
(1962) 08 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous A No. 8 of 1962 (G)

J.C. Mills Ltd. Gwalior

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 06-08-1962

Acts Referred:

Factories Act, 1948 — Section 14

Citation : (1965) JLJ 110

Hon'ble Judges : A.H. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.H. Khan J.

1. The facts giving arise to this Miscellaneous Appeal in short are that one Ramswaroop, a worker in the Engraving Department of the J. C. Mills, Gwalior, got injured while working on the varnishing machine. His left hand index finger was crushed in between the gears of the varnishing machine, which had no fencing round it. The Employees State Insurance Corporation gave the worker the disablement benefit. After settling the claim of the worker, the Employees State Insurance Corporation filed a suit against the Mills for the recovery of the disablement benefit, on the ground that the Mills had been negligent in not putting up fencing round the machine. The Employees State Insurance Court, Madhya Pradesh, Gwalior, decreed the claim of the Employees State Insurance Corporation, Gwalior, against which this appeal is filed.

2. The main contention of Mr. P. L. Dubey, learned counsel for the appellant, is that every dangerous part of a machine need not be fenced and he bases his argument on Sec. 21(iv)(c) of the Factories Act which provides for fencing to safeguard a worker. Section 21(iv)(c) reads thus.-

(iv) (c) Fencing of Machinery: -

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 following namely,

(c) every dangerous part of any other 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;

A careful perusal of the above provision would show that every dangerous machinery or part of it need not necessarily be fenced. What the law requires is that only such dangerous parts of a machinery must be fenced that are exposed and are in such a position so that the working of those parts in an unfenced condition would be unsafe to the worker in the factory. In other words where part of the machinery is such that in its operation, danger may result to the worker if unfenced, then such machinery or part of it must be fenced. In view of this interpretation, we must now find out if this particular machinery was not safe for the worker and it should have been, therefore, fenced.

3. Prabhakar Lambore, the Factory Inspector, has deposed that because the gears were near the fast and loose pulleys, there being no guard on them, there was every likelihood that at the time of changing from the fast pulley to the loose one, the hand or fingers might get injured. Furthermore, Kashinath Tiwari, Chief Engineer of the Mill, has deposed that when this machine had been put up in the beginning, it had been fenced. He has referred to the fencing as covers. He has further stated that he can not say whether at the time of the incident the covers were there or not. Baburao, one of the workers in the Department, has deposed that there were no covers on the machine at the time of the incident. Ramswaroop, the injured person, in his deposition has said that there were no covers or handles on the machine, and, that if they had been there, it would have been possible to work the machine from some distance, and the accident could have been avoided. He further states that the covers and handles were flitted after the accident. All these statements would go to show that there has been negligence in not fencing the dangerous part of the machinery. As a matter of fact the management of the Mill was alive to the danger and that is why covers had been fitted to the machinery in the beginning.

4. In *John Summers & Sons Ltd, Vs. Frost* (1955) 1 AER 870, the principle of putting up fencing round the machinery has been elaborately discussed and I can do no better than quote the relevant portion which runs as follows:-

The necessary and sufficient condition for the emergence of the duty to fence imposed by section 14 of the Factories Act is that some part of some machinery should be "dangerous". The question is not whether the occupiers of the factory knew that it was dangerous; nor whether a factory Inspector has so reported, nor whether previous accidents had occurred; nor whether the victims of these accidents had, or had not, been contributory negligent. The test is objective and impersonal. Is the part such in its character, and so circumstanced in its position,

exposure, method of operation and the like, that in the ordinary course of human affairs danger may reasonable be anticipated from its use unfenced, not only to the prudent, alert and skilled operative intent upon his task, but also to the careless or inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part.

5. No other point has been pressed before me by the learned counsel for the appellant.

6. For reasons stated above, I dismiss the appeal. Parties shall bear their own costs of this appeal.