

(1991) 01 KL CK 0032
In the High Court Of Kerala
Case No : M.F.A. No. 301 of 1985

Sathyabhama

APPELLANT

Vs

E.S.I. Corporation

RESPONDENT

Date of Decision : 30-01-1991

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(8)

Citation : (1991) ACJ 861 : (1991) 63 FLR 339 : (1992) 1 LLJ 831

Hon'ble Judges : U.L. Bhat, J; Rajasekharan, J

Bench : Division Bench

Advocate : M. Ramachandran and P.V. Abraham, for the Appellant; C.S. Rajan, for the Respondent

Final Decision : Allowed

Judgement

Bhat, J.—Appellant was employed in the Finishing Department of Madura Coats Ltd., Koratti. On the morning of January 7, 1983 she had gone to the premises of the employer to sign lay-off register as she along with others had been laid-off. She signed the register, came out of the premises and stepped into the public road with a view to cross the road to proceed homewards. Then a scooter came and struck her and she sustained injuries. After complying with the requisite formalities, she preferred a claim before the E.S.I. Court, Alleppey claiming compensation. The claim was resisted by the employer and was rejected by the E.S.I. Court. The E.S.I. Court rejected the claim on two grounds; one is that the person who goes to the employer's premises to sign lay-off register cannot be said to have gone there in the course of employment and the injury cannot be said to be an employment injury. The second reason is that since she had received compensation from the owner of the scooter, she is not eligible to receive compensation under the provisions of the E.S.I. Act. Hence this appeal.

2. Learned counsel representing the respondent did not seek to support the two reasons on which the impugned order rests. On the other hand, learned counsel for the respondent contended that the order is sustainable for another reason,

namely, that the injury cannot be regarded as an employment injury since it was caused outside the premises of the employer. It is admitted that the injury was caused when the appellant had come out of the gate into the public road. The question is whether in these circumstances the injury can be said to be an employment injury. Employment injury is defined in Section 2(8) of the E.S.I. Act as 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.

3. The leading decision in relation to this controversy is that of the Supreme Court in *Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others*, That was a case in which an employee while proceeding to the place of employment in a public ferry boat was drowned. The Supreme Court held that injury was not sustained in the course of the employment. The rule has been laid down in the judgment as follows: (p.251):

"As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the 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 employment even though he had not reached or had left his employer's premises. 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."

The Court observed in PP. 251-252 as follows :-

"It is well settled that when a workman is on a public road or a 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. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him."

4. Learned counsel for the respondent invited our attention to a number of decisions of this Court. In the decision in *Regional Director E.S.I. Corporation v. K. Krishnan* 1975 KLT 712 injury was sustained when the employee was travelling in public transport in a public road far away from the factory premises. It was held that the injury cannot be said to be an employment injury. In *A.S. No. 65 of 1973* it was held that the injury sustained by an employee working in a

printing press while he was on his way from his house to the press cannot be regarded as an employment injury. That is because every member of the public walks along the road and in the case of an employee also he walks only as a member of the public and theory of notional extension of employment did not extend to such a case. In *E.S.I.C. Vs. Francis De Costa*, the employee sustained injury while he was riding a cycle to reach the factory when a lorry belonging to the factory hit him. The accident took place at a distance of 1 km. away from the factory. Nevertheless the Court held that it was an employment injury particularly because the employee was on his way to the factory and in the normal course he would have been reporting for duty within a few minutes and he was using the route through which normally he had to reach the factory from his home and he was using the conveyance which, though he was not legally obliged to use, was a vehicle which, in the contemplation of the parties, was a normal mode of transport from the employee's residence to the factory. In *E.S.I. Corporation v. Lakshmi* 1978 KLT 817 employee sustained an injury when he was travelling in a public transport arranged by the employer. This Court held that it was an employment injury. The decision in *Indian Rare Earths Ltd. Vs. Subaida Beevi*, dealt with the case of an employee who was residing 7 to 8 kms. away from the factory and had to walk 3 kms before he could board a bus. He was covering the 3 kms. long road using a cycle. The expenses he had to meet for travelling in bus was subsidised by the employer as per settlement. This Court held that employment injury in those circumstances arose in the course of employment and out of the employment.

5. Learned Counsel also referred to a decision in *A.C. Roy and Co. (Private) Ltd. Vs. Taslim and Another*, That was a case in which employee reached near the gate of the docks. He was employed by the stevedores. His work was in a berthed ship far away from the gate of the docks. It was held that the notional extension of the location of his employment could not be stretched to the gate of the docks.

6. As observed by the Supreme Court, the decision in every case depends on the facts and circumstances of that case. The theory of notional extension cannot be reduced to a mathematical formula of distance and time. Whether in a given case of injury sustained outside the premises of the employer, the theory of notional extension would apply would depend on the facts and circumstances of the case which have to be examined very carefully. There can be some reasonable extension in both time and place.

7. In the present case the employee attended the factory, signed the lay-off register, passed out of the gate and stepped into the public road situated in front of the gate. Undoubtedly the employee has to cross the public road for the purpose of reaching her house. It was at the time she reached the road with a view to cross the road that she was hit by the scooter. Considering both the point of time as well as that of distance, we are of opinion that theory of notional extension of the employer's premises must be applied to the facts of this case.

We hold that the injury sustained in this case is an employment injury. Hence we set aside the order of the E.S.I. Court. The Court has to determine the compensation payable and for this purpose the case is remanded to the Court below. The appeal is thus allowed but in the circumstances without costs.