General Manager, B. E. S. T. Undertaking, Bombay

Vs

Mrs. Agnes.

Civil Appeal No. 133 of 1961

(K. Subha Rao, Raghuvar Dayal, J. R. Mudholkar JJ)

10.05.1963

JUDGMENT

SUBBA RAO, J. –

This appeal by special leave raises a short but difficult question of the true construction of s. 3(1) of the Workmen's Compensation Act (8 of 1923), herein after called the Act, and its application to the facts of this case.

The Bombay Municipal Corporation, hereinafter called the Corporation, runs a public utility transport service in Greater Bombay and the said transport service is managed by a Committee known as the Bombay Electricity Supply and Transport Committee. The said Committee conducts the transport service in the name of Bombay Electric Supply and Transport Undertaking. The Undertaking owns a number of buses and the Corporation employs a staff, including bus drivers, for conducting the said service. One P. Nanu Raman was one of such bus drivers employed by the corporation. There are various depots in different parts of the City wherein buses feeding that part are garaged and maintained. A bus driver has to drive a bus allotted to him from morning till evening with necessary intervals, and for that purpose he has to reach the depot concerned early in the morning and go back to his home after his work is finished and the bus is lodged in the depot. The efficiency of the service depends, inter alia, on the facility given to a driver for his journey to and from his house and the depot. Presumably for that reason Rule 19 of the Standing Rules of the Bombay Municipality B.E.S.T. Undertaking permits a specified number of the traffic outdoor staff in uniform to travel standing in a bus without payment of fares. Having regard to the long distances to be covered in a city like Bombay, the statutory right conferred under the rule is conducive to the efficiency of the service. On July 20, 1957, the said Nanu Raman finished his work for the day at about 7.45 p.m. at Jogeshwari bus depot, he boarded another bus in order to go his residence at Santacruz. The said bus collided with a stationary lorry parked at an awkward angle on Ghodbunder Road near Erla Bridge, Andheri. As a result of the said collision, Nanu Raman was thrown out on the road and injured. He was removed to hospital for treatment where he expired on July 26, 1957. The respondent, his widow, filed an application in the Court of the Commissioner for Workmen's compensation, Bombay, claiming a sum of Rs. 3,500/- as compensation by reason of the death of her husband in an accident alleged to have arisen "out of and in the course of his employment". To that application the General Manager of the B.E.S.T. Undertaking, Bombay, was made the respondent, and he contended, inter alia, that the accident did not arise "out of and in the course of the employment" of the deceased. The Commissioner dismissed the application accepting the contention of the General Manager of the B.E.S.T. Undertaking. On appeal, the High Court of Bombay held that the said accident arose "out of and in the course of the employment" of the said deceased and, on that finding, passed a decree in favour of the widow for a sum of Rs. 3,500/- with

costs. The General Manager of the B.E.S.T. Undertaking has preferred the present appeal against the order of the High Court.

Section 3(1) of the Act reads :

> "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."

Mr. Pathak, learned counsel for the appellant, contends that the words "arising out of and in the course of his employment" are pari materia with those found in the corresponding section of English statute, that the said words have been authoritatively construed by the House of Lords in more than one decision, that an accident happening to an employee in the course of his transit to his house after he left the precincts of his work would be outside the scope of the said words unless he has an obligation under the terms of the contract of service or otherwise to travel in the vehicle meeting with an accident and that in the present case Nanu Raman finished his work and had no obligation to go in the bus which met with the accident and his position was no better than any other members of the public who travelled by the same bus.

On the other hand, Mr. Ganapati Iyer, who was appointed amicus curiae, argued that the interpretation sought to be put on the said words by the appellant was too narrow and that the true interpretation is that there should be an intimate relationship between employment and the accident and that in the present case whether there was a contractual obligation on the part of the deceased to travel by that particular bus or not, he had a right to do so under the contract and in the circumstances it was also his duty in a wider sense to do so as an incident of his service.

As the same words occur in the corresponding English statute, it would be useful to consider a few of the leading decisions relevant to the question raised.

In Cremins v. Guest, Keen and Nettlefolds, Ltd. [(1908) 1 K.B. 469.], the Court of Appeal had to deal with a similar problem. Cremins was a collier in the employment of the company. He, along with other employees, lived at Dowlais, six miles from the colliery. A train composed of carriages belonging to the appellants, but driven by the Great Western Railway Company's men, daily conveyed Cremins and many other colliers from Dowlais to a platform at Bedlinog erected by the appellants on land belonging to the said Railway Company. The platform was repaired and lighted by the appellants, and was under their control. The colliers were the only persons allowed to use the platform, but there was a station open to the public at a short distance. The colliers walked from the platform by a high road to the colliery, which was about a quarter of a mile from the platform. A similar train conveyed the colliers from the platform to Dowlais. The colliers were conveyed free of charge. Cremins was waiting on the platform to get into the return train, when he was knocked down and was killed by the train. His widow applied for compensation under the workmen's Compensation Act, 1906. Under s. 1 of the Act of 1906 she would be entitled to compensation if the accident arose "out of and in the course of his employment". The Court of Appeal held that the widow was entitled for compensation. Cozens-Hardy, M.R. gave his reason for so holding thus : ".....I base my judgment on the implied term of the contract of service.....". Elaborating the principle, he said :

> "..... it was an implied term of the contract of service that these trains should be provided by the employers, and that the colliers should have the right, if not the

> obligation, to travel to and from without charge."

Fletcher Moulton L.J. in a concurrent judgment said much to the same effect thus :

> "It appears to me that the workmen were expected to travel to and from the colliery by the trains and in the carriages provided for them by the employers, and that it was intended by both parties that this should be part of the contract of employment."

Though the accident took place on the platform, this decision accepted the principle, that it was an implied term of the contract of service that the colliers had to travel to and from the colliery by the trains provided by the employers. In that case, there was certainly a right in the colliers to use the train, but it is doubtful whether there was a legal duty on them to do so. But the Court was prepared to give a popular meaning to the word "duty" to take in the "expectation" of user in the particular circumstances of the case.

The house of Lords in St. Helens Colliery Company, Ltd. v. Hewitson [(1924) A.C. 59.], had taken a stricter and legalistic view of the concept of "duty". There, a workman employed at the colliery was injured in a railway accident while travelling in a special colliers' train from his work to his home at Maryport By an agreement between the colliery company and the railway company the latter agreed to provide special trains for the conveyance of the colliery company's workmen to and from the colliery and Maryport, and the colliery company agreed to indemnify the railway company against claims by the workmen in respect of accident, injury or loss while using the trains. Any workmen who desired to travel by these trains signed an agreement with the railway company releasing them from all claims in case of accident, and the colliery company then provided him with a pass and charged him a sum representing less than the full amount of the agreed fare, and this sum was deducted week by week from his wages. The House of Lords by a majority held that there being no obligation on the workmen to use the train, the injury did not arise in the course of the employment within the meaning of the Workmen's Compensation Act, 1906. Lord Buckmaster, after citing the passage already extracted by us in Cremins's case [(1908) 1 K.B. 469.], stated, "I find it difficult to accept this test" and proceeded to observe :

> "The workman was under no control in the present case, nor bound in any way either to use the train or, when he left, to obey directions; though he was where he was in consequence of his employment, I do not think it was in its course that the accident occurred"

Lord Atkinson also accepted the said principle, but he made an important observation, at p. 70 :

> "It must, however, be borne in mind that if the physical features of the locality be such that the means of transit offered by the employer are the only means of transit available to transport the workman to his work, there may, in the workman's contract of service, be implied a term that there was an obligation on the employer to provide such means and a reciprocal obligation on the workman to avail himself of them".

The learned Lord had conceded that a term of obligation on the part of the employee to avail himself of a particular means of transit could be implied, having regard to the peculiar circumstances of a case. Lord Shaw in a dissent gave a wider meaning to the terms of the section. According to him the expression "arising out of the employment" applied to the employment as such - to its nature, its conditions, its obligations, and its incidents. He added that a man's employment

was just as wide as his contract. After noticing the terms of the bargain between the parties, he concluded thus, at p. 86 :

> "These arrangements continued for the whole twelve years of service. The company and the man were thus brought into intimate and continual daily relations. The workman secured his access to his work, the company provided the means of transport".

Lord Wrenbury accepted the majority view and laid down the test thus, at p. 92 :

> "A useful test in many cases is whether, at the moment of the accident, the employer would have been entitled to give the workman an order, and the main would have owed the duty to obey it".

The learned Lord was also prepared to imply a term of duty under some circumstances, for he observed :

> "And there are cases which would, I suppose, be within what are called above the "incidents" of the employment, in which the journey to and from work may fall within the employment, because by implication, but not by express words, the employer has indicated that route, and the man owes the duty to obey. But the mere fact that the man is going to or coming from his work, although it is a necessary incident of his employment, is not enough".

This decision accepts the principle that there should be a duty or obligation on the part of the employee to avail himself of the means of transit offered by the employer; the said duty may be expressed or implied in the contract of service.

The House of Lords again in Alderman v. Great Western Railway Co. [(1937) A.C. 454, 462.], considered this question in a different context. There, the applicant, a travelling ticket collector in the employment of the respondent railway company, had, in the course of his duty, to travel from Oxford, where his home was, to Swansea, where he had to stay overnight, returning thence on the following day to Oxford. He had an unfettered right as to how he spent his time at Swansea between signing off and signing on, and he could reach the station by any route or by any method he chose. In proceeding one morning from his lodgings to Swansea station to perform his usual duty, he fell in the street and sustained an injury in respect of which he claimed compensation. The House of Lords held that the applicant was not performing any duty under his contract of service and therefore the accident did not arise in the course of his employment. The reason for the decision is found at p. 462 and it is :

> ".....when he (the applicant) set out from the house in which he had chosen to lodge in Swansea to go to sign on at the station he was (and had been ever since he had signed off on the previous afternoon) subject to no control and he was for all purposes in the same position as an ordinary member of the public, using the streets in transit to his employer's premises".

This case, therefore, applies the principle that if the employee at the time of the accident occupies the same position as an ordinary member of the public, it cannot be said that the accident occurred in the course of his employment. This is a simple case of an employee going to the station as any other member of the public would do, though his object was to sign on at the said station.

In Weaver v. Tredegar Iron and Coal Co. Ltd., [(1940) 3 All. E.R. 157, 163, 164, 166.] the House of Lords reviewed the entire law and gave a wider meaning to the concept of "duty". It was also a case of a collier. He was caught up in a press of fellow-workmen trying to board a train and was pushed off the railway platform and injured. The platform and train were both owned, managed and controlled by a railway company, but the platform was situated by the side of a railway line which ran through the colliery premises owned by the workmen's employers, and was accessible from the colliery premises only. It was not open to the public, and its name did not appear in the company's time table. Employees of the colliery used it under an arrangement between their employers and the company whereby specified trains were stopped at the platform to take the men to and from their homes at a reduced fare, which was deducted by the employers from the men's wages. The men were free to go home by means of the main road which ran past the colliery, but in practice every employee used the railway. The injured workman claimed compensation. The House of Lords by a majority held that the accident arose in the course of and out of the employment and the injured workman was entitled to compensation. Lord Atkin posed the question thus : "Is he doing something in discharge of a duty to his employer directly or indirectly imposed upon him by his contract of service ?" and answered :

> ".....the word "duty" in the test has such a wide connotation that it gives little assistance as a practical guide".

He proceeded to state :

> "Duty with the vague connotation given to it above cannot be rejected, but it does not seem to point very clearly to the desired goal. There can be no doubt that the cause of employment cannot be limited to the time or place of the specific work which the workman is employed to do. It does not necessarily end when the "down tools" signal is given, or when the actual workshop where he is working is left. In other words, the employment may run on its course by its own momentum beyond the actual stopping-place."

After considering the decisions on the subject, learned Lord concluded thus :

> "When all the cases have been looked at and considered, one is finally brought back to the words of the Act, "the course of the employment". The course of the employment begins when the workman enters the employment, and it ceases when he leaves the employment, it being his duty to do both".

Lord Wright puts the same idea differently thus, at p. 172 :

> "In a case like the present, however, where a man was simply using the usual and proper way provided for leaving the colliery, I do not see the relevance of the idea of duty, except in the artificial sense that a man owes his employers a duty to come to his work and to go away when his work is ended. I think that it is in some such sense that duty has been referred to in certain of the cases of this nature".

Lord Romer applied the following tests to the facts of the case, at p. 175 :

> "In all cases, therefore, where a workman, on going to, or on leaving, his work, suffers an accident on the way, the first question to be determined is whether the workman was at the place where the accident occurred in virtue of his status as a

> workman or in virtue of his status as a member of the public."

He came to the conclusion that the employee in that case, when the accident happened, was there only by virtue of his status as an employee of the colliery. Lord Porter, dealing with the test of duty, remarked thus, at p. 179 :

> "In some cases, no doubt, it may be helpful to consider whether the man owed a duty to his employers at the time of the accident, and indeed, if duty be construed with sufficient width, it may be a decisive test, but, so construed, to say that the man was doing his duty means no more than that he was acting within the scope of his employment. The man's work does not consist solely in the task which he is employed to perform. It includes also matters incidental to that task. Times during which meals are taken, moments during which the man is proceeding towards his work from one portion of his employers' premises to another, and periods of rest may all be included. Nor is his work necessarily confined to his employer's premises. The man may be working elsewhere - e.g., in building a house, or in work on the road, or in work at a dock. The question is not, I think, whether the man was on the employer's premises. It is rather whether he was within the sphere of area of his employment."

Adverting to the question of alternative facilities, the learned Lord pointed out, "However, if it is in the course of his employment, the fact that he might have chosen an alternative method does not disentitle him to recover". After equating the expression "part of his duty" with "in the course of his employment", he proceeded to observe :

> "It is in the course of his employment, and, if the phrase be used, it is part of his duty, both to go to and to proceed from the work upon which he is engaged, and so long as he is in a place in which persons other than those so engaged would have no right to be, and indeed, in which he himself would have no right to be but for the work on which he is employed, he would, I think normally still be in the course of his employment."

But the learned Lord took care to state that he was not considering cases in which "the necessities of the work compel the employee to traverse the public streets or other public places." This decision while it did not discard the test of "duty", gave it a wider meaning than that given by the earlier decisions. it was the duty of the employee to go to the work spot and leave it and it would be his duty to leave it by means of transit provided by the employer. The exigencies of the service, the practice obtaining therein and the nature of the service would be the guiding factors to ascertain the scope of the duty.

The Court of Appeal in Dunn v. A. G. Lockwood & Co. [(1947) 1 All. E.R. 446.], implied such a term of duty under the following circumstances. A workman, who lived at Whitstable was employed to work at Margate. The terms of the employment were that the workman might, though it was not obligatory, travel from Whitstable, to Margate by the 7.40 a.m. train from Whitstable, which arrived at Margate at 8.15 a.m. and that he was to be paid as from 8 a.m. While proceeding one morning from Whitstable station by the most expeditious routs to his work he slipped and injured himself. The Court held that there was a contractual obligation imposed on the workman by the concession to go to his work as quickly as possible after arrival at Margate station; and that the accident, therefore, arose "out of and, in the course of the employment" within the meaning of the

Workmen's Compensation Act. Lord Oaksey, L.J., said that the accident arose in the course of the workman's employment, because at that time he was performing a duty which he owed to his employer by virtue of his contract. From the permission given to use the 7.40 a.m. train, although he was to be paid from 8 a.m., obligation was implied on the part of the employee to proceed as quickly as possible to his work by the most expeditious route after his arrival at Margate. This decision illustrates the wider meaning given to the test "duty", though the result was achieved by implying an obligation in the circumstances of the case. In Hill v. Butterley Co. Ltd. [(1948) 1 All. E.R. 233.], a workman while crossing her employers' premises on her way to the office to "clock in" before starting work, slipped on an icy slope and was injured. Though there was no public right of way, the inhabitants of the neighbouring village were using the part of the premises, where the accident happened, without objection from the owners for reaching an adjoining railway station. The Court held that the accident arose out of and in the course of the employment. The fact that the premises were used as a path-way by the other members of the public did not prevent the Court from holding that the employee met with the accident in the course of her employment.

The Court of Appeal in Jenkins v. Elder Dempster Lines, Ltd. [(1953) 2 All E.R. 1133.], once again construed the expression "arising out of and in the course of employment". There, the ship in which the deceased was employed moored against the harbour mole of Las Palmas. At the landward end of the mole was a gateway where police were stationed for the purpose, ostensibly of keeping unauthorized persons off the mole, but all kinds of people were allowed there and entry to it was practically unrestricted. Shortly after the ship moored, the deceased and other members of the crew went ashore for a short while. When they were returning to the ship, the policemen at the gate of the mole asked them which was their ship and allowed them to enter the mole. In the darkness, the deceased fell over the side of the mole and was drowned. In a claim by the widow against the employers for compensation under the Workmen's Compensation Acts, her claim was not allowed. Sir Raymond Evershed, M.R., posed the question thus : "Was the workman at the relevant time acting in the scope of his employment ?" and answered :

> ".....the explanation, it is true, which the cases have added will entitle him to say that he was if his presence at the point where he met with the accident is so related to his employment as to lead to the conclusion that he was acting within its scope."

This decision lays down a wider test, namely, that there should be a nexus between the accident and the employment. This Court has considered the scope of the section in Saurashtra Salt Manufacturing Co. v. Bai Valu Raja [A.I.R. 1958 S.C. 881, 882.], and accepted the doctrine of "notional extension" of the employer's premises in the context of an accident to an employee. Imam J., delivering the judgment of the Court laid down the law thus :

> "As a rule, the employment of a workman does not commence until he had 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."

On the facts of that case, this Court held that the accident did not take place in the course of the employment.

Under s. 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 as both the entry and exit by time and space. The scope of the such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he uses 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 been 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 traverse public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority.

At this stage to appreciate the scope of "duty" of a bus driver in its wider sense, the relevant Standing Rules of the B.E.S.T. Undertaking may be scrutinized. We are extracting only the rules made in regard to permanent bus drivers material to the present enquiry.

Rule 31. (a) All applications for Bus..... Drivers' tests should be written and signed by the applicant himself.

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(i) Bus Drivers :

(1) The applicant shall be not less than 20 years of age and not more than 40 years of age. Birth Certificates must be produced in doubtful cases.

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Rule 5. All permanent members of the Traffic Outdoor Staff will be supplied with uniforms as per the chart attached.

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Rule 3. Calling time must be marked in ink by the Starters on the time cards once a week in the case of permanent men, and daily in the case of extra men.

Rule 9. (a) Duty-Hours : 8 hours per day for..... Bus-Drivers.....

Rule 10. Duties-Permanent :

(a) Men who arrive in time and who work the duty, they are booked for, will be marked for 1 day's pay. If, however, the hours of work exceed the duty hours as laid down in Rule 9(a), the excess hours will be entered as overtime, payable as shown in Rule 25.

(b) Men who do not arrive at their call or miss their cars will drop to the bottom of Extra List for the day and are not to be given work unless there is work actually available for them in which case they will be marked as having come late and will only be paid for the number of hours worked. However, men given no work are to be marked "Late-No-Work", and will receive no pay for the day.

(c) Any man who misses his car more than three times in a month whether he gets work or not, will be reverted to Extra List.

Rule 1. (e) All.....drivers (Buses.....) who are late on duty by more than one hour will be marked "ABSENT".

Rule 12. (a) All exchange of duties requests to be addressed to Traffic Assistants incharge of Depots for their sanction.

Rule 19. (a) Four members of the Traffic Outdoor Staff in uniform are permitted to travel standing on a double deck bus irrespective of their designation, two on the lower deck and two on the upper deck. On a single deck bus two members are only permitted.

(b) Traffic Staff in uniform shall not occupy seats even on payment of fares.

Rule 39. (a) Men can be transferred from one Depot to another only under the orders of a Senior Traffic Officer. This will only be considered if the succeeding depot is short of staff.

The gist of the aforesaid rules may be stated thus : A bus driver is recruited to the service of the B.E.S.T. Undertaking. Before appointment the rules and regulations of the Undertaking are explained to him and he enters into an agreement with the Undertaking on the basis of those terms. He is allotted to one depot, but he may be transferred to another depot. The working hours are fixed at 8 hours a day and he is under a duty to appear punctually at the depot at the calling time. If he is late by more than one hour, he will be marked absent. If he does not appear at the calling time or "misses his car", he will not be given any work for the day unless there is actually work available for him. If he "misses his car" more than three times in a month, he will be reverted to the extra list, i.e., the list of employees other than permanent. He is given a uniform. He is permitted to travel free of charge in a bus in the said uniform. So long as he is in the uniform he can only travel in the bus standing and he cannot occupy a seat even on payment of the prescribed fare, indicating thereby that he is travelling in that bus only in his capacity as bus driver of the Undertaking. He can also be transferred to different depots. It is manifest from the aforesaid rules that the timings are of paramount importance in the day's work of bus driver. If he misses his car he will be punished. If he is late by more than one hour he will be marked absent for the day; and if he is absent for 3 days in a month, he will be taken out of the permanent list. Presumably to enable him to keep up punctuality and to discharge his onerous obligations, he is given the facility in his capacity as a

driver to travel in any bus belonging to the Undertakings. Therefore, the right to travel in the bus in order to discharge his duties punctually and efficiently is a condition of his service.

Bombay is a City of distances. The transport service practically covers the entire area of the 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 so 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 user 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 an employee in a factory or in premises belonging to the employer providing ingress or egress 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 workshops, factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adapted to meet its peculiar requirements. 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 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 them back after the 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 the 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.

Before leaving the case we must express our thanks to Mr. Ganapati Iyer for helping us as amicus curiae.

In the result, the appeal fails and in circumstances is dismissed without cost.

RAGHUBAR DAYAL J. –

I am of opinion that this appeal should be allowed.

The deceased, Nanu Raman, was a bus driver of the appellant Corporation. On July 20, 1957, he met with an accident after he had finished his duty for the day. The duty finished at about 7.41 p.m. at Jogeshwari Bus Depot. He then boarded another but in order to go to his house and the bus met with an accident and, as a result of the injuries received in that accident, he died. The question is whether those injuries were caused to him out of and in the course of his employment. If the injuries so arose, the appellant Corporation would be liable to pay the compensation. If they did not so arise, the appellant Corporation will not be bound to pay compensation in pursuance of the provisions of s. 3 of the Workmen's Compensation Act, 1923 (Act VIII of 1923).

It is clear that the deceased was off duty when he received the injuries. He had finished his duty for the day. He had left the bus on which he was posted that day. He had not only left that bus, but had boarded the other bus as a passenger. In view of r. 19 of the Standing Rules of the Traffic Department of the B.E.S.T. Undertaking, he was allowed to travel as he was in uniform. The question is whether this concession was by way of a term of his service and a part of the contract of service. I am of opinion that it was not a part of the contract of service or a condition of his service. Rule 19 is not with respect to the bus drivers or with respect of the traffic staff of the Corporation alone. The rule does not permit any number of the employees of the traffic staff to travel by a bus free. The rule deals with the persons who are allowed the concession of free travelling on buses. The rule reads :

Free Travelling on Buses

> "(a) Four members of the Traffic Outdoor Staff in uniform are permitted to travel standing on a double deck bus irrespective of their designation, two on the lower deck and two on the upper deck. On a single deck bus two members are only permitted.
>
> (b) Traffic Staff in uniform shall not occupy seats even on payment of fares.
>
> (c) Municipal Councillors and non-Councillors, Members of the Schools Committee holding Tram-cum-Bus passes must occupy a seat. They are not permitted to travel by standing or in excess.
>
> (d) One police officer above the rank of a Jamadar is allowed to travel free by standing. All other ranks must occupy seats and pay their fares.
>
> (e) Meter Readers and Bill Collectors of the Consumers' Department and Public Lighters of the Public Lighting Department are permitted to travel in buses outside the Tramway Areas when on duty either in uniform or on production of the Undertaking's badge by payment of Undertaking's tokens. These tokens stamped 'Service' will be accepted in lieu of cash and ticket issued.
>
> (f) Traffic Officers and only those Officers holding a bus-cum-Tram Pass and Silver Badge and Bombay Motor Vehicle Inspectors holding passes are permitted to travel standing and may board the bus outside the Queue Order."

Clauses (c) to (e) allow the concession of free travelling to persons other than the traffic staff. The rule cannot be a term of contract with these persons. It is just a privilege and a concession allowed

to those persons. The privilege is restricted in certain respects.

Clauses (a), (b) and (f) deal with concessions allowed to the members of the traffic staff. It appears from cl. (a) that the number of traffic outdoor staff which can travel by a bus is limited to 4 on double decker buses and to 2 on a single decker. They have to be in uniform. Even if they purchase tickets on payment of fares they cannot occupy seats if they happen to be in uniform. If this concession of free travelling had anything to do with the condition of service in order to ensure punctuality and efficiency on the part of bus drivers keeping in consideration the possibility of their travelling long distance to and from their houses, in order to return from duty or to join duty there should not have been any limitation on the number of such staff travelling by a particulars bus. It can be possible that more than two or four members of the traffic outdoor staff may be residing in neighbouring localities and may have to join duty or to return to duty at about the same time. Further, it would have been more conducive for the efficient discharge of their duty if at least on their way to join duty they were allowed to have a seat on the bus in preference to travelling standing. There could have been no justification for not allowing them to occupy a seat on payment of fare. This is not allowed. These considerations indicate to my mind that this rule allowing the members of the traffic out-door staff to travel free, but under certain limitations, on the buses, was not connected with their service conditions or with the question of their observing punctuality and discharging their duties efficiently, but was merely a concession from the employer to their employees. Such a conclusion is further strengthened when the rule does not provide that this concession is available to the staff only when they are travelling from their houses to join duty or when they are returning home after finishing their duty. They can take advantage of this privilege whenever they have to travel by a bus. They have to simply put on uniform at that time. The availability of the concession on their being in uniform is not on account of their being supposed to be on duty, on the way to or from their houses, but on account of the fact that the wearing of uniform would be an indication and the guarantee of their being members of the traffic out-door staff.

I therefore do not construe r. 19 as a condition of service of the bus-drivers of the Corporation and therefore do not construe it to artificially extend the period of their duty and consequently the course of employment by the time occupied in travelling by the bus if the bus driver, after discharging his duty or on his way to join duty happens to travel by bus.

The bus driver is not bound to travel by bus. He is not bound to put on his uniform when travelling to such bus. If he does not want to have the concession and prefers to travel comfortably by paying the necessary fare to occupy a seat, he can do so by simply taking off his uniform and then boarding a bus. There is nothing in the circumstances of the bus driver's service, as shown to us, which should induce me to hold that he had to travel perforce by the bus on his way to join duty or on his return journey after discharging his duty. Bombay may be a city of distances, but every bus driver need not be residing far from the place where he had to join duty or to leave his duty. There is nothing on the record to indicate that the salaries of these bus drivers are such as would make it impossible for them to spend on the railway tickets if they wish to travel by in comfort by purchasing tickets. It is not therefore a case that our of necessity the persons had to travel by the buses of the Corporation and therefore it is not a case for notionally extending the territorial area of the premises within they had to discharge their duty.

It is true the bus service of the Corporation extends over the entire city of Bombay but that does not mean that the area of duty of a bus driver also becomes as extensive as the area controlled by the buses of the Corporation. The notional extension of the premises or the area within which the bus

driver works can at best be extended to the bus which he is given to run during his duty hours. The premises of the bus driver can be deemed to include the bus and the responsibility of the employer can be reasonably extended for injuries to bus drivers up to the bus driver's boarding the bus for discharging his duty and up to his leaving the bus after discharging his duty. Before his boarding the bus, the bus driver is not on actual duty. He is not on duty subsequent to his leaving the bus after the expiry of his duty hours. In this view of the matter, the moment the deceased left the bus at Jogeshwari Bus Depot after finishing his duty at 7.41 p.m., he was off duty. He was then free to travel as he liked, for the purpose of returning home. The employers had no control over him except in so far as he would not be permitted to travel in uniform in the bus if there be already the permissible number of traffic staff in uniform on the bus. This control is exercised over him not because he was the bus driver of the Corporation, but because he wanted to travel in uniform against the provisions of r. 19. The deceased had no duty connected with his employment as bus driver towards the Corporation after he had left his bus and boarded the other bus for going to his residence.

In these circumstances, it is not possible to say that the deceased was on duty when he was travelling by the other bus and met with the accident and that the accident arose out of and in the exercise of his employment.

In S. S. Manufacturing Co. v. Bai Valu Raja [A.I.R. 1958 S.C. 881.], this Court laid down the following propositions in connection with the construction of the expression 'in the course of employment'. They are : (i) as a rule 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; (ii) as a rule the journey to and from the place of employment is not included within the expression 'in the course of employment'; (iii) the aforesaid two positions are subject to the theory of notional extension of the employers' premises so as to include the area which the workman passes and re-passes in the 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 employers' premises; (iv) the facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose within and in the course of employment of a workman keeping in view at all times the theory of notional extension.

On the basis of the first two propositions, the deceased cannot be said to have received the injuries in an accident arising out of and in the course of his employment. The third proposition does not cover the present case as I have indicated above. The expression 'an area which the workman passes and re-passes in going to and in leaving the actual place of work, in proposition 3, does not, in view of what is said in proposition No. 2, mean the route covered necessarily in his trip from his house to the place of employment or on his way back from the place of employment to the house. This expression means such areas which the employee had to pass as a matter of necessity and only in his capacity as employee. Such areas would be areas lying between the place of employment and the public place or the public road up to which any member of the public can reach our use at any time he likes. Such areas then would be areas which the employees had, as a matter of necessity, to pass and re-pass on his way to and from the place employment, and will either be areas belonging to the employer or areas belonging to third persons from whom the employer had obtained permission for the use of that area by his employees. The passing and re-passing over such areas is a matter of necessity as it is presumed, in this context, that without passing over such land or such area, the employee could not have reached the place of his employment. It is in that context that the area of the place of employment is extended to include such areas over which the employee had, as matter

of necessity, to pass and re-pass.

After discussing the facts of the particular case in the light of the general propositions noted above this court said at p. 883 :

> "It is well settled that when a workman is 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."

The view I have expressed above is consistent with these observations.

I may just note that the expression 'unless the very nature of his employment makes it necessary for him to be there' in the above observation, contemplates employments or duties of his employee necessitating the employee's using the public road or public place or a public transport in the discharge of his duty. One such case is the one reported as Dennis v. A.J. White & Company [(1917) A.C. 479.].

Reference may be made to the cases reported as St. Helens Colliery Co. v. Hewitson [(1924) A.C. 59.] and Weaver v. Tradegar Iron and Coal. Ltd. [1940 3 All. E.R.]. In the former case colliery worker was travelling by the special train run by the railway company under contract with the employer for the convenience of the workman to an from the colliery and the place of residence of the worker. He met with an accident while so travelling. The question was whether he was entitled to compensation from his employer. It was held by the House of Lords that it was an inseparable part of the contract of employment that the employee had obtained a pass enabling him to travel and that he released his rights to compensation in the case of accidents against the railway company. Still it was considered that this was not sufficient to determine his right to compensation. The facts of the present case are different and do not justify the conclusion that it was a term of the contract of employment of the deceased by the appellant that he would be allowed to travel free by the buses of the Corporation. He is not granted any such privilege of free travel. He had to do nothing in return for such a privilege. The employee in the aforesaid case had released his rights against the railway company. The deceased in the present case did not release any of his rights against the Corporation. Any way, the House of Lords held that the employee was not entitled to any compensation. Lord Buckmaster said at p. 66 :

> "The real question to my mind is whether, when he entered the train in the morning, it was in the course of his employment within the meaning of the Act. I find it difficult to fix the test by which this question can be answered in favour of the respondent."

A similar question can be put in the instant case. It will be difficult to say that the deceased entered the bus which met with the accident in the course of his employment.

Lord Buckmaster further observed at p. 67 :

> "The workman was under no control in the present case, nor bound in any way either

to use the train or, when he left to obey directions; though he was where he was in consequence of his employment. I do not think it was in its course that the accident occurred."

It can be similarly said with respect to the deceased that he was under no control of his employer when he was on the bus and that he was not bound in any way to use the bus or to obey the directions of his employer after he had left the bus on which he was deputed for the day.

In the Weaver case, [(1940) 3 All. E.R. 157.] the employee was held entitled to compensation. The distinction in the facts of the two cases is well indicated by Lord Romer in his speech at page 176 :-

"My Lords, upon this principle, it would seem reasonably plain that the appellant in the present case was entitled to compensation which he seeks. After finishing his work at the colliery, he proposed returning to his home by train. In order to get to the train, he passed directly from the colliery premises on to a platform, which was the only means of access from the colliery to the train, and upon which he had no right to be except by virtue of his status as an employee of the colliery. While on the platform, and by reason of his being on the platform, he met with an accident. In my opinion, it was an accident arising out of and in the course of his employment. The country court judge and the Court of Appeal, however, considered that they were precluded from giving the appellant relief by the decisions of your Lordships' House in St. Helens Colliery Co., Ltd. v. Hewitson [(1924) A.C. 59.] and Newton v. Guest, Keen & Nettlefolds, Ltd. [(1926) 135 L.T. 386.]. My Lords, if I am to accept the conclusion that the effect of these two decisions is to deprive the appellant in the present case of any right to compensation under the Act, I must, as it seems to me, necessarily suppose that they lay down a principle inconsistent with the principle which had already been established by your Lordships' House in Longhurst's case [(1917) A.C. 249.] and accepted in M'Robb's case [(1918) A.C. 304.] and has since been affirmed and applied in Mccullum's case [(1932) 147 L.T. 316.]. As this is an altogether impossible supposition, it is necessary to ascertain what really were the grounds of the decisions in Hewitson case [(1924) A.C. 59.] and Newton's case [(1926) 135 L.T. 386.]. I need not state in detail the facts in Hewitson's case [(1924) A.C. 59.]. It is sufficient to say that, if, in the present case, an accident to the appellant had occurred while he was actually in the train travelling towards his home, the case would have been in all material circumstances comparable to Hewitson's case [(1924) A.C. 59.]. The two cases would have been indistinguishable. The workman in Hewitson's case [(1924) A.C. 59.] however, failed, upon the ground that he was under no contractual obligation to his employer to be in train. All their Lordships who were responsible for the decision were at pains to ascertain whether or not Hewitson was under any such obligation. It would seem to follow from this that they did not regard Hewitson when in the train as being engaged upon one of those acts which are always considered as being part of workman's employment because they are incidental to the employment proper. They must have regarded him, in other words, as a workman who had left the scene of his labour and "the means of access thereto" within the meaning attributed to those words in the cases to which I have previously referred, for, when a workman is engaged in performing an act which is merely incidental to his employment proper, it hardly, if ever, true to say that he is under a contractual obligation to his employer to perform it."

In view of what I have stated above I hold that Nanu Raman did not die of the injuries received in an accident arising out of and in the course of his employment and that therefore the respondent is not entitled to receive any compensation from the appellant under s. 3 of the Workmen's Compensation Act 1923. Therefore I would allow the appeal with costs and set aside the order of the court below.

BY COURT : Following the opinion of the majority, the appeal is dismissed but in the circumstances without costs.

Appeal dismissed.

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