

Varkeyachan Vs. Thomman

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Court : Kerala

Decided On : Sep-08-1978

Reported in : (1979)ILLJ373Ker

Judge : Narayana Pillai and; George Vadakkal, JJ.

Appellant : Varkeyachan

Respondent : Thomman

Judgement :

George Vadakkal J.

1. The 1st respondent's son Varkey was a workman under the appellant. On May 3, 1971 he died of stab injuries he received at the gate of the appellant's saw-mill where he was employed to do odd jobs. That day there was some labour unrest in the mill. Some of Varkey's workfellows refusing to work had assembled at the gate from the morning. They were shouting slogans and the situation was tense. Varkey was sent out to a nearby tea shop in the first instance to fetch two glasses of tea for Anto and Vakkachan, the son and the nephew of the appellant, who were inside the mill and a second time to return the tea glasses. While he was coming back from the tea shop after returning the glasses Anto was on his way towards the road on a motor cycle. The motor cycle dashed against one of the workmen assembled at the gate, one Pappan. He fell down, Varkey was at the gate, when Pappan fell down and was helping Pappan to rise up when

Vakkachan's stab fell on Varkey. Vakkachan had by this time come to the gate whereupon a scuffle ensued between him on the one side and the striking workmen on the other.

2. It is contended that the injury being an intentional injury the same cannot be said to have been caused by an accident. It is by now well-settled that the term 'accident' for the purpose of the law relating to compensation for personal injuries sustained by workmen and the employer's liability in that behalf, includes any injury which is not designed by the workman himself, and it is of no consequence that the injury was designed and intended by the person inflicting the same. In *Nisbet v. Rayne and Burn* [1910] 2 K.B. 689, where a cashier travelling in a train with a large sum of money intended for payment to his employer's workmen was robbed and murdered, the Court of Appeal held the murder was an accident from the point of cashier and, therefore, it was an accident within the meaning of that term in the Workmen's Compensation Act, 1906. Similarly in *Trim Joint District School Board of Management v. Kelly* [1914] A.C. 667, where an assistant master at an industrial school was assaulted and killed by two of the pupils while the assistant master was performing his duties, the House of Lords held that his death was caused by an accident for the purpose of the same statute, Viscount Haldane, L.C. pointed out that the meaning of the term 'accident' would vary according as the context varies, and as instances mentioned criminal jurisprudence where crime and accident are sharply divided by the presence or absence of mens rea and the law of marine insurance where the maxim: *In jure non remota causa sed proximo spectatur* (In law the proximate, and not the remote, cause is to be regarded) applies. The learned Lord Chancellor said:

My Lords, if we had to consider the principle of the Workmen's Compensation Act as *res integra*, I should be of opinion that the principle was one more akin to insurance at the expense of the employer of the workman against accidents arising out and in the course of his employment than to the imposition on the employer of liability for anything for which he might reasonably be made answerable on the ground that he ought to have foreseen and prevented it. I think that the fundamental conception is that of insurance in the true sense. And if so it appears to me to follow that in giving a meaning to 'accident' in its context in such

a scheme one would look naturally to the proxima causa, of which Lord Herschell and Lord Barnwell spoke in connection with marine insurance, the kind of event which is unlooked for and sudden, and causes personal injury, and is limited only by this, that it must arise out of and in the course of the employment. Behind this event it appears to us that the purpose of the statute renders it irrelevant to search for explanations or remoter causes, provided the circumstances bring it within the definition. No doubt the analogy of the insurance cases must not, as Lord Lindley points out in his judgment in *Fenton v. Thorley* (1)1903 A.C. 443, be applied so as to exclude from the cause of injury the accident that really caused it, merely because an intermediate condition of the injury--in that case a rupture arising from an effort voluntarily made to move defective machine--has intervened. If, so far as the workman is concerned, unexpected misfortune happens and injury is caused which the statute seems to me to impose in the interest of the employer, who cannot escape from being a statutory insurer, is that the risk should have arisen out of and in the course of the employment.

3. The findings of facts entered leave no room for doubt that Varkey sustained the stab injury while he was returning to the mill from the tea shop after executing his second errand of giving back the glasses at the tea shop. The accident arose in the course of Varkey's employment.

4. The further question is whether the accident arose out of his employment. The Supreme Court in *M. Mackenze v. I.M. Issak* : (1970)ILLJ16SC approvingly referred to the test laid down by Lord Sumner in *Lancashire and Yorkshire v. Highley* [1917] A.C. 352, as the proper test for determining the question whether an accident arose out of the employment. That test is as follows:

There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. 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. To ask if the cause of this was within the sphere of the

employment or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was acting, or should have been in the position in which he was, whereby in the course of that employment he sustained injury.

5. Apply the above test. The querulous workmen were at the gate from the morning. It was hazardous for anyone to be there where a tense situation prevailed. Yet his employment obliged Varkey to pass and repass that area. The accident arose out of his employment.

6. It is argued that Varkey exposed himself to an added peril by an imprudent act, namely, by helping Pappan to rise up from the ground. Varkey was at the place of occurrence properly in the course of his employment. To help a person to get up from the ground where he had fallen cannot be said to be an Unreasonable act on the part of the person so rendering help. That is, perhaps, what is expected of any fellowmen in the ordinary course of affairs; and it is not possible to dichotomise one's behaviour into workman's behaviour and fellow-man's behaviour in such situations. There is nothing to suggest that Varkey participated in the melee. On the other hand the facts found by the Commissioner and narrated in the beginning of this judgment indicate that he was a loyal workman who was working on the fateful day. There is no merit in the argument that he did an imprudent act nor is there any material on which it could be found that he added to his peril by helping Pappan to get up.

7. Dismissed. In the circumstances of the case there will be no order as to costs.

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