

SUPREME COURT OF INDIA

Saurashtra Salt Manufacturing Co.

Vs.

Bai Valu Raja

C.A.No.368 of 1956

(N. H. Bhagwati, S. J. Imam and P. B. Gajendragadkar, JJ.)

28.04.1958

JUDGEMENT

S. JAFER IMAM, J.:

1. Special leave to appeal was granted in this case upon the appellant giving an undertaking not to claim any refund of the compensation moneys already paid in pursuance of the order dated 31-1-1953, passed by the Commissioner for Workmen's Compensation at Junagadh and to pay in any event the respondents their costs of the appeal.

2. The appellant is the Saurashtra Salt Manufacturing Co. It employs workmen both temporary and permanent. The salt works of the appellant is situated near a creek opposite to the town of Porbandar. There are at least two ways to go to the salt works from the said town, one an over land route nearly 6 to 7 miles long and the other via the creek which has to be crossed by a boat. At the Porbandar end of the creek is the Asmavati Ghat and the creek can be crossed from there at point A to the other side at point B which is on a sandy piece of land. Those crossing the creek from point A alight from the boat at point B. From point B, after transversing the sandy area, one can reach the salt jetty of the salt works and the salt works itself. One the sandy area near point B there is also a public foot path which goes to the salt works at point D, the distance being 1 1/4 mile. It is unnecessary to refer, for the purpose of this case, to the overland route although this route is clearly indicated in the map, Ext. 35, which was prepared by H. V. Vaishnav who was appointed a Commissioner to prepare the map in this case.

3. When the appeal had been heard for some time it was thought necessary by this Court to have findings recorded on two questions (1) whether there was any arrangement between the appellant and the ferrywalas or Kharvas for its workmen to be ferried to and from the salt works and, if so, what were the terms thereof and (2) whether the arrangement, if any applied also to the casual workmen of the type in question in these proceedings, whether they were proceedings to the salt works or returning therefrom. This Court also ordered that a map or plan was to be prepared showing the site of the creek, the sandy patch and the salt works together with the area and surroundings of the town of Porbandar with reference thereto. The above-mentioned map, Ex. 35, was prepared accordingly.

4. In the evening of 12-6-1952, a boat carrying certain workmen, who had been employed that day by the appellant, while crossing the creek from point B to point A capsized due to bad weather and over-loading. The accident took place when the boat had partially reached point A of the map, Ext.

35. As the result of the accident some of the workmen were drowned resulting in 7 cases for compensation being filed under the Workmen's Compensation Act. Of these, one was dismissed and compensation was awarded to the dependants of the drowned workmen in the other cases.

5. The Commissioner for Workmen's Compensation found that the accident arose out of an in the course of the employment of the workmen. Accordingly, he awarded compensation. The appellant appealed to the High Court of Saurashtra (now the High Court of Bombay). The High Court, after an elaborate discussion of the law, came to the same conclusion and dismissed the appeal with costs. In the appeal before us it was urged on behalf of the appellant that although the compensation had been paid to the dependants of the drowned workmen and the appellant did not seek a refund of the same and the appellant must pay the costs of the respondents even in the event of success, it was essential for the appellant to have a decision whether in the circumstances disclosed in this case, in law, the appellant was liable to pay any compensation.

6. Although from the town of Porbandar there are two ways of going to and returning from the salt works of the appellant, it was not disputed in the High Court that the usual and the ordinary way to go to and return from the salt works was via the creek to be crossed at points A and B. The deceased workmen were not regular workmen employed by the appellant for whom quarters are provided near the salt works. In determining the question whether the accident resulting in the drowning of the workmen, arose out of and in the course of their employment, for the purposes of this appeal, it is unnecessary to consider which route a workman ought to take to go and return from the salt works, in order to determine whether the appellant was liable to pay compensation to the dependants of the drowned workmen. It is also unnecessary to consider whether the workmen were on temporary employment as they were workmen within the definition of the "Workman" in the Workmen's Compensation Act.

7. 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 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.

8. It is unnecessary for the purposes of this appeal to refer to the various decisions in England and in India explaining the aforesaid theory because even it on such a basis a workman may be regarded as being in the course of his employment at point B either while on his way to the salt works or returning from it, the question for our decision is whether he has still in the course of his employment when he was on his journey between points A and B of the map, Ext. 35. While the case was in the High Court attention of the learned judges was drawn to the failure of the Commissioner for Workmen's Compensation to examine witnesses to prove an alleged arrangement between the appellant and the Kharvas (ferry-walas) for the carrying of the workmen of the appellant by boat across the creek to enable them to be ferried to and from the salt works. The learned Judges of the High Court at first were inclined to order a remand for the recording of this evidence, but, having regard to the view which they took of the recent decisions of the House of Lords in England, they thought it unnecessary to have such evidence recorded. In their opinion, on

the material as already on the record, it must be held that the accident arose out of and in the course of the employment of the deceased workmen. In this Court, as already stated, we considered it necessary to have evidence taken in this connection and findings recorded thereon. The findings, on the evidence so recorded, is quite clear that there was no arrangement between the appellant and the Kharvas to ferry to and from the salt works, across the creek, any workman of the appellant. According to the evidence, workmen of the salt works are charged by the Kharvas when they cross the creek in their boats. The only concession made by them on their own account is not to make such a charge in the case of any person who is a Kharva - a fellow caste man. It is also clear from the evidence on the record, both before and after remand, that the boats ferried across the creek are used by the public, every one of whom has to pay the charge for being ferried across the creek with the exception of a person of the Kharva caste. To reach point A on the map a workman has to proceed in the town of Porbander via a public road. A workman then uses at point A a boat, which is also used by the public, for which he has to pay the boatman's dues, to go to point B. From point B to the salt works there is an open sandy area 450 to 500 feet long and 200 to 250 feet wide. This sandy area is also open to the public. From this sandy area there is a footpath going to the salt jetty, point C and a foot-track going to the salt works, point D. There is no question that the foot-track going to the salt works is a public way. The footpath from the sandy area to the salt jetty, point C, may or may not be used by the public. For the purpose of this case it may be assumed that a workman must necessarily use that footpath if he has to go to the salt jetty and from there to the various salt pans and salt reservoirs within the area of the salt works. 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. In the present case, even if it be assumed that the theory of notional extension extends upon point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A 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 two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable.

9. The appeal is accordingly allowed and the order of the Commissioner for Workmen's Compensation directing the appellants to pay compensation is set aside. The appellant, however, will pay the costs of the respondents of this appeal and will not be entitled to recover the compensation money already paid. Each party will bear and pay its own costs on the proceedings on remand as ordered by this Court on 9-10-1957.

Appeal allowed.

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