CIVIL APPELLATE

Before Kapur, J.

THE INDIAN NEWS CHRONICLE, LTD.,—*Appellant,*

versus

MRS. LUIS LAZARUS,—*Respondent.*

1951

April 25th

First Appeal from Order No. 65 of 1950

Workmen's Compensation Act (VIII of 1923), Section 3—Expression "Personal injury is caused to a workman by accident arising out of and in the course of employment"—meaning of.

Held, that personal injury does not mean merely physical injury but includes strain which caused chill, etc., resulting in incapacity or death, and further that the accident must have some relation to the workman's employment and must be due to a risk incidental to that employment as distinguished from a risk to which all members of the public were alike exposed, before the injury resulting from it can be said to be "arising out of and in the course of employment."

First Appeal from the order of Shri S. S. Dulat, District Judge and Commissioner, Workmen's Compensation Act, Delhi, dated the 27th May 1950, granting the petitioner Rs 3,500 as compensation with proportionate costs.

I. D. DUA and RAM NARAIN, for Appellant.

H. L. SARIN and C. L. JOSEPH, for Respondent.

JUDGMENT

KAPUR, J. This is a defendant's appeal against an order passed under the Workmen's Compensation Act by District Judge, Delhi, acting as Commissioner, Delhi, and awarding Rs 3,500 as compensation with proportionate costs in favour of the applicant, Mrs Luis Lazarus. Kapur J

Lazarus was employed as an electrician in the press of the Indian News Chronicle, and in the course of his duties he had frequently to go into a heating

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room and from there to a cooling plant where the temperature was kept considerably low. On the 21st of June 1948, at about 11 p.m. he went into the cooling room and on the same night at 2 a.m. (the 22nd of June 1948) he suddenly felt ill and was sent home. It was there noticed by his wife that he was very cold. At about 3.30 a.m. a doctor was called who diagnosed the disease to be pneumonia. He died on the 27th of June, 1948. On the 8th of April 1949, an application for compensation under section 3 of the Workmen's Compensation Act was filed in the Court of the Commissioner (District Judge, Delhi) where Rs. 4,000 was claimed.

The point for decision in this appeal is whether the facts disclosed in this case are covered by section 3 of the Workmen's Compensation Act, hereinafter called the Act. Section 3 of the Act is as follows :—

"3. Employer's liability for compensation.

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

Provided that the employer shall not be so liable—

(*a*) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding seven days ;

(*b*) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

Two contentions were raised. Firstly, that no personal injury was caused to the workman, and, secondly, it was not caused by an accident arising out of and in the course of his employment. I am asked to hold that there was no personal injury caused to the workman. The argument was that the word "injury" is used in the sense of some damage or hurt to the employee and it must mean damage or harm to the physical structure of the body and such disease or infection as naturally results therefrom. In other words, actual physical hurt to the body of the employee must appear in order to make an injury compensable. I am unable to agree with this submission. Reference was made to *Shazengers Australia Pty. Limited* v. *Ivv Phyllis Eileen Burnatt* (1), where Lord Simonds at p. 955 made the following observations :—

> "But this at least is clear that in the Act the word 'injury' (unless the context or subject-matter otherwise indicates or requires) must bear a very artificial meaning in that it is to include a disease which satisfies certain conditions and must, therefore, according to ordinary rules of construction exclude any other disease."

But that was an appeal from the New South Wales, and the injury had been described in section 6 (1) of the New South Wales Workers Compensation Act. In the Indian Act there is no definition given of the word "injury".

(1) 54 C. W. N. 952 (P. C.)

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In America it has been held that heat exhaustion may constitute the type of bodily injury that is contemplated by the word "injury". Death from sun stroke has been held to be compensable as a violent injury produced by an external power which is not natural; see 71 C. J, paragraph 332, page 579. In the present case Dr Jaswant Singh who was attending the deceased deposed, "On going into the history I found that he was working in the News Chronicle at the cooling and heating plant and I concluded that his sudden exposure was some time the exciting cause of pneumonia." No doubt, in cross-examination he did say that pneumonia was probably due to some other cause also, that is, other than what I have mentioned. But no evidence has been produced on behalf of the defendant to show that it was an idiopathic disease. There are a large number of American cases on this point. In 71 C. J., paragraph 335, p. 585, it has been said that if the facts show a casual connection between the injury and the development of the disease, the victim of the disease is entitled to compensation.

Here the words that have to be interpreted are "personal injury caused by accident." "Accident" has been defined in *Board of Management of Trim Joint District School* v. *Kelly* (1), "as unexpected misfortune" and Lord Macnaughten in *Fenton* v. *Thorley* (2), has interpretted this as "denoting an unlooked for mishap or an untoward event which is not expected or designed".

I for one cannot see why injury caused by accident should be confined to physical injury. In my opinion, this phrase includes a strain which causes exposure to draught or causes a chill. In a small book, Industrial Injuries by Samuels and Pollard, it is said at p. 13 :—

> "'Accident' has its ordinary meaning of an unexpected mishap. It includes not only

(1) 1914 A. C. 667 at p. 675.
(2) 1903 A. C. 443

such occurrences as collisions, tripping over floor obstacles, falls of roof, but also less obvious ones causing injury, e.g., a strain which causes rupture, exposure to draught causing a chill, exertion in a stokehold causing apoplexy, shock causing neurasthenia. The common factor in all these cases is that there is some concrete happening at a definite point of time and incapacity results from this happening. Therefore each is an 'accident.' Whether the strain, fall or other occurrence is light or serious is irrelevant. The previous health of the employed person or his health at the time of the occurrence is likewise irrelevant."

Mr Joseph relied on a judgment of the House of *Lords, Coyle* v. *John Watson, Limited* (1). There Lord Atkinson quoted with approval the observations of Lord Halsbury, Lord Macnaughten and Lord Lindley in Brintons v. Turvey, ~~1905~~ A. C. 230, at pp. 233, 234 and 238 : —

1915

Lord Halsbury said :—

"When some affection of our physical frame is in any way induced by an accident, we must be on our guard that we are not misled by medical phrases to alter the proper application of the phrase 'accident causing injury', because the injury inflicted by accident sets up a condition of things which medical men describe as disease.....It does not appear to me that by calling the consequences of an accidental injury a disease one alters the nature or the consequential result of the injury that has been inflicted."

(1) 1915 A. C. 1.

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Lord Macnaughten said :—

> "Speaking for myself, I cannot doubt that the man's death was attributable to personal injury by accident arising out of, and in the course of, his employment. The accidental character of the injury is not, I think, removed or displaced by the fact that, like many other accidental injuries, it set up a well known disease, which was immediately the cause of death, and would no doubt be certified as such in the usual death certificate."

Lord Lindley observed :—

> "In this case your Lordships have to deal with death resulting from disease caused by an injury which I am myself unable to describe more accurately than by calling it purely accidental."

In this case (1915 Appeal Cases) a workman, who had been exposed for a period of an hour and half to a current of cold air due to being checked at a mid-landing for a prolonged period, got pneumonia and died from this disease. This was said, in that case, to be an injury by accident.

Relying on these cases I am of opinion that injury does not mean merely physical injury but may include a strain which causes a chill, and in this particular case, as was stated by the doctor, the injury was due to his working in the heating and cooling plants and was not idiopathic in its nature.

It was then submitted that the injury was not caused by accident arising out of and in the course of his employment. That the injury did arise out of and in the course of his employment, is clear from what I have said above. The evidence of the doctor is that the cause of this pneumonia was his working in the

cooling and heating plants. It cannot be said, therefore, that it did not arise out of and in the course of his employment.

In *Coyle* v. *John Watson,* Limited (1), also pneumonia came on as a result of exposure, and it was held that that was during the course of employment. In *McCullum* v. *Northumbrain Shipping Company, Limited* (2), Lord MacMillan said :—

> "That few words in the English language had been subjected to more microscopic judicial analysis than these, and in the effort to expound them many criteria had been proposed and many paraphrases suggested. But it was manifestly impossible to exhaust their content by definition, for the circumstances and incidents of employment were of almost infinite variety. This at least, however, could be said that the accident, in order to give rise to a claim for compensation, must have some relation to the workman's employment and must be due to a risk incidental to that employment as distinguished from a risk to which all members of the public were alike exposed."

This observation was quoted with approval by Leach, C.J., in *Ramabrahaman* v. *The Traffic Manager, Vizagapatam Port* (3), and in my opinion this is the best way that one could define the words "out of and in the course of his employment."

I hold, therefore, that the injury was caused out of and in the course of employment. On these findings the petitioner was rightly awarded compensation, and, in my opinion, the learned District Judge came to a correct conclusion on this part of the case.

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(1) 1915 A. C. 1.
(2) (1932) 147 L. T. 361
(3) I. L. R. (1944) Mad. 29 at p. 31

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The next question is one of quantum of compensation. On this point the learned District Judge has worked out Rs. 3,500 because the deceased, Lazarus, was drawing Rs. 150 a month, and in accordance with the IV Schedule of the Workmen's Compensation Act this is the amount of compensation which his heirs are entitled to.

I, therefore, dismiss this appeal. The appellant will pay the costs of the respondent in this Court and in the Court below.