

APPELLATE CIVIL

Before Mr. Justice Bavdekar and Mr. Justice Dixit.

1951
Nov. 8

THE TRUSTEES OF THE PORT OF BOMBAY (ORIGINAL OPPONENTS),
APPELLANTS v. SHRIMATI YAMUNABAI, W/O VINAYAK YENKU
(ORIGINAL APPLICANT), RESPONDENT.*

Workmen's Compensation Act (VIII of 1923), s. 3—Accident arising out of, and in the course of employment—Meaning of:

The expression "in the course of his employment" occurring in s. 3 of the Workmen's Compensation Act, 1923, suggests the point of time; that is to say, the injury must be caused by accident taking place during the currency of the employment. The expression "arising out of his employment" occurring in s. 3 suggests both the time as well as the place of employment. The expression "out of" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of the accident. But the words "arising out of his employment" are wide enough to cover a case, where there may not necessarily be a direct connection between the injury caused as a result of an accident and the employment of the workman.

Munshi & Co. v. Yeshwant Tukaram⁽¹⁾; *Thom or Simpson v. Sinclair*⁽²⁾; relied upon.

Brooker v. Thomas Borthwick & Sons (Australasia), Ltd.⁽³⁾; *Nawab Ali v. Hanuman Jute Mill*⁽⁴⁾; *Lancashire and Yorkshire Railway v. Highley*⁽⁵⁾; *Warner v. Couchman*,⁽⁶⁾ referred to.

Appeal against the order passed by B. C. Patil, Commissioner for Workmen's Compensation, Bombay.

One Vinayak Yenku was a carpenter employed by the Bombay Port Trust (appellant). On May 14, 1950, when the carpenters were at their respective work-tables in the workshop of the appellant, there was a bomb explosion which resulted in fatal injuries to Vinayak. His widow, Yamunabai (respondent) made an application in the Court of the Commissioner for Workmen's Compensation at Bombay claiming Rs. 3,500 as compensation.

The Trustees of the Port of Bombay admitted the accident which caused the death of Vinayak but contended that the accident did not arise out of and in the course of his employment.

* First Appeal No. 281 of 1951.

⁽¹⁾ (1946) 49 Bom. L. R. 539.

⁽²⁾ [1917] A. C. 127.

⁽³⁾ [1933] A. C. 669.

⁽⁴⁾ [1933] A. I. R. Cal. 513.

⁽⁵⁾ [1917] A. C. 352.

⁽⁶⁾ [1912] A. C. 35.

The Commissioner for Workmen's Compensation, Bombay, held that the applicant was entitled to compensation as claimed. In the Course of his judgment he observed:

"In considering whether the accident arose out of the employment of the workman, the question to be considered is whether the injury suffered by the workman can be associated with his employment. The inquiry need not be restricted to the question as to whether the nature of the employment of the injured person had any casual relationship to the accident. Such restricted enquiry was held to be too narrow in *Thom v. Sinclair* [1917] A. C. 127 in considering the expression "arising out of employment", and that expression was construed in a broad sense and it was held that if by reason of the nature, the conditions, obligations and the incidents of the workman's employment he was brought within the zone of special danger and so injured or killed, the broad words of the statute "arising out of employment" apply. That case was followed in the case of *Brooker v. Thomas* [1933] A. C. 669. We may also refer to the very recent decision reported in Butterworth's Workmen's Compensation cases, Vol. XLI (Final Volume) at pp. 17-21 (*Hill v. Butterley Co. Ltd.*).

In the case under consideration, the workman's duty obliged him to be in that particular place in the workshop of the opposite party for the purpose of the work entrusted to him. It was his attendance at that place that exposed him to the special risk of that accident viz., explosion. His employment is thus connected with the accident. I hold, therefore, that the accident arose out of the employment of the Applicant."

The Trustees of the Port of Bombay appealed to the High Court.

N. K. Petigara instructed by *Mulla* and *Mulla* for the appellants.

No appearance for the respondent.

Dixit J. This appeal arises from an application for compensation made by the respondent under the Workmen's Compensation Act, 1923, and the question which it seeks to raise is whether the respondent's husband received personal injury by accident arising out of, and in the course of, his employment. The facts of the case in which the question arises are simple.

One *Vinayak Yenku*, a carpenter, was employed in a workshop situate at Alexandra Dock, Bombay, and belonging to the appellant. In the workshop he was given a table and a cupboard. There were other workmen besides *Vinayak*, and their tables were in line with one another. On May 13, 1950, which is the date of the accident, *Vinayak* went to the workshop and sat at the table assigned to him to do the work which was that of preparing a frame for a trolley. While there, a bomb exploded, as a result of which *Vinayak* received injuries. He was

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subsequently removed to the St. George's Hospital, where he died on the night of the same day.

The respondent, who is the widow of the deceased Vinayak, made the present application on June 22, 1950, claiming compensation in the sum of Rs. 3,500. The appellant filed a written statement, in which two contentions were taken. It was contended, firstly, that Vinayak was not a workman within the meaning of the Act, and that the accident did not arise out of, and in the course of, his employment.

Upon the application evidence was led before the Commissioner, and two persons were examined. One of them was an Inspector of Police, who visited the place of the incident after the explosion, and a clerk by name Bento in the Hamalage workshop at the Alexandra Dock. At the trial the appellant gave up the contention that Vinayak was not a workman, and upon the second contention the learned Commissioner came to the conclusion that the accident arose out of, and in the course of Vinayak's employment. Consequently, he allowed the application and gave the respondent a sum of Rs. 3,522. From the order made upon the application, the original opponent has come up in appeal.

Mr. Petigará, who appears for the opponent, contends that in the lower Court the question whether or not Vinayak was a workman was wrongly given up. The contention is based upon s. 2 (1) (n), cl. (ii), read with the second schedule. According to the schedule it is necessary that there must be ten or more persons employed on any one day of the preceding twelve months. The clerk who gave evidence stated that there were in all nine workmen; that is, there were four carpenters, one fitter, two coolies, one foreman and himself. In cross-examination he admitted that coolies were kept to help the carpenters in their work when necessary. It seems to me, therefore, that there was evidence before the learned Commissioner showing that more than nine persons were employed in the workshop and in view of this evidence it was not disputed before the learned Commissioner that the deceased was a workman within the meaning of the Act. In our opinion, therefore, this contention fails.

The second contention is whether it is proved that personal injury was caused to Vinayak by accident arising out of, and in the course of, his employment. It is apparent that two conditions are required to be satisfied, that is, (1) personal injury

must be caused to a workman by accident arising out of his employment, and (2) it must be caused to him in the course of his employment. As regards the second of the two requirements, there is no dispute that Vinayak received personal injury as a result of an accident, which took place in the course of his employment. The question, however, remains whether it can be said that personal injury was caused to Vinayak by accident arising out of his employment. The expression "in the course of his employment" suggests the point of time; that is to say, the injury must be caused by accident taking place in the course of the employment; that is, during the currency of the employment. The expression "arising out of his employment" suggests both the time as well as the place of employment. The expression "out of" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of the accident. That to my mind, is the literal and strict construction of the section. But, in my opinion, the words "arising out of his employment" are wide enough so as to cover a case, where there may not necessarily be a direct connection between the injury caused as a result of an accident and the employment of the workman. And there may be circumstances attending the employment, which would go to show that the workman received personal injury as a result of the accident arising out of his employment.

Mr. Petigara for the appellant has referred us to two Indian decisions upon the point and to certain other English cases to be mentioned presently. As I read these cases, it seems to me that the cases do not seem to yield any accepted principle, and it seems to me that, in the ultimate analysis, each case must depend upon its own facts. In the first place, he referred us to a decision of this Court reported in *Munshi & Co. v. Yeshwant Tukaram*,⁽¹⁾ and Mr. Petigara strongly relied upon this decision as establishing his contention. In the judgment delivered by Mr. Justice Macklin, to which I was a party, he referred to two English decisions reported in *Thom or Simpson v. Sinclair*⁽²⁾ and *Brooker v. Thomas Borthwick & Sons (Australasia) Ltd.*⁽³⁾ On the interpretation of s. 3 (1) of the Workmen's Compensation Act, 1923, this is what Mr. Justice Macklin said (p. 541):

"The next question is whether the accident arose 'out of' the employment within the meaning of s. 3 of the Act. It cannot be disputed that

⁽¹⁾ (1946) 49 Bom^e L. R. 539.

⁽²⁾ [1917] A. C. 127.

⁽³⁾ [1933] A. C. 669.

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for an accident to arise out of any particular employment the risk of such an accident must to a greater or lesser degree have been inherent in the employment before the accident occurred; and it is evident that the risk of a ship exploding and knocking down a godown wall and through the ruins discharging a heavy piece of iron on to an employee's leg is not a risk which is ordinarily inherent, even remotely, in the applicant's employment in the godown."

Mr. Petigara is right in contending that these observations go to support his view, but Mr. Justice Macklin, after referring to the two English decisions referred to already, preferred to rest his decision upon the facts of that particular case. This is what he said (p. 541):

"It is evident that these decisions, if pressed far enough, could cover a number of cases which could not otherwise be held to be accidents arising out of employment. It would, I think, be easy to press them too far. We agree with the learned Commissioner that it is possible to justify the grounds for compensation in this particular case by reference to these two cases. But for ourselves we prefer to base our decision upon different grounds. It is, as I say, only logical to hold that an accident cannot be said to arise out of employment unless the risk of such an accident has been, even before the accident, inherent in the employment itself to a greater or lesser extent; and though in the present case it could not be said that employment in a godown in the Bombay Docks normally involved a risk of injury by the explosion of a ship, nevertheless it must not be forgotten that this explosion occurred during war time."

It is apparent, therefore, that the decision was based upon the facts of that particular case, and I am not prepared to say that the case laid down any accepted principle. But Mr. Petigara then relied upon a decision of the Calcutta High Court reported in *Nawab Ali v. Hanuman Jute Mill*.⁽¹⁾ The test laid down in that case is as follows:

"The question as to whether the accident arose out of the employment cannot be determined on any general view of facts. It is dependent on the facts of each particular case. There is one test which is always applicable. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment. If, nay, it did not, because what it was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. And the question whether the workman did his duty negligently or not arises only where the workman was doing something which it was his duty to perform."

It is noticeable that this test is based upon the observations made by Lord Sumner in the English case of *Lancashire and Yorkshire Railway v. Highley*.⁽²⁾ Mr. Petigara's contention is

⁽¹⁾ [1933] A. I. R.-Cal. 513.

⁽²⁾ [1917] A. C. 352.

that this case shows that the test laid down as the correct test is not present in this case. But as I said, the English cases do not seem to lay down any accepted principle except in so far as the principle is governed by the facts of each particular case.

The case which is frequently cited and which was accepted by the learned Commissioner in the Court below is the case of *Thom or Simpson v. Sinclair*. That case was noticed by Mr. Justice Macklin in *Munshi & Co.'s case*. In that case what happened was that a woman was injured by the fall of a wall which had no connection whatever with the woman's employment. But the immediate cause of the injury was the collapse of the shed in which she was working; and the collapse of the shed was due to the fall of the wall. Under these circumstances, the House of Lords held that the accident arose out of her employment within the meaning of the Workmen's Compensation Act, 1906. At page 135 of the report this is what Viscount Haldane said:

"...I think that the Court is directed to look at what has happened proximately, and not to search for causes or conditions lying behind, as would be the case if negligence on the part of the employer had to be established."

Again at p. 136:

"...The appellant was injured because she happened at the moment of the accident to be working in the shed where she was employed to work, and I think that, unless authority constrains us to hold the contrary, the Act ought to be construed as signifying that an accident such as this comes within the class against which she is insured. Whether the remoter cause of the roof falling was the collapse of a neighbouring wall, or the falling down of some high adjacent building, or a stroke of lightning, seems to me immaterial in the light of this construction. It is enough that by the terms of her employment the appellant had to work in this particular shed and was in consequence injured by an accident which happened to the roof of the shed. The accident is one arising out of the employment not the less if ultimately caused by the fall of some one else's wall than if it had been caused by inherent weakness of the employer's roof."

It was argued before the House of Lords that the words "out of" point to the origin or cause of the accident, and the words "in the course of" to the time, place and circumstance under which the accident takes place. But apparently Lord Haldane did not seem to accept the construction contended for on behalf of the party concerned in that case. Then, in the address of Lord Shaw the learned Lord examined the words "arising out of the employment", when it was suggested that the words

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meant "arising out of the nature of the employment", and he seems to suggest that he was not prepared to accept that construction. In my opinion, therefore, *Thom or Simpson v. Sinclair* supports the view taken by the learned Commissioner, and we think that is the right view.

The other case to which reference was made by Mr. Petigara is the case of *Lancashire and Yorkshire Railway v. Highley*. Now, the Calcutta case, to which I have referred, is based upon the observations made by Lord Sumner at page 372 of the report. It is evident on reference to the facts of the case that it was clearly the case of an added peril. The present is not a case, where there was any added peril on the part of the workman, and it seems to me that if the true view is that each case must depend upon its own facts, the principle which seems to have been laid down by Lord Sumner would not be strictly applicable to the facts of the present case. The case of *Thom or Simpson v. Sinclair* was followed by the House of Lords in *Brooker v. Thomas Borthwick & Sons (Australasia) Ltd.*⁽¹⁾ Mr. Petigara relied upon the observations made by Lord Atkin at page 678 of the report. They are these:

"...Neither bombs nor shells have ordinarily anything to do with a workman's employment. It is therefore necessary to show special exposure to injury by them. They represent exactly for this purpose the operation of such forces as lightning, heat and cold."

Mr. Petigara, therefore, suggested that an explosion due to a bomb stands on the same footing, as, for example, an accident arising out of lightning, or by reason of extreme cold, or extreme heat. Here again, no general principle can be laid down, and so far as the facts of this particular case are concerned, the learned Commissioner has recorded a finding that the bomb had been placed by some unknown person, and the suggestion which was made on behalf of the appellant that the workman was responsible for the preparation of the bomb was not accepted in the Court below. It seems to us, therefore, that one cannot place the case of an explosion of a bomb like the one in the present case on the same footing as an accident arising out of natural forces, as, for example, lightning, heat or cold. Reference was also made to a decision reported in *Warner v. Couchman*⁽²⁾ and Mr. Petigara strongly relied upon that. But as I said, each case seems to suggest that the question has to be decided by the facts of each particular case, and as far as I have been able to understand these cases, they do not seem to yield any accepted principle.

⁽¹⁾ [1933] A. C. 669.

⁽²⁾ [1912] A. C. 35.

The question, therefore, is whether it can be said that in this case Vinayak received personal injury as a result of an accident arising out of his employment. On the finding recorded by the Court below it is clear that some unknown person had placed the bomb, and Vinayak was not responsible for the placing of the bomb. That Vinayak was required to do the work at the particular place and at the particular time is not disputed. There was, therefore, a circumstance attending his employment, because at the time and place at which he was employed an explosion occurred, in consequence of which Vinayak received injuries and as a result of which he died. It seems to me, therefore, that the facts of the present case seem to be similar to the facts of the case in *Thom or Simpson v. Sinclair*. It seems to me that, if a claim to compensation can be sustained upon the basis of the fall of a roof, which was the result of the fall of a neighbour's wall, I do not see why, in principle, a claim to compensation cannot be sustained in a case, where a workman was admittedly working at a time and place, when as a result of an explosion of a bomb, which was near the table which was assigned to him, the workman received injuries, as a result of which he died. If Mr. Petigara's argument is correct, the case of *Thom or Simpson v. Sinclair* would seem to be wrongly decided. But I am not prepared to agree with Mr. Petigara in this contention. It may be that the expression "out of employment" is not easy to construe. Two interpretations may be possible. It may be, for example, that the words "out of employment" may be construed in a restricted sense. In such a case Mr. Petigara would seem to be right. But, on the other hand, the expression "out of employment" may be construed in a wider sense, and that apparently seems to be the principle accepted in *Thom or Simpson v. Sinclair*. For example, if in this case a brother workman and Vinayak had picked up a quarrel with each other, and the brother workman had made a murderous attack upon Vinayak, as a result of which Vinayak had died, I am prepared to consider that in such a case it cannot be said that Vinayak received injuries by an accident arising out of his employment. Similarly, supposing for example, a bomb had been thrown at Vinayak from outside by an outsider, and as a result of the explosion of the bomb Vinayak had died, I am prepared to consider again that it could not be said in such a case that Vinayak had received injuries as a result of an accident arising out of his employment. Again, if a workman were operating upon a machine, and while at work he got personal injury, there is no difficulty in saying that the

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injury received by him is as a result of an accident arising out of his employment. If, on the other hand, an employer were to send his employee to a post office to post his letters with a direction to go on foot, and instead of obeying the direction, the employee were to go to a stable of the employer and to ride a horse in order to go to the post office, and if during the journey he were to fall and receive injury, it cannot be said that in such a case personal injury was received by him as a result of an accident arising out of his employment. It is evident that these are two extreme types of cases, and in between there is a class of cases, of which *Thom or Simpson v. Sinclair* is an illustration. Instances may be multiplied. However, as in this case the place where Vinayak was working was a dangerous place by reason of the existence of a bomb, it seems to me that the test laid down in *Thom or Simpson v. Sinclair* has been satisfied in the present case.

For the above reasons, I think the view taken by the learned Commissioner is correct. The appeal, therefore, fails, and the same will be dismissed. As the respondent has not appeared at hearing of the appeal, there will be no orders as to costs.

Appeal dismissed.

K. B. S.

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Before Mr. Justice Bhagwati and Mr. Justice Chainani.

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 LAKHU MOTIRAM SHET AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v. RADHABAI MULCHAND RAMNARAYAN MARWADI (ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), O. XXI, rr. 90, 92 (3); s. 47 (1)—Bar to suit—Plaintiffs purchasing mortgaged property and some other property—Suit on mortgage against mortgagor and plaintiffs—Decree ordering sale of mortgaged property—Plaintiffs' property not covered by mortgage sold in Court-sale—Mortgagor or plaintiffs not objecting to sale—Suit by plaintiffs against auction-purchaser for recovery of property not covered by mortgage—Whether Court-sale a nullity—Words, "All questions arising" used in s. 47, meaning of—Suit whether barred under O. XXI, r. 92 (3)—If Court-sale a nullity, whether suit barred under s. 47 (1).

The plaintiffs purchased certain lands some of which were previously mortgaged to another person. The mortgagee filed a suit against the

* Second Appeal No. 1228 of 1948.