CALCUTTA HIGH COURT

A.C. Roy And Co. (Private) Ltd

Vs

Taslim

(D Sinha, C.J. A Mukherjea ,J.)

0 6.04.1967

JUDGMENT

Sinha, C.J.

1. This is an appeal against an order made by the Commissioner for Workmen's Compensation, West Bengal D/-30th May 1959. The facts are briefly as follows: The applicant for compensation under the Workmen's Compensation Act, 1923 (VIII of 1923) (hereinafter referred to as the "said Act") was Taslim, son of Bhagloo. He worked as a khamali and belonged to the Reserve Pool of the Calcutta Dock Labour Board. On the 4th of February 1957 he was booked by the said Board to work under the Sardar Ekbal for the appellant A. C. Roy and Co. (Private) Ltd.. stevedores, in berth No. 27 Kidderpore Docks, in the vessel S. S. "Khaybar" in the afternoon shift. The booking was between 2-30 p.m. to 3-00 p.m For booking he had to go to the Call Stand of the Dock Labour Board and was booked to work for the appellant as aforesaid The booking was for working in the ship, in the shift, commencing from 3.50 p.m. As I have stated above, he was booked between 2-30 and 3-00 p. m. and he went on foot, via the public road which leads to gate No. 22 of the Kidderpore Docks. While on the public road and just at the gate, he was knocked down by a taxi going south. It came up behind him and pushed him down. He reported the accident to the Foreman about the injury and was asked to procure another person as a substitute which he did. According to him, his right foot was badly injured and fractured. The monthly wages of the applicant amounted to Rs. 80 to Rupees 100. On or about the 10th of June, 1957 the applicant made an application under the said Act. In the first instance, he made only the Administrative Officer. Calcutta Dock Labour Board as the opposite party. Later on, he made an application that the appellant also should be made a party and accordingly it was made a party. Both the appellant and the Board contested the application. Before the Commissioner, the following issues were raised:

"1. Is the claim maintainable against opposite party No. 1 and opposite party No. 2?

2. Is the applicant a workman within the meaning of Workmen's Compensation Act?

3 Did the alleged accident arise out of and in the course of applicant's employment under the opposite party No. 1 or opposite party No 2?

4. Was any notice of the accident served?

5 Has the applicant sustained any permanent partial disability? if so, to what extent?

Before us, only the appellant was represented by Mr. Mukherjee but the respondents did not appear. As several Important points of law were concerned, we asked the Learned Standing Counsel and Mr. Dipankar Gupta to assist us as amicus curiae. We are grateful to them for the substantial assistance they have rendered to us. As regards the extent of disability, parties filed a joint petition under Rule 38 of the Workmen's Compensation Rules, referring the matter to the Commissioner for decision.

2. The first point to be considered is as to whether the original respondent, the Administrative Officer, Calcutta Dock Labour Board or the added respondent the appellant, was the 'employer' of the workman, within the meaning of the said Act. The Dock Labour Board is a statutory body constituted under the Dock Workers (Regulation and Employment) Act, 1948 (IX of 1948) for decasulisation of dock workers. The Board works under a scheme framed under Section 4 of the 1948 Act known as the Calcutta Dock Workers (Regulation and Employment) Scheme, 1956 (hereinafter referred to as the "Scheme"). The scheme made by the Central Government has for its object the assurance of greater regularity of employment for dock workers and to secure that an adequate number of dock workers is available for the efficient performance of the dock work in the port of Calcutta. Employers of labour have to register themselves, and "registered employer" means stevedore whose name is, for the time being entered in the employers' register. A "reserve pool" means a pool of registered dock workers who are available for work and who are not for the time being in the employment of a registered employer or a group of employers, as a monthly worker. What happens is that the Administrative body of the Dock Labour Board allocates registered dock workers in the reserve pool, for work, to registered employers. Under Clause 37(2) of the said Scheme, a registered dock worker under the reserve pool, who is available for work is deemed to be in the employment of the Board, but under Clause 11(e)(i), for the purposes of allocation of work, the administrative body shall be deemed to act as an agent for the actual employer. Under Clause 3(g), a "dock employer" means a person by whom a dock employee is employed or is to be employed. The net result is that a registered dock worker is primarily in the employment of the Board but when the administrative body of the Board allocates a worker in the reserve pool to a registered employer, then for the time being and for the purposes of the work concerned, the worker becomes employed under the registered employer.

According to the scheme, normally, registered employers can only employ registered workers at the docks and vice versa. We, therefore, think that for the purposes of this application, the appellant must be taken to have been the employer of the workman concerned and the applicant before the Commissioner was a workman within the meaning of tha said Act, working under him. The real issue to be decided in this case, is issue No. 3, namely as to whether the accident arose out of and in course of the applicant's employment under the appellant. I have already stated that the workman belonged to the reserve pool, and some time between 2-30 to 3-00 p.m. he went to the Call Stand and was booked for the afternoon shift commencing from 3-50 p.m., to work for the appellant at the vessel s. s. Khaybar then lying in berth 27 of the Kidderpore Docks, as a Khamali under the Sardar Ekbal. After he got his booking slip, he was going to join his work at the ship He was walking on the public road and when he had just come to the gate he was knocked down by a taxi and injured.

3. The learned Commissioner has held that although he had not actually taken up his work, he was proceeding to report for duty and therefore, there should be a notienal extension of time, and place and the accident should be taken to have arisen out of and in the course of applicant's employment. He has accordingly held in favour of the workman and assessed the loss at 10 per cent and granted a compensation of Rs. 420 to the opposite party. In this matter, we had several doubts, which have now been dispelled by the assistance rendered by learned Counsel acting as amicus curiae. The first doubt is as to whether the two respondents could be joined in one claim under the said Act, in the alternative. Under the Code of Civil Procedure, this can certainly be done. Under Section 23 of the said Act certain provisions of the Code of Civil Procedure have been extended to proceedings before the Commissioner, but all the provisions of the Code have not been made applicable. The learned Standing Counsel has, however, referred us to the decision of Sir Ashutosh Mookerjee in *Chhayemannessa Bibl v. Basirar Rahman*[1]where the learned Judge said as follows:

> "In the first place, it is clear upon the authorities that a Court has inherent power, in any particular case, to adopt such procedure as may be necessary to enable it to do that justice for the administration of which alone it exists: *Panchanan Singha Roy v. Dwarka Nath Roy*[2], *Hukum Chand Boid v. Kamalanand Singh*[3], As Mr. Justice Mah-mood observed in *Narsingh Das v. Mangal* [Dubey4], the Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by law.' This is of course subject to the qualification that, in the exercise of its inherent power, the Court must be careful to see that its decision is based on sound general principles, and is not in conflict with them or the intentions of the Legislature. A similar view was emphasised by Lord Penzance in *Kendal v. Hamilton*[5].

where he observed that procedure is the machinery of the law after all, the channel and means whereby law is administered and justice reached; it strangely departs from its proper office, when, in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern where it ought to subserve "

In out opinion there does not seem to be any insuperable obstacle in the way of making the appellant as a party respondent, because it was the real employer The second doubt that we had, is as to whether the Dock Labour Board was an agent of the stevedores in relation to the employment of the workman As stated above, this doubt has also been dispelled and we have no hesitation in finding that the appellant was the employer of the workman Now I come to a consideration of issue No. 3. that is to say whether the accident arose in course of or out of the applicant's employment T regret to say that we are unable to agree with the finding of the Commissioner Upon this point in our opinion, the matter is covered by authority The first case to be cited is a Division Bench decision of this Court presided over by Lahiri. C. J . Commissioners for Port of Calcutta v. Mst. Kaniz Fatema. . In that case, Md Ismail was a shedwriter of the appellant the Commissioners for the Port of Calcutta On December 1953, while he was proceeding along the Circular Garden Reach Road on a bicycle to join his duty in the Port Commissioners' Office, he was knocked down by a motor car and sustained injuries as a result of which he died on the following day The widow of Ismail, filed an application under the said Act which claim was resisted, inter alia on the ground that the accident did not arise out of or in the course of, his employment, inasmuch as he was knocked down in the public road, where he shared the risk in common with all the other members of the public. Lahiri, C. J. said as follows:

"The question that we have to consider therefore is whether the proximity of 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-recognised 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 genera] 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."

Bachawat I said a follows :

> "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 place 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 him by the contract of employment."

4. The reason why I have commenced by citing the Bench decision above mentioned, is that it relates to the same locality as is the subject-matter of the present case, namely, the Kidderpore Docks. In that case, the workman concerned was employed by the Port Commissioners. It appeared that he 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. It was found that a section of this road was controlled by the Commissioners for the Port of Calcutta because it passes through the dock area. Inside the dock area, there are bridges and barriers which are controlled by the Port Commissioners for the purpose of securing the safety of the public. In other words, a public road enters the dock area and within the dock area there are several barriers and gates for the safety of the public. In the present case, the name of the road is not given, but according to the evidence of the workman himself he was going along the only road leading to 27 Kidderpore Docks from the Dock Labour Board. In the original petition, the locality of the accident is said to be -- "just on the gate of the dock". This is also repeated in a petition for addition of the appellant as a party. In his evidence, the workman said that he was knocked down -- "at the gate". But he improved this evidence in his cross-examination by saying that he was run down "within the gate". From all this, it is obvious that a public street maintained by the Corporation of Calcutta enters the dock area and the workman was struck down just as he was entering the gate, by a public conveyance, namely, a taxi. So far as the locality of the accident is

concerned, it does not matter even if the accident occurred iust within the gate, because it will be remembered that in the Division Bench case cited above, the workman was employed by the Port Commissioners who run the whole dock, and although the workman had entered the dock area to a considerable extent, it was still held that the accident did not occur in course of his employment Here, the employer was a stevedore who was not the owner of the docks, but he was only doing work in a ship berthed at Dock No. 27 of the King's George's Dock. It is, therefore, not understood how the Commissioner held that the notional extension of the place of employment could extend to the very gate where the public road enters the dock The workman was coming by a public road and was run down by a public conveyance, at a considerable distance from the ship where he was supposed to be working. I now come to the Supreme Court decision on which reliance was placed in the said Judgment. This is the case of *Saurashtra Salt Manufacturing Co v. Bai Valu Raja* . The facts in that case were as follows: The appellant was the Saurashtra Salt Manufacturing Co. The salt works of the appellant were situated near a creek opposite to the town of Porbandar. One of ways for going from Porbandar to the Salt Works was to cross the creek by boat. On a certain evening, a boat carrying certain workmen who had been employed that day by the appellant, while crossing the creek, was capsized due to bad whether and overloading and drowned, resulting in 7 cases for compensation being filed under the said Act. The matter eventually went to the Supreme Court and Imam, J. said as follows:

> "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 and area which the workman passes and repasses in going to & 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."

5. After considering the facts of the case, the learned Judge then proceeds to say as follows:

> "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."

6. In this Supreme Court decision, the workman failed to come within the scope of notional extension. On the other side, we have a Supreme Court decision -- *General Manager. B. E. S. T Undertaking, Bombay v. Mrs. Agnes* . In that case, the workman concerned was a bus driver employed by the Bombay Municipal (Corporation. It was proved that Bombay being a city of distances, drivers of buses were allowed free transport on the employers' buses, in the interest of the service, having regard to the long distances a driver has to travel to go to the depot from his house and vice versa, the user of the said buses being a proved necessity because it was essential that punctuality of time has to be maintained for attendance of the workmen. The workman concerned, being a bus driver, finished his work on a particular day, left the bus depot and availed himself of free transport to so to his home at Santa Cruz. The said bus collided with a stationary lorry en route, and as a result the workman was thrown out on the road and was injured and ultimately expired. On these facts, it was held that there was a notional extension and the workman was entitled to compensation. Subba Rao, J. (as he then was), discussed a number of decisions including some English cases, because the corresponding English statute contains the same words as are used in the said Act. I will mention some of the decisions cited. In Cr*emins v. Guest, Keen and Nettlefold Ltd*[6]*.,* the workman was a collier in the employment of the company and lived at a place which was six miles from the colliery. The Colliery supplied trains to workmen to and from their homes situated at a distance, free of charge. The workman was waiting on the platform for such a train, when he was knocked down and killed by a train. It was held that his widow was entitled to compensation. The learned Judges came to the finding that the workmen were expected to travel by train to and from their homes, where they lived at a distance, and it was intended by both parties that this should be a part of the conditions of employment. Side by side, a decision of the House of Lords in St. *Helens Colliery Co. Ltd. v. Hewitson*[7]. was noticed. In that case, the company arranged for special trains to take their workmen to and from their work. Any workman 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 with the agreed fare. Workmen had no obligation to use such a train. He could use other trains if he so liked. It was held that there was no notional extension in the circumstances of the case, and a workman who was injured by travelling on such a special train, was not entitled to compensation. In a decision of the court of appeal, *Jenkins v. E. D. Lines Ltd.*[8]*,* the deceased workman was employed in a ship which was moored in the harbour of La Palmas. The deceased and other members of the crew went ashore for a short while and while returning in the dark, the workman fell over the side of the mole and was drowned. It was held that compensation was not payable because his presence at the point where he met with the accident was not so related to his employment as to lead to the conclusion that he was acting within its scope. In a decision of the House of Lords, *Charles R. Davidson and Co. v. M'Robb*[9]*,* the Chief Engineer of a ship lying in a part of a public harbour

went ashore on leave for purposes of his own. On returning to the ship after dark, he fell from the quay and was drowned. Held that the accident was not shown to have arisen out of the employment in that case, Lord Finlay L. C. cited a number of earlier cases, e.g. *Gilmor v. Dorman, Long and Co*[10]. where the Master of the Rolls said:

> "It has been repeatedly held that a man is not entitled to the protection of the Act when on his way from his home to the work. There may be some difficulty in ascertaining precisely when a man's employment begins. Generally speaking the factory gate or yard indicates the boundary."

In another House of Lords' case, Stewart and *Son v. Longhurst*[11], it was said as follows:

".....employment may begin as soon as the workman has reached his employer's premises or the means of access thereto. And in the same way the employment may be considered as continuing until the workman has left his employer's premises. The case would be different if the workman was at the time of the accident on the public highway on his way to or from his work. His employment cannot be considered as having begun if he is merely in transit in the public street or road to or from his employer's premises. Of course, if his employment were of a kind which is pursued on the highway he might be in the course of his employment while there, but I am speaking of cases in which he is in the public way merely in exercise of the public right of passage there on his way to or from his employment."

7. Let us now apply the principles established in these decisions to the facts of the present case. Assuming that the workman was employed by the appellant who are stevedores, doing work of loading and unloading in the ship "Khaybar", lying at berth No. 27 in the Kidderpore Docks, the position is that, having been booked through an agent, the workman was coming on a public street and had arrived at the gate leading to the Docks, where he was run down by a taxi, that is to say a public conveyance. I have mentioned above that in his pleading and examination-in-chief he has said that he was, at the time of the accident, "at" the gate. In his cross-examination he tried to Improve the position by saying that he was "within" the gate. This part of the evidence cannot be believed. It will appear from the facts of the Division Bench judgment of this Court mentioned above, that a public road passes through the docks and there are many barriers etc. and a part of it is looked after by the Port Commissioners. Be that as it may, the workman in this instance was not in the employ of the Port Commissioners. He was in the employ of a stevedore and in the absence of evidence adduced by the workman, the notional extension of the location of his employment cannot be stretched to the "gate" of the docks. It might extend to berth No. 27 in which the ship was docked in any event, the "gate" was abutting on a public road and that is when the workman met with the accident. In our opinion, the doctrine, which is now well established, that a workman going to or coming from his place of employment on a public street

is not necessarily doing so in course of his employment, and the principles as have been laid down in the Supreme Court decision Saurashtra Salt Manufacturing Co.'s case. (supra), must be applied. It must be held therefore, that the workman has not been able to prove that the accident arose out of or in course of his employment. In other words, issue No. 3 must be answered in the negative.

8. That being so, the appeal must succeed and the finding of Commissioner and the order thereon dated the 30th May 1959 must be set aside and the application for compensation dismissed. There will however be no order as to costs throughout.

Arun K. Mukherjea, J.

9. I agree.

Cases Referred.

1(1910) ILR 37 Cal 369 at p. 404
2(1906) 3 Cal LJ 29
3(1906) ILR 33 Cal 927
4(1883) ILR 5 All 163 (FB)
5(1879) 4 AC 504
6(1908) 1 KB 469
71924 AC 59
8(1953) 2 All ER 1133
91918 AC 304
10(1911) 4 BWCC 279
11 (1917) AC 249