KERALA HIGH COURT

Regional Director, E.S.I. Corporation

Vs

K. Krishnan

A.S. No. 15 of 1974

(V. Balakrishna Eradi and George Vadakkel, JJ.)

17.09.1975

JUDGMENT

Balakrishna Eradi, J.

1. The Regional Director, Employees' State Insurance Corporation, Trichur (hereinafter referred to as the Corporation) is the Appellant in this appeal which has been filed under Section 82 of the Employees' State Insurance Act (hereinafter called the Act) against the judgment dated October 20, 1973 of the Employees' Insurance Court, Calicut holding that the Corporation is liable to pay to the Respondent herein disablement benefit on the ground of his having sustained an 'employment injury' as defined under Section 2(8) of the Act.

2. The Respondent who is employed as a worker in the plywood department of Messrs. Standard Furniture Co., Kallai, met with a road accident on May 2, 1970 at 2.35 a.m. while returning from the factory to his residence after having completed his work in the shift between 5 p.m. and 2 a.m. While the Respondent was walking along the trunk road on his way to his residence from the factory he was knocked down by a motor car as a result of which he sustained a fracture in his right arm. The incident took place at a place far away from the factory premises. The Respondent claimed disablement benefit from the Corporation contending that since the accident had taken place while he was returning from the factory after attending to his work the injury sustained by him was an 'employment injury'. The Corporation disputed the said claim and granted only sickness benefit to the Respondent. Thereupon the Respondent filed the application E.I.C. 18 of 1971 before the Employees' Insurance Court, Kozhikode claiming disablement benefit. The said application was resisted by the Corporation by contending that the injury sustained by the Respondent had not arisen out of and in the course of his employment and that hence there is no liability for the Corporation to pay any amounts to the Respondent by way of disablement benefit. The said contention was rejected by the Employees' Insurance Court. The E.I. Court took the view that since the workman had to be on the trunk road at that particular

time 2.35 a.m. because of the fact that his working hours in the factory had to come to an end at 2 a.m. there was a relationship between the accident and the employment in the sense that (sic. occurring)of the accident at that particular time and that hence the injury sustained by the workman was an 'employment injury'. The petition filed by the workman was accordingly allowed by the Employees' Insurance, Court and it ordered that the Corporation should assess and pay to the workman disablement benefit as per law. In this appeal the Corporation has challenged the legality and correctness of the said decision rendered by the Employees' Insurance Court.

3. The sole question arising for determination is whether the injury sustained by the Respondent workman can be said to be an 'employment injury'. The material facts are not in dispute. The workman had finished his work in the factory and was proceeding to his residence along the public road at the time when he was knocked down by a taxi car. The question is whether by invoking the theory of notional extension of the employer's premises it can be said that the accident arose out of and in the course of the employment of the workman.

4. An almost identical question came up for decision very recently before a Division Bench of this Court (Subramonian Poti and Janki Amma, JJ.) in AS. No. 65 of 1973. In that case an employee working in a printing press at Ernakulam was hit by a motor-vehicle while he was on his way from his house to the press. The accident which resulted in some injury to the employee took place about one furlong away from the premises of the Press. Rejecting the contention put forward by the workman that the accident arose out of and in course of his employment, Subramonian Poti, J. speaking on behalf of the Bench observed thus:

> "While it may be said that in the case of an employee who meets with an accident while traveling in a transport provided by the employer as a facility to and from the work-shop the employer is liable under the Workmen's Compensation Act it cannot be said that a person who is merely walking to the place of occupation meeting with an accident is suffering such accident in the course of his employment. That is because every member of the public walks along the road and in the case of an employee also he walks only as a member of the public. The theory of notional extension of employment does not extent to coverage in regard to such a situation. We need not examine the question any further for the case is covered by the decision in *Saurashtra Salt Manufacturing Co. v. Bai Valu Raja and Ors*[1]*.,*

We are in respectful agreement with the above observations of the Division Bench which are fully supported by the dictum laid down by the Supreme Court in *Saurashtra Salt Manufacturing Co. v. Bai Valu Raja and Ors., A.I.R. 1958 S.C. 881(*Supra) wherein their Lordships stated the principle 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

[1] A.I.R. 1958 S.C. 881

compensation for any accident happening to him."

In the light of the aforementioned pronouncements it cannot be said in this case that the injury sustained by the Respondent as a result of the accident met with by him while he was walking along the public road at a place far away from the factory premises was an 'employment injury'. The finding entered by the Employees' Insurance Court cannot therefore be sustained.

5. In the result, we set aside the judgment of the Employees' Insurance Court and hold that the Respondent is not entitled to recover from the Appellant Corporation any amount by way of disablement benefit. The appeal is accordingly allowed and the application E.I.C. 18 of 1971 will stand dismissed. We direct the parties to bear their respective costs in this appeal.

Appeal allowed.