not discharging his duty properly. Nothing happened between the appellant and Shankar till December 16, 1956. On that day, the appellant was on duty in the second shift and his hours of duty were from 3 p.m. to 11 p.m. His reliever Fernandes, however, arrived in the mill by about 10-15 p.m. and relieved him. After handing over charge to Fernandes the appellant left the mill. As soon as he came out of the mill compound he was assaulted and beaten with a bamboo stick by some assailants and the case of the appellants is that one of the persons who so assaulted him was Shankar. The appellant was thereafter removed to the hospital and as a result of the injuries sustained on the left side of his face, his left eye was completely lost.

2. On December 10, 1957, the appellant filed an application being application No. 129 of 1957 before the Insurance Court claiming benefit from the respondent. That application was dismissed by the Insurance Court. On appeal by the

appellant to this Court the order of dismissal by the Insurance Court was set aside and the appellant was given permission by this Court to file a fresh application in regard to his claim. Accordingly, on September 6, 1961 a fresh application was filed by the appellant in the Employees' State Insurance Court. In this application he made a claim for permanent disablement benefit at the rate of Rs. 1.50 paise per day from February 20, 1957 to the date of the application. The application was dismissed by the Insurance Court. The Insurance Court took the view that the appellant failed to prove that the accident which resulted in the injury arose out of the employment. The Court also felt a doubt whether Shankar was one of the assailants of the appellant. According to the Court the appellant had not proved his case beyond reasonable doubt and it dismissed the application.

3. An appeal against this decision of the Insurance Court was heard by Gatne, J. Upon scrutinising the evidence on record the learned Judge took the view that the case must be decided on the basis that the person who assaulted the appellant on the night of December 16, 1956 was Shankar. The learned Judge also took the view that the appellant was so assaulted by Shankar by reason of a previous incident which had taken place a few days earlier. He accordingly found no difficulty in holding that the assault arose out of the employment of the appellant as an Assistant Electrical Foreman. The learned Judge, however, felt that as the appellant was assaulted on the road outside the mill compound it could not be said to be in the course of his employment. In view of this finding the learned Judge dismissed the appeal that was filed by the appellant.

4. The appellant has come in this Letters Patent Appeal against the said decision of the learned Judge.

5. Mr. Buch on behalf of the appellant contended that in order to prove an employment injury within the meaning of the Act it is necessary for an employee to prove that the personal injury caused to him by the accident arose out of and in the course of his employment being an insurable employment. His submission is that there was a clear finding that the injury to the appellant arose out of his employment. He also relied upon the finding of this Court that the appellant handed over the charge of his post to Fernandes and left the mill premises for going home. It was in that context that he happened to be on the road where he was subjected to an assault. The submission of Mr. Buch is that an injury caused to an employee does not cease to arise in the course of his employment simply because he is assaulted outside the actual place of his employment. He submitted that if at the time when the employee was assaulted he was doing something reasonably incidental to his employment then the injury arose not only out of employment but also in the course of his employment. Mr. Jaykar on the other hand on behalf of the Insurance Corporation submitted that when the appellant handed over the charge of his post to Fernandes and left the mill premises, his employment terminated or came to an end; that the assault on the appellant had not taken place within the mill premises; that he was assaulted

while he was outside the mill premises at a distance of about 25 or 30 paces away from the main gate; that such as assault had taken place after the employments has terminated and cannot be regarded as arising in the course of employment. He has not disputed the correctness of the finding of Gatne, J., that the injury to the appellant arose out of his employment.

6. Section 51 of the Act inter alia provides for permanent disablement benefit to which an employee may be entitled. The relevant part thereof provides that subject to the provisions of the Act and the regulation, if any, made thereunder, a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment for such disablement in accordance with the provisions of the First Schedule. The phrase "permanent total disablement" is defined in S. 2(15B). Under this Sub-section "permanent total disablement" means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement. The words "employment injury" are defined in S. 2(8) as under :

"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 contracted within or outside the territorial limits of India.

7. The question that arises in the present case is, whether by permanent loss of his left eye as a result of the assault can the appellant be regarded to have suffered an employment injury within the meaning of this definition. It will be an employment injury if it is a personal injury caused to the appellant by accident arising out of and in the course of his employment being an insurable employment. The Insurance Court took the view that it was not established beyond reasonable doubt that it was Shankar who was one of the persons who assaulted the appellant. In view of that findings, the Insurance Court dismissed the application of the appellant when the matter was, however, considered by the High Court, Gatne, J., took the view that the appeal must be decided on the footing that the person who assaulted the appellant on the night of December 16, 1956 was Shankar. He also gave a clear finding that there is no difficulty in holding that the assault at the hands of Shankar arose out of the employment of the appellant as an Assistant Foreman. He, however, took the view that as the assault was committed on the road outside the mill compound, the assault could not be said to be in the course of his employment.

8. The short question to be considered in this case is, if regard be had to the facts and circumstances of this case and the finding of Gatne, J., can it be said that the injury to the appellant arose in the course of his employment ? Having regard to the provisions and the scheme of the Act it is not permissible to us to challenge the findings of fact arrived at by the Insurance Court and the learned Judge. The learned Judge in his judgment has clearly observed that the case must proceed on the basis that the appellant handed over the charge of his post

to Fernandes and left the premises for going home and it was in the nature of that context that he happened to be on the road where he was subjected to an assault. The assault on the appellant had taken place at a distance of about 25 or 30 paces away from the mill premises while he was leaving the mill premises.

9. A person is only in the course of his employment while doing something which he is under an obligation, express or implied, to his employers to do or something reasonably incidental thereto. It does not follow that because the accident happens on an employer's premises it necessarily arises in the course of the employment, for it may be that the employed person has not yet entered upon his employment or alternatively that at the time of the accident he has already disentangled himself from his employment. The course of employment normally begins when the employee reaches his place of work. To extend it to the journey to and from work it must be shown that, in travelling by the particular method and route and at the particular time, the employee was fulfilling an express or implied term of his contract of service. One way of doing this is to establish that the home is the employee's base from which it is his duty to work and that he was travelling by direct route from his home to a place where he was required to work, but that is only one way of showing this; the real question at issue is whether on the particular journey he was travelling in the performance of a duty, or whether the journey was incidental to the performance of that duty and not merely preparatory to the performance of it. The test is whether the employee was exposed to the particular risk by reason of his employment or whether he took the same risks as those incurred by any member of the public using the highway. (See. Halsbury's Laws of England. Vol. 27. 3rd Edition, Articles 1418 and 1419.)

10. The phrase "accident arising out of and in the course of employment" came for construction before this Court in *Trustees of the Port of Bombay Vs. Yamunabai*, . The view taken by the Division Bench of this Court is that the expression "in the course of his employment" suggests the point of time; that is to say, the injury must be caused by accident taking place in the course of the employment, that is, during the currency of the employment. The expression "arising out of his employment" suggests both the time as well as the place of employment. The expression "out of" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of the accident. That is the literal and strict construction of the provisions of S. 3 of the Workmen's Compensation Act. But the words "arising out of his employment" are wide enough so as to cover a case, where there may not necessarily be a direct connection between the injury caused as a result of an accident and the employment of the workmen. And there may be circumstances attending the employment, which would go to show that the workman received personal injury as a result of the accident arising out of his employment.

11. In *Works Manager, Carriage and Wagon Shop, E.I. Rly. Vs. Mahabir*, , it is pointed out that the word "employment" is of wider import than the word "work"

or "duty". The expression "in the course of employment" means not only the actual work which the man is employed to do but what is incident to it, in the course of his service. The expression is not to be regarded as confined to the "nature of the employment". It applies to employment such, i.e., to its nature, its conditions, its obligations, and its incidents. It would thus include not only the period when he is doing the work actually allotted to him but also the time when he is at a place where he would not be but for his employment. It is further pointed out that "What may be called" "environmental accidents", i.e., accidents resulting from the surroundings in which the workmen is employed or through which he has to reach his place of work in order to carry out his obligation to his employer also fall within the scope of the phrase "arising out of or in the course of employment". This rule, of course, is subject to the exception that where the accident occurs in a public place, and the risk faced by the workman is not due to his employment but to his being on the spot as a member of the public, the employer will be liable only if the presence of the workman on the spot can be found traceable to an obligation imposed upon him by the employer".

12. In view of the clear finding of this Court that the assault on the appellant was amongst others by Shankar and the cause of the assault was an earlier incident of reprimanding him there is no difficulty in coming to the conclusion that the assault that had resulted in an injury to the appellant arose out of his employment, such injury is also in the course of his employment not only when the injury is caused to him while doing something which an employee is under an obligation, express or implied, to do, but also when he is doing something reasonably incidental thereto. On the day in question, the appellant was working in the second shift and his hours of duty were from 3 p.m. to 11 p.m. Fernandes, who was his reliever from the third shift came a little earlier at about 10-15 p.m. and relieved him. After handing over the charge to Fernandes, the appellant was going out of the mill premises and after he had proceeded about 25 or 30 paces from the gate of the mill he was assaulted amongst others by Shankar. In determining the question whether the injury arose in the course of his employment, the test to be considered is whether the employee was exposed to the particular risk by reason of his employment. The appellant could not have been at that particular time at the place where he was assaulted, had it not been for his employment. Further it was by accident that he happened to go a little earlier before the expiry of his duty hours. His normal hours of duty in the second shift were upto 11 p.m. but Fernandes who was his reliever from the third shift came a little earlier and he handed over the charge of his post to him at 10-15 p.m. It was open to his employer at any time before 11 p.m. to recall him for the work which was a part of his duty to do. His going away from the mill premises was actually reasonably incidental to the duty that he was called upon to discharge as an Assistant Electrical Foreman in the mills. The time when and the place where he was attacked also clearly show that they are incidental to the course of his employment. It cannot be said that at the time when he was assaulted, the appellant took the same risks as those incurred by any member of

the public using the highway. The appellant would not have been at that time at the place where he was assaulted but for his employment. As his being at the spot was reasonably incidental to his employment, the assault which resulted in the injury arose in the course of his employment. As such, all the ingredients required under the definition of "employment injury" are fulfilled in the present case and it can be said that the appellant suffered an employment injury as defined under the Act.

13. Reliance was placed by Mr. Jaykar on behalf of the Insurance Corporation upon the decision in *Netherton v. Coles* 1945 1 AER 227. In that case the workman was a painter and was employed by the appellant, a building contractor. By the contract of employment the employer had reserved the right to name the place of work. This place of work was a hospital, some eleven miles away from the workman's home. The contract contained provisions for travelling allowances and for free travelling facilities as between convenient centres at or near the job and the employer's office in Plymouth. The workman finished work at the hospital at 6 p.m. on May 21, 1943 and about five minutes later was killed when riding his motorcycle on the public road on his way to his home. It was found as a fact that it was not the practice of the workman to attend at the employer's office in Plymouth either before going to, or after returning from, his place of work. It was contended for the respondent, the widow of the workman, that the accident arose out of and in the course of the employment, since the workman was under orders to make the journey to the place of work and the journey from it must be treated on the same footing, with the consequence that the workman's employment was extended so as to cover such journeys. The Court of Appeal held that the journeys of the workman did not form any part of his service since he was at liberty, outside working hours, to choose his own time and method of transport to and from his actual work and the accident happened after completion of his work. The ratio of this case cannot be attracted in the present case, because, at the time when the appellant was assaulted his hours of duty had not even expired. He only happened to leave the mill premises simply because Fernandes who was to relieve him from the third shift came a little earlier. It is incidental to the employment of every workman that after his hours of duty he must leave the mill premises. In the present case the assault had taken place after the appellant had hardly walked 25 or 30 paces from the gate of the mills. Thus the proximity of time to his hours of duty and the nearness of the place, where he was assaulted, to the place of employment clearly go to show that at the time the appellant was doing something which incidental to his employment. The injury in the present case, therefore, arises not only out of but also in the course of his employment.

14. Reliance was also placed by Mr. Jaykar upon the decision of *Smith v. South Normanton Colliery Company, Limited* [1903] 1 K.B. 204. In that case, the appellant, a workman, while working in the respondents' colliery, was, for disobedience of orders, suspended from work, pending an inquiry into the matter by the under-manager of the colliery. It appeared that men were not allowed to

remain in the workings of the colliery when not at work; and the practice was for a workman who was suspended while at work to go to the pit bottom, i.e., the bottom of the shaft in which the cage worked, by which access to or egress from the mine was obtained. The appellant, when he was suspended, went into a place, called a "passby," at the side of the tramway leading to the pit bottom. While sitting there he was ordered by the deputy to go to the pit bottom. He remained "however" in the passby, where, about two hours later, a fall from the roof took place, by which he was injured. If the appellant had gone to the pit bottom as directed, he could not have got out of the mine till the cage went up in the ordinary course, which was later than the time at which the accident happened. Upon a claim by the appellant for compensation under the Workmen's Compensation Act, the county Court judge found that the accident did not arise out of and in the course of the appellant's employment. On appeal, the Court of Appeal confirmed the finding of the county Court Judge. This was a case where a workman has disobeyed the orders of his superior and was suspended and it was by reason of such disobedience and suspension that he happened to meet the injury for which the claim was made. Such a case has no application to the facts of the present case.

15. In our opinion, having regard to the findings of Gatne, J., on questions of fact the conclusion is that the personal injury caused to the appellant by the accident, arose out of and in the course of his employment being an insurable employment and injury is an employment injury within the meaning of of S. 2(8) of the Act. We accordingly set aside the order passed by the Insurance Court and by this Court on December 16, 1968. We hold that the personal injury caused to the appellant by the accident arose out of and in the course of his employment and as it was an employment injury within the meaning of the Act, the appellant will be entitled to benefit in accordance with the provisions of the Act and the rules made thereunder. The matter is remanded back to the Insurance Court to determine the amount of benefit to which the appellant may be entitled to having regard to the provisions of the Act and the Rules made thereunder. The respondents will pay the costs of the appeal before Gatne, J., and of this Letters Patent Appeal. So far as the costs of the application before the Insurance Court are concerned, the same may be dealt with at the time when the matter is finally disposed of by that Court pursuant to this order of remand.