any point of law involved in this case which is raised by the parties and is still left undecided and will decide that point itself and so far as the question of fact regarding the landlord wanting possession of the lands for his *bona fide* personal cultivation or otherwise is concerned, the Revenue Tribunal will send back the case to the Assistant Collector for recording a finding thereon and thereafter for disposal according to law.

We make no order as to costs.

Order accordingly.

G. N. V.

APPELLATE CIVIL

Before Mr. Justice Dixit and Mr. Justice Vyas.

1955 Sept. 27

MRS. SANTAN FERNANDES (ORIGINAL APPLICANT) APPELLANT *v.* MESSRS. B. P. (INDIA) LTD. (ORIGINAL OPPOSITE PARTY), RESPONDENTS.*

Workmen's Compensation Act (VIII of 1923), s. 3—Workman dying of heat stroke while doing his duty when atmospheric temperature was high—Duties as a scullion requiring workman to move constantly from low atmospheric temperature to high temperature—Whether accident arose out of employment—Whether in case of accident by heat stroke exposure of workman to direct rays of the sun necessary to make employer liable for compensation—"Locality risk" arising to some extent out of natural force, effect of.

A workman who was employed as a scullion on a ship suffered from a heat-stroke and died on board the ship. The atmospheric temperature was high then but the deceased had been working under cover and the nature of his employment did not expose him directly to the rays of the Sun. In a claim for compensation under the Workmen's Compensation Act, 1923, the question was whether the accident which resulted in the death of the workman arose out of his employment,

Held, (1) that inasmuch as the nature of the workman's employment as a scullion required him to move constantly from the low temperature of a cold-storage room to the high atmospheric temperature, the accident arose out of his employment and was not due to the general weather conditions;

(ii) that the fact that the nature of the workman's employment did not expose him directly to the rays of the Sun was immaterial; and

(iii) that the risk which the workman had to encounter in the course of his employment, *viz.* the risk of exposure to a sudden variation in the temperature by reason of his having to move from a low temperature area to a high temperature area could be appropriately termed "a locality risk". The fact that the risk itself might to a certain extent have arisen from the operation of a natural force *viz.* the high atmospheric temperature on a particular day was immaterial.

*First Appeal No. 94 of 1955.

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Thom or Simpson v. *Sinclair*,[1] *Bhagubai* v. *The General Manager, Central Railway*,[2] and *The Trustees of the Port of Bombay* v. *Shrimati Yamunabai*,[3] relied upon.

Appeal from the decision of C. P. Fernandes, Commissioner for Workmen's Compensation at Bombay.

The facts are sufficiently set out in the Judgment.

B. K. Hirani for *A. G. Makhijani*, for the Appellant.

A. C. Beynon with *Little & Co.*, for the Respondents.

Vyas J.—This is an appeal by the original applicant, and it raises a point of law whether the accident which resulted in the death of the applicant's son who was a scullion on a ship arose in the course of, and out of, his employment with the opposite party. Can a legal inference be drawn from the nature of the deceased's employment that the said employment was a proximate cause of a heat stroke from which he suffered and on account of which he lost his life? If an employee works under cover if the nature of his employment does not expose him directly to the rays of the sun, if the atmospheric temperature is 101 but the nature of the employment as a scullion requires the employee to move suddenly from the low temperature of a cold storage room to the atmospheric temperature of 101 and even higher temperature of a kitchen and if, while doing that duty, he suffers from heat stroke and dies, is a legal inference permissible that the accident arose out of his employment and was not due to the general weather conditions to which not only the employee, but all others in the same place were subject? These are questions which we have to answer in this case.

The facts which have given rise to this appeal may now be stated. The application has been made to recover a sum of Rs. 3,500 from the opposite party Messrs. B. P. (India) Ltd. as compensation in respect of the death of the applicant's son Joaquim Fernandez. Joaquim Fernandez was in the employment of the opposite party as a scullion on the s. s. British Chemist. His duties were (1) to wash the dishes, utensils and crockery; (2) to convey food from the kitchen to the pantry and (3) to assist in serving morning tea to the officers in their cabins. While he was performing those duties on July 28, 1953, when the ship was near Bahrein, he suffered from a heat stroke and collapsed. He went into coma. His temperature rose to 110 degrees. He was removed to the ice room, artificial respiration was resorted to, but he died. The applicant's contention is that the mishap of the heat stroke which resulted in the death of her son occurred when the deceased was in the course of employment of the opposite party and it arose out of the said employment and that, therefore, the opposite party is liable

1. [1947] A. C. 127. 2. (1954) 56 Bom. L. R. 509.
3. (1951) 54 Bom. L. R. 421.

to pay compensation. In the written statement filed by the opposite party, the opposite party has denied that the accident arose out of and in the course of the employment of the deceased. According to the opposite party, the deceased died of a natural cause, viz., a heat stroke. The opposite party contends that the heat stroke was merely a consequence of the severity of the weather, that the deceased was not specially affected by the severity of the weather by reason of his employment and that his work did not in any manner contribute to his death. Accordingly, the opposite party submits that it is not liable to pay compensation to the applicant.

The learned Commissioner for Workmen's Compensation observed in the course of his order that no evidence was led on behalf of the applicant to show that the work of the deceased exposed him to special risk of heat stroke. The learned Commissioner said that the deceased scullion had to work under cover, that he was not exposed to the rays of the sun or the heat of the engine room or the heat of the kitchen and that the character of his employment "was not such as to create or intensify the risks that arise from extraordinary natural causes." The learned Commissioner came to the conclusion that the employment of the deceased did not expose him "to some peculiar or extraordinary danger" and therefore it could not be said that he died of an injury by accident. In his view, "the death of the deceased was not due to injury by accident arising out of and in the course of his employment." Accordingly, he dismissed the application. From that order, the applicant has appealed.

Mr. Beynon for the opposite party opposes the appeal and contends that the atmospheric temperature on that day was 101 degrees which could not be called a high temperature, that the duties of the deceased involved only occasional visits to the kitchen, that during those visits he did not have to stay long in the kitchen and that in these circumstances it could not be said that the deceased was exposed to any peril in the course of his employment, as a result of which he suffered from heat stroke and died. According to Mr. Beynon, the heat stroke from which the deceased suffered might have been the result of the general weather conditions to which everybody on the ship was subject alike.

Mr. Beynon forgets that, though the atmospheric temperature of 101 degrees may not normally be called a high temperature, it would still be a high temperature as contrasted with the temperature of the cold storage room or the ice room where the temperature would be very low. Mr. Beynon overlooks the fact that in the course of his employment and as a matter of his duty the decesed had to move from the atmospheric temperature of 101 degrees to the low temperature of the ice

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room and thence again to the temperature of the kitchen which must be even higher than 101 degrees and was accordingly subjected to the peril of sudden exposure to high temperature, notwithstanding the fact that he moved under cover and did not have to expose himself directly to the rays of the sun. In our opinion, Mr. Beynon has not sufficiently assessed the importance of the fact that, although the weather conditions were the same for everybody on the ship and although there was nothing to show that the deceased suffered from any physical peculiarity or disability or from any organic infirmity, he alone suffered from heat stroke, a circumstance *prima facie* suggestive of the probability that unless the deceased was exposed to some special peril arising out of his employment, he would not have suffered from a heat stroke.

On that day, there were 9 officers and 47 crew on the ship. Thus, 56 persons were having their meals on the ship and the food for them would normally consist of articles cold and hot. The cold things, such as meat, fish, eggs, butter etc., would be kept in the ice room and would be conveyed from that room to the kitchen or the pantry by a scullion. The deceased was the only scullion on the ship on that day (July 28, 1953). Mr. Brown, the Shipping Assistant who has given evidence in this case, has stated that a scullion has to go to the ice room "to take meat etc., from the ice room to the kitchen." The hot food would be in the kitchen and had to be taken from the kitchen to the pantry some 15 minutes before the meal time. This was also the work of the deceased. It is futile to suggest that while fetching the food from the kitchen to the pantry, the scullion would be in the kitchen for a few seconds only and that he would hop into and out of the kitchen, carrying the food with him. Such a suggestion is impossible and impracticable. We must understand the realities of the situation. After the scullion goes into the kitchen, the cook would naturally take some time to keep the various articles of food in plates and dishes and then only the scullion would collect the plates and dishes and carry them to the pantry. All this cannot be done in a few seconds by hopping in and out between the kitchen and the pantry. Looking to the number of people (they were 56) who were to have their meal and considering the quantity of food which would have to be conveyed from the ice room to the kitchen or the pantry and from the kitchen to the pantry, it is only reasonable to assume that more visits than one were necessary to be paid by the deceased to the ice room, the kitchen and the pantry for conveying the food to the pantry. In our opinion, as the deceased was the only scullion on the ship and as there were as many as 56 people for whom food had to be brought to the pantry, the deceased must have made several trips, forward and backward, between the ice rooms, the kitchen and the

pantry and was thus subjected to the risk of sudden exposure to great variations in temperature, including a variation from a very low temperature of the ice room to a high temperature of the kitchen. Even after the meal was finished, the food which was to be preserved for use at a subsequent meal had to be kept in the cold storage and for that purpose also the deceased must have repeated his trips between the kitchen, the pantry and the ice room, against exposing himself to the risk of suddenly moving into a high temperature area from a low temperature area.

In *Thom or Simpson* v. *Sinclair*,[4] Lord Shaw observed (p. 142):

"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 workman himself, as in the case of *Plumb* v. *Golden Floor Mills Co., Ltd.*[5] and *Barnes* v. *Nunnery Colliery Co. Ltd.*,[6] in this House, then a case for compensation under the statute appears to arise."

In the present case, it was an incident of the employment of the deceased and it was one of the obligations of that employment that, in the discharge of his duties as scullion, he had to keep on visiting the ice room, the kitchen and the pantry for taking the cold stuff from the cold storage to the kitchen or the pantry and the hot things from the kitchen to the pantry. At the conclusion of the meal, he had again to alternate his visits between the kitchen and the cold room for keeping in the cold storage the food which had been left over and had to be preserved for a subsequent meal. In our view, by reason of these obligations and conditions of his employment to which the deceased was subject in the course of discharging his duties, he was brought within the zone of a special danger, viz., exposure to sudden heat after having been in a low temperature area in the ice room. There is nothing to show that to the abovementioned peril, which the deceased had to encounter in the course of, and as arising out of, his employment, he had added any peril by his own conduct. That being so, in the light of the observations of Lord Shaw in the abovementioned case, this would be an eminently fit case where compensation should be paid to the applicant by the opposite party.

In *Bhagubai* v. *The General Manager, Central Railway*,[7] which was a case decided by a Division Bench of this Court consisting of the learned Chief Justice and my learned brother,

4. [1917] A. C. 127.
5. [1914] A. C. 62.
6. [1912] A. C. 44.
7. (1953) 56 Bom. L. R. 809.

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it was held that there must be a causal connection between the accident and the employment of the deceased in order that the Court could say that the accident arose out of the said employment. It was pointed out by the Court that, if the employee in the course of his employment had to be in a particular place and had to face a peril by reason of his being in that place and if the accident was caused by reason of that peril which he had to face, then a causal connection was established between the accident and the employment and the mere fact that the employee shared that peril with other members of the public was an irrelevant consideration. On the record before us, we are satisfied that the deceased scullion, by reason of his having to be on the move between the ice room, the kitchen and the pantry, had to face a peril, viz., an exposure to a sudden and great variation from low temperature to high temperature and accordingly a causal connection was established between the heat stroke from which he suffered and the incidents and obligations of the employment to which he was subject. Thus, this case is fully governed by the principles laid down by this Court in *Bhagubai* v. *The General Manager, Central Railway.*

In Halsbury's Laws of England, 2nd Edition, Volume 34, page 837, paragraph 1170, the learned author has said that where the injury is directly due to a locality risk, the fact that the risk itself arose from the operation of a natural force is immaterial and it is not necessary to prove special exposure to such risks. These observations of the learned author would aptly apply to the facts of the present case. The risk which the scullion had to encounter in the course of his employment, viz., the risk of exposure to a sudden variation in temperature from a low temperature to a high temperature by reason of his having to move from a low temperature area to a high temperature area, could be appropriately termed 'a locality risk' and the fact that the risk itself might to a certain extent have arisen from the operation of a natural force, viz., the atmospheric temperature of 101 degrees on that date, would be immaterial. It would also be unnecessary to prove special exposure to such risks.

In *The Trustees of the Port of Bombay* v. *Yamunabai,*[8] a decision to which my learned brother was a party, a workman who was employed as a carpenter in a workshop along with other workmen was killed as a result of injuries sustained 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. In a claim for compensation under the Workmen's Compensation Act, a question arose whether the personal injuries which were caused to the workman were caused by an accident

8. (1951) 54 Bom. L. R. 421.

arising out of his employment. It was held that the workman had received personal injuries as a result of an accident arising out of his employment. My learned brother, who delivered the judgment of the Court in that case, observed (p. 425):

"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."

In the abovementioned case, a bomb was not expected to have any connection with the ordinary course of the employee's employment. Some unknown person had placed it and the deceased employee was not responsible for it in any manner. He was working in the neighbourhood of that place when the bomb suddenly exploded. It was as a result of that explosion, which was entirely unforeseen, that the employee sustained injuries and died. If, even in those circumstances, the accident could be held to have arisen in the course of and out of the workman's employment, it is difficult to understand why in the present case, where the deceased scullion was working at the time and the place when and where he suffered from an accident of a heat stroke, it could not be said that the accident occurred in the course of, and arose out of, his employment.

The learned Commissioner seems to have relied considerably on the fact that the deceased was not exposed directly to the rays of the sun or to the heat of the kitchen. It is however to be remembered that in such cases a direct exposure to the rays of the sun is not necessary. Glaister in his Medical Jurisprudence and Toxicology, 9th Edition, at page 233, has observed:

"Morton has suggested that there is no hard and fast line between severe heat exhaustion and heat stroke.....these conditions will be described under one heading.....It is advisable to adopt only one term, heat hyperpyrelia. This condition is prone to develop in those who have to work in abnormally high temperatures, for example, stokers and engineers and, *contrary to past belief, neither is exposure to sunlight nor the presence of humidity in the atmosphere necessary.*"

According to the learned author, therefore, in order that a person may suffer from heat exhaustion or heat stroke, it is not necessary that he must have been subjected to an exposure to sun light. Modi also in his Medical Jurisprudence and Toxicology, 11th Edition, at page 181, while dealing with Heat exhaustion, heat hyperpyrexia (heat stroke or sun stroke) and heat cramps, has observed that exposure to the direct rays of the sun is not necessary and that an individual may be affected while working in a closed, hot, and badly ventilated room or factory. In this particular case, it is to be remembered that under the conditions under which the deceased scullion was

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working, he was exposed to the risk of subjecting himself to a high temperature, for the kitchen temperature was undoubtedly a high temperature as contrasted with the temperature of the ice room. Even the atmospheric temperature of 101 degrees would be a high temperature as compared to the low temperature of the cold storage room; and if a person has to move frequently between the ice room, the kitchen and the pantry, he would run the risk of an exposure to a high temperature. In this connection, it may be pertinent to turn once again to Glaister's Medical Jurisprudence and Toxicology where, on page 234, the learned author has referred to 109 cases having suffered from the effects of heat stroke. The learned author has pointed out that in none of those 109 cases was the history of excessive exposure to sun elicited. The point is that it is not necessary in a case of this kind to prove that the individual concerned was subjected to an excessive exposure to sun.

Mr. Beynon has contended that, since the ice treatment was resorted to for reducing the temperature of the deceased (his body was placed upon a slab of ice), the visits which the deceased had to pay to the ice room and thence to the kitchen and the pantry could not have contributed to a heat stroke. This is an extraordinary and patently unsound contention. If a person, who has suffered from a heat stroke by reason of an exposure to high temperature, is put upon a slab of ice for reducing his temperature, it could not be said that the heat stroke had not resulted from a high temperature.

In the result, we are unable to confirm the order passed by the learned Commissioner for Workmen's Compensation. This is a case in which the applicant has made out her contention that the accident, from which her son suffered, occurred in the course of his employment and arose out of his employment with the opposite party. So far as the quantum of compensation is concerned, there is no dispute about it. Accordingly, the appeal is allowed; the order passed by the Commissioner for Workmen's Compensation is reversed; and we direct that the opposite party Messrs. B. P. (India) Ltd., shall pay to the applicant a sum of Rs. 3,500 by way of compensation. The opposite party will bear its own costs as also the applicant's costs in both the Courts.

Appeal allowed.

K. B. S.