

(1946) 07 BOM CK 0021
In the Bombay High Court
Case No : First Appeal No. 338 of 1945

Munshi and Company

APPELLANT

Vs

Yeshwant Tukaram Teli

RESPONDENT

Date of Decision : 01-07-1946

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (1947) 49 BOMLR 539

Hon'ble Judges : Macklin, J;Dixit, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Macklin, J.—This is an appeal by an employer against the award of compensation to one of his workmen in respect of an injury suffered in warehouse in Prince's Dock at the time of the Bombay Explosion of April 14, 1944. The facts are not in dispute. The workman was employed in a godown. As the result of the explosion the wall suddenly collapsed, and a hot plate of metal got into what was left of the godown and hit the workman's leg. As a result of this injury his leg was amputated. His disability was assessed at 60 per cent., and he was awarded altogether Rs. 1,512 by way of compensation and an additional Rs. 4 for court-fee charges.

2. It is to be noted that after the explosion the Government of India set up a Claims Commission and the applicant appeared before the Claims Commission. He was awarded by them Rs. 2,280 in respect of his injury, but that sum was made subject to a deduction of the amount awarded to him in the proceedings under the Workmen's Compensation Act. The fact of the Claims Commission being in existence is important in this case, because it is the justification put forward by the applicant for having appeared before the Commissioner for Workmen's Compensation more than twelve months after the date of the accident.

3. The principal grounds of this appeal are (1) that the claim having been made twelve months after the date of the accident was beyond time and should have been treated as such, and (2) that the accident, though it arose in the course of the applicant's employment, did not arise "out of" his employment within the meaning" of the Act. The explosion took place on April 14, 1944, and the claim to the Commissioner for Workmen's Compensation should have been made within a year of that date; actually it was not made till April 26, 1945. The applicant however stated in his application (which he incidentally verified on oath) that he had been under the impression that he would receive all his compensation from the Court of the Claims Commissioner, but that he was afterwards given to understand that he was entitled to receive compensation under the Workmen's Compensation Act in the first instance and then would receive additional compensation from the Claims Commissioner. This explanation was accepted by the learned Commissioner, and in his discretion he treated the application as being within time. Section 10 of the Act gives him such a discretion.

4. But on behalf of the appellant-employer it is now argued that there was no material on record upon which it was open to the Commissioner to exercise his discretion in favour of the workman, and that this Court is therefore entitled to interfere in appeal, even in a matter which is *prima facie* a matter of discretion. The argument is that beyond the statement of the applicant that he misunderstood his rights, there is nothing by which he could show cause justifying his application being made out of time. Ignorance of the law is no excuse; and it is argued that the very form of the application made by the workman before the Claims Commissioner shows that the possibility of compensation being available under the Workmen's Compensation Act had to be taken into account by the Commissioner. We fully agree with the appellant's learned advocate that there was no real justification for the applicant's misunderstanding his legal rights; and so far as the record of the case goes there is nothing to show how it was that he came to misunderstand them. But it cannot be doubted that he did misunderstand his position, since otherwise he would certainly have made his claim to the Commissioner for Workmen's Compensation at the same time as he made it to the Claims Commissioner; and we cannot feel that the learned Commissioner was wrong in finding in his discretion that the applicant had justified the late presentation of his application. There is, as I say, very little on the record. But there is at any rate verification by affirmation of what the applicant stated in his application; and if the learned Commissioner thought fit to act upon that material, we cannot say that he was not justified in doing so. That the applicant genuinely did misunderstand his position is clear from, the fact that he gave "no" as the answer to the question on his claims-form as to his right to compensation under the Workmen's Compensation Act. We are unable to find that the discretion of the Commissioner was exercised unjudicially, and in that respect we do not propose to interfere.

5. The next question is whether the accident arose "out of" the employment

within the meaning of Section 3 of the Act. It cannot be disputed that for an accident to arise out of any particular employment the risk of such an accident must to a greater or lesser degree have been inherent in the employment before the accident occurred; and it is evident that the risk of a ship exploding and knocking down a godown wall and through the ruins discharging a heavy piece of iron on to an employee's leg is not a risk which is ordinarily inherent, even remotely, in the applicant's employment in the godown. The learned Commissioner bases his decision that the accident arose out of the employment largely upon two English decisions, *Thorn or Simpson v. Sinclair* 10 B.W.C.C. 220 and a later case which fully discussed *Thorn or Simpson v. Sinclair*, namely *Brooker v. Thomas Borthwick and Sons (Australasia)*, 26 B.W.C.C. 495. In the first of them a woman was injured by the fall of a wall which had no connection whatever with her employment. But the immediate cause of the injury was the collapse of the shed in which she was working; and the collapse of the shed was due to the fall of the wall. It was held by the House of Lords that it was immaterial to look beyond the immediate cause of the injury and to consider why the shed collapsed or to consider whose wall it was that brought the shed down, and they held that upon the terms of her employment the woman had to work in this particular shed and was in consequence injured by an accident which happened to the roof of the shed. In the second case a workman was injured by the collapse of a building due to an earthquake. The principle of *Thorn or Simpson v. Sinclair* was followed in the case and the injuries were held to arise out of the employment.

6. It is evident that these decisions, if pressed far enough, could cover a number of cases which could not otherwise be held to be accidents arising out of employment. It would, I think, be easy to press them too far. We agree with the learned Commissioner that it is possible to justify the grounds for compensation in this particular case by reference to these two cases. But for ourselves we prefer to base our decision upon different grounds. It is, as I say, only logical to hold that an accident cannot be said to arise out of employment unless the risk of such an accident has been, even before the accident, inherent in the employment itself to a greater or lesser extent; and though in the present case it could not be said that employment in a godown in the Bombay Docks normally involved a risk of injury by the explosion of a ship, nevertheless it must not be forgotten that this explosion occurred during war time; and it is notorious that during the late war, in spite of the protests of the Port Trust, the regulations of the Port Trust prohibiting the entry of ships carrying explosives into the docks were relaxed, with the result that ships carrying explosives frequently came into the Docks, and we have every reason to believe that on more than one occasion they actually caught fire. It cannot, we think, be doubted that employment in the docks during the late war did carry with it an inherent risk, however remote, of injury by reason of an explosion. That being so, we must hold that the accident in this particular case arose out of a risk inherent in the employment itself and can therefore be said to have arisen out of the employment.

7. The appeal fails and must be dismissed with costs. The interim stay is discharged. The money deposited with the Commissioner should be paid to the applicant.