
(1964) 09 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 35 of 1963

Nandlal Bhandari Mills Ltd.

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 18-09-1964

Acts Referred:

Factories Act, 1948 — Section 21, 21(1)

Citation : AIR 1966 MP 324 : (1966) ILR (MP) 611 : (1966) 2 LLJ 867 : (1966) 11 MPLJ 945

Hon'ble Judges : V.R. Newaskar, J;S.B. Sen, J

Bench : Division Bench

Advocate : R.G. Waghmare, for the Appellant; B.S. Johar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Newaskar, J.

This appeal is preferred by the employers M/s Nandlal Bhandari Mills Ltd. and the Superintendent of the said Milk in respect of the claim for Rs. 8730 decreed by the the Judge of the Employees' State Insurance Court against them in favour of Employees' State Insurance Corporation. The last named Corporation had preferred a claim for the aforesaid sum against the appellants for reimbursement of the actuarial present value of periodical payments amounting to Rs. 8400 for permanent partial disablement benefits payable to the insured one Balkrishan together with the amount already paid to him Rs. 330 in all Rs. 8730.

The worker Balkrishan was employed in the Printing Department of the appellant Mills his duty being to see that no creases were caused in the cloth fed during the process of printing. On 24-2-1961 while he was working at the Printing Machine his left hand slipped, got entangled and crushed in the nip which existed between the Central Calender Drum and the Copper Design Roller when he tried to remove the crease caused in the cloth which had moved up to the central

calender drum. This resulted in the crushing of the fingers of his left hand. The case of the Insurance Corporation is that the injury sustained by the insured was an employment injury as the same arose out of and in the course of his employment. The said injury was caused due to negligence on the part of the employers in failing to provide a nip" guard a sort of safety guard on the nip which existed between the central calender drum and the copper design roller in spite of the fact that it was a dangerous part of the printing machine. The injured Balkrishan was examined by the Medical Board on 4-8-1961 for the assessment of the loss of his earning capacity. The Board assessed the same at 60%. The employee had been paid in all Rs. 330 as temporary disablement Benefit for the period from 25-2-1961 to 6-7-1961 at Rs. 2/8/ per day. The Insurance Corporation aforesaid was further liable to pay to the worker Rs. 1-8-0 per day throughout his life. They therefore, claimed reimbursement of the amount of Rs. 8730.

The claim was totally denied by the appellants. They even denied that the fingers of the left hand of the worker Balkrishan had been crushed and had to be amputated. They denied that the central calendar drum and the copper design roller constituted dangerous part of the printing machine requiring it to be provided with a safety guard upon the nip formed to between them. They also contended that it was neither practicable nor necessary to provide any such guard on the nip aforesaid and that neither the Factories Act nor the Rules framed thereunder required any such device.

The Judge of the Employees' State Insurance Court who heard the case came to the conclusion that it was both practicable and necessary for the Mills to provide a safety guard on the nip in question to prevent any accidental injury being caused to a worker may be even due to his own negligence. Section 21 of the Factories Act was referred to and relied upon by him as providing for such safety device. It was held that the appellants were guilty of negligence in failing to provide a safety guard on the nip. He accordingly decreed the claim of the respondent in full.

In this appeal against that decision Mr. Waghmare for the appellants contended, firstly, that the central calender drum and the copper design roller together do not constitute a dangerous part of the printing machine requiring a safety guard, and secondly, that there was wilful negligence on the part of the worker to resort to that part of the machine when his ordinary duties did not justify any such course of action; Section 21 of the Factories Act, it was contended, had no application.

In our opinion the contentions are devoid of force.

Material part of Section 21(1) of the Factories Act No. LXIII of 1948 is as follows:

"In every factory

(i)

(ii)

(iii)

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

(a)

(b)

(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.

Sub-section (2) of Section 21 empowered the State Government to make rules prescribing such further precautions as it may consider necessary in respect of any particular machinery or exempting, subject to such condition or conditions as may be prescribed, for securing the safety of the workers, any particular machinery or part thereof from the provision of that section.

It is clear from this provision that the obligation imposed upon the factory by this section is absolute subject of course to what the section itself excepts. It is not open for us to water down the absolute character of the obligation by importing consideration as to practicability of the requirement or the possible substantial loss of efficiency or even utility of the machine. If, therefore, the part of the machinery in question is dangerous, the employer cannot be relieved of the obligation imposed by the section.

Now the term "dangerous part" is not defined in the Act and Cor the exact import of the term we may have recourse to decisions which explain what it means in cases of this sort.

In (1897) 1Q. B. 192 at page 195 it is observed by Wills, J., :-

"It seems to me that machinery or parts of machinery is and are dangerous if in the ordinary course of human affairs danger may be reasonably anticipated from the use of them without protection. No doubt it would be impossible to say that because an accident had happened once therefore the machinery was dangerous. On the other hand, it is equally out of the question to say that machinery cannot be dangerous unless it is so in the course of careful working. In considering whether machinery is dangerous, the contingency of carelessness on the part of the workman in charge of it, and the frequency with which that contingency is likely to arise, are matters that must be taken into consideration. It is entirely a question of degree."

In a recent decision reported in Walker v. Bletchley Fletlons Ltd. 1937 1 All ER 170 at p. 175, Du Pareq. J., put it succinctly as follows :-

"....a part of machinery is dangerous if it is a possible cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur."

In *Mitchell v. North British Rubber Co. Ltd.* 1945 SCJ 69 at p. 73.

"The necessary and sufficient condition for the emergence of the duty to fence imposed by S. 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 had so reported; nor whether previous accidents had occurred; nor, whether the victims of these accidents had or not, been contributorily 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 reasonably 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?"

As the working of the Printing Machine is described and is also represented by photographs it seems that the cloth strip moves over the calender drum and from over it to the copper design roller. The worker is to see that the cloth during the movement from the calender drum to the design roller does not have a crease until the printing of the moving cloth is complete. In between the drum and the design roller a nip exists. If the worker is alert, skilled and prudent it may be that he would see that no crease occurs in the moving cloth without having to approach the place where the nip exists. But having regard to the character and position of this part of the machine as also the method of its operation danger may reasonably be anticipated from its use unfenced. The reason is that worker is apt to be momentarily inattentive and a crease might occur which he would try to remove by going ahead before it reaches the design roller. In so doing his hand may be caught as had actually occurred in this case.

It is therefore clear that the part of the Printing Machine in question was no doubt dangerous.

Next question is as to practicability of proving a safety guard on the nip and mechanical usefulness.

In this regard we may quote the observations of Sailer. J., in *Davies v. Thomas Owen & Co.* 1919 2 KB 39 at p. 41

"The obligation imposed by the Factory and Workshop Act, 1901, in relation to the fencing of dangerous machinery, is absolute. It is an obligation not merely to fence, but to fence securely. The statute does not say that dangerous machinery shall be securely fenced if that is commercially practicable or mechanically possible. If a machine cannot be securely fenced, while remaining commercially practicable or mechanically useful the statute in effect prohibits its use."

We are told by the learned counsel for the parties that a safety guard is actually provided now on the dangerous part in question. Tin's also established the untenability of the contentions as to practicability and possible loss of usefulness of the machine.

It is next contended that the accident and consequent injury did not arise out of and in the course of his employment.

In this connection it is observed by Barnes v. Nunnery Colliery Co., Ltd. 1912 AC 44 (47).

"You cannot say that this boy was employed to be prudent and cautious, and therefore deny him compensation if by reason of his want of prudence and caution he meets with an accidental injury. Nor can you deny him compensation on the ground only that he was injured through breaking rules. But if the thing he does imprudently or disobediently is different in kind from anything he was required or expected to do and also is put outside the range of his service by a genuine prohibition, then I should say that the accidental injury did not arise out of his employment.

Lord Atkinson in the case observed at page 49:

"In these cases under the Workmen's Compensation Act a distinction must, I think always be drawn between the doing of a thing recklessly or negligently which the workman is employed to do, and the doing of a thing altogether outside and unconnected with his employment. A peril which arises from the negligent or reckless manner in which an employee does the work he is employed to do may well be held in most cases rightly to be a risk incidental to his employment. Not so in the other cases."

In the present case it cannot be said that the workman exposed himself to a risk unconnected with his employment and which neither he nor his employer could be reasonably supposed to have contemplated as properly belonging or incidental to it".

This Court had occasion to deal with a similar case in Misc. Appeal No. 123 of 1959 Nandlal Bhandari Mills v. Manager, Local Officer, Employees' State Insurance Corporation, Indore decided on 15-1-1962 (MP) In that case it was held:-

"Section 66 (of the Employees' State Insurance Act) requires a causal connection but not an exclusive causal connection".

In Jayathilal Dhanji and Co. Oil Mills Vs. Employees State Insurance Corporation, the facts were that an unskilled worker, whose duty was to feed groundnut seeds into the crushing machine worked by a belt moved by a power-driven shaft. kicked the belt, so as to remove the belt off the moving pulley in order to stop the machine running unnecessarily and in doing so got his leg caught between the pulley and the belt, was lifted to a height of six feet fell down and died

instantanieously, it was held that the accident did arise out of and in the course of his employment and consequently the injury was an employment injury.

In Kondisetti Anjaiah Vs. T. Lakshmaiah, . it was held that where the immediate act which led to the accident is not so remote from the sphere of his duties as to be regarded as something foreign to it then the accident can well be held to have arisen out of and in the course of his employment.

Having regard to the principles laid down in the above cases the injury question has been rightly held to be employment injury. The decision of the Court below is therefore right.

The appeal is consequently dismissed with costs. Counsel's fee shall be taxed at Rs. one hundred.