BOMBAY HIGH COURT

Bhagubai

Vs.

General Manager, Central Railway

First Appeal No. 406 of 1953. for Workmen's Compensation in Appln. No.232/B-5 of 1953

(Chagla, C.J. and Dixit, J.)

20.01.1954

JUDGMENT

Chagla, C.J.

1. This is a rather unusual case arising under the Workmen's Compensation Act. The facts briefly are that the deceased was a mukadam employed in the Central Railway at Kurla station and he lived in the railway quarters adjoining the Kurla railway station. It was found as a fact that the only access for the deceased from his quarters to the Kurla railway station was through the compound of the railway quarters. On 20-12-1952, the deceased left his quarters a few minutes before midnight in order to join duty and immediately thereafter he was stabbed by some unknown person. It is not disputed by the railway company that the deceased died as a result of an accident, nor is it disputed that the accident arose in the course of his employment. But what is disputed is that the accident did arise out of the employment of the deceased. The learned Commissioner for Workmen's Compensation held that the accident did not arise out of the employment and therefore dismissed the claim made by the applicant, who is the widow of the deceased. She has now come in appeal.

2. Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to

the peril or extends the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident.
In this particular case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to join duty, and he had to pass this spot in order to join his duty. Therefore, the connection between the employment and the accident is established. There is no evidence in this case that the employee in any way added to the peril. There is no evidence that he was stabbed because the assailant wanted to stab him and not anybody else. It was suggested in the evidence that the employee was also a money-lender apart from being a mukadam in the service of the railway company. But the point was not pursued and it was not proved that by reason of his being a money-lender he had any enemies who were likely to fall upon him and do him to death. Mr. Desai who appears for the railway company has argued that a railway servant was prohibited from doing any other business. But it is not established that by his doing this prohibited business he brought upon himself the peril of being murdered.

3. Our attention has been drawn to several authorities by Mr. Desai, but there are two decisions of this very Court which amply bear out the proposition which we have just set down. There is a reported judgment to which my brother was a party in - *'Trustees of the Port of Bombay v. Yamunabai*[1]*',* In that case a workman was employed as a carpenter in a workshop along with other workmen and he was killed as a result of injuries received by him by the explosion of a bomb which was placed by an unknown person near the place where the workman was doing his work, and Mr. Justice Bavdekar and my brother Mr. Justice Dixit held that the workman had received personal injury as a result of an accident arising out of his employment. Then there is another decision which is not reported to which I and Mr. Justice Gajendragadkar were a party and which is - *'General Manager, G.I.P. Rly., V.T., Bombay v. Godrej Navroji Unwala*[2]*',* where we held that the workman who was serving as an Assistant Engine Driver in the G.I.P. Railway Company and who was returning after completing his duty at Kalyan by the Kalyan Local Railway and was set upon by some soldiers and thrown on the railway lines and received injuries, that the injuries arose out of the employment and he was entitled to compensation.

4. Both these decisions are really based upon the leading English case reported in - *'Thom or Simpson v. Sinclair*[3]*',* In that case a woman employed by a fish-curor, while working in a shed belonging to her employer, was injured by the fall of a wall which was being built on the property of an adjoining proprietor with the result that the roof of the shed collapsed and the woman was buried under the wreckage, and the House of Lords held that the accident arose out of her employment, and the principle is well stated by Lord Shaw (p.142):

> ".. In short, my view of the statute is that the expression 'arising out of the employment' is

not confined to the mere 'nature of the employment'. The expression, in my opinion, applies to the employment as such - to its nature, its conditions, its obligations, and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed, it appears to me that the broad words of the statute 'arising out of the employment' apply. If the peril which he encountered was not an added peril produced by the

[1] AIR 1952 Bom 382 [3]1917 AC 127

[2] P.A. No.527 of 1948 (Bom)

workman himself, as in the cases of - *Plumb v. Coliden Flour Mills Co*[4]*.',* and - *'Barnes v. Nunnery Colliery Co*[5]*.',* in this House, then a case for compensation under the statute appears to arise."

Viscount Haldane also puts the case very simply (p.136):

".. If, therefore, the language in question were to be construed upon principle and apart from authorities I should be prepared to hold that it was satisfied where, as here, it has been established as a fact that it was as arising out of her employment that the appellant was under the roof by the falling of which she was injured."

To apply that test to the facts of this case, it arose out of the employment of the deceased that he found himself at a spot where he was assaulted and murdered.

5. Mr. Desai has strenuously argued that the distinguishing feature' of this case is that the employee was murdered and according to him there is always a motive for a murder, and therefore it could not be said that the risk which the employee ran was a risk which would have been run by any other employee or member of the public. According to Mr. Desai, in the case of a murder the person murdered alone runs the risk because the murder is motivated by a particular person being done to death. In our opinion there is not an iota of evidence in this case that the employee was done to death because some one was interested in murdering him. Nor is there any evidence that the employee was bound to be murdered, whether he was on the spot in the course of his employment or anywhere else.

Faced with this difficulty Mr. Desai's contention is that the burden was upon the applicant to establish that the risk which the employee ran was a risk which was not personal to him. Now, there can be no doubt that before an applicant under the Workmen's Compensation Act can succeed he must discharge the burden of proving (1) that there was an accident, (2) that the accident arose in the course of the employment, and (3) that the accident arose out of the employment. He must place evidence on the record which would entitle the Court to hold that these three conditions laid down by Section 3 of the Act have been satisfied. In this case, as already pointed out, there is no dispute as to the accident or the accident taking place in the course of the employment. The question is whether the applicant has discharged the burden with regard to the third ingredient and also what is the burden that the law places upon him with regard to that ingredient. In our opinion, once the applicant has established that the deceased was

at a particular place and he was there because he had to be there by reason of his employment, and he further establishes that because he was there he met with an accident, he has discharged the burden which the law places upon him. The law does not place an additional burden upon the applicant to prove that the peril which the employee faced and the accident which arose because of that peril was not personal to him hut was shared by all the employees or the members of the public. Mr. Desai would have an applicant prove not only that the employee was murdered, but that in murdering him the murderers had no personal motive against the murdered man but he would have murdered any other employee of the railway company as well. We refuse to hold that the law casts any such intolerable burden upon the applicant. Once the peril is established, it is for the employer then to establish either that the peril was brought about by the employee himself, that he added or extended the

[4]1914 AC 62

[5]1912 AC 44

peril, or that the peril was not a general peril but a peril personal to the employee. It is because of this that the authorities have made it clear that the causal connection between the accident and the employment which the applicant has to establish is not a remote or ultimate connection, but a connection which is only proximate. Once that proximate connection is established the applicant has discharged the burden, and in this case the proximate connection between the employment and the injury is the fact that the deceased was at a particular spot in the course of his employment and it was at that spot that he was assaulted and done to death. In our opinion the learned Commissioner was in error in coming to the conclusion that the applicant had failed to discharge the burden that the deceased died of injury by accident arising out of his employment.

6. We would, therefore, set aside the order of the learned Commissioner and pass an order directing the respondent to pay to the applicant the sum claimed, viz. Rs. 3,500. There is no dispute as to the quantum of the claim. We direct that the sum should be deposited with the Commissioner for Workmen's Compensation within a fortnight from today. The respondent must pay the costs both here and before the learned Commissioner.

Order set aside.