CALCUTTA HIGH COURT

Commissioners for the Port of Calcutta

Vs.

Kaniz Fatema

A.F.O.O. No. 298 of 1957

(S.C. Lahiri, C.J. and R.S. Bachawat, J.)

19.01.1960

JUDGMENT

S.C. Lahiri, C.J.

1. Two questions of some importance have been raised in this appeal by the employers against the decision of the Commissioner for Workmen's Compensation awarding a sum of Rs. 3,500/- as compensation to the respondent who is the widow of one Md. Ismail. Md. Ismail was a Shed-writer of the appellant. On December 29, 1953, while Ismail was proceeding along the Circular Garden Reach Road on a bicycle from west to east at about 10.15 a.m. to join his duty in the Port Commissioners' Office at Kidderpore Dock, he was knocked down by a motor-car and sustained injuries, as a result of which he died on the following day. On September 22, 1954, the respondent who is the widow of Ismail filed an application claiming a lump payment of a sum of Rs. 3,500/- as compensation. The claim was resisted by the appellant, inter alia, on the ground that the accident did not arise out of and in the course of his employment, inasmuch as the deceased Ismail was knocked down on a public road and he shared the risk in common with all the other members of the public and it was further pleaded by the appellant that the deceased was not a workman within the meaning of the Workmen's Compensation Act. Upon the pleadings the two questions that arose for consideration were : (a) whether the accident arose out of and in the course of the employment of the deceased and (b) whether the deceased was a workman within the meaning of the Workmen's Compensation Act.

2. In order to decide the first question I shall have to determine the exact place where the accident took place. In this enquiry we have been greatly handicapped by the absence of any map or plan of the place of accident showing the local features and we have to rely on the materials supplied by the report of a local inspection held by the Commissioner for Workmen's Compensation and the oral evidence adduced by the parties. As far as one can judge from these materials, in order to reach his place of employment the deceased was proceeding on a bicycle from west to east along the Circular Garden Reach Road which is a public road maintained by the Corporation of Calcutta. A section of this road is controlled by the Commissioners for the Port of Calcutta, because it passes through the dock area. In order to reach his office along this road, Ismail had to cross a swing bridge and two sets of railway lines belonging to the Port

Commissioners. In between the western end of the swing bridge and the eastern end of the railway lines there are three barriers which are controlled by the Port Commissioners for the purpose of securing the safety of the public who have occasion to pass and repass over this section of the road. There are notice boards hung up near the barriers controlling traffic and restricting speed limit to five miles per hour over the swing bridge. It appears from the evidence that Ismail had crossed the swing bridge and had also crossed the railway lines and reached a place which is at a distance of about 40 ft. from the swing bridge when he was knocked down by a motor car. According to the evidence of the applicant's witness No. 2, who is a bridge operator under the Port Commissioners, carts, lorries, cars, taxis of members of the public pass along this road and the public have a right to use this road. This witness further says that the bridge is cleaned by the Port Commissioners' sweepers. Upon these materials the learned Commissioner for Workmen's Compensation has found that though the accident took place on a public road, the place of accident was under the control of the employers and further that the place of accident being close to the premises of the employers, it must be considered to be an essential part of the place of employment. On this view, the learned Commissioner has held that the accident arose in the course of the employment.

3. It is necessary to have a clear idea of the nature of the control exercised by the Port Commissioners over this section of the public road. In the first place, it is clear upon the evidence that the control of the Port Commissioners was confined to the section of the road lying between the western end of the swing bridge and the eastern end of the railway lines and the control consisted in lowering the barriers when the swing bridge was opened and the railway trains belonging to the Port Commissioners were passing over the railway lines and the bridge used to be cleaned by the Port Commissioners' sweepers. It is also clear that the deceased had safely crossed the swing bridge and the railway lines on his way to his office. The evidence on the record does not justify the conclusion that the Port Commissioners had any control over that part of the Circular Garden Reach Road which lies beyond the eastern boundary of the railway lines. The notice restricting the speed limit is also confined to the swing bridge. There can, therefore, be no doubt that the accident took place on the public road at a point over which the Port Commissioners had no control.

4. The question that we have to consider therefore is whether the proximity of a place of accident to the place of employment makes the place of accident a part of the employers' premises. According to the finding of the learned Commissioner the accident took place on a public road at a distance of about 100 yards from the gate of the shed where the deceased used to work. The deceased had, therefore, not reached his employers' premises at the time when the accident occurred and the place of accident was not also the property of his employers. Can it then be said that the employment of the deceased began at the time or place when he met with the accident ? It seems to me that the answer to this question must be in the negative. The law on the Subject as laid down by the Supreme Court of our country and also by several decisions of English Courts is that subject to certain well recognized exceptions, the employment of a workman does not begin until he has reached his place of employment and does not continue after he has left it. The question, therefore, is whether the present case comes under the general rule or under the exceptions. The risk which was incurred by the deceased in the present case was not a risk incidental or peculiar to his employment, but a risk which the deceased shared with all the other members of the public. The risk of being knocked down by a passing vehicle on a public road is not incidental to the employment of the deceased, but it is a risk which is shared by every

member of the public when passing along a public road. The decision of the Supreme Court in the case of *Saurastra Salt Manufacturing Co. v. Bai Valu Raja*[1], supports this conclusion. That was a case where in order to reach his place of employment a workman had to cross a river in a boat used by the public between points A and B. then he had to cross a sandy area open to the public and also a foot-path up to a point C and then a foot track leading to the place of employment D, the foot track between C and D being also a public way. A workman employed in the Salt Works at D while returning from duty was drowned while crossing the river in a boat due to bad weather between points B and A. The question arose whether the accident took place in the course of employment of the workman and the Supreme Court held that it did not. In coming to this conclusion the Supreme Court made the following observations :

> "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 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 this case the Supreme Court asked for a finding, on the question whether there was an arrangement between the employer and the owner of the ferry for ferrying its workmen from the Salt Works and the finding was that there was no such arrangement. The observations of the Supreme Court as quoted above must be interpreted in the light of the finding as to the absence of any arrangement between the employer and the owners of the ferry to carry the workmen across the river. The Supreme Court held that the creek or river in which the accident took place did not come within the theory of notional extension of the place of employment, because the means of transport on which the accident took place were not provided by the employer for the purpose of enabling its workmen for coming to and going away from the place of employment. Mr. Sanyal appearing for the respondent contends before us that the present case falls within the exception to the general principle as enunciated by the Supreme Court in the above passage and argues that the place where the accident took place in the present case is one within the notional extension of the employers' premises. I am, however, unable to accept this contention. In order to come within the theory of notional extension, the place of accident must be one at which the workman could not be present except by virtue of his employment. This feature is completely absent in the present case. I accordingly hold that the deceased, having met with the accident on a public road or a public place, is not entitled to the protection of the Workmen's Compensation Act.

5. The learned Counsel for the appellant cited before us the decision of the House of Lords in the case of *Weaver v. Tredegar Iron and Coal Co. Ltd*[2]*.,* where a workman of a colliery was awarded compensation for injuries received by him when he was pushed off a railway platform belonging to a Railway Company, but situated in the colliery premises

[1] AIR 1958 SC 881

[2](1940) 33 B. W. C. C. 227

owned by the workmen's employers and was only accessible from the colliery premises. The platform was not open to the public and its name did not appear in the Railway Company's Time Table and it was used by the employees of the colliery under an arrangement between their employers and the Railway Company whereby certain trains were stopped at specified times to take the workmen of the colliery to and from their homes at reduced fares. Upon these facts the House of Lords held that the injured workman had not left his employment at the time he met with the accident, but that he was about to leave his employment in the manner provided by his employers and awarded compensation upon that finding. The decision in this case does not support either the appellant or the respondent, because the facts were entirely different from the facts of the case before us, but it illustrates the theory of notional extension of the place of employment referred to by the Supreme Court in the case of Saurastra Salt Manufacturing Co., AIR 1958 Supreme Court 881. The distinction between the risks which a man incurs as an employee and those which he incurs as an ordinary member of the public is, however, pointed out in the decision of the House of Lords in the case of *John Stewart and Son, (1912) Ltd. v. Longhurst*[3], In that case Lord Atkinson made the following observations :

> "When a man walks along the public streets to get to his work he is doing something which he has a perfect right to do irrespective altogether of his employment. The right does not spring from his employment at all. It belongs to him as a member of the public."

The decision of the Court of Appeal in the case of *Clark v. Stephen Button Ltd*[4]., supports the same conclusion. In this case a workman received injuries while following a route which lay on a private property but was used by the members of the general public with the leave and licence of the owners. It was held by the Court of Appeal that in using the route used by the members of the public, the workman was acting as a member of the public and was not exposed to a risk special to his employment. Referring to the theory of notional extension of the sphere of occupation to a place outside the actual place of employment Greene M.R., observed at page 348 :

> "The necessity for any such extension of the area or sphere * * * * entirely disappears when the man has reached a place which is open to the public and where the public are exercising whatever rights they have."

The same principle was laid down by the Court of Appeal in the case of *Williams v. Assheton Smith*[5], In this case the accident happened on a public foot-path which lay on the employer's land but which had been dedicated by the employer to the public. The Court of Appeal held that the accident did not arise out of and in the course of the employment, because the accident happened on a public foot-path where the workman had a right to go as a member of the public. It was pointed out in this case that the distance of the spot where the accident happened from the place of work is not material for the purpose of determining whether the accident arose in the course of the employment.

[3](1917) AC 249
[4](1937) 30 B. W. C. C. 340
[5](1913) 6 B. W. C. C. 102

6. It is unnecessary to multiply authorities. As far as I can see, it is well established that an accident cannot be said to arise out of and in the course of employment if it takes place on a public road in the absence of any circumstance showing that the nature of the employment of the workmen required him to be there. The proximity of the place of accident to the place of work is

irrelevant for this purpose. As there is nothing in the present case to show that the nature of employment of the deceased required his presence at the place of accident, I must hold that the deceased met with his accident as a member of the public and, therefore, the accident did not arise out of and in the' course of his employment.

7. The Commissioner for Workmen's Compensation has referred to a large number of American and Australian cases for the purpose of coming to the conclusion that the place of employment notionally includes a place which is "in or about" the employer's premises. In view of the decision of the Supreme Court in Saurastra Salt Manufacturing Company's case, AIR 1958 Supreme Court 881, I need not discuss those decisions in detail. The limits of the doctrine of notional extension of the place of employment have been pointed out in that case as well as the different cases of the English Courts, which I have discussed above, according to which the notional extension terminates when a workman has reached a public road where the members of the public have a right to exercise whatever rights they have. As the place of accident in the present case falls within this description, it cannot be said to be a place of employment of the workman within the meaning of the Workmen's Compensation Act. I accordingly hold that the accident in the present case cannot be said to have arisen out of or in the course of the employment of the deceased Ismail.

8. The second point raised by the appellant relates to the meaning of the word "workman". It is contended that the deceased Ismail, having regard to the nature of the duties he was required to perform, was not a workman within the meaning of the Workmen's Compensation Act. This question depends upon a consideration of the evidence relating to the nature of the duties required to be performed by Ismail and also upon a correct interpretation of Section 2 (1)(n) of the Workmen's Compensation Act read with clause 7 of the Second-Schedule. Since the evidence as to the nature of the duties of the deceased Ismail is not complete and since the appellant succeeds on the first point raised by it before us, I do not express any opinion on the second point raised in support of the appeal.

9. In the result, I would allow the appeal on the first point raised by the appellant and set aside the order made by the Commissioner for Workmen's Compensation and dismiss the respondent's application for compensation under the Workmen's Compensation Act.

10. In the circumstances of the case, I would make no order as to costs.

Bachawat, J.

11. On December 29, 1955 Mohamed Ismail, an employee of the Commissioners for the Port of Calcutta, met with an accident on Circular Garden Reach Road while he was on his way to join his duties at his place of work at shed No. 5 of the Kidderpore Dock East side. The place of the accident was 100/125 yards from the gate of the employer's premises. He was riding a bicycle and was knocked down by a motor car. He suffered personal injuries and died the next day. Circular Garden Reach Road is a public street and is used by the public as of right. The accident took place at about 10-10 a.m. The hour of his duty commenced at 9 a.m. but in all the circumstances of the case he was not unreasonably late. The question is whether the accident arose in course of his employment.

12. An employee works for his master. There is a time and place for his work. The employment has a spatiotemporal setting. It courses through the working hours and places of work. The course of employment embraces the working hours and places of work and extends to such time and place as may reasonably be considered to be accessory thereto. Other times and other places as a rule lie outside its course. Some special feature of the employment may extend its course so as to include within it other times and other places. In the case of an employee who lives away from his place of work, the period and the route of his journey to and from the place of work as a rule lie outside the course of his employment. The employment commences at the end of his journey from home and stops at the commencement of his return journey. A personal injury caused to the employee by accident in a public street or in a public place does not arise in course of his employment unless the employee is then rendering service to his employer or is then discharging some obligation imposed upon firm by the contract of employment.

13. S. Jafer Imam, J., in AIR 1958 Supreme Court 881 at 883 stated the law on the point thus :

> "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".

14. In the case cited above a workman while on his way from his home to the place of his employment was being ferried by a boat across a creek. The employer did not provide for the ferry. The workman like other members of the public used to be ferried across the creek on payment of the usual charges to the boatman. The boat capsized due to bad 'weather and the workman was drowned. The Supreme Court held that the accident did not arise in course of his employment.

15. In the instant case, the accident took place in a public street while the employee was on his way to his place of employment. Prima facie, therefore, the accident did not arise in course of his employment. See *Netherton v. Coles*[6],

16. The learned Commissioner held that the accident arose in course of the employment of Ismail. His reasons for this conclusion may be summarized thus. He found that the place of accident was under the control of the employer and was an essential part of the

[6](1945) 1 All England Reporter 227

egress and ingress thereto. He thought that the injury was a risk of the employment and that at the time and place of the accident an employee was exposed to greater risks than a member of the public. He also thought that Ismail was at the place of the accident in pursuance of the contract of his employment. I am unable to agree with these findings and conclusions.

17. Circular Garden Reach Road at the place of accident runs east to west. A portion of the road to the west of the place of accident may be closed by barriers. Between two of the barriers there

are railway lines belonging to the Port Commissioners. To the west of the last barrier there is a swing bridge owned and operated by the Port Commissioners. When the bridge is open the barriers are closed. There is a notice board near the barrier warning that persons crossing the barrier when the bridge is open will be prosecuted. There is also a traffic control notice that the speed limit over the bridge is 5 miles per hour. Ismail was proceeding west to east. He had crossed the bridge and the barriers and had come to a place on the road 30 to 35 cubits to the east of the last barrier. The street is one of the main arteries of traffic of that area and of other parts of the city and joins other public streets. For some distance near the place of the accident the street traverses the Dock area and is cleaned by the Port Commissioners' sweepers. The street is vested in and is maintained by the Corporation of Calcutta. Regular traffic police is posted at the barrier. The public use the street as a matter of right. When the swing bridge is open the Port Commissioners are entitled to close the barriers. But the section of the street where the accident took place can in no sense be said to be under the control of the Port Commissioners. Public traffic can be regulated for safety purposes but this liberty to regulate the traffic does not convert the public street into a private place. For purposes of liability under the Workmen's Compensation Act the part of the public street where the accident took place is in no way different from any other public street. There is no evidence to support the Commissioner's finding that the street at the place of the accident is under the control of the Port Commissioners.

18. At the time of the accident Ismail was not working for his employer. He was passing through a public street as a member of the public. Though the place of employment was not far off and though its gate opened on the public street the place of accident can in no sense be regarded as a part of or as an extension of the place of employment. While in the public street he was outside the area of employment and was consequently outside the area of risks special to his employment. The risk to which Ismail was exposed was no greater than the risk to which a member of the public was exposed.

19. In *Northumbrian Shipping Co. Ltd. v. McCullum*[7], at 301, Lord Macmillan observed :

> "In the case of a town house in a street it would doubtless be necessary to draw the line between the public highway and the master's house with just the same precision as the line is drawn between the public harbour and the ship. If the maid-servant fell on the area steps she would presumably be within the Act, but if she fell on the pavement a few feet away she would presumably be outside the Act, always of course assuming that she was not on some errand for her master at the time."

[7](1932) 25 B. W. C. C. 284

20. Ismail was not rendering any service to his employer when he met with the accident. He was a clerk and his duty was to prepare and keep accounts and record of the Export and Import cargo in shed No. 5. He was no doubt going to join his duties but he was not then engaged in discharging any obligation or duty owed by him to his employer under the contract of employment. In *Blee v. London and North Eastern Rly. Co*[8]., at 366, Lord Atkin observed :

> "There can be no question that had the workman been going to his ordinary work in the morning he would not have been entitled to compensation for injury suffered from street risks incurred in transit. His time in such a case is his own : he arrives at the scene of his labours as he pleases : and though it is his duty to present himself at the appointed time,

yet his "employment" does not in ordinary circumstances begin for the purposes of the Act until he reaches the place where he is employed."

21. In Blee's case, (1937) 30 B. W. C. C. 364, there was evidence from which the court could infer that from the time the workman left home he was actually engaged in the performance of his contract of service. There was evidence to the same effect in *Dunn v. A.G. Lockwood and Co*[9]*.,* There is no such evidence in the instant case.

22. In my opinion the accident in this case cannot be said to arise in course of the employment of Ismail. I concur in the order proposed by my Lord.
Appeal allowed.

[8](1937) 30 B. W. C. C. 364

[9](1947) 1 All England Reporter 446