

Savlaram Vithoba Vs. Salubai Vithoba

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Court : Mumbai

Decided On : Aug-03-1937

Reported in : AIR1938Bom171; (1938)40BOMLR106

Judge : John Beaumont, Kt., C.J. and ;Sen, J.

Appeal No. : Appeal No. 296 of 1935

Appellant : Savlaram Vithoba

Respondent : Salubai Vithoba

Disposition : Appeal dismissed

Judgement :

John Beaumont, Kt., C.J.

1. This is an appeal from a finding of the Commissioner for Workmen's Compensation, Bombay. The workman in question was killed in an accident on May 27, 1935, so that the addition to Schedule II to the Workmen's Compensation Act which was notified in Government Notification No. L-3002 dated March 27, 1937, was long after the date of the accident. It is clear, therefore, that in considering whether the workman falls within the terms of the Act we must ignore that Notification, and take the Act and the Schedule as they were on May 27, 1935. The facts seem not to have been in dispute, and according to the finding of the Commissioner the workman was employed by the present appellant in the

cotton godowns leased by Messrs. Toyo Menka Kaisha,Ltd., at Sewri. The practice is for purchasers of cotton bales to go down to the godown in order to take delivery of the bales. As I understand it, the purchaser is given a delivery order in respect of the number of unascertained bales which he has purchased. Then he goes down to the godown and takes samples-the Commissioner finds, generally four percent, from the bales which he has purchased, so that if a purchaser has purchased one hundred bales of cotton, he goes down to the godown with a delivery order for one hundred bales; then he is shown bales which are available to satisfy his contract, and takes samples of four bales, and if he is satisfied, he takes delivery of one hundred bales, and the sale is complete. Now in order to take samples the bales have to be taken down from the racks where they are stacked, and then they are opened, the sample extracted, and the bale is then fastened up again. Exactly how the accident happened in this case does not appear from the judgment, but the learned Commissioner says that there is no evidence that the workman unfastened or fastened up the bales or did anything more than help to unstack them or remove them from the godown. I understand that he fell off the place where the bales were stacked, but as I have said, there is no definite finding as to how the accident happened, except that it was in connection with removing the bales for the purpose of completing the sale. That seems to be common ground. Now the learned Commissioner has held that the workman falls under the Second Schedule, Clause (in), which includes as workmen persons ' employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty or more persons have been so employed.' It is not disputed in this case that these godowns fall within that description, and the only question is whether the workman was employed in the manner indicated in that clause. It seems to me that the purpose of making, altering, repairing, ornamenting and finishing articles for use, transport or sale denotes some work actually upon the article, and I think that the words ' or otherwise adapting ' can in the context in which they appear only cover some physical act performed upon the article or part of the article required for the purpose of adapting it for use, transport or sale. I think the whole clause denotes

work done physically upon the article. It is, I think, very difficult to define what would be included in such an expression as 'adapting for transport.' But if one limits the expression to adapting by some physical work or some physical alteration of the article, one excludes merely preparation for transport. That, I think, must be regarded as the meaning of the Act. I do not think the Act can have intended to include employees in a store who merely wrap up articles in paper to enable the purchaser to take them away. I do not think it would be correct to say that those persons are adapting the articles for transport. But how far physical work must be done is not easy to define. I think the learned Commissioner is right in saying that the whole process of taking down the bale from the stack in the godown, its opening and examination and its closing up and removal constitutes a process which may be called adapting it for transport or adapting it for sale. I think that if the whole process of work on which or part of which the workman is employed comes within the description of 'adapting goods for transport or sale,' the workman falls within the schedule, although it may not be shown that he himself actually took part in that portion of the process which involves any physical work on or alteration of the article in question. I confess that I do not think it easy to construe these words in the Act, and I have felt considerable doubts as to whether the workman can properly be brought within the schedule. But, on the whole, I am not prepared to differ from the view taken by the learned Commissioner. I think, therefore, that the appeal must be dismissed with costs in favour of respondent No. 1.