
(1986) 07 MP CK 0028
In the Madhya Pradesh High Court
Case No : M.F.A. No. 145 of 1981

Surajbai

APPELLANT

Vs

Cement Corporation of India Ltd. and Another

RESPONDENT

Date of Decision : 22-07-1986

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (1999) 3 LLJ 236 : (1990) 35 MPLJ 754 : (1990) MPLJ 754

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : Nair, for the Appellant; R.C. Khare Advocate for Respondent No. 1 and G.K. Soni and K.S. Wadhwa, for the Respondent

Final Decision : Allowed

Judgement

G.C. Gupta, J.

Outlining the ambit and scope and restating conceptual contents of "employment" as appearing in Section 3 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") is the requirement of present appeal filed by the claimant of the deceased workman u/s 30 of the Act, the claim of the appellant having been dismissed by the Commissioner for Workmen's Compensation, Bilaspur, by his order dated January 30, 1981 in Workmen's Compensation Case No. 1/79.

The appellant's husband Amardas was admittedly employed as a Chowkidar with the respondent National Building Construction Corporation at Akaltara Dist., Bilaspur. The said respondent/Corporation had undertaken some construction work as a contractor of the respondent Cement Corporation of India Ltd. It is not disputed that the respondent/Cement Corporation of India was the principal employer and respondent National Building Corporation was the immediate employer in relation to said Amardas. It is also not in dispute that on July 21, 1978 at about 11-30 P.M. the said Amardas while going to join his duty at the

place of his employment met with an accident by getting himself entangled with power live-wire of 240 volts and died. It is also no longer in dispute that the accident had taken place on the service road between the sump-pit and the office of the Respondent No. 2 and within the premises of the undertaking of Respondent No. 1. The road where the accident had taken place was built by the Respondent No. 1 mainly for the use of its employees, though there is evidence on record to hold that some villagers also use this road. The true position of the place of accident is shown in the map Ex. D-1. A perusal of this map would indicate that an electric power line runs from the plant area to the sump-pit and covers major part of the service road. The electric line also belongs to Respondent No. 1. From these facts it is clear that the accident in which the deceased Amardas died had happened within the undertaking of Respondent No. 1 but before the said workman reached his place of duty. Report of this accident was sent by the Regional Manager of Respondent No. 1 on August 9, 1978 in Form "BE1. From the proceedings of the case it appears that the Commissioner for Workmen's Compensation acting on the information received, required the Respondent No. 2 by its order dated November 28, 1978 to deposit an amount of Rs. 18,000/- as compensation payable to the dependants of deceased Amardas. It, however, appears that on January 1, 1979 the present appellant, wife of deceased Amardas, filed the claim before the Commissioner and hence no further action on the order dated November 28, 1978 was taken.

The claim of the appellant was mainly contested by the Respondent No. 2 though both the respondents have filed their written statement. Both of them however, denied their liability to pay compensation as the accident had not taken place during the course of employment of Amardas nor did it arise out of employment.

The learned Commissioner by his order dated January 30, 1981 held that the accident in question had taken place (sic) the deceased 1 Amardas could reach his (sic) and started working. He, therefore, held that the accident did not arise out of and in the course of employment. That is how the matter has been brought before this Court for consideration.

The Act in spite of its colonial origin had a worker's welfare bias to which has been added the conceptual contents of social justice based on Part IV of the Constitution. In spite of its imperialist overtone the Act illustrated the influence of Inter-national Labour Organisation and inaugurated an era of welfare legislation in India. It was the first legislative effort to adopt universally accepted standards of civilized countries and provide for Workmen's Compensation which was so far not provided to the workers in India but was almost the established principle elsewhere in the world. For a free India, the Act is the basic requirement of its welfare policies as in a welfare State the protection afforded to a disabled workman cannot be allowed to rest on the mercy or grace of the employer by way of continuing the workman in service. Since the Act is a welfare legislation, it is generally expected that its provisions would receive liberal interpretation so as to advance the object and purpose of the Act. Any

interpretation of this Act must, therefore, be done in the context of the fact that the legislature intends that the employer should act as an insurer of his workman, dying or receiving injuries during the course of and arising out of employment. The Act therefore provides a wider definition of "Employee" in Section 2(e) and includes even a person to whom the services of a workman are temporarily lent. Similarly the word "workman" has also been defined and includes any person employed in any such capacity as is specified in schedule II of the Act. Section 3 of the Act requires the employer of the workman receiving personal injury by accident arising out of and in the course of his employment, to pay compensation in accordance with the provisions of the Act. The words "arising out of and in the course of employment" are the key words and have given rise to good deal of judicial controversy. These are in fact two different phrases and have been understood as such. If the accident had occurred on account of a risk which is an incident of the employment, the claim must succeed unless, of course, the workman had exposed himself to an added peril by his own imprudent act. The distinction between the 2 phrases has been noticed by our law Courts and it has been held that the phrase "in the course of employment" suggests the point of time i.e. the injury must be caused during the currency of employment whereas the expression "out of employment" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of accident. It was at one time thought that an accident arose out of and in the course of employment only if the workman was injured at the place of his employment. There is of course, no difficulty in accepting such an accident as an accident arising out of and in the course of employment. But this narrow interpretation has not been able to satisfy new challenges created by modern methods of working of industrial undertaking. To determine the exact place of employment of a workman in the context of modern industrial development, is in itself a difficult task. A pilot who is responsible for flying the air-craft is supposed to be working at the cockpit of the plane and his place of work would be the place wherever the plane flies. A light-house workman, particularly in cases where light-house is situated in the middle of sea on some tiny island, is required to be taken to that island by some method before he can actually start working. An underground mine worker reports at the opening of the mine and travels underground to reach his actual place of work. These are the instance of modern industries and such instances can be multiplied. The Mines Act, 1952, provides that a workman joins his duty before he has reached the place of his actual work. Industrial Jurisprudence treats the air-craft pilot and a light-house worker as on duty even before he has actually started working. The modern management methods do not even require a workman to work. Some of them are kept waiting to be available whenever there is work. These developments had made it wholly unnecessary to consider a workman on duty only when he reaches his place of work or starts working. For purposes of workmen's compensation the law has adopted what is known as "the principle of notional extension of employer's premises." If the place of accident by application of this doctrine can be said to be the place of duty of the

workman concerned, the workman is held entitled to compensation even if he had not reached his actual place of work. The 1 first authoritative statement of this rule is contained in Supreme Court decision in *B.E.S. T. undertaking v. Mrs. Agnes*, AIR. 1964 SC 193. This was a case where the employer had permitted the workman to travel in its buses without payment of fare to go to his place of work and after his duty hours, to his residence. The workman after his duty was returning home in one such bus. The bus met with an accident as a result of which the workman was thrown out of the road and injured. He later on expired in the hospital. The widow of the workman claimed compensation under the Act submitting that her husband had died in an accident arising out of and in the course of his employment. The question for consideration of the Supreme Court was when did the employment of workman began and when it ended. The Court considered several judicial precedents on the point and laid down the law as follows :

"Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. Though at the beginning the word "duty" has strictly construed, the later decisions have liberalized this concept. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion. But none of the decisions cited at the Bar deals with a transport service operating over a large area like Bombay. They are therefore, of little assistance, except in so far as they laid down the principles of general application. Indeed some of the law Lords expressly excluded from the scope of their discussion cases where the exigencies of work compel an employee to travel on public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority,"

Applying the aforesaid principles to the facts of the case the Court held that as the free transport was provided in the interest of service, the accident occurred during the course of employment of the deceased and therefore, his wife was entitled to compensation. The reasoning of the Supreme Court is contained in the following passage of the judgment :

"Bombay is a city of distances. The transport service practically covers the entire

area of Greater Bombay. Without the said right it would be very difficult for a driver to sign on and sign off at the depots at the scheduled timings, for he has to traverse a long distance. But for this right, not only punctuality and timings cannot be maintained but his efficiency will also suffer. D.W.I, a Traffic Inspector of B.E.S.T. Undertaking, says that instructions are given to all the drivers and conductors that they can travel in other buses. This supports the practice of the drivers using the buses for their travel from home to the depot and vice versa. Having regard to the class of employees, it would be futile to suggest that they could as well go by local suburban trains or by walking. The former, they could not afford and the latter, having regard to the long distances involved, would not be practicable. As the free transport is provided in the interest of service, having regard to the long distance a driver has to traverse to go to the depot from his house and vice versa, the use of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty. He is not exercising the right as a member of the public but only as one belonging to a service. The entire Greater Bombay is the field or area of the service and every bus is an integrated part of the service. The decisions relating to accidents occurring to any employee in a factory or in premises belonging to the employer providing ingress to the factory are not of much relevance to a case where an employee has to operate over a larger area in a bus which is in itself an integrated part of a fleet of buses operating in the entire area. Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshop, factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adopted to meet its peculiar requirement. While in a 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 a city transport service, by analogy, the entire fleet of buses forming the service would be the "premises". An illustration may make our point clear. Suppose, in view of the long distances to be covered by the employees, the Corporation, as a condition of service, provides a bus for collecting all the drivers from their houses so that they may reach their depots in time and to take back after day's work so that after the heavy work till about 7 p.m. they may reach their homes without further strain on their health. Can it be said that the said facility is not one given in the course of employment? It can even be said that it is the duty of the employees in the interest of the service to utilize the said bus both for coming to the depot and going back to their homes. If that be so, what difference would it make if the employer, instead of providing a separate bus, throws open his entire fleet of buses for giving employees the said facility? They are given that facility not as members of the public but as employees, not as a grace but as of right because efficiency of the service demands it. We would, therefore, hold that when a driver when going home from the depot, or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment.

We, therefore, agree with the High Court that the accident occurred to Nanu

Raman during the course of his employment and therefore his wife is entitled to compensation. No attempt was made to question the correctness of the quantum of compensation fixed by the High Court".

It would, therefore appear that if the transport facility for reporting to the place of work and going back to the residence is provided by the employer as a part of condition of employment or has some reasonable connection with the employment, any accident taking place while travelling to and from the place of employment would be the accident occurring during the course of employment. The concept underlined by the Supreme Court in this case is in line with the current jurisprudential thinking on the subject and fully seeks to achieve the object of the Act.

In *M. Mackenzie v. I.M. Issak* (1970-I- LLJ -16), the Supreme Court again considered this question and laid down the following tests to determine the disputed question at pp. 18-19 :

"To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it". The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." In other words, there must be a causal relationship between the accident and the employment. 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. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises "out of employment". To put it differently, if the accident had occurred on account of a risk which is an incidence of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act."

The aforesaid indicates a new principle i.e. if the injury had resulted from some risk incidental to the duties, which unless engaged in the duty, it is reasonable to believe the workman would not have suffered. This Court is therefore required to examine whether the deceased Amardas would have suffered the injury, if he had not been going to the place of his employment? In other words, if deceased Amardas would have gone to the place even without being an employee of the respondents, the accident cannot be said to have arisen during the course of his employment. This test as prescribed by the Supreme Court is wider in its amplitude than the test prescribed by it in *B.E.S.T Undertaking* case (*supra*) and may be suggestive of the development of welfare bias in the judicial process during the period.

The approach of this Court in such matters appears to be rather liberal. In *Public Works Department, Bhopal v. Kausa*, (1967-I-LLJ-340) this Court considered a case where the workman; was engaged in job of road repairing. While he was taking meals near a well at a distance of about 3 furlongs, he was murdered by some unknown persons. The Commissioner for Workmen's Compensation while deciding the claim of his wife held that the deceased was killed while he was performing his duties as gangman. This Court held that the death was neither expected nor designed and was therefore an accident within the meaning of Section 3(1) of the Act. According to the Court, the workman would not have been at the place where he was murdered, had it not been for the fact that he had left the place for purpose of collecting salary of the labourers from the office. The mere fact that while on his way to the office, he sat down in order to take his meals would not alter the fact that he happened to be there on account of his duties i.e. to collect salary of the labourers. This Court, therefore, held that the accident arose during the course of employment.

Learned counsel for the Respondents has relied on *Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others*, , to support his submission that the employment does not commence unless the workman has reached the place of his employment. This proposition as stated is not supported by this decision. The Supreme Court in this case has laid down the law on the subject as under :

"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 employee'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. 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".

Applying the aforesaid law to the facts and circumstances of the case, the Court held that since the accident had taken place on a public road, the accident cannot be said to have arisen in the course of employment; While deciding the aforesaid, the Court held as under :

"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." Para (8)

The Supreme Court also held that theory of notional extension extends upto point "D" i.e. the foot-track going to the salt works, and since the accident had happened beyond this point, the same was held to be not in the course his employment. This case is, therefore, not the authority for the proposition canvassed by the respondents. This decision, if at all, establishes that the foot-track going to the salt works i.e. the place of employment was covered by the theory of notional extension.] Many other decisions of various High Courts have also been cited by the learned counsel but all those cases were decided prior to 1970 and are not considered because of the Supreme Court decision.

The aforesaid legal survey provides some positive tests for determining whether the accident in the instant case arose in the course of employment. The first test is whether the deceased workman would have been at the place of accident but for his employment and the second test is whether the road on which the workman had been travelling was provided by the employer to facilitate workmen reaching their place of duty? The first test is culled out from the decisions in M. Mackenzie's case (supra) and Sawashtra Salt's case (supra), while the second test is grounded in B.E.S.T. Undertaking decision (supra). Having discovered the aforesaid tests and examinations of facts of the case, may now be undertaken to decide the controversy.

The map Ex. D-1 would indicate that the establishment of Respondent No. 1 consists of a mining area and plant area. In between these 2 areas are placed primary and secondary crushers and a stock-pile. Two areas are connected by a Kachha road which is used by the workers as a service road as would be clear from Ex. D-3. A copy of the letter of Resident Engineer of Respondent No. 2 to the Personnel Officer, of Respondent No. 1 dated July 22, 1978 would indicate that the electric line which caused the death of the workman was being looked after by the respondent/Cement Corporation of India being crusher-quarry line. This letter also indicates that the accident had taken place within the boundary area of Respondent No. 1. It is clear from the written statement of Respondent No. 2 that the road connecting quarry area and the plant area belongs to Respondent No. 1. It is now no longer in dispute that the Respondent No. 2 was engaged as a contractor by the Respondent No. 1 for undertaking construction work. These facts would sufficiently establish that Respondent No. 1 was the "principal employer" in relation to deceased Amardas and the Respondent No. 2 were his "immediate employers." Section 12 of this Act would make the principal liable to pay compensation under the Act in case it is established that the contractor was engaged by him in any part of the work which is ordinarily part of the trade or business of the principal. Since the Respondent No. 2 was engaged by the Respondent No. 1 for the purposes of his trade or business to execute a work connected with his business, the requirement of this Section would be more

than satisfied. The submission of the learned counsel for Respondent No. 2 that they were not engaged in the course of or for the trade or business of Respondent No. 1 ignores the broad language used in this provision. It is not necessary that the contractor should be employed in the course of principal employer's trade or business and may be engaged for the purposes of his trade or business. This provision would, therefore, make the deceased an "employee" of Respondent No. 1, even though he was not directly employed by them. This would add a new dimension to the problem under consideration. In case late Amardas can be said to have been employed by Respondent No. 1, the accident having arisen within the establishment of the said respondent, the appellant would be entitled to compensation even without applying the theory of notional extension. The theory of notional extension had to be considered only to fasten liability directly on the Respondent No. 2, which liability can be easily fastened as the facts and circumstances give a favourable answer to the two tests discovered by this Court above. There is no difficulty in holding that Amardas would not have been on the road at the relevant time in case, he was not required to join his duties. The accident had occurred at about 11 -30 P.M. within the work premises of Respondent No. 1. No member of the public would ordinarily be on the road at that place. The deceased Amardas had to be at the place only because he was employed with the respondents and had to go to the place of his employment via that road. This satisfies the test laid down in *M. M. MacKenzie's* case (supra). The other test is also satisfied in the context of facts and circumstances of the present case. The road was meant to be used as a service road by the workmen and was constructed by Respondent No. 1 as a connecting link between the mine and other part of their establishment. The fact that this road, which was a short-cut was also used by some outsiders does not change the nature and importance of the road as a facility connected with the industrial establishment. The fact that the road after entering into the factory area goes beyond and joins Akaltara road is also of no consequence as the said extension is only for the benefit of the industrial employees. If use of this road by others was the distinguishing factor, the Supreme Court would not have directed payment of compensation in *B.E.S.T. Undertaking* case (supra). Under the circumstances there is no escape from the conclusion that the accident took place in the course of the employment of deceased Amardas and therefore the appellant is entitled to compensation. Since the Commissioner has ascertained a sum of Rs. 18000/- payable as compensation to the appellant and the said calculation is found to be correct the claim of the appellant for a sum of Rs. 18000/- is decreed. Since the amount was payable and had not been paid the respondents are also liable to pay interest @ 6% per annum from the date of accident till realisation u/s 4A of the Act. The Commissioner under this provision is also entitled to impose a penalty to the extent of 50% of the amount of compensation in case the payment is delayed without any justification. Though there was some justification for delaying the payment so far, there would be no justification for any further delay. Under the circumstances it is also decreed that in case the amount and interest as decreed above are not paid within a period of two months from the

date of this order, the respondents shall be jointly and severally liable to pay further sum of Rs. 9000/- as penalty. The appellant shall also be entitled to costs of the litigation in this Court as well as before the Commissioner for Workmen's Compensation. Counsel fee in both the Courts is quantified at Rs. 1000/- only.

The appeal succeeds and is allowed as aforesaid.