Uoi and anr. Vs. Ram Chander Decd. Thr. Lr Maina Devi

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Court : Delhi

Decided On : Feb-03-2014

Judge : Valmiki J. Mehta

Appellant : Uoi and anr.

Respondent : Ram Chander Decd. Thr. Lr Maina Devi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % UOI & ANR. FAO No.134/2009 Through:

3. d February, 2014 .....Appellants Mr. Abhishek Yadav, Adv. VERSUS RAM CHANDER DECD. THR. LR MAINA DEVI ..... Respondents Through: Ms. Pratima N. Chauhan, Adv. for R1. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. Yes VALMIKI J.

MEHTA, J (ORAL) 1. This first appeal has been filed by the Union of India under Section 30 of the Employees Compensation Act, 1923 impugning the order of the Commissioner dated 7.11.2008 by which compensation was granted on account of injuries to a casual workman Sh. Ram Chander who was working as a gangman with the Railways. I may note that Sh. Ram Chander has since expired and now he is being represented by his legal heirs.

2. The impugned orders in this case are dated 7.11.2008 and the subsequent order dated 19.1.2009 enforcing the impugned judgment dated 7.11.2008.

3. Before me, counsel for the appellant has argued two aspects. First is that in the present case, the accident in question happened on 1.5.1990 and the compensation claim petition was filed after a delay of more than 10 years, and therefore, such a delay could not be condoned by the Court more so for the reason that the employee had in the meanwhile approached the Central Administrative Tribunal and had secured employment with the Union of India to a lower post of a Khalasi. It is argued that the application for condonation of delay did not give any ground except the fact that applicant is a layman and does not know the law, and which ground is unsustainable in law. The second argument which is urged is that accident in question by which the workman Sh. Ram Chander received injuries happened on a public road when he was not on duty i.e the accident cannot be said to have happened arising out of and in a course of employment because the workman Ram Chander was on a public road on a private scooter while going back from duty.

4. Learned counsel for the legal heirs of the employee has argued that the Commissioner was justified in condoning the delay and also that the accident in this case should be taken to have happened arising out of and in the course of employment in view of the judgment of the Supreme Court in the case of Param Pal Singh Vs. National Insurance Co. & Anr. IV (2012) ACC848(SC).

5. The present case in my opinion is squarely covered by the judgment of the Supreme Court in the case of Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and others, AIR 1958 SC881wherein the Supreme Court held that if an employee is at a public place while travelling to and fro from duty, and at such time if an accident happens in that public place which is otherwise used by general public, the accident cannot be said to have arisen out of and in the course of employment. In the facts of Saurashtra Salt Manufacturing Co (supra), employees had to go to the salt works by using a boat for crossing the creek and then had to use a public path for reaching the place of work. Supreme Court has held that the accident did not arise out of and in the course of employment and consequently compensation would not be payable. Paras 7 and 8 of the said judgment are relevant and the same read as under:

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.

8. It is unnecessary for the purposes of this appeal to refer to the various decisions in England and in India explaining the aforesaid theory because even if on such a basis a workman may be regarded as being in the course of his employment at point B either while on his way to the salt works or returning from it, the question for our decision is whether he was still in the course of his employment when he was on his journey between points A and B of the map., Ext- 35. While the case was in the High Court attention of the learned judges was drawn to the failure of the Commissioner for Workmen's Compensation to examine witnesses to prove an alleged arrangement between the appellant and the Kharvas (ferry-walas) for the carrying of the workmen of the appellant by boat across the creek to enable them to be ferried to and from the salt works. The learned Judges of the High Court at first were inclined to order a remand for the recording of this evidence, but, having regard to the view which they took of the recent decisions of the House of Lords in England, they thought it unnecessary to have such evidence recorded. In their opinion, on the material as already on the record, it must be held that the accident arose out of and in the course of the employment of the deceased workmen. In this Court, as already stated, we considered it necessary to have evidence taken in this connection and findings recorded thereon. The findings, on the evidence so recorded, is quite clear that there was no arrangement between the appellant and the Kharvas to ferry to and from the salt works, across the creek, any workman of the appellant. According to the evidence, workmen of the salt works are charged

by the Kharvas when they cross the creek in their boats. The only concession made by them on their own account is not to make such a charge in the case of any person who is a Kharva - a fellow caste man. It is also clear from the evidence on the record, both before and after remand, that the boats ferried across the creek are used by the public, every one of whom has to pay the charge for being ferried across the creek with the exception of a person of the Kharva caste. To reach point A on the map a workman has to proceed in the town of Porbander via a public road. A workman then uses at point A a boat, which is also used by the public, for which he has to pay the boatman's dues, to go to point B. From point B to the salt works there is an open sandy area 450 to 500 feet long and 200 to 250 feet wide. This sandy area is also open to the public. From this sandy area there is a footpath going to the salt jetty, point C and a foot-track going to the salt works, point D. There is no question that the foot-track going to the salt works is a public way. The footpath from the sandy area to the salt jetty, point C, may or may not be used by the public. For the purpose of this case it may be assumed that a workman must necessarily use that footpath if he has to go to the salt jetty and from there to the various salt pans and salt reservoirs within the area of the salt works. 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 compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends upto point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their

employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable.

(underlining added) 6. This aforesaid judgment was referred to in the subsequent Constitution Bench judgment of the Supreme Court reported as General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes AIR 1964 SC193wherein Supreme Court held the employer liable because the employee was travelling in the transport which was specifically prescribed by the employer for coming to and fro from duty. It was therefore held that since there was a compulsion to use a specific transport, and which is given by the employer, if accident arises while using that transport, the accident arise out of and in the course of employment. The relevant paras 12,13 and 14 of the judgment are contained in the judgment delivered by Honble Mr. Justice Subba Rao, J who spoke for the majority. These read as under:

12. Under s. 3 (1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he uses the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. Though at the beginning the word 'duty" has been strictly construed, the later decisions have liberalized this concept. A theoretical option to take an alternative route may not detract from such a duty if' the accepted one is of proved necessity or of practical compulsion. But none of the decisions cited at the Bar deals with a transport service operating over a large area like Bombay. They are,

therefore, of little assistance, except in so far as they laid down the principles of general application. Indeed. some of the law Lords expressly excluded from the scope of their discussion cases where the exigencies of work compel an employee to traverse public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority.

13. At this stage to appreciate the scope of "duty" of a bus driver in its wider sense, the relevant Standing Rules of the B. E. S. T. Undertaking may be scrutinized. We are extracting only the rules made in regard to permanent bus drivers material to the present enquiry. Rule 31. (a) All applications for Bus..... Drivers' tests should be written and signed by the applicant himself xx x xxx (i) Bus Drivers: (1) The applicant shall be not less than 20 years of age and not more than 40 years of age. Birth Certificates be produced in doubtful cases. xx xx xx (1) After recruiting, the Undertaking's rules and regulations shall be explained to those men by the Recruiting Clerk. xx FAO1342009 xx xx Page 7 of 13 Rule 5. All permanent members of the Traffic Outdoor Staff will be supplied with uniforms as per the chart attached. xx Rule 3. xx xx Calling time must be marked in ink by the Starters on the time cards once a week in the case of permanent men, and daily in the case of extra men. Rule 9. (a) Duty Hours :

8. hours per day for..... Bus Drivers..... Rule 10. Duties Permanent : (a) Men who arrive in time and who work the duty, they are booked for, will be marked for 1 day's pay. If, however, the hours of work exceed the duty hours as laid down in Rule 9 (a), the excess hours will be entered as overtime, payable as shown in Rule 25. (b) Men who do not arrive at their call or miss their cars will drop to the bottom of Extra List for the day and are not to be given work unless there is work actually available for them in which case they will be marked as having come late and will only be paid for the number of hours worked. However, men given no work are to be marked "Late-No-Work", and will receive no pay for the day. (c) Any man who misses his car more than three times in a month whether he gets work or not, will be reverted to Extra List. Rule 1. (e) All..... drivers (Buses..... who are late on duty by more than one hour will be marked "'ABSENT". Rule 12. (a) All exchange of duties requests to be addressed to Traffic Assistant's in- charge of Depots for their sanction. Rule 19. (a) Four members of the Traffic Outdoor Staff in

uniform are permitted to travel standing on a double deck bus irrespective of their designation, two on the lower deck and two on the upper deck, On a single deck bus two members are only permitted. (b) Traffic Staff in uniform shall not occupy seats even on payment of fares. Rule 39. (a) Men can be transferred from one Depot to another only under the orders of a Senior Traffic Officer. This will only be considered if the succeeding depot is short of staff. The gist of the aforesaid rules may be stated thus: A bus driver is recruited to the service of the B.E.S.T Undertaking. Before appointment the rules and regulations of the Undertaking are explained to him and he enters into an agreement with the Undertaking on the basis of those terms. He is allotted to one depot, but he may be transferred to another depot. The working hours are fixed at 8 hours a day and he is under a duty to appear punctually at the depot at the calling time. If he is late by more than one hour he will be marked absent. If he does not appear at the calling time or "misses his car", he will not be given any work for the day unless there is actually work available for him. If he "misses his car" more than three times in a month, he will be reverted to the extra list, i.e., the list of employees other than permanent. He is given a uniform. He is permitted to travel free of charge in a bus in the said uniform. So long as he is in the uniform be can only travel in the bus standing and he cannot occupy a seat even on payment of the prescribed fare, indicating thereby that he is travelling in that bus only in his capacity as bus driver of the Undertaking. He can also be transferred to different depots. It is manifest from the aforesaid rules that the timings are of paramount importance in the day's work of a bus driver. If he misses his car he will be punished. If he is late by more than one hour he will be marked absent for the day; and if he is absent for 3 days in a month, be will be taken out of the permanent list. Presumably to enable him to keep up punctuality and to discharge his onerous obligations, he is given the facility in his capacity as a driver to travel in any bus belonging to the Undertakings. Therefore, the right to travel in the bus in order to discharge his duties punctually and efficiently is a condition of his service.

14. Bombay is a City of distances. The transport service, practically covers the entire area of Greater Bombay. Without the said right, it would be very difficult for a driver to sign on and sign off at the depots at the scheduled timings, for he has to traverse a long distance. But for this right, not only punctuality and timings

cannot be maintained, but his efficiency will also suffer. D.W.I. a Traffic Inspector of B.E.S.T. Undertaking, says that instructions are given to all the drivers and conductors that they can travel in other buses. This supports the practice of the drivers using the buses for their travel from home to the depot and vice versa. Having regard to the class of employees, it would be futile to suggest that they could as well go by local suburban trains or by walking. The former, they could not afford, and the latter, having regard to the long distances involved, would not be practicable. As the free transport is provided in the interest of service, having regard to the long distance a driver has to traverse to go to the depot from his house and vice versa, the user of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty. He is not exercising the right as a member of the public, but only as one belonging to a service. The entire Greater Bombay is the field or area of the service and every bus is an integrated part of the service. The decisions relating to accidents occurring to an employee in a factory or in premises belonging to the employer providing ingress or egress to the factory are not of much relevance to a case where an employee has to operate over a larger area in a bus which is in itself an integrated part of a fleet of buses operating in the entire area. Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshops, factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adapted to meet its peculiar requirements. While in a case of a factory, the premises of the employer which gives ingress or egress to the factory is a limited one, in the case of a city transport service, by analogy, the entire fleet of buses forming the service would be the "Premises". An illustration may make our point clear. Suppose, in view of the long distances to be covered by the employees, the Corporation, as a condition of service, provides a bus for collecting all the drivers from their houses so that they may reach their depots in time and to take them back after the day's work so that after the heavy work till about 7 p.m. they may reach their homes without further strain on their health. Can it be said that the said facility is not one given in the course of employment ?. It can even be said that it is the duty of the employees in the interest of the service to utilize the said bus both for coming to the depot and going back to their homes. If that be so, what difference would it make if the employer,

instead of providing a separate bus, throws open his entire fleet of buses for giving the employees the said facility ?. They are given that facility not as members of the public but as employees; not as a grace but as of right because efficiency of the service demands it. We would, therefore, hold that when a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment.

(emphasis added) 7. In the present case, it is not disputed that the accident took place in a public place i.e on a public road not at the premises of the employer/Union of India/appellant and while using a private means of transportation. Also, it may be noted that the appellant had sought to conceal the fact that he was not injured at his working place, but he was injured while returning from duty and which aspect is noted in para 4 of the judgment of the Central Administrative Tribunal which makes reference to the application given by the workman admitting that he had been injured while going back from work, however, the Central Administrative Tribunal gave relief of employment to the workman on account of the Railway Boards order dated 11.4.1980.

8. In my opinion, therefore, it is clear that accident which caused injuries to the employee Sh. Ram Chander cannot be said to have happened arising out of and in the course of employment to make the appellant-Union of India liable.

9. The judgment of the Supreme Court in the case of Param Pal Singh (supra) which is relied upon by the legal heirs of the employee will have no application because that judgment was dealing with the issue of accident arising out of and in the course of employment on account of truck driver suffering from a heart attack, and it was held that heart attack was because of the reason of his constant driving of the vehicle and it was the avocation which therefore caused his death making the death arising out of and in the course of employment. I may note that what the Supreme Court has observed in the case of Param Pal Singh (supra) is provided in so many words under sub-Sections 2 to 5 of Section 3 of the Act, which provides that where disease etc which causes death or injury occasioned is on account of and relatable directly to the employment then the necessary connection is established for the accident or injury to be arising out of and in the course of

employment for the employer to be liable.

10. In my opinion, Commissioner has also erred in condoning the huge delay of over 10 years and 6 months in this case because in my opinion the bland assertion of the employee that he was a layman cannot be accepted inasmuch as employee had in fact filed a litigation before the Central Administrative Tribunal in which he succeeded. It is also settled law that ignorantia juris non excusat. Also, it may be noted that limitation period for approaching the Commissioner under the Act for grant of compensation is two years, and therefore, such huge delay of more than 8 years and 6 months could not have been condoned as per the facts which were stated in the application, inasmuch as on expiry of the period of limitation (and period in and around that period), vested rights arise in favour of the employer which cannot be washed away more so in a case such as the present.

11. In view of the above, the appeal is allowed. Impugned orders of the Commissioner dated 7.11.2008 and 19.1.2009 are set aside. Appellant is held not liable to pay compensation to Ram Chander and now to his legal heirs. Parties are left to bear their own costs. FEBRUARY03 2014 ib FAO1342009