

(1961) 06 AP CK 0004
In the Andhra Pradesh High Court
Case No : A.A.O. No. 75 of 1958

Ravuri Kotayya

APPELLANT

Vs

Dasari Nagavaradhanamma and Others

RESPONDENT

Date of Decision : 28-06-1961

Acts Referred:

Workmens Compensation Act, 1923 — Section 1, 2, 8(5), 8(6), 8(7)

Citation : AIR 1962 AP 42

Hon'ble Judges : Sanjeevarao Nayudu, J

Bench : Single Bench

Advocate : T.V. Sarma, for the Appellant; D. Narayana Rao and K.V. Subrahmanya Narusu, for the Respondent

Judgement

(1) This appeal is directed against the judgement and order of the Commissioner appointed under the Workmen's Compensation Act, awarding compensation to the 1st Respondent under the said Act, on account of the death of her husband Lakshiminarayana, hereinafter referred to as the deceased.

(2) The deceased was in the employment of the appellant who owned a lorry bearing registration No. ADG 993, as a motor driver, to perform the duties of driving the lorry in question. On 10-11-1956, this lorry of the appellant ADG 993 was carrying tins containing dalda from Kurnool to Guntur. The deceased had picked up the load under the directions of the appellant at the dalda factory in Kurnool and was carrying the same to Guntur in accordance with his master's order. The road from Kurnool to Guntur crosses the river Musi, and a causeway had apparently been built to enable the traffic to pass from one side of the river Musi. At the time of the accident, the river Musi was in floods, water was running at some considerable height over the causeway with the result that there was a suspension of traffic naturally resulting in the accumulation of lorries, which had been held up, on the Kurnool side of the river. There were some twenty lorries that had been so held up. These lorries had waited in the nearby village of Podili for a day or so in the hope of the flood

water subsiding and thereafter, on the waters of the river receding, made their way to the banks of the Musi river. It was found that a two feet high water was still flowing over the causeway.

Apparently, some consultation had been held among the drivers and a decision was taken that the lorries should be pushed across the river along the causeway, as, on account of the flow of water, it may not be possible to move the lorries across, on their own power. Accordingly, one after another, the lorries were pushed by the available drivers and cleaners safely to the other side of the river. The lorry ADG 993, which was owned by the appellant and which was driven by the deceased, was the second of the lorries to thus reach the opposite bank in safety. Having thus managed to get his own lorry across the river to the other bank, the deceased, apparently, in accordance with the decision taken by all the drivers, himself came back to the lorries remaining behind and began giving a helping hand to those lorries to reach the opposite bank. It would appear that as many as 10 lorries had thus been pushed to the opposite bank, safely. It was when the 11th lorry was being pushed by the deceased along with the other drivers and cleaners, that the deceased appears to have slipped and fallen into the water with the result that the back wheels of the lorry nearest to him passed over him and the deceased was thereafter drawn away by the flood current into the waters of the river.

Some of the drivers who were thus engaged in pushing the lorry, noticed the deceased in the waters, and immediately ran to his rescue and pulled him on to the bank, when the deceased complained to them that he had been run over by the back wheels of the lorry which he was pushing and that he should be taken to a hospital for immediate attention. The evidence indicates that the man was in distress and suffering from pain. Thereupon, one of the drivers, who had been examined in the case as P. W. 2, took the deceased in his own lorry viz., ADG 993 to the hospital in Ongole which apparently was the nearest place. On medical advice given at the hospital, the deceased was immediately taken away by the lorry to Guntur hospital for treatment, but unfortunately he appears to have expired on the way. An inquest was held on the dead body and it was opined by the panchayatdars that the deceased died on account of an accident in which the wheels of the lorry ADG 1217 which, according to the evidence, was the lorry that was being pushed by the deceased at the time of the occurrence, passed over him.

(3) It is contended by Mr. T. V. Sarma, the learned counsel for the appellant, that there was no proof in the case of any accident at all, or that that accident resulted in the death of the deceased workman. He further contended that even if there was an accident and the death of the deceased was the result of the accident, the accident did not arise out of and in the course of the deceased's employment, as he was not employed to push the lorries of other persons, and as his employment was only to drive the lorry of the appellant entrusted to him, and also because the appellant countermanded specifically, the deceased, from

taking the lorry across rivers in floods.

(4) On the question whether there was an accident at all, there is, in my opinion, abundant evidence. The last time the deceased was seen functioning was when he was pushing the lorry ADG 1217. He was pushing on the left side of the lorry and when he was seen next, he was found in the water almost immediately thereafter, and when he was picked up, he complained of pain and prayed for being taken to the hospital for treatment, at the same time stating that the back wheels of the lorry had run over him. This evidence regarding the statement made by the deceased is obviously admissible under S. 32(1) of the Indian Evidence Act as a dying declaration. No satisfactory reasons have been shown in the evidence or in the arguments as to why this statement of the deceased should not be accepted as true, particularly when the deceased had not time to think of anything, that he mentioned this immediately he was picked up and when he was in extreme pain, and that he had no motive to speak falsehood about the appellant.

Further, it is not understood how the statement made by the deceased would, in the knowledge of the deceased, be either advantageous to him or prejudicial to his employer. There being no motive suggested or shown as to why the deceased, in those circumstances, speak to something which is not the truth, I have no hesitation whatsoever in accepting his statement as truthful and rely on it. Further, the fact that he made that statement is corroborated by the evidence of other witnesses who noticed him suffering from pain and who were requested by him to take him to the hospital: and the fact that he was actually taken to the Ongole hospital. The doctors there, apparently felt that he needed better treatment, which could be got at Guntur hospital, and accordingly an attempt was made to take him there. Hence, I experience no difficulty whatsoever in coming to the conclusion that the deceased died as a result of an accident and that the accident was caused by the back wheels of the lorry which he was pushing passing over him.

It is true that the exact circumstances in which the accident has happened or the exact manner in which it had happened has not been established. The reason is obvious. Everyone is interested in pushing the lorry and nobody might have noticed what was actually happening to the deceased. If the deceased had slipped and fallen in front of the back wheels which were in motion, in the first place, he would have fallen in the river water which was flowing over the causeway at a height of two feet, and in the second place, nobody could have noticed the tyres passing over him on account of the flowing of the water, and it is immaterial in a case of this kind whether there is such evidence or not. Suffice it to say that the accident had occurred in the circumstances disclosed by the evidence for the petitioner in the case.

(5) This takes us to the next question whether the accident could be held to have occurred and arisen out of and in the course of the deceased's employment by the appellant. In this connection, it is necessary to refer to Sec. 3 (1) of the

Workmen's Compensation Act (VIII of 1923), hereinafter referred to as the Act, which is in the following terms:

3(1) "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.

X X X X X X X"

The liability of the employer, therefore, would arise only where personal injuries were caused to as workman by reason of an accident arising out of and in the course of the employment of that worker. It is contended by Mr. Sarma, the learned counsel for the appellant, that in the instant case, even if it is held that there was an accident and the death of the deceased was caused by that accident, the accident did not arise out of and in the course of the deceased's employment by the appellant, and that, therefore, the appellant is not liable to pay compensation under the Act. In support of his contention, he placed reliance on a decision reported in *Burama Oil Co. v. Ma Hmwe Yin*, AIR 1935 Rang 428. In that case, the deceased Maung E Maung was employed as a drilling cooly by the appellants therein viz., Burma Oil Co., Ltd., at one of their oil wells. The said Maung E Maung, hereinafter referred to as the deceased, was living in quarters provided by the appellants therein at a place called Khangone situated about four miles away from the well where the deceased was working.

There were three routes connecting the quarters allotted to the deceased and the well where he was employed to work, and it was open to him to have made use of any one of those ways. On a certain day the deceased left Khangone barracks at about 7-00 P. M. in order to give himself enough time to reach the well before 11-30 P. M. when he had to report to duty. He chose one of the three routes a village where he could pick up a companion to accompany him on his way to the well. Accordingly, the deceased and the other person left the village on foot at about 8-00 P. M. and were proceeding to the well where the deceased was employed. After walking a mile or so from the village, the deceased was bitten by a snake and lost his life. On the facts the Commissioner had held that the deceased's dependants were entitled to compensation from the appellant's company, who appealed to the High Court of Rangoon questioning the finding of the Commissioner.

The learned judges who decided that case, after examining a number of English decisions, came to the conclusion that on the facts of that case, the accident which caused the death of the deceased did not arise out of or in the course of his employment by the appellant company. It is unnecessary to enter into an examination of the correctness of this decision which is clearly distinguishable from the present case on the facts. A perusal of that decision shows that the main reason which influenced the decision of the learned Judges was, that the risk and danger to which the deceased in that case was exposed was common to all persons walking along the route and had no connection, direct or indirect,

with the employment of the deceased by the appellant's company. It was further found in that case that the tests propounded by the English decisions quoted therein were not satisfied on the facts of that case. The following observations of the learned Chief Justice Page would make the position fairly clear:

"An employer is not liable to compensate a workman for an injury that has been caused by reason of the workman being exposed to risk to which all persons who happened lawfully to be present at the time and place of the accident would be subjected, unless the workman at such time and place was exposed to an exceptional risk of sustaining the reason of the work which he was engaged by the employer to carry out.

In my opinion it is obvious that the snake bite which caused Maung E Maung's death was a misfortune that might have befallen any person who happened to be passing lawfully along the green route on the night in question. It was a Public highway, and a snake is no respecter of persons".

(6) Obviously, therefore, this decision has no direct bearing on the facts of the present case.

(7) It is, however, useful to refer to English authorities wherein the facts bear closer similarity to the facts of the present case. In *Charles R. Davidson and Co. v. M. "Robb,"* 1918 AC 304 at P. 317, dealing with the scope of the expressions "arising out of the employment" and "in the course of the employment" which occur in the Workmen's Compensation Act, 1906 (British Act), which was in force in the United Kingdom, the following observations of viscount Haldane throw considerable light on the determination of the scope of these expression:

"In order to come within the statute an accident must not only occur "in the course of", that is to say during, actual employment, but addition must arise "out of" it. In other words, there is required to be shown something in the nature of a causal relation between the accident and an order, expressed or implied, given by the employer".

In the same case, Law Lord Dunedin observed as follows at p. 321 :

It is obvious that the addition of the words "and in the course of" are meant in some way either to qualify or further explain the words "out of". My own view is that they do the latter. It is in one sense difficult to imagine that there could be any injury held as arising out of the employment which would not also be in the course of the employment. But it may well be that the determination of the question whether at the moment of the injury the workman was in the course of his employment may go to solve the question of whether the injury arose out of the employment".

The learned Law Lord gave the illustration of a butler who is run over in the street, and observed that if the butler had been sent by the master on a message, or to fulfil a certain errand, the butler could certainly be held to be in the course of his employment at the time of the accident; but if he were enjoying

an evening out, it would not be difficult to determine that if being run over is one of the inherent dangers of the street the accident may not be held to have arisen out of the employment, and wound up by observing.

"In my view "in the course of employment" is a different thing from "during the period of employment". It connotes, to my mind, the idea that the workman or servant is doing something which is part of his service to his employer or master. No doubt it need not be actual work, but it must, I think, be work, or the natural incidents connected with the class of work e.g., in the workman's case the taking of meals during the hours of labour; in the servant's, not only the taking of meals, but restings and sleeping, which follow from the fact that domestic servants generally live and sleep under the master's roof".

(8) In *Andrew v. Falisworth Industrial Society, Ltd.*, (1904) 2 KB 32 at pp. 34, 35 Collins Master of the Rolls dealing with the scope of the provision observed as follows:

"Though it (the accident) may not be connected with, or have any relation to the work the man was doing, yet, if in point of fact the position in which the man was doing the work, and the place he must necessarily occupy whilst doing the work are a position and a place of danger which caused the accident, it may fairly be said that it arose out of the employment, not because of the work, but because of the position".

Barnes v. Nunnery Colliery Co., Ltd. (1912) AC 44 is a case illustrating that where the victim was involved in the accident and the death resulted by reason of an added peril, added by himself, the liability of the employer had been negatived. It was therein observed that where the death was caused by an added peril to which the deceased by his own conduct exposed himself, and not by reason of any peril involved by his contract of service, the case is taken out of the scope of the section. In *Plumb v. Cobden Flour Mills Co., Ltd.*, (1914) AC 62, the appellant therein was employed with two others in a room in the respondent's mill to stack bundles of sacks by hand. After the man had raised the bundles as high as they could by hand, the appellant utilised for this purpose a revolving shaft which ran along the room near the ceiling by throwing a rope over it and fastening one end to the bundle thereby making use of the shaft for the purpose of raising the bundle. The appellant who was standing on the stack, while endeavoring to extricate a bundle which had been hauled too high and had stuck between the shaft and the ceiling, got his arm entangled in the rope and was carried round the shaft and injured. In that case the question posed was as follows:

"Was the risk one risk on reasonably incidental to the employment?"

In other words, whether the risk was an employment risk. The position had been made clear in *Craske v. Wigan*, (1909) 2 KB 635 wherein the following observations were made by the Master of the Rolls:

"A lady's maid was engaged in the nursery doing some work of her own which she was entitled to do, and the doing of which did not prevent her from being at that time in the course of her employment. It was a hot evening. The window was open, and the light in the nursery happened to be electric light. A cockchafer came in at the window. She was alarmed at it and hit her own eye with her thumb, with very serious consequences".

On the facts of that case, it was therein held that the risk in which the lady's maid was involved was a risk in no way incidental to the employment as a lady's maid, as she was not placed by reason of the employment in a position of any special danger, and the incursion of a cockchafer through an open window into a room where there is a light, is a risk common to all humanity and it is altogether impossible to say that the alarm caused to the applicant by the flight of the cockchafer followed by her putting her thumb into her eye, was something which arose out of employment. It is not enough for the applicant to say according to this decision, that "the accident would not have happened if I had not been engaged in that employment or if I had nor been in that particular place". He must go further and be in a position to say "the accident arose because of something I was doing in the course of my employment or because I was exposed by the nature of my employment to some peculiar danger".

(9) In *Mrs. Margaret Thom v. Sinclair*, 1917 AC 127, a woman was employed by a fish curer, while working in a shed belonging to her employer, was injured by the property of an adjoining proprietor resulting in the roof of the shed in which she was working collapsing, and the woman was buried under the wreckage. It was held in that case that the accident arose out of her employment within the meaning of the Workmen's Compensation Act, 1906 (British Act). The observations of the Master of the Rolls in 1909 2 KB 635 were approved. Lord Parmoor observed in that case at p. 146 as follows:

"In my opinion, if the conditions of the workman's employment oblige him to work in a particular building and thereby expose him to the risk of the accident which has happened, this may be described as a peculiar danger to which from the nature of the employment the workman is exposed.

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A risk may be accentuated by the incidents of the employment when the conditions of the employment oblige the work to be carried on in a particular building which exposes the workman to the risk of the accident which in fact has occurred. An example of the application of this principle is found in the case of *Andrew v. Failsforth Industrial Society*, (1904) 2 KB 32,"

(10) In an earlier decision of this court in *Kondisetti Anjaiah Vs. T. Lakshmaiah*, the legal position had been summed up in the following words:

"To sum up the legal principles involved in determining whether the accident had arisen out of and in the course of a person's employment it is enough if it is established that (1) at the time of the accident he was in fact employed on the duties of his employment; (2) that it occurred at the place where he was performing those duties; and (3) that 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 them".

(11) To summarize the principles laid down in the above decisions, we find that in order that an accident could be held to have arisen out of and in the course of the employment of the victim by the employer, the following conditions would require to be established:

(1) That the workman was in fact employed on, or performing the duties of, his employment at the time of the accident;

(2) That the accident occurred at or about the place where he was performing these duties, or where the performance of these duties required him to be present.

(3) That the immediate act which led to or resulted in the accident had some form of causal relation with the performance of these duties, and such causal connection could be held to exist if the immediate act which led to the accident is not so remote from the sphere of his duties or the performance thereof, as to be regarded as something foreign to them.

(12) The above, however, are subject to the following exceptions, which exclude the liability of the employer:

(I) 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

(ii) 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.

(13) Applying these tests to the instant case, it is clear that the deceased was in the employment of the appellant at the time of the accident and the accident occurred on the route which he was asked to make under the directions of his employer, that is, to proceed from Kurnool to Guntur taking the load in the lorry of the appellant. His work and duty consisted in driving the lorry carefully and delivering the load safely at the destination indicated by the appellant. It is not disputed that it was in the course of the performance of this duty that the accident occurred, and although the deceased was not actually driving the lorry at the time of the accident, he was performing a function which is connected with, however indirectly, the performance of his duty viz., of safe conveyance and delivery of the goods entrusted to him. The lorry of the appellant was held up on account of the floods involving the deceased waiting for some considerable

time to allow the floods to recede. Apparently when the flood had come down to a level which was considered by the drivers of all the lorries that had been held up on account of the floods to be safe enough for crossing along the causeway the crossing took place.

That the lorries could not cross on their own power without the aid of additional power supplied by human beings pushing, is more or less admitted; and at any rate, not seriously disputed, and is made clear from the evidence. The appellant's lorry had been successfully pushed along the causeway to the other bank with the aid of the this additional power supplied by the drivers and cleaners employed on the lorries so held up. Having therefore had the benefit of a safe conveyance of the lorry from one side of the river to the other, the deceased was, in duty bound, to help the other lorries to cross similarly and this obviously was incidental to his employment and to the performance of his duty. The test propounded by Viscount Haldane in 1918 AC 304 was, that there should be something in the nature of a causal relation between the accident and the performance of duty.

It is obvious that in the circumstances of the instant case, neither the appellant nor the deceased would have had the benefit of the help and service rendered by the other drivers in safely conveying his lorry across the river to the other bank, but for the Co-operation that was promised to them by the deceased, and it was in the act of rendering this Co-operative service that the accident had occurred. I am, therefore, satisfied that not only it has been shown that there is a causal relation between the accident and the employment of the deceased, but also the third test laid down in *Kondisetti Anjaiah Vs. T. Lakshmaiah*, viz., that the immediate act which led to the accident is not so remote from the sphere of his duties so as to be regarded as something foreign to him, is also fulfilled.

(14) In appreciating the scope of the decisions bearing on the question, it is not difficult to distinguish between cases which come within the scope of the section and which fall outside e.g., taking the facts of the instant case if an accident occurred when the deceased during the rest period when he halted the lorry, went into deep waters to have a bath and lost his life. Obviously the death can be said to be so remote from the sphere of his duties that it could easily be regarded as foreign to them. On the other hand, if supposing the deceased was changing the flat tyre of the lorry and in the course of doing so, the load from the lorry falls on his head and he dies, obviously the death bears a causal relation to the performance of his duty and it can, therefore be held that the accident arose not only in the course of his employment but also out of his employment.

(15) On a careful consideration of the various decisions bearing on the question, I am satisfied in this case that the accident occurred in the course of as well as arose out of the employment of the deceased by the appellant; and hence the order of the learned Commissioner awarding compensation to the 1st Respondent as a dependent of the deceased is in order and cannot be questioned.

(16) In this connection, Mr. Sarma contended that the deceased had acted contrary to the orders of the appellant, that he had no business to cross the river during floods and that the risk taken by him was expressly countermanded by the appellant. In considering this objection, it would be necessary to refer to the counter filed by the appellant before the Commissioner. All that was stated therein is:

"I never instructed my driver to rush through torrents and floods".

There is, therefore, no specific averment in the counter that the deceased was directed not to cross a river when it did not involve rushing through torrents and floods. On the facts of the instant case, it is clear that what the deceased did was in the good interests of the appellant as the lorry had been safely taken to the other side of the river; for the statement in the evidence is that the river Musi is a dangerous river and that the appellant had particularly asked the deceased not to take the lorry across that river when it was in floods-- a statement which, if true, would have been made in the counter. In cross-examination, the appellant admitted that it was the driver that was responsible for the careful transport of the goods.

(17) I do not think that the evidence in the case established that the deceased had been particularly given an order not to cross any river when it is in floods and in the nature of things, such a direction, except when the river is in such a state that it may be dangerous both to the lorry as well as to its contents to effect a crossing, is not likely to have been given. That in the deceased exercised sound judgment is apparent from the fact that he, with the efforts of the other drivers similarly placed, had successfully taken his lorry across the river, apart from the fact that there is evidence that all the other lorries about eleven in number had been similarly taken across the river safely.

(18) The only other question that remains to be considered is whether the Commissioner is correct in fixing the compensation. It is in evidence that not only do the drivers of lorries get their pay, they also get a commission on the business turned out, and from the evidence, it is clear that practically everyone of the lorry drivers was making on an average a sum well over Rs. 100/- including pay. This is a question of fact and I see no reason to disagree on the evidence with the finding reached by the learned Commissioner that the deceased must have been earning at least Rs. 100/- a month, and hence, fixing compensation on the basis of that is the correct thing to do in the circumstances.

(19) One other contention raised by Mr. Sarma is that the 1st respondent had re-married in or about 1958 and that, therefore, she ceased to be a dependant after her re-marriage and consequently not entitled to compensation. This contention overlooks the definition of a "dependant" as given in the Act which is as follows:

2(d) "dependant" means any of the following relatives of a deceased workman, namely:

(I) a widow, minor legitimate son, and unmarried legitimate daughter or a widowed mother: and

There is no provision in the Act to the effect that subsequent events would affect the claim of the dependant to compensation. Further, a similar conclusion follows by a consideration of Section 8 sub-section (5), which is in the following terms:

8(5) "Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant".

(20) Mr. Sarma further contended that S. 8(6) prohibited payment of compensation to a woman or to a person legally disabled and that therefore any order of the Commissioner directing payment to the 1st Respondent was not justified. This contention does not receive support from the language of the provisions. Sub-section (6) of S. 8 which is the relevant provision lays down as follows:

"Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto".

The Section compels the Commissioner to pay off the compensation to a person entitled to it, who is not a woman nor a minor. In case where the persons entitled to compensation are women or minors or persons under legal disability, option is given to the Commissioner either to make the payment to them or to take action by way of an investment as provided for in sub-section (7) of Sec. 8. The discretion is vested in the Commissioner and it is not for this court to tell him how to exercise it.

(21) It is, however, to be noticed that the compensation in this case is payable not only to the 1st Respondent but also to Respondents 2 and 3, the minor children of the deceased. It is true that the Commissioner is empowered to pay the compensation to any one of the dependants having regard to the language of Sec. 8 sub-sec. (5) of the Act. It is also not disputed that the minor children of the deceased are now being looked after and depending on the 1st Respondent. In the circumstance, I do not feel it necessary to interfere with the order proposed by the Commissioner.

(22) In the results, this appeal fails and is dismissed with costs.

(23) Appeal dismissed.