

GUJARAT HIGH COURT

Sadgunaben Amrutlal

Vs.

The Employees' State Insurance Corporation,

Latter Patent Appeal No. 89 of 1981

(M.P. Thakkar, J.)

05.05.1981

JUDGMENT

M.P. Thakkar, J.

1. Is the 'notional extension' theory evolved by the Courts for determining whether the injuries sustained by a workman were sustained in the course of and out of employment, in order to do substantial justice really speaking merely 'notional'? Or is it real, rational, and effective? And on the answer to this question depends the fate of the widow, five (daughters (four of whom are minors) and minor son of deceased Amrutlal Chunilal, a workman employed as a jobber in the Aruna Mills Company Limited, Ahmadabad, who died on the morning of December 24, 1975. The circumstances in which Amrutlal died as also the relevant provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as the "Act"), particularly Sub-section (8) of Section 2 of the Act containing definition of "employment injury" will have to be interpreted in order to do so. The claim of the dependents of the deceased who instituted an application under Section 77 of the Act for appropriate benefits as provided in Section 46 of the Act having been rejected by the Employees' Insurance Court, Ahmadabad, by the decision rendered by the Presiding Judge of the Court concerned on May, 28, 1978 and an appeal preferred to this Court under Section 82 of the Act having been dismissed by a learned Single Judge by his judgment dated June 19, 1980 in First Appeal No. 571 of 1979, the aggrieved dependents have approached this Court by way of present appeal under Clause 15 of She Letters Patent. Following questions arise for our determination:

- "1. Whether a personal injury (to which he ultimately succumbed) was caused to the employee concerned by the accident?
- "2. Whether the said accident arose in the course of his employment;
- "3. Whether the said accident arose out of his employment.

2. The deceased was employed as a jobber in the Aruna Mills Company Limited. He was engaged in the Wrapping Department. And he was an insured person under the Act. These facts are not in dispute. The only facts which require to be scrutinized carefully in order to resolve the central issue pertain to the circumstances in which the accident resulting in the injury caused to the employee was caused. The employee concerned was employed as a jobber in the Wrapping Department of the mills. He was working in the day shift. His duty hours were from 8-00 A.M. to 4-30 P.M. On December 22, 1974, while he was on duty in the mill, he felt giddy and his head began to reel. He took medical treatment on the next day (i.e. on December 23, 1974) which was an off day for him on account of staggering of electricity supply as a result of which the mill remained closed. On December 24, 1974, he left his residence at about 7-20 A.M. The time of departure is very important having regard to the fact that he was required to report for duty sharp at 8-00 A.M. at the mills. And he had left his house some 40 minutes before the reporting time in order to reach the mills just in time. He walked for a short distance from his house and came to the nearest bus stop. It was from this bus stop (near the Rajmahal Hotel) that he had to board the A.M. T.S. bus which would carry him to the mills. Whilst he was waiting for the bus to arrive, he felt unwell. He complained about his discomfort to one Jayantilal Keshavlal an ex employee of the mills who was also waiting at the bus stop and conveyed to him that it was on account of the strenuous work which he was required to do at the mills that he was feeling unwell. Meanwhile the bus arrived. When Amrutlal was just about to step into the bus he collapsed and became unconscious. And instead of being transported to the mills, he was transported to the hospital. At the hospital it was discovered that he had already died. The routine postmortem examination made subsequently revealed that he died because of acute cardiac failure. These are facts in the background of which the questions posed in the earlier part of the judgment have arisen.

3. The Presiding Judge of the Employees' Insurance Court (hereinafter referred to as the "E.S.I. Court") came to the conclusion that the appellants were dependents of the deceased within the meaning of the expression "dependent" embedded in Sub-section (6A) of Section 2 of the Act. However, the application for claiming benefits under Section 46 made under Section 77 of the Act was rejected on the ground that the appellants had failed to establish that the employee concerned had died on account of the accident which occurred "in the course of and out of his employment" so as to fall within the orbit of the expression "employment injury" contained in Section 2(8) of the Act. The learned Single Judge confirmed the decision of the E.S.I. Court mainly on the ground that the employee concerned had sustained the said injury on a public road while he was waiting at the bus stop in order to board a public transport vehicle and that under the circumstances, it cannot be said even by recourse to the theory of notional extension that the employee concerned had died "in the course" of the employment. Reliance was placed on the decision in *S.S. Mfg. Co. v. Bai Valu Raja*¹, in support of the view that the workman who sustained injury in the course of the accident when he was on the way to the place of work, cannot be said to have sustained the injury "in the course" of his employment. The learned Single Judge distinguished the decision of a Division Bench of this High Court in *Dudhiben Dharamshi and Ors. v. New Jehangir Vakil Mills Ltd*², wherein the view was taken that an accident which

arose at a point of time when the workman concerned was near the gate of the mill in order to enter the mill premises was an accident in the course of employment within the meaning of the relevant provisions, on the reasoning that it was a decision on the peculiar facts of that case. In the result, the learned Single Judge negatived the plea of the appellants-dependents that the accident arose in the course of the employment of the deceased workman.

¹ AIR 1958 SC 881

²(1977) II L.L.J. 194

4. Since the view concurrently taken by the E.S.I. Court and the learned Single Judge is to the effect that the accident which resulted in the injury was not caused "in the course of employment having particular regard to the "place" where it occurred, this is the hurdle which must be crossed at the outset. Reliance has been placed by the learned Single Judge mainly on some observations made in *S.S. Mfg. Co. v. Bai Valu Raja* (supra). What is of significance is to realize that in the aforesaid case, Supreme Court has accorded recognition to the 'notional extension theory.' In order to claim the benefits under the relevant Act it is not considered essential to establish that the accident occurred on the very precincts of the factory premises. The place of accident need not necessarily be located within the limits of the factory premises-so long as the place of accident falls within a zone which can be notionally deemed to be the zone of the factory for the purpose of the Act by recourse to the theory of notional extension which evidently has been evolved in order to do social justice as also to do substantial justice to the workmen for whose amelioration the benevolent legislation partaking of the character of social insurance has been enacted. Notwithstanding the fact the recognition was unhesitatingly accorded to this benevolent theory in order to keep the promise held out by the legislation of the aforesaid character, the Supreme Court was unable to uphold the claim of the dependents of the workmen in view of the facts of that particular case as is evident from the following passage culled out from paragraph 7 of the judgment:

(7) As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.

5. Following propositions emerge from the law declared by the Supreme Court in the aforesaid passage: namely, (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) Notwithstanding the aforesaid rule, it is now well-settled position in law that the

said proposition (i) is subject to a rider, namely that it is subject to the theory of notional extension of the employers' premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work; (iii) Notional extension theory can be made recourse to in order to extend in both 'time' and 'place', in a reasonable manner, in order to ascertain whether an accident to a workman may be regarded as in the course of employment though he had no' actually reached his employment premises; (iv) 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 employment of the workman keeping in view the theory of notional extension. We wish to emphasize each and every one of the aforesaid propositions, for, in our opinion, these are propositions which constitute the real ratio of the decision. What is of utmost importance is to realize that recognition has been accorded to the theory of notional extension. It has to be applied in the facts and circumstances of each individual case and no rigid rule governing every fact situation can be formulated. Once the theory of notional extension is properly applied to the fact situation pertaining to a particular accident in the peculiar facts and circumstances of that case and it is held that the accident occurred within the area falling within the notional extension theory, dependents of the employee would be entitled to succeed. In so far as the question as to whether or not accident arose in the "course of the employment is concerned, the Supreme Court in terms having said that it must depend upon the facts and circumstances of each case and in terms having left it to the Court to determine to what extent theory of notional extension can be carried in respect of every individual case, it would be unreasonable to take the view that the Supreme Court has declared that in no case can an accident be said to have occurred within the area covered by the notional extension theory unless the accident occurs very much within the precincts of the factory or immediately outside the factory. We may say that notional extension theory was applied by a Division bench of this High Court in Dudhiben's case (supra) in the fact situation where the accident occurred just outside the factory premises. In substance the distance between the place where the accident occurred and the factory premises is not required to be measured in yards or furlongs. It just happened that in Dudhiben's case, the accident occurred just outside the premises. But the rule broadly laid down by the Supreme Court in S.S. Mfg. Co.'s case from which the aforesaid propositions have been culled out, cannot be restricted by the Courts by adding a rider unrelated to the fact situation obtaining in each individual case which comes before, the Court. To do so, would be to add a rider to the law laid down by the Supreme Court which it may not be open to the Court to do. It is in this perspective that the incidental observations made by the Supreme Court in paragraph 8 of the S.S. Mfg. Co's case have to be understood, and interpreted. No doubt in paragraph 8 it has incidentally been observed that the workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. But this observation cannot be read in isolation and in disregard of the law clearly stated in paragraph 7 of the judgment from which the relevant propositions have been extracted a short while ago.

So also, it must be realised that immediately after this observation, the Supreme Court has reaffirmed the position of law stated earlier and has clarified that a workman certainly is in the course of his employment, if he reaches the place of work or a point or an area which conies

within the theory of notional extension. There is, therefore, nothing in this observation which detracts from the law declared in para 7 of the judgment. The learned Single Judge has reproduced the passage from paragraph 7 without reference to paragraph 8 and after quoting the passage has reached the conclusion that in view of the law laid down by the Supreme Court, the dependents of the deceased workman cannot succeed. The exercise which was required to be undertaken in obedience to the propositions of law laid down by the Supreme Court in paragraph 7 of S.S. Mfg. Co.'s judgment has not been undertaken in the context of the facts which are not in dispute, namely that the employee concerned had left his house some 40 minutes before reporting time in order to report for work at the factory. He was actually waiting at the bus stop from where the bus would have carried him to the factory. We do not know exactly what was the distance between the bus stop and the factory, but then when one makes recourse to a public mechanized transport vehicle, the distance in a way loses importance. It was a few minutes' ride on the bus from the bus stop to the factory premises. The question then is whether when he was standing at the bus stop, he was standing at a place which was situate within the notional extension zone so as to enable holding that the accident occurred 'in the course of employment'. The Supreme Court has deliberately and purposefully abstained from defining physical distance or introducing the concept of physical distance in ascertaining the notional extension zone. The Supreme Court has left it to the competent authority to undertake that exercise in the facts and circumstances obtaining in each individual case and to arrive at its own conclusion as to whether or not the place where the accident occurred is located within the notional extension zone. In other words, the formula is an elastic and flexible formula. It has to be applied in a purposeful manner. Be it realized that we are concerned with the application of the said formula in the context of the Employees State Insurance Act, 1948, which has been enacted (so says the preamble) to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto, and as it is considered expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury etc. Be it also realized that an insured person himself has to make contribution along with the employer who is obliged to make contribution, in order to enable the scheme to function. It is in the light of this benevolent legislation enacted for the purpose of protecting a workman who sustains employment injury—a workman who has himself been made to make contribution from his meagre earnings towards the costs of running the scheme that notional extension theory has to be applied. There are some more weighty and substantial considerations which must be taken into account in applying the notional extension theory articulated by the Supreme Court.

The importance of Section 51-A which enacts a presumption as to the accident arising in course of employment cannot be overemphasized. The said provision in terms provides that for the purposes of the Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen 'out of that employment'. No doubt, the presumption pertains to the next question which arises namely as to whether the accident was 'out of ' employment. But what needs to be stressed is that the legislature was anxious to ensure that the claim of a workman or his dependents was not defeated

on technical considerations regarding weight of evidence or burden of proof. And a still more important consideration arises in the context of the provision which has a far reaching impact on the notional extension theory in the background of the facts of the present case. The statutory provision, we have in mind is one contained in Section 51-C. We can do no better then to quote the said provision in so far as it is material:

51. C.(1) An accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from the place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if-

(a) xxx xxx xxx xxx xxx xxx

(b) at the time of the accident, the vehicle-

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and

(ii) is not being operated in the ordinary course of public transport service.

No doubt the aforesaid provision is not attracted in the present case. No doubt the aforesaid provision makes it abundantly clear that one of the conditions which would be required to be fulfilled would be that the vehicle was being operated by or on behalf of the employer and that it was not being operated in the course of a public transport service. But these are limitations embedded in the context of the fact that a deeming provision is enacted in the Act in order to extend the benefit to the workmen even at the point of time when they are on their way to or on their way back from the place of work. This provision by itself cannot support the contention of the appellants. It, however, presides a key to the mind of the legislature. It is the intention of the legislature that the workman for whose benefit the law is enacted, and who himself made contribution, should be able to acquire benefits under the Act even in a situation where he was away from the place of the work but was on his way to or on his way back from the place of work, In view of Section 51-A a liberal approach is required to be made in regard to cases which do not fall within Section 51-C but to which notional extension theory requires to be applied having regard to the law laid down in S.S. Mfg. Co's case (supra) in the fact situation of each case. And if such a liberal approach is made, the notional extension theory can be so applied as to cover the place where the workman concerned was actually waiting in order to proceed directly to his place of work. From the bus stop the mechanized transport vehicle would have carried him to the place of work in a few minutes. The question of distance, therefore, in a way becomes immaterial. Whether he was standing just outside the gate from which he could have made entry by just walking into the factory or he was standing at the bus stop from where he was able to board a bus which could have taken him at the factory gate within a space of a few minutes should make no difference. In so far as the facts of the present case are concerned, indubitably the employee concerned was standing at the bus stop and was waiting to catch the bus. Instead of catching the bus to the place of work he collapsed on the steps and died at the bus stand. Notional extension theory takes into account that a place outside the factory premises can

be considered to be a place situate within the extended zone. In the modern world when one travels by a mechanised transport vehicle and one is at a few minutes' distance from the actual place of work, one can without hesitation reach the conclusion that the employee concerned was within the notional extension zone since he was immediately at the door steps of the factory but for the short time that he would have taken to cover the distance in the mechanized vehicle. We have already adverted to the propositions which emerge from the law declared by the Supreme Court in paragraph 7 of S.S. Mfg. Co.'s case wherein reference has been purposefully made to the extension 'in time' and 'place' both. If, therefore, one is standing at a place at a couple of minutes' walking distance from the factory one can say that he is standing within the notional extended zone. If one is waiting for a bus and instead of walking distance we have to consider the driving distance it would make no difference in principle. What is true from the stand-point of physical proximity is true from the standpoint of time-cum-distance proximity in applying the notional extension theory in the modern world. One is as much 'just outside the factory' when one is standing near its gate as when one is standing at a bus stop if one takes into account that one has only to step on the bus in order to be there. Only the bus and the few minutes in the bus stand between the workman and the factory. The notional extension is permissible in time as also in space as has been declared by the Supreme Court. Once this formula is applied meaningfully as it must be, it can be unhesitatingly said that the employee concerned was within the notionally extended zone. And thus it can be said that the accident occurred in the course of employment for the workman had set out on his journey to the place of work. But for the fact that he had collapsed he would have been at the factory within a couple of minutes. In our opinion, notional extension theory can be meaningfully applied in a situation like the present so as to effectuate the intention of the legislature to extend the benefit to the workman who contributes towards the costs of running of the scheme evolved with a benevolent eye in order to appease the social conscience. We are, therefore, of the opinion that the accident had occurred in the course of employment.

6. This brings us immediately to the next question. Did the accident arise 'out of employment'? In other words, in order to answer this question, we will have to examine whether nexus has been established between the cause of the accident and nature of his employment. It needs no argument to hold that the work of a jobber in a mill is a strenuous work which results in physical strain, and stress. The evidence clearly shows that he was actually working for the employer on December 22, 1974 at the factory premises when he had a feeling of giddiness, his head began to reel, and he became unwell. Medical evidence goes to show that he died because of acute cardiac failure. Evidence of witness No. 2 for the applicant, D. N. Pathek, practising as a Vaidya for 45 years, goes to show that the employee concerned was unwell and he was being treated by him since four days before the date of the occurrence. Treatment was being given for bronchitis and asthma and his condition was not good. The witness had advised him not to go to the mill and not to undertake any strain as he was complaining of pain in the chest. His evidence clearly shows that strain of work may affect heart when a person is suffering from asthma and bronchitis. Post mortem notes clearly show that death was on account of cardiac failure. Witness

No. 5 for the applicant Dr. Chhotalal Mehta, aged about 61, with a considerable experience behind him as Assistant Police Surgeon, has deposed that on December 24, 1974 he had performed post-mortem on the dead body of the workman concerned. He has expressed his opinion to the effect that death was due to acute cardiac failure. He has proceeded to explain that cause of cardiac failure is heart disease. And thereafter he has made a significant statement. It is stated by him that heart gets diseased because of stress and strain and this disease to the heart may even lead to instantaneous death if the person undertakes excessive strain. In cross-examination it was elicited that heart of Amrutlal (deceased employee) was in a diseased condition. In the light of this evidence which strengthens the evidence of an experienced Vaidya, there is hardly any room for doubt on the score that death of Amrutlal was caused on account of stress and strain. The evidence of the Assistant Police Surgeon who had no reason to go out of way to support the appellants, must be accepted without any hesitation. It has been clearly stated by him that the workman was suffering from heart ailment and that his death was caused by cardiac failure which was attributable to stress and strain. Stress and strain was obviously caused by strenuous work done by him at the mill, as he was already suffering from heart ailment. The position was worsened on account of stress and strain undertaken by him immediately prior to the date of the accident. On December 22, 1974 he had complained of pain and discomfort in the chest as is revealed by the evidence of his co-worker witness No. 3 Jayantilal Keshavlal who is employed as a Jamadar in the mill concerned. His evidence shows that the workman had complained to him that he was not keeping well and was about to get on the bus when he had a reeling sensation and collapsed. Apart from the stress and strain caused at the mills, his anxiety was to reach the premises in the factory in time, which resulted in the accident which caused the injury culminating in his death. If these facts are interpreted in the context of the statutory presumption implanted in Section 51A, the conclusion is inevitable that the accident arose 'out of employment. Thus it has been established that the accident resulting in the injury which culminated in his death was caused "in the course of employment as also "out of employment. And this conclusion would attract the definition of "employment injury" contained in Section 2(B) of the Employees' State Insurance Act, 1948.

7. The appellants are accordingly entitled to the benefits claimable under the relevant provisions of the Act. The appeal is, therefore, allowed, the order passed by the E.S.I. Court as confirmed by the learned Single Judge is set aside and the application made by the appellants is granted to the following extent:

- (1) It is declared that deceased Amrutlal had sustained employment injury by accident arising out of and in course of his employment and dependents of the deceased workman are entitled to such benefits as are available under the relevant provisions of the Employees' State Insurance Act, 1948.
- (2) The matter will go back to the E.S.I. Court in order to determine the quantum of benefits awardable to the appellants.
- (3) From out of the total amount of monetary benefits computed for the period till 30th

April 1981 a sum of ₹ 5000/- will be paid to the appellants in cash. The remaining amount will be invested in National Savings Certificates, 7th series.

(4) Such monthly benefits as are claimable by the dependants (original applicants) shall be paid regularly for the prescribed period with effect from and subsequent to May 1, 1981.

8. There will be no order regarding costs. The E.S.I. Court will make computation in accordance with the directions given hereinabove within 60 days commencing from the date of receipt of writ and record (which shall be sent to the E.S.I. Court within a week of the copy of this judgment being received by the Department) and the E.S.I. Corporation will make payment within 30 days thereafter.

Appeal allowed.