

(1937) 09 BOM CK 0005
In the Bombay High Court
Case No : First Appeal No. 287 of 1936

Koynabai

APPELLANT

Vs

The Bombay Municipal Corporation

RESPONDENT

Date of Decision : 13-09-1937

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)(n)

Citation : AIR 1938 Bom 155 : (1938) 40 BOMLR 12 : 173 Ind. Cas. 673

Hon'ble Judges : Sen, J;Norman, J;John Beaumont, J

Bench : Full Bench

Final Decision : Allowed

Judgement

John Beaumont, Kt., C.J.—This is an appeal from the Commissioner for Workmen's Compensation. The facts found are that the Bombay Municipality, who were the employers, are in charge of the water supply for Bombay, and in order to test the efficiency of the system it becomes necessary for them at times to ascertain the degree of pressure in the water mains. On the occasion in question when the accident occurred they were testing the pressure in the 24" water main on Gibbs Road. In order to test the pressure they had to fix to the stand pipe a recording instrument and to keep that instrument working for twenty-four consecutive hours. They started the test at 8 a.m. on April 16, and as the test had to be continued throughout the night they placed two coolies on guard to watch the instrument during the night. The coolies in question were employed in the Water Department of the Bombay Municipality. During the night an accident occurred and one of the coolies, whose representative is the claimant in this case, was killed and the other was rendered unconscious and we are told does not remember in the least how the accident occurred. The Commissioner thinks that the coolies may have been asleep and have been run into by some passing motor-car, but that is only a guess. We do not know what happened, and it is at any rate possible that the coolies met with the accident in an endeavour to prevent some careless motorist from running into the apparatus, which it was

their business to protect.

2. It is not disputed that the accident arose out of and in the course of the employment of the deceased man, and the only question is whether he was at the time a workman within the meaning of the Workmen's Compensation Act. Section 2(1)(n) of the Act, so far as material for the present purpose, defines a "workman" as meaning any person who is employed on monthly wages not exceeding three hundred rupees in any such capacity as is specified in Schedule II. Schedule II provides that persons are workmen within the meaning of Section 2(1)(n) who are employed in any of the various forms of employment specified. A great many of the expressions employed in the schedule are capable, I think, of being given either a wider or a narrower -construction. For instance Clause (viii) includes amongst workmen persons employed in the construction, repair, or demolition of any building, etc. Apart from the context one might give to the words " construction, repair or demolition " a restricted meaning, and hold that only persons who are actually employed in the work of building, repair or demolition are included. On the other hand, the expression may embrace anybody employed in work necessary to enable the work of construction, repair or demolition to be carried out, for instance, persons who are employed in erecting a temporary scaffolding to enable repairs to be done, or persons bringing to the site materials required for the work. Having regard to the scope and intention of the Act, which is to give compensation to workmen injured in particular forms of employment, I am satisfied that the Court ought rather to give a wider than a narrower interpretation to the expression used in the Act, a principle of construction which, I think, is in accordance with the construction placed on the Act by the House of Lords in *Lysons v. Andrew Knowles and Sons, Limited* : *Stuart v. Nixon & Bruce* 2 L.R.A. 161. The test seems to me really to be whether when a man meets with an accident arising out of and in the course of his employment, he was in the position in which he was when the accident occurred because of the work specified in the schedule. His particular share in the work whether active or passive, skilled or unskilled, is irrelevant.

3. Now here the clause under which the workman is alleged to come is Clause (x) of the second schedule which includes amongst workmen any person employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal pipe-line, or sewer. The question is whether the workman in this case was employed in working a pipe-line. Now on the findings the employer, viz. the Bombay Municipality, was responsible for the working of this pipe-line. In order to work it efficiently they had to test the pressure in the main for twenty-four hours. In order to do that they had to keep a recording instrument in position during the night of April 16 and 17. Clearly if no protection was afforded to the instrument it might be stolen or damaged, deliberately or by inadvertence by some passerby. Moreover as the instrument was raised above the level of the roadway the Municipality was bound to protect the users of the roadway from the obstruction they were placing upon it. It was for the employers to consider what steps were necessary in order to enable this

test to be carried out, and they decided that for that purpose it was necessary to place on guard these two coolies. That being so, I can see no reason why these coolies were not employed in the working of the pipe-line. The learned Commissioner was impressed by the fact that in two of the paragraphs of the second schedule, viz. 2 and 5, the words used are " incidental to or connected with," but those two paragraphs are framed rather differently to the other paragraphs. They do not specify the actual work on which the workman is to be employed, but refer to work incidental to or connected with manufacturing or mining operations, and I see no reason why the special phraseology of those two paragraphs should in any way cut down the natural meaning of the words used in other paragraphs. It is not really a question of reading into paragraph 10 the words " incidental to or connected with." The question is what operations are embraced in the expression " working a pipe-line," and in my opinion, that expression covers all work necessary in the view of the employer for the efficient working of the pipe-line. In my judgment the coolie, who was killed, was a person employed in the working of the pipe-line, and was therefore a workman within the meaning of the Act and his widow is entitled to compensation.

4. The appeal must be allowed and the case referred back to the Commissioner to fix the amount of compensation. The appellant must get her costs of the appeal.

Sen, J.

5. I agree. The expression "working" in Clause (x) of the second schedule to the Act has obviously been used in the active sense of operating or causing the pipe-line to perform its appointed work or function. The expression, therefore, in my opinion, would include all acts or operations intended and reasonably calculated to cause the pipe-line to function in the way it is intended to function. All such acts or operations would thus be a part of, and not merely incidental to or connected with, the working of the pipe-line. The interpretation that the Commissioner has put on the expression has been based largely on the fact that in Clauses (ii) and (v) of Schedule II the words " incidental to or connected with" have been used, but the same words have not been used in this clause. In Clause (it) those words have been used in connection with manufacturing processes in which mechanical or electrical power is used, and in Clause (v) the words have been used with reference to mining operations. " Manufacturing process" has been denned in the Indian Factories Act, 1911, and " mine" has been denned in the Indian Mines Act, 1923. There is, on the other hand, no statutory definition of the words construction, working, repair and demolition used in Clause (x). It would, therefore, seem that if the words " incidental to or connected with " were used with the word " working ", the scope of Clause (x) would have been unduly widened. It seems to me impossible, consistent with the object of the Act, to define the word " working " so as to confine its meaning to such acts as would directly involve merely physical effects on the pipe-line or its functions as such. There is no reason why, if periodical tests are essential for the

proper functioning of the pipe-line, such tests should not be regarded as an essential and integral part of its working, nor why the keeping of men to watch over the apparatus used for such tests not be regarded as an essential part of the test and thus also of the working of the pipe-line. The employment of such a man would be essential to the test in the sense that the test would be exposed to risk of being nullified or rendered valueless unless the apparatus was guarded against being tampered with or its being removed. The question, however, may be raised, how far is such a chain of necessary connections to be carried ? If, for instance, a certain thing is necessitated in order that men can be employed in the working of a pipe-line, would such a thing, again, be an essential part of the working of the pipe-line? I think that if such a thing be an act or operation intended to cause the pipe-line to function in the way in which it is intended to function or to continue so to function, then it would be within the scope of the words " working of the pipe-line" ; otherwise not. Judged by this test it must, I think, be held that the deceased was employed in the working of the pipe-line. I, therefore, agree to the order proposed by my Lord the Chief Justice.

Norman, J.

6. With all due respect I am unable to agree with the view of my Lord the Chief Justice and Mr. Justice Sen. The question is whether a person can be said to be " employed in the working of a pipe-line," when his sole duty is to prevent some external interference with the working and when he has no knowledge whatever of how a pipe-line should be worked, and would, if anything went wrong, be unable to apply any remedy. In some contexts no doubt " working " has a very wide significance, but in connection with machinery it has a more restricted significance and means doing something positive which helps to make the machine work. That a narrower sense is intended in the schedule is in my view suggested by two things. In the first place the word " working " occurs between the words " construction " on one side and " repair or demolition " on the other, all of which are words of some technical significance. Secondly, as pointed out by the learned Commissioner, in two other articles in the schedule the expression used is " in any kind of work whatsoever incidental to or connected with any such manufacturing process " or " any mining operation." Contrasting the wording it appears to me that the Act did intend to give rather more extended protection to persons employed in factories and mines, than to persons employed in other capacities set out in the schedule.

7. With regard to the facts my Lord the Chief Justice has suggested that the deceased might have met his death in preventing some motor car from running into the pipe stand. It does not appear however on the evidence that it was any part of the coolies' duty to direct the traffic. Two lanterns were placed by the stand pipe to give warning to traffic car. All that the coolies had to do was to see that nobody deliberately removed the recorder. In my view this task cannot be considered to be included in the expression " working of the pipe-line," and I, therefore, think with great respect, that the appeal should be dismissed.