(1954) 05 CAL CK 0019

Calcutta High Court

Case No: Appeal from Original Order No. 119 of 1953

Managing Agents, Messrs. Ukhra Farming Corporation Ltd.		APPELLANT
	Vs	
Satubala Bagdini		RESPONDENT

Date of Decision: May 29, 1954

Acts Referred:

- Factories Act, 1948 - Section 2(1)(n)

Citation: 58 CWN 751

Hon'ble Judges: Chakravartti, C.J; Guha, J

Bench: Division Bench

Advocate: Priti Bhusan Burman, Ranjit Kumar Ghose and Manan Kumar Ghose, for the Appellant;Mukundu Behari Mallik, Mahendra Kumar Ghose and Rabindra Nath Mitra, for the Respondent

Final Decision: Allowed

Judgement

Chakravartti, C.J.

This, appeal must be allowed on a point which does not appear to have been fully appreciated or properly canvassed before the learned Commissioner. The appeal arises out of an application by one Satu Bala Bagdini, who claimed compensation to the amount of Rs. 1,000 from the appellant company on the ground that her son, Khandu Bagdi, who had been a workman employed under the appellant, had been bitten by a venomous snake while so employed and had died as a result of the bite. The employment of the deceased was said to be the cutting of sabai grass for the purposes of a business carried on by the appellant company. The defence, which unfortunately appears to have been disfigured by many false pleas was, so far as the really material points are concerned, that the deceased had not been employed under the appellant at all, but was employed under a contractor; secondly, that his employment was of a casual nature, and, thirdly, that he could not be said to have been a workman within the definition in the Act.

2. At the trial, a further point appears to have been raised which was that the business of the appellant company was agriculture and, consequently, nobody who had been employed as a worker in that business could claim to be a workman, as contemplated by the Act.

3. The Commissioner found that the deceased had been employed under the appellant and also that his employment was not of a casual nature. As regards the defence that the operations of the appellant company were of an agricultural character the Commissioner found that no such plea had been taken in the written statement and therefore, strictly speaking, it was not open to the appellant to take that plea. He, however, added that the undertaking of the appellant company was not limited to agriculture, but comprised manufacturing processes as well. The Commissioner found further that the field where the deceased had suffered the bite was one which was densely grown with sabai grass and a favourite abode of snakes. He, therefore, concluded that inasmuch as the employment of the deceased was to cut grass from the sabai field and inasmuch as the sabai field became thickly grassy during reaping time and also a favourite haunt of snakes, the employment of the deceased was such as exposed him to the special risk of snake-bites, and consequently the bite which he received was an accident arising out of and in the course of his employment. On those various findings, the Commissioner decreed the claim for Rs. 900. The employer thereafter appealed.

4. An interesting discussion took place before us as to whether a fatal injury by snake-bite, caused to a grass-cutter, could at all be an accident arising out of and in the course of his employment. If this point had to be decided, the matter would have to be examined carefully and the true nature of the causation, which makes an accident occurring to a workman an accident arising "out of" his employment, would have to be investigated and ascertained. It appears, however, that the decision of the point is not called for in the present case, inasmuch as the appellant must succeed and the respondent must fail for a very simple reason. I agree with the Commissioner that the appellant could not be allowed to raise the plea that the operations in which it was engaged were agricultural operations and therefore workers employed in them could not be workmen within the meaning of the Act. Such a plea obviously raises issues of fact, which the appellant could not be allowed to raise for the first time in appeal. I also agree with the Commissioner that the employment of the deceased was not of a casual nature. Even so, however, it appears to me that on the case made by the applicant herself and taking the description given by her of her son''s occupation as entirely correct, it must still be held that he was not a workman within the meaning of the Act. In order to show that such is the position, it is only necessary to refer to the material part of the definition of "workman" which occurs in section 2(1) (n) of the Act. Under that definition, '"'workman" means "any person * * * * who is * * * (ii) employed on monthly wages not exceeding four hundred rupees, in any such capacity as is specified in Schedule II" It is to be noticed that the language of the definition is not

that the term "workman" includes certain classes of persons, but that it means them. In other words, the definition is exhaustive. If so, in order that a person may-claim to be a workman within the meaning of the Act, he must, if he is not a railway servant and, therefore, does not come under clause (i) of the definition section, prove that he comes under one or other of the clauses set out in Schedule II. On a reference to that Schedule, it appears to be plain that the deceased cannot be brought under any one of its clauses. Reference was made to clause (xviii), but that clause is specifically and expressly limited to persons employed on any estate which is maintained for the purpose of growing cinchona, coffee, rubber or tea. An estate maintained for the purpose of growing any other crop is not included in the clause. The only other clause to which reference was made was clause (ii), but the language of that clause is so plain that, to my mind, it excludes itself. The clause has reference to premises wherein, or within the precincts whereof, a certain number of persons had been employed in any manufacturing process, as defined in the Factories Act of 1934, or in any kind of work whatsoever incidental to or connected with any such manufacturing process and where power is used. Mr. Mallik referred to the finding of the Commissioner that the undertaking of the appellant comprised manufacturing activities as well and it was on the basis of that finding that he claimed the deceased to be a workman under clause (ii) of Schedule II. It is however, clear that what clause (ii) contemplates are persons employed in the premises where the manufacturing process is carried on. It does not cover persons who may be connected with a concern which carries on a manufacturing process, but who, so far as they themselves are concerned, are employed in outdoor work. The governing provision in the clause is that the persons contemplated by it must be employed in premises of a certain kind and the clause then proceeds to say what the premises must be like. The premises must satisfy two conditions, one of which is that on any one day during the preceding twelve months, ten or more persons must have been employed there in a manufacturing process or in any kind of work connected with such process or with the article made and the other of which is that steam, water or electrical power must be used in the premises. Persons working within such premises, though not employed in the manufacturing process proper, are within the definition, but persons working outside are not, though they may be serving the concern. If the deceased had been employed at a place where the sabai grass was stacked or made into bundles or processed or otherwise made ready for sale, and if those operations could be described as a manufacturing process and if, further, the statutory number of workmen had been employed at the place on any one day during the preceding twelve months and power of one of the specified kinds was used, it might have been said that the deceased was a workman. But on the statement of the applicant herself, her son had been employed only as a grass-cutter and his work lay in the fields. There is again nothing to show what the number of persons employed in the concern was or that steam, water or electrical power was used. I am, therefore, of opinion that clause (ii) also cannot be said to cover the case of the deceased.

5. There is no other clause which can be said to be even remotely capable of covering the case of the deceased. It must, therefore, be held, however unfortunate the conclusion may be, that the deceased was not a workman within the meaning of the Act and, therefore, his dependent mother was not entitled to maintain an application for compensation.

6. The appeal is accordingly allowed. The judgment and order passed by the Commissioner for Workmen''s Compensation are set aside and the application for compensation is dismissed. Under an order passed by us at a previous stage, a sum of Rs. 200 was allowed to be withdrawn by the respondent. It has been very generously stated before us by Mr. Burman on behalf for his client, the appellant, that the appellant does not insist on the respondent paying back the money she has withdrawn. The concession made by the appellant will, therefore, be recorded. We make no order as to costs either of the trial Court or of this appeal.

Guha, J.

I agree.