

(1951) 01 CAL CK 0002
In the Calcutta High Court

Prativa Das Gupta

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 01-01-1951

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(n), 8

Citation : 55 CWN 496

Hon'ble Judges : Harries, C.J.;Banerjee, J

Bench : Division Bench

Advocate : Phanindra Kumar Sanyal and Jitendra Mohan Sen Gupta, for the Appellant;Sunil Kumar Basu, for the Respondent

Final Decision : Dismissed

Judgement

Harries, C.J.—This is an appeal from an order of the Commissioner for Workmen's Compensation, dismissing an application for compensation brought by a widow. The applicant was the wife of one Phanindra Mohan Das Gupta who was employed by the Corporation of Calcutta in the Building City Architect Department. On August 3, 1947, he was out in connection with his work when he was attacked by a riotous mob and killed. His body was removed and it was never discovered. It is however admitted that he was killed in the manner suggested. The monthly wages of the deceased were said to be between Rs. 200 and Rs. 300 per month and the widow as a dependant claimed a sum of Rs 4,000 as compensation.

2. The Calcutta Corporation denied that the deceased man was a "workman" within the meaning of that term as used in the Workmen's Compensation Act. They admitted that he was killed by a riotous mob whilst following his employment and indeed admitted that the killing amounted to an accident arising out of and in the course of the employment. The contest was on whether the deceased man was a workman and therefore entitled to compensation. The learned Commissioner eventually held that the deceased was not a workman and dismissed the application.

3. It is to be observed that the Corporation whilst denying liability, made an ex gratia payment of Rs. 2,000 to the widow. It is quite clear that this did not involve an admission of liability and in any event can never be regarded as payment on account of compensation because compensation could never be paid to the widow, under the provisions of sec. 8 of the Workmen's Compensation Act, except through the Court.

4. The only point that has been taken before us is that the Court below was wrong in coming to the conclusion that the deceased man was not a workman.

5. The term "workman" is defined in sec. 2 (n) of the Workmen's Compensation Act in these terms:

"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--

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(ii) employed on monthly wages not exceeding four hundred rupees, in any such capacity as is specified in Schedule II.

6. It is suggested that this man was employed in a capacity which is stated in cl (viii) of Sch. II, namely, "employed in the construction, repair or demolition Of-

(a) ally building which is designed to be or is or has been more than one storey in height above the ground or twenty feet or more from the ground level to the apex of the roof; or

(b) any dam or embankment which is twenty feet or more in height from its lowest to its highest point; or

(c) any road, bridge, or tunnel or

(d) any wharf, quay, sea-wall or other marine work including any moorings or ships.

7. On behalf of the appellant it is said that the unfortunate man was employed by the Corporation in the construction, repair or demolition of buildings.

8. The Corporation owns a large number of buildings and frequently has to build, repair or demolish its own buildings. However it is clear that as a Building Inspector (and that is the description given of his employment) he was not concerned with the property belonging to the Corporation. Apparently, building, repairing and demolishing Corporation property is in the hands of the Engineering Department.

Head-note (1).

9. The Building Inspector is employed by the Corporation to see that all the rules and. regulations relating to building, repairing or demolishing are observed, that

is, observed not by the Corporation, but by builders and contractors. All buildings within the Municipality can only be erected in accordance with plans passed by the Corporation and no building can be erected unless plans have been sanctioned. The Building Inspector has to see that these buildings erected by others are built in conformity with the sanctioned plans. He also has to see that no unauthorized constructions are made by others that is, constructions not authorised by the Corporation. It is clear that in these duties he is not employed by the party constructing any building, and I do not think it can be said that he was employed in the construction of such buildings To be employed in the construction of such buildings it appears to me that the deceased would have had to be employed by whoever was responsible for the construction. It might be that if employed by builders or contractors he could be regarded as being employed in construction, though his duties were not directly concerned with construction. For example, a night watchman who is placed on partially built premises to protean the premises and the tools of workmen and materials left on the site overnight, can be said to be employed in the construction, though he does not actually take part in the construction.

10. "Employed in the construction" means not necessarily actually employed to construct, but employed in connection with the construction. The Building Inspector however is employed by the Corporation which has nothing to do with the construction. He is merely employed by the Corporation to see that those who are concerned in the construction are building according to the plans sanctioned and the bye-laws of the Corporation.

11. Again, I do not think that it can be said that he is employed in construction or demolition when he examines property with a view to seeing whether any unauthorised constructions have been erected. If he finds any unauthorised constructions he must report the same to the Corporation. His work is not in connection with the construction. work is in the nature of spying, as it were, on others to see with a view to reporting them if they are in breach of any law.

12. This description of the work of the deceased went to the site, he would not two witnesses--Satyendra Nath Ghosh and Santosh Kumar Chowdhury--and this description has not been challenged. These witnesses also state that the Building Inspector was concerned with demolitions. For example, a magistrate might order the demolition of premises and the owner of the premises must carry out the order. Again, if the deceaser went to the site, he would not be employed in the demolition, because the demolition would be carried out by the owner or by a contractor on behalf of the owner. He would be merely there on behalf of the Corporation to report to the Corporation that the order of the magistrate was being duly carried out.

13. There is however another case where it might be suggested that the Inspector was employed in demolition. If the owner of the offending property does not demolish, the Corporation is by law entitled to demolish, and it is suggested that when the Corporation is demolishing, then the Inspector would be

employed in the demolition. However it is said that the demolition even when done at the instance of the Corporation is done through contractors and the Inspector is not an employee of the contractors, who do the work- All that he would have to do would be to report that the work had been done. Occasionally, it is said, in very rare cases he might point out what is to be demolished and to that extent and that extent only, it might be said that he was concerned in or employed in connection with the demolition. It has rather a remote connection with his usual work and the evidence suggests that such activity could only arise on very rare occasions.

Head-note (2).

14. It appears to me that in coming to the conclusion whether a man is or is not a workman., his ordinary work must be regarded. Persons may on very rare occasions do something that might bring them within the category of workmen, but the question which has to be decided is, whether the work in which they are substantially employed is work which brings them within the category of workmen. It appears to me that the work which this man was employed to do was substantially work that would not bring him within that category.

15. Mr. Sanyal who appeared on behalf of the appellant relied on a Special Bench decision of the Bombay High Court in *Koynabai Vs. The Bombay Municipal Corporation*, . In that case a Municipality was responsible for the working of a pipe line. In order to work it efficiently, it had to test the pressure of water in the main for twenty-four hours. A recording instrument was fixed to a pipe to test the pressure and some coolies were employed to guard the instrument during the night. It was held by Beaumont, C. J., and Sen, J., Norman, J., dissenting, that the coolies came within the expression "working a pipe line" and hence, were workmen within the meaning of the Act. It was further held that the Court should give a wide interpretation to the expression "working of the pipe line". The test was 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 Such- II His particular share in the work, whether active or passive, skilled or unskilled, was irrelevant.

16. It was suggested in this Bombay case that the coolies were workmen by reason of item (x) in Sch. II which reads:

Employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline, or sewer.

17. It is to be observed that the Municipality were responsible for working the pipe line and they employed the persons who worked the pipeline. The Municipality employed these coolies to guard certain instruments on the pipe line during the night. The majority held that they were employed in the working of the pipe line and with very great respect I think there can be no doubt that the decision was right. I have already pointed out that a night watchman of a building in course of construction, though he does not do any constructing, would

be regarded as being employed in the construction because he was employed to guard what was already constructed and the materials and tools left on the site. His presence at night would be as necessary to the construction as the presence of carpenters and masons during the day. Similarly, in the Bombay case these coolies were necessary for the working of the pipe line, because how could the pipe line be worked if these instruments were not protected and guarded during the night when they could have been stolen or destroyed by evil-minded persons.

18. It appears to me that there is a clear distinction between the present case and the Bombay case. The coolies in the Bombay case were employed by the Municipality which was working the pipe line. They were employed in connection with the actual working and it mattered not whether they really took an active or a somewhat passive part in the work- In the present case the unfortunate Building Inspector was not employed, by the builders or contractors. He was employed by the Corporation which was not building and which was not employing anybody to build. He was merely employed by the Corporation to see that the law was being observed. I think it would be stretching the phrase "employed in the construction, repair or demolition" unduly to hold that the deceased man was so employed. I do not think it can be said even that he was employed in supervising the construction, repair or demolition. He had no authority at all over the persons who were actually building or the persons who were employing them. All he could do, when he noticed a breach of the law, was to report it to his employers, the Corporation, who would take such action as it thought proper. It is with some hesitation that I come to this conclusion, but I find that I am bound to do so. In the result therefore I am of opinion that the Commissioner was right and the appeal therefore fails and is dismissed. In the circumstances we make no order as to costs.

Banerjee, J.

I agree.