

(1991) 11 KAR CK 0031
In the Karnataka High Court
Case No : M.F.A. No. 978 of 1984

Rajappa

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 27-11-1991

Acts Referred:

Citation : (1992) ACJ 434 : (1992) ILR (Kar) 284 : (1991) 3 KarLJ 207 : (1992) 2 LLJ 714

Hon'ble Judges : M. Rama Jois, J; Jagannatha Shetty, J

Bench : Division Bench

Judgement

K. Jagannatha Shetty, J.—This appeal is by the claimant in a case under the Employees State Insurance Act, 1948 (hereinafter referred to as the "Act") against the order of the Employees State Insurance Court (hereinafter referred to as the "ESI Court"), Bangalore, dated January 23, 1984 passed in ESI Application No. 1/1982, rejecting the claim.

2. The facts of the case are simple and few. The claimant is working as a helper in KIMCO for over 16 years. He is covered under the Act and he is paying regularly the ESI contribution. He was working in the first shift on March 6, 1980. About 6 kms. away from the factory, he was residing in Chikkondugula village. On the day while he was returning to home directly from the factory, when he was about 1 K.M. away from his house, at 5.50 p.m. three persons attacked him with scythes and knives. His left hand was cut off. The bones of his left leg were also cut. He was then taken to Government Hospital and he was treated there for 3 1/2 months. He was, thereafter, taken to ESI Hospital, Bangalore and was treated there as an inpatient for a further period of 3 1/2 months. The ESI Corporation met all the medical expenses of the claimant, when he was under treatment.

3. Thereafter, the claimant has made representation to the ESI Corporation to give him the disablement benefit. The ESI Corporation in their letter dated May 14, 1981, intimated that he is not entitled to the disablement benefit. The

claimant filed an application before the ESI Court claiming the benefit. The claim was contested by the ESI Corporation/respondent. It was admitted that the claimant is an employee and he was attacked by the unknown assailants on March 6, 1980 while he was returning from the factory. It was, however, denied that the injury was in the course of employment, much less caused by accident arising out of and in the course of employment. It was further asserted that there was no nexus between the injury and the employment. He was attacked by the persons with whom he has personal enmity.

4. The ESI Court by its order dated January 13, 1984 dismissed the claim of the claimant/applicant holding that there is no material to link the incident with his employment. There is no allegation that the said assailants had any grouse or enmity against workman in connection with the factory work or some other activities of workman connected with his employment and there is no material on record which helps the claimant to claim that the injuries sustained were arising out of and in the course of employment.

5. This appeal is filed by the appellant u/s 82(2) of the Act. The appeal under the provisions of the Act lies only on substantial question of law. The finding of fact cannot be questioned.

6. The learned Counsel appearing for the appellant has urged that the ESI Court has erred in holding that the injuries sustained by the appellant are not in the course of employment within the meaning of Section 2(8) of the Act. The learned Counsel has pointed out that the ESI Court ought to have considered that the route in which the appellant was returning from the work to his house was the only route and as such, there is notional extension of employment and as the incident occurred on the way resulted in personal injury it had nexus to the employment and as such the injuries sustained in the incident took place on March 6, 1980 is an employment injury. In support of his submission, the learned Counsel for appellant has relied on the decisions reported in B. E. S. T. Undertaking v. Agnes 1958 ACJ 473 and Dudhiben Dharamshi and Others Vs. New Jehangir Vakil Mills Ltd., Bhavnagar,

7. The respondent - ESI Corporation represented by Sri Papanna has submitted that the employee did not sustain employment injury as defined u/s 2(8) of the Act. There was no accident, but an incident of assault by his enemies on March 6, 1980, while he was returning home from the factory. He was hit because of ill-will between him and the assailants, who have been convicted in Session Case No. 27 of 1980 on February 15, 1982. As such, there was no nexus between the employee's employment in KIMCO at Hassan and the incident in which he had sustained injuries, and his claim is wholly unsustainable.

8. The appellant Counsel has tried to submit, relying on the definition of the word "Accident" in law Lexicon that the word "Accident" generally denotes an event that takes place without one's foresight, expectation, event which proceeds from unknown cause.

9. The "employment injury" is defined u/s 2(8) of the Act, which reads as follows :-

"employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India."

10. The word "accident" is not defined under the Act. But the term accident contemplated in the Act is assigned a separate and distinct meaning from the general or dictionary meaning. Not all accidents that may occur to an employee are accidents within the meaning of the Act. It is those accidents which occur out of and during the course of employment and cause some personal injury resulting in the loss of physical or earning capacity of the employee fall within "employment injury". The important condition for constituting an employment injury for claiming compensation under the Act, in respect of the injury caused, is that it should arise out of and in the course of employment, and the injury must be personal to the employee and it must be caused by an accident resulting in his disablement, whether temporarily or permanently, or fully or partially to attend his work.

11. There are series of case laws which have been evolved on each of the above referred conditions while determining the liability of Corporation to pay compensation, on the principle of "Notional Extension" of the employment by different High Courts and also by the Supreme Court. The injury caused must be by an accident arising out of and in the course of employment as per Section 2(8) of the Act. Therefore, the principle is that in order to make the Corporation liable to pay compensation for the death or injury suffered by the employee, it must be as a consequence of an accident arising out of and in the course of his employment. But where employment is not a contributing factor to create any incident or accident, or to accelerate causes of death or personal injury of employee, a claim cannot be made for compensation under the Act.

12. For the application of doctrine of "Notional Extension", the main problem is to answer the question as to when does an employment begin and when does it end. These factors depend upon each case. It is no doubt true that the Courts have held that employment does not necessarily end when the signal of "down tool" is given or when the workman leaves the actual place of work, where he is working. As there is notional extension both to the entry and exit by time and place, the scope of such extension depends on the circumstances of each case.

13. In B.E.S.T. Undertaking's case cited supra, it is observed by the Supreme Court as follows :-

".... Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshops, factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adopted to meet its peculiar requirements. While in case of a factory, the premises of the

employer which gives ingress or egress to the factory is a limited one, in the case of the city transport service, by analogy, the entire fleet of buses forming the service would be the "premises"

In the said case, the claim for compensation was made by the widow of the deceased driver employed by a special transport undertaking operating in the City of Greater Bombay. After the day's work, the driver was returning to his house. For the said purpose, he was travelling in a bus belonging to the undertaking. The bus met with an accident as a result of which the driver was thrown out of the bus and as a result of injuries sustained thereby, he expired within six days. Under the Rules of the undertaking, the driver was permitted to travel back home not as member of the public, but as an employee of the undertaking. On the above facts, the Court held that the user by the driver of the bus belonging to the undertaking to go to the depot from the house and vice versa is by way of necessity and gave rise to implied obligation on his part to travel in the said bus as a part of his duty and the accident in an incident in the course of employment.

14. But in certain cases where an employee met with an accident on public road or public place there may be some reasonable extension of doctrine in both time and place of work to ascertain whether it is in the course of employment or not. In *Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others*, the worker employed in salt work used to cross a creek in a boat along with the other members of the public and on payment of charges for the purpose of going to the workspot. There was no arrangement by the salt work with ferrywala for workman to be ferried to and from the workspot. A boat carrying such workman capsized while it was crossing the creek. The question arose as to whether the accident to the workman could be considered to have arisen out of and in the course of employment. The Supreme Court has laid down the following principles of law to come to the conclusion. (p. 251) :-

"(i) As a rule, the employment of workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment

(ii) It is now well settled that is subject to the theory of notional extension of employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work.

There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises.

(iii) The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.

(iv) It is well settled that when a workman is on a public road or public place or on a public transport he is there as any other member of the public and is not there in the course of his employment."

Applying these principles scientifically and logically the question was answered in the negative. Thus it was held that the moment a workman left point B in a boat or left point A (for crossing the creek) but had not yet reached point "B" he could not be said to be in the course of his employment and any accident happening to him on the journey between these points could not be said to have arisen out of and in the course of employment. It is further observed by the Supreme Court that "it is well settled that when a workman is on a public road or public place or on a public transport he is there as any other member of the public and is not there in the course of his employment, unless the very nature of his employment makes it necessary for him to be there."

Thus, it is recognised under the doctrine of "notional extension" that where an obligation is present on a worker to discharge his duty and he meets with accident, it is an accident in the course of employment. This principle is well established in *Chairman, Cochin Dock Labour Board Vs. P.J. George and Another*, In that case an employee was obliged to travel by a particular means of transport to reach and to leave the business premises. He met with an accident while so travelling. It was held that if the presence of the workman concerned at the particular point was so related to the employment so as to come to the conclusion that he was acting within the scope of the employment that would be sufficient to deem the accident as having occurred in the course of employment.

15 In an another note worthy case *Chairman, Cochin Dock Labour Board Vs. P.J. George and Another*, Gujarat High Court applied the scope of the doctrine of notional extension to both conditions, namely in the course of employment and arising out of employment. In the said case a workman was knocked down by a cyclist while he was standing near the main gate at about 10-15 feet away trying to get access to enter the Mill so that he could attend the second shift starting at 3.30 p.m. He was present at that fatal hour of 3.20 p.m., at that fatal place at 10-15 feet distance from the Mill gate. He was in the close proximity both in place and time. Thus, the learned Judge have held that "workman would not be in the course of employment from the moment he left his house and was on the way of his work, but certainly he was in the course of employment when he reached the particular point or area of 10-15 feet of the main entrance, which was the entry gate specified by the mill company, and had come there to obtain access at 3.30 p.m." Therefore, it was held that the area clearly came as per the decision within the theory of notional extension because of the sufficient proximity both in time and place when the workman was obtaining access through the specified mill gate. In this case an important observation has been made. It was considered what is called as "Incident of employment". Instead of entire route being described as in the course of employment, in other cases, in this case the entry gate and the timings had been specified by the employer so

the worker could properly be in time to leave and enter from the gate when there was change over of the shift. The employee would be under a duty to obey the Rules of the Mill of remaining present five minutes before the shift commences inside the compound and to enter by the specified gate for this purpose. As such, he came within the zone of employment when he carried out orders. In that case it was held that dependents of the workman were entitled to get compensation under the Act as both the conditions in the course of employment and arising out of employment had been fulfilled under application of doctrine of notional extension.

Thus, the doctrine of notional extension will have to be properly applied to the factual situation pertaining to the particular case.

16. It is an undisputed fact that the appellant is employed in KIMCO. He is covered by insurance. The appellant has appeared before the ESI Court and stated that on March 6, 1980 while he was returning home directly from the factory at 3.50 p.m. he was attacked by three persons with scythes and knives, and caused grievous injury, as a result of which the left hand and leg were cut off. He stated in the cross-examination that he did not know his assailants. He admitted that police had investigated the case and had charge-sheeted three persons but he did not know what happened in the criminal case. The respondent-Corporation has sought permission to produce the Judgment in the Sessions Case No. 27 of 1980 before the Sessions Judge, Hassan, as additional evidence. We have admitted it. The assailants of the appellant were convicted by the Judgment in Sessions Case No. 27 of 1980. As per the said Judgment, it is clear that these assailants had ill-will towards the appellant due to a land dispute. It is seen from the Judgment that the appellant-employee has been examined as P.W. 2 in the said Sessions Case and his evidence is considered at para 13 of the Judgment. He has stated therein that he was working in KIMCO factory, and there was ill-will between him and four assailants from two years prior to the date of incident, and that the accused No. 4 was the Chairman of the village and that all the accused belong to one group, that Government had allotted him 30 guntas of land along with others, that accused No. 4 obstructed their ploughing but the land was cultivated with the help of the police. Because of this, accused No. 4 was threatening that he would kill him and break his limbs. On March 6, 1980 at 4 p.m., after the close of his work, he went to the shop of Chandrappa at Hassan in Adlimane, joined P.W. 1 who was sitting there and proceeded towards Chikkakondagola on two bicycles; that he was going ahead and P.W. 1 Mayappa was behind him by one maru. In between Thimmalapura and Chikkakondagola, near the land of Karigowda, accused No. 1 to 3 came on the bicycles from opposite side. They were holding "Machus" in their hands. The accused stopped him. Accused No. 2 threw mud at his face with one hand. Accused No. 3 kicked the front wheel of his bicycle. Accused No. 1 hit him at his left arm with "Machu" and shouted that he would finish him (P.W. 2) since P.W. 2 has no support. He first hit P.W. 2 on his left hand and on the wrist. He hit thrice and as a result, his left hand palm was severed. Accused No. 1 again hit him on

the above portion of his left arm with "Machu". Accused No. 3 hit him on his right knee, on right shoulder and on the elbow of his right hand with "Machu". Accused No. 1 also hit him on his left leg above ankle. As a result of the assault, he fell down. Accused No. 1 to 3 ran away on their bicycles towards Byagaderakoppalu. The accused hit him in order to kill him, because of ill-will in connection with the grant of gomal land to him, to which they were opposed. Some time later, the police arrived there with P.W. 1 Mayappa and he was taken to the hospital where he was an in-patient for three months. The police also recorded his statement in the hospital and seized his clothes.

17. Thus, from the above factors, the only conclusion that can be drawn is that the appellant suffered injury by the attack of three assailants who were his enemies and they were looking for an opportunity to do away with the life of the appellants as there was dispute in respect of cultivation of gomal land by the appellant.

18. The Corporation's liability under the Act arises, provided the conditions laid down under the Act are fulfilled. As we noticed earlier, one point which mainly emerges from decisions is that the condition precedent to a liability under the said provision is a casual connection or association between the employment and the injury caused by the accident. Looking at the whole body of facts, if it can be drawn to the effect that the injury caused was an employment injury, then alone the Corporation would be liable for paying compensation.

19. In the present case, the appellant was attacked by his enemies while returning home from the factory, the motive for attack being personal ill-will arising out of cultivation of land by the appellant, no liability for compensation can be fastened on the Corporation as there was no nexus established between the employment as such, and the act of assault by his enemies. The evidence in the case goes to show that the assault of the appellant was pre-meditated and outcome of conspiracy among his assailants to injure him who had land dispute with him. The Supreme Court in the decision reported in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, has observed :-

"There must be a casual relationship between the accident and the employment."

Further, it is observed that :-

"The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents."

Applying the above principles of law to the facts of the present case, we find absolutely no material which establishes any intimate relationship between the assault causing injury to the appellant-employee and the employment.

20. For the reasons aforesaid, the appeal fails and the same is dismissed. No costs.