
(2000) 06 CAL CK 0044
In the Calcutta High Court
Case No : F.M.A.T. No. 3306 of 1999

Parle Products Limited

APPELLANT

Vs

Subir Mukherjee

RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 3

Citation : 105 CWN 480 : (2000) 2 ILR (Cal) 320 : (2001) 1 LLJ 964

Hon'ble Judges : S.B. Sinha, J;H. Banerji, J

Bench : Division Bench

Advocate : S.S. Roy and Dipak Kr. Paul, for the Appellant;Arunava Ghosh and Soumya Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This appeal u/s 30 of the Workmen's Compensation Act raises a question as to whether an employee who had suffered injury while travelling in a train at the hands of some hooligans is entitled to compensation from the employer under the Act.

2. The claimant-respondent was working as a Territory Supervisor and was looking after the sales of the products of the appellant-company. He was directed to attend a conference at Puri on June 27, 1998. The said conference was organised by the appellant. The claimant-respondent along with his other colleagues left Calcutta by Jagannath Express for Puri in the night of June 26, 1998 to attend the conference but during the journey he was assaulted and thrown out of the Railway compartment as a result whereof he sustained multiple injuries including head injury. The petitioner as a result of such injuries became permanently physically disabled. He was only 23 years old at the relevant time and his monthly salary was Rs. 2337/- at the time of accident.

3. The learned Tribunal below upon taking into consideration the materials on record allowed the application filed u/s 4 of the Workmen's Compensation Act

holding that the respondent was entitled to get a sum of Rs. 52,788/ as compensation for his 20% loss of earning capacity from the Opposite Party.

4. Before us Mr. Roy, the learned counsel appearing on behalf of the appellant has in support of this appeal raised two questions, (1) the respondent was not a workman, and (2) even if he was a workman, the accident did not occur in course of employment and the learned counsel, has placed strong reliance on a decision of the Apex Court in *Regional Director, Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another*, .

5. Mr. Arunava Ghosh, the learned counsel appearing on behalf of the respondent, however, submitted that as the petitioner was directed to attend the conference which was organised by the appellant and in view of the nature of job undertaken by him, as he was to work outside the factory premises, he is entitled to compensation under the provisions of Workmen's Compensation Act.

Re. contention No. 1 :

Section 2(1)(n) of the Workmen's Compensation Act, reads thus:

"Section 2(1) In this Act unless there is anything repugnant in the subject or context-

(a).....

(n) "Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is-

(i).....

(ii) employed (***) (****) in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of (the Armed Forces of the Union) (***) and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them".

6. The Schedule II appended to the Act embraces within its fold such employees who also look after sales. Thus, it is futile to contend that the respondent was not a workman. The said question is, therefore, answered in favour of the respondent.

Re. Contention No. 2:

7. The fact that the petitioner was a Sales Supervisor and for the purpose of discharging his duties he was required to travel is not in dispute. It is also not disputed that the respondent was travelling in a train pursuant to a direction issued to him in this regard by the authorities of the appellant itself to attend a conference. Section 3 of the said Act imposes liability on the employer if a

personal injury is caused to a workman by accident arising out of and in course of his employment.

8. The interpretation of the words "arising out of and in course of employment" has not been found to be easy by the Courts. See *Armstrong With worth & Co. v. Redford* 1920 AC 757 and *McCollum v. Northumbrian Shipping Co. Ltd.*, (1932) 147 LT 361, wherein it was held:

"That few words in the English language had been subjected to more microscopic judicial analysis than these, and in the effort to expound them many criteria had been proposed and many paraphrases suggested. But it was manifestly impossible to exhaust their content by definition, for the circumstances and incidents of employment were of almost infinite variety. This at least, however, could be said that the accident in order to give rise to a claim for compensation, must have some casual relation to the workman's employment and must be due to risk incidental to the employment as distinguished from risk to which all members of the public were alike exposed."

In *Cardillo v. Liberty Mutua Ins. Co.* 330 U.S. 469, it has been held that phrase "arising out of and in the course of employment" as "deceptively simple and litigiously prolific phrase."

9. One of the tests for determining as to whether an accident could be held to have arisen out of employment is that the workman is in fact employed on or performing the duties of his employment at the time of accident. Another test would be that the accident: occurred at or about the place where the performance of his duties required him to be present. It is not a case where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the workman, by his own conduct, exposed himself, which peril was not involved in the normal performance of the duties of his employment.

10. A Full Bench decision of the Assam High Court in *Assam Railways and Trading Co. Ltd. Vs. Saraswati Devi*, is of some help for determination of the question raised in this case. In that case the workman who was working as Battery Charger-cum-electrician was asked to repair a fan installed in a mine for supplying fresh air to the miners working inside the same. The deceased hurried to the fan house to detect the cause and to restart the fan. His way to fan house from the boiler room lay across rails, wagons, girders, stones, tubs, etc. As he was thus hurrying, the deceased fell down and died. The Court held that the manifestation of the physical effects of the accident was so immediate and closely consequent on the fall that it is a reasonable conclusion to draw in the circumstances that it was the accidental fall that had produced the physical effects of pain and hard breathing manifested by the deceased immediately thereafter.

11. In a recent decision of the Supreme Court of India in *Smt. Rita Devi and*

Others Vs. New India Assurance Co. Ltd. and Another, , the deceased autorickshaw driver was employed to drive autorickshaw for carrying passengers on hire. The passenger of the autorickshaw committed an act of felony by stealing the autorickshaw. He was also murdered. An application was filed for grant of compensation under the Motor Vehicles Act, 1988. The question raised was when would a murder be an accident in a given case ? The Apex Court relying on various decisions held that the death was caused accidentally in the process of committing the theft of the autorickshaw. The learned Judges interpreting the provision of Section 92-A of the Motor Vehicles Act, 1939 as a beneficent legislation held in 2000 1 LLJ 1656:

"17. In that case in regard to the contention of proximity between the accident and the explosion that took place this Court held:

This would show that as compared to the expression "caused by" the expression "arising out of has a wider connotation. The expression "caused by" was used in Sections 95(1)(b)(i) and (ii) and 96 (2)(b)(ii) of the Act. In Section 92-A, Parliament, however, chose to use the expression "arising out of which indicates that for the purpose of awarding compensation u/s 92-A the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out the use of a motor vehicle" in Section 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."

This aspect of the matter has also been considered recently by Gauhati High Court in National Insurance Co. Ltd. and Others Vs. Sabita Gope and Others, .

12. Section 3 of the Workmen's Compensation Act in such a situation, in our opinion, should receive the same construction.

In Regional Director; E.S.I. Corpn. v. Francis De Costa, (supra) the fact situation was absolutely different. In that case the claimant was on his way to his place of employment whence an accident took place a kilometer away to the north of the factory as the bicycle which he was riding was hit by a lorry belonging to his employers. In the aforementioned situation the Apex Court held in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another,

"We are of the view that in the facts of this case, it cannot be said that the injury suffered by the workman one kilometer away from the factory while he was on his way to the factory was caused by an accident arising out of and in the course of his employment."

In this case, the following factors are admitted:

(1) that there had been an accident,

(2) the accident had a causal connection with the case of the employer inasmuch as the respondent was travelling in the train to attend a conference organised by the appellant in terms of a direction issued in that regard to him.

13. Thus, the accident has occurred in course of his employment. In this view of the matter we are of the considered opinion that the decision of the Apex Court in Francis De Costa (supra) has no application to the instant case.

14. In The Regional Manager and Another Vs. Pawan Kumar Dubey, , it has been held at P. 269 of LLJ:

"7. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

15. For the reasons aforementioned we do not find any merit in this appeal which is accordingly dismissed. In the facts and circumstances of this case there will be no order as to costs.

H. Banerji, J.

I agree.