

(1949) 12 OHC CK 0002
In the Orissa High Court
Case No : M.A. No. 62 of 1948

Padam Debi

APPELLANT

Vs

Raghunath Ray

RESPONDENT

Date of Decision : 13-12-1949

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 3(1)

Citation : AIR 1950 Ori 207

Hon'ble Judges : Panigrahi, J;Narasimham, J

Bench : Division Bench

Advocate : B.K. Pal, for the Appellant; H. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, J.—This is an appeal under the Workmen's Compensation Act against the order of the District Magistrate of Puri rejecting the appellant's claim for compensation.

2. The appellant is the widow of one Parikhit Panda who had been engaged as a motor driver by the respondent in September 1946. The respondent had a temporary permit to ply a bus (O. R. P. 265) for hire between Khurda and Banpur in Puri District. On 24th September 1946, while the appellant's husband was driving the said motor bus he met with an accident in consequence of which he sustained severe injuries which resulted in his death. The bus dashed against a tree while proceeding at a somewhat high speed and the driver and some other passengers sustained fatal injuries. The police made the usual investigation and submitted final report to the effect that the accident was caused by the rash and negligent driving of the driver but that in view of his death no could be taken.

3. The learned District Magistrate, relying mainly on the police report and also on the evidence of one Fakir Padhan who was one of the occupants of the ill-fated bus held that the driver met with his death by his own rash and negligent driving and that consequently Section 3, Workmen's Compensation Act, would have no

application to this case inasmuch as the death could not be said to be caused by accident".

4. Section 3(1), Workmen's Compensation Act runs thus :

""If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter."

5. The learned District Magistrate has obviously committed an illegality in construing the expression "accident" occurring in Section 3, Workmen's Compensation Act. Doubtless that expression has nowhere been defined but it seems to be well settled that the expression "accident" generally means some unexpected event happening without design, even though there may be negligence As pointed out in Halsbury's Laws of England, Edn. 2, Vol. 34, page 816 :

"To decide whether an occurrence is an accident, it must be regarded from the point of view of the workman who suffers from it, and if it is unexpected and without design on his part, it may be an accident although intentionally caused by the author of it, or caused by some act committed wilfully by him."

As pointed out by Lord Atkin in *Harris v. Associated Portland Cement Manufacturers. Ltd.*, 1939 A. C. 71 at pp. 76 and 77 : 108 L. J. K. B. 145 :

"Once you have found the work which he is seeking to do to be within his employment the question of negligence, great or small, is irrelevant and no amount of negligence in doing an employment job can change the workman's action into a non-employment job ... In my opinion if a workman is doing an act which is within the scope of his employment in a way which is negligent in any degree and is injured by a risk incurred only by that way of doing it he is entitled to compensation."

This principle has been followed in India in several decisions reported in AIR 1937 311 (Nagpur); *Dhanpal Madras Vs. Superintendent of Collieries*, and *Lee Shi v. Consolidated Tin Mines of Burma Ltd.* A.I. R. 1939 Rang. 428 : 185 I. C. 847.

6. Judged in the light of the aforesaid decisions, there seems to be no doubt that in the present case the death of the appellant's husband was caused by an accident. The respondent has frankly admitted that the appellant's husband was engaged (though temporarily) as a driver on a pay of Rs. 60 per month. Even if it be assumed that the accident was caused by the rash and negligent act of the driver in driving the vehicle at excessive speed, it cannot be said that the dashing of the vehicle against the tree on the road was brought about by any previous design The driver did not wilfully dash the bus against the tree but because of his negligent driving he lost control of the steering thereby causing the accident. But it is admitted that at the time of the accident he was in the employment of the respondent and the accident itself arose while he was

working in that capacity. Mr. Mohapatra urged that the driver committed & breach of the provisions of the Motor Vehicles Act and the Rules framed thereunder by driving the bus at excessive speed and ignoring the caution signals on the road. But these are not factors which would affect the right to claim compensation in a case where death is actually caused because the applicability of Clause (b) of the proviso to Sub-section (i) of Section 3, Workmen's Compensation Act is limited to those cases where injury has not resulted in death. Where however the injury has resulted in death the question about disobedience of any rule or order is not material so long as it can be reasonably held that the accident arose out of and in the course of the employment. Similarly the negligent or rash conduct of the workman also is immaterial. As pointed out by Lord Finlay in *Lancashire and Yorkshire Rly. v. Highley* 1917 A. C. 352 : 86 L. J. K. B. 715 there is a distinction between an act done in the course of employment but in an improper way and one done outside the course of the employment altogether. In the present case, the driver might have driven the bus in an improper way, but as he was engaged in driving the vehicle at the time of the accident it cannot be said that his action was outside the course of his employment altogether.

7. Mr. Mohapatra then urged that the appellant's husband was not a "workman" as defined in Clause (n) of Section 2(1), Workmen's Compensation Act. That clause should be read along with the provisions of Schedule 2 to the said Act. Clause (i) of that schedule says that any person employed otherwise than in a clerical capacity in connection with the operation of a vehicle propelled by mechanical power is a "workman" within the meaning of the Act. An argument was advanced to the effect that a motor vehicle is not a vehicle propelled by mechanical power. But this argument is not convincing. The expression "mechanical power" obviously means power generated or derived from a machine and it cannot be seriously contended that the power in a motor bus is not derived from a machine. Even in the Motor Vehicles Act the definition of the expression "motor vehicle" (see Section 2(18)) indicates clearly that a motor vehicle is also considered to be a mechanically propelled vehicle.

8. In *The Pollachi Transport, Ltd., by General Manager Mr. G.D. Naidu Vs. Arumuga Kounder, and Nanda Kumar Singh v. Pramatha Nath Chatterjee* 42 C. W. N. 123 it was held that the conductor of a motor bus was a "workman" within the meaning of the Workmen's Compensation Act. This shows clearly that the High Courts in India have taken the view that a motor vehicle is also a vehicle propelled by mechanical power within the meaning of Clause (i) of Schedule 2 to the Workmen's Compensation Act. There seems thus no doubt that the driver of a motor bus is a workman within the meaning of that Act.

9. The appellant is, therefore, clearly entitled to compensation. In fixing the amount of compensation there is some difficulty chiefly because of the conflict in the evidence regarding the salary of the appellant's husband. The appellant; has stated in her evidence that her husband was employed on a monthly salary of

Rs. 120 where. as the respondent's Gumasta stated that the salary fixed for the driver was only Rs. 60 per month. But the respondent has not produced any of his registers or any piece of documentary evidence to show the exact amount fixed as the monthly salary of the driver. Mr. H. Mohapatra urged that the case may be remanded to the lower Court with a view to enable the Court to come to a clear finding as to the exact monthly salary of the driver. The accident took place more than three years ago and both parties were given adequate opportunities to adduce all possible evidence as regards the salary of the driver. A further remand at this stage will not only cause harassment to the unfortunate widow (appellant) but may lead to perjured evidence. We are inclined to accept the evidence of the appellant on this point and hold that the driver was getting Rs. 120 per month on the date of the accident. The appellant is therefore entitled to compensation of Rs. 3500 (vide Schedule 4 to the Workmen's Compensation Act).

10. The appeal is, therefore, allowed, the order of the lower Court is set aside and the respondent is directed to pay Rs. 8600 as compensation to the appellant.

Panigrahi, J.

11. I agree with the order proposed and would like to add a few observations. It was first contended for the respondent-employer that the accident which resulted in the death of the workman is not an "accident" which arose out of and in the course of his employment within the meaning of Section 3(1), Workmen's Compensation Act. Reliance was placed by Mr. Mohapatra on a case reported in *Powell v. Panchu Mokadam* 21 Pat. 218: A. I. R. 1949 Pat. 153. The deceased workman in that case, one Sukhdeo, was employed in a stone quarry, Sukhdeo with others had been removed outside the danger zone as the stores were being blasted by gun-powder. Four shots were fired when Sukhdeo and others ran towards the quarry. The manager of the quarry, who was present and others shouted to these men not to go as the fifth shot had then been fired. That shot was fired, and a piece of flying stone hit Sukhdeo and killed him. On these facts their Lordships of the Patna High Court made some observations on which the fabric of Mr. Mohapatra's argument is based. The defence in that case was that the deceased was injured while doing a prohibited act. Their Lordships in remanding the case left it to the Commissioner to consider and decide upon evidence whether there was a genuine prohibition or not. Nowhere in the judgment do their Lordships purport to say down that the deceased man would not be the victim of an accident as defined in the Act on the facts of that case. The law on the subject has been clearly laid down by Lord Sumner in *Lancashire and Yorkshire Ry. v. Highley* (1911) A. C. 362 : 86 L. J. K. B. 715 as below.

"The test is : Was it part of the injured person's employment to hazard, to suffer, or to do that which caused by injury ? If yes, the accident arose out of his employment. If nay, it did not, because what was not part of the employment to hazard, to suffer, or to do cannot well be the cause of an accident arising out of the employment."

12. In AIR 1937 397 (Nagpur) the workman met with his death in having violated a statutory rule under the Indian Coal Mines Regulations. Their Lordships held that wilful disobedience of a safety regulation did not exempt the employer from liability in the case of a fatal accident. The point is whether the prohibition is a part of the contract of the employment. It is only if there is such a prohibition at the time of the contract between the employer and the employee that the employer may claim exemption. The word "accident" has not been defined. But its accepted meaning is no longer in doubt. As Viscount Haldane L. C. put it in Board of Management of Trim Joint District School v. Kelly (1914) A. C. 667 : 83 L. J P. C. 220:

""The Act covers a field akin to statutory insurance against injury to the workman arising out of and in the course of his employment, provided that injury is something not expected or designed by the workman himself,"

In a later case reported in Harris v. Associated Portland Cement Manufacturers, Ltd. (1939) A.C. 71 108 L J K. B. 145 Lord Atkin laid down the law as follows :

""Once you have found the work which he is seeking to do to within his employment the question of negligence, great or small, is irrelevant : and no amount of negligence in doing an employment job can change the workman's action into a non-employment job. With great respect it is not a question of degree, and does not give rise to a question of fact. The nature of the act is not altered in kind by the degree of negligence with which it was done,"

and as pointed out by his Lordship later in the course of that judgment,

"if negligence would in any degree preclude compensation, the benefits of the Act would be seriously impaired. In truth the negligence of the workman is as much a risk of his employment as the negligence of his fellow workmen."

To the same effect is the decision reported in Urmila Dasi and Another Vs. Tata Iron Steel Co. Ltd., where it was laid down that; in order to claim exemption it was not enough for the employer to prove a reckless and rash act on the part of the workman. We are, therefore satisfied that the deceased met with the accident while driving the motor vehicle and that it arose out of and in the course of his employment entitling him to compensation within the provisions of Section 3(1) of the Act.

13. It was next contended that inasmuch as the driver was driving at a reckless speed contrary to the statutory rules framed under the Motor Vehicles Act he was guilty of wilful disobedience of the rule expressly framed for the purpose of securing the safety of the workman within the meaning of proviso (b) (ii) of Sub-section (i) of Section 3, Workmen's Compensation Act. This argument, however, cannot prevail as this sub-section applies only to cases of injuries not resulting in death. It was next contended that the driver of a motor vehicle is not a workman entitled to compensation under the Act. Schedule II to the Act enumerates the class of persons, answering the definition of "workman" given in Section 2 of the

Act. The following persons are workmen within the meaning of Section 2, and Sub-section (1) (n) says any person who is: "(i) employed in connexion with the operation of a vehicle propelled by steam or other mechanical power ..." Mr. Mohapatra's contention is that a motor bus is not a vehicle propelled by mechanical power. The expression "motor vehicle" has been defined in the Motor Vehicles Act as meaning "any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source" It cannot, therefore, be seriously urged that a motor bus is not a vehicle propelled by mechanical power within the meaning of the Workmen's Compensation Act. It was contended that the definition of the expression "motor vehicle" given in the Motor Vehicles Act has no bearing on the interpretation of the expression "vehicle" used in the Workmen's Compensation Act. But as both are Acts of the Central Legislature I am inclined to hold that the meaning attributed to a motor vehicle is common to both the Acts. Even the conductor of a motor bus has been held to come within the meaning of the expression "workman" under the Workmen's Compensation Act, For instances reference may be made to *The Pollachi Transport, Ltd., by General Manager Mr. G.D. Naidu Vs. Arumuga Kounder*, and *Nanda Kumar Singh v. Pramatha Nath Chatterjee* 42 C. W. N. 123.

14. In the result, none of the objections raised on behalf of the respondent-employer are tenable and the appellant is entitled to compensation under the Workmen's Compensation Act.