(REPORTABLE)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2017
(Arising out of SLP (C) No. 30379 of 2014)

Daya Kishan Joshi & Anr. ....Appellants

Versus

Dynemech Systems Pvt. Ltd. ...Respondent

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The judgment dated 23rd April 2014 passed in FAO No. 349 of 2011 by the High Court of Delhi is called in question in this appeal by the unsuccessful claimants. By the impugned judgment, the High Court has confirmed the award passed by the Commissioner under the Employees' Compensation Act, 1923 (Known earlier as the Workmen's Compensation Act, 1923 until 2009) (for brevity "the Act") dismissing the claimants' petition on

the ground that the accident cannot be said to have arisen out of and in the course of employment.

3. Records reveal that the deceased workman Shri Ravi Shekhar Joshi, son of the appellant, was employed with respondent (Dynemech Systems Pvt. Ltd.) as an engineer. He was entrusted with the duty to be in the field for promoting the sales/installation of the products of the respondent. On the unfortunate day of the accident, i.e., 08.09.2007, the deceased and his co-worker Shri Vikas (who was also employed as an engineer/sales executive) were deputed to test a filter which was installed on 07.09.2007 at Hero Honda Factory, Dharu Heda, Haryana. Accordingly, both of them went from Delhi and checked the filter installed at Hero Honda Factory, Dharu Heda, Haryana in the afternoon and thereafter started the return journey to Delhi at 4:30 PM. Both the workers including the deceased met with road accident while they were little away from Hero Honda Factory and sustained injuries. Both were taken to the hospital wherein the deceased was

declared “brought dead” while his co-worker was discharged after being given first-aid.

The appellants filed an application for compensation under Section 22 of the Act before the Learned Commissioner. Based on the pleadings, the Learned Commissioner framed the following issues.

1 Whether the accident of the deceased occurred during the course of and out of employment?
2 Whether the deceased falls under the definition of workman under Workmen’s Compensation Act, 1923?
3 If so, whether the claimant is entitled for compensation as per claim application?
4 Relief, if any?

After the full-fledged trial, written arguments were submitted on 30th January, 2010. The Commissioner, after a wait of about 14 months dismissed the claim application of the appellants by deciding issue no. 1 only, on the ground that the accident cannot be said to have arisen out of and in the course of employment. The said award of dismissal of the claim petition was confirmed by the High Court as mentioned supra.

4. The only question to be decided by this Court in this appeal is as to whether the Learned Commissioner, as well as the High Court is justified in deciding that the accident in question cannot be said to have arisen out of and in the course of employment.

5. Undisputedly the employer's liability for compensation to the employee arises only if the employee has suffered in the accident which arose out of and in the course of employment.

Section 3(1) of the Act deals with the employer's liability for compensation to the employee in case of accident arising out of and in the course of employment. Section 3(1) reads thus:

> "If personal injury is caused to [an employee] 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:"

The amount of compensation where the death resulted from the injury shall be quantified in accordance with Section 4 of the the Act. Section 4(1)(a) reads thus:

> "Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) where death results from the injury : An amount equal to fifty per cent. of the monthly wages of the deceased *[employee] multiplied by the relevant factor;

or

an amount of *[one lakh and twenty thousand rupees], whichever is more;"

6. The words 'arising out of' and 'in the course of employment' are in fact two different phrases and have been understood as such. If the accident had occurred on account of a risk which is an incident of employment, the claim shall succeed unless, of course, the workman had exposed himself to an added peril by his own imprudent act. The phrase 'in the course of employment' suggests that the injury must be caused during the currency of employment, whereas the expression 'out of employment' conveys the idea that there must be a causal connection between the employment and the injury caused to the workman as a result of the accident.

Prima facie, while deciding the issue on hand, there is no material on record to show that the deceased workman had exposed himself to added peril by his own imprudent act.

7. When a workman is on the public road or public place or on 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. In other words, there must be a causal relationship between the accident and the employment. The expression 'out of employment' is not confined to the mere nature of the employment: the expression applies to employment as such, to its nature, its conditions, its obligations and its incidents. The words "arising out of employment" are understood to mean that during the course of employment, the injury has resulted from some risk incidental to the duties. Unless engaged in the duty owed to the employer, it is reasonable to believe that the workman would not otherwise have suffered.

There cannot be any dispute that the question as to when an employment begins and when it ceases, depends

upon the facts of each case. There is a notional extension at both entry and exit by time and space. There may be some reasonable extension in both time and space and a workman may be regarded as in the course of his employment even though he has not reached or has left employer's premises. In India, the courts have recognized the principle of notional extension of time and space for over 60-70 years while determining whether the injury has been caused out of or in the course of the employment of the workman. The Courts have held consistently that the employment does not necessarily end, when the tool down signal is given and when the workman actually leaves his place of work.

8. The High Court relied upon the judgment of this Court in the case of ***Saurashtra Salt Manufacturing Co. v. Bai Valu Raja (AIR 1958 SC 881)*** to conclude that when an employee is commuting to and from the place of work and there is an accident, such an accident cannot be said to have arisen out of and in the course of employment. This Court has rendered judgment based on the facts and circumstances of that case.

The facts in ***Saurashtra Salt Manufacturing's case*** (supra) are different from the facts of this case. While deciding ***Saurashtra Salt Manufacturing's case*** (supra), this Court has clearly observed that the facts and circumstances of each case will have to be examined carefully in order to determine whether the accident arose out of or in the course of the employment of the workman, keeping in view at all times this notional extension. It is also observed that accident cannot be said to have occurred during the course of employment unless the very nature of his employment makes it necessary for him to be there. The relevant portions of the judgment in ***Saurashtra Salt Manufacturing's case*** (supra) read thus:

> "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 a 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.

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 boatsferried 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 this 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 the 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."
>
> (emphasis supplied)

It was not the case in ***Saurashtra Salt Manufacturing's case*** (supra), that the employees travelled by creek because their employment necessitated it.

9. In the case on hand, the deceased was employed as an engineer, assigned the duty of promoting the sales and installation of the products of the respondent company. It is not in dispute that a product was installed on the day prior to the accident at the Hero Honda Factory situated at Dharu Heda in the State of Haryana which is about 70 kms from Delhi State. It is also not in dispute that the deceased on the instruction and direction of the respondent, left for the field work assigned to him on 08.09.2007. After completing the necessary work assigned to him and his co-worker, both of them were returning to Delhi and at that time they met with the unfortunate accident. Thus, under the facts and circumstances, it is to be held that the deceased had to go to Hero Honda Factory, Dharu Heda, Haryana from Delhi for the purposes of carrying out the work entrusted to him and after completing his work he was returning to Delhi. The very nature of his employment made it necessary for him to be there. In view of the same, in our considered opinion, it needs to be held that the accident had taken place in the course of the employment.

10. English Courts have elaborated in great detail on the subject of 'arising out of employment' while considering the matters arising out of The English Workmen's Compensation Act, 1897.

11. Buckley, LJ., in ***Pierce v. Provident Clothing and Supply Co. Ltd. [(1911) 1 KB 997],*** made the following observations:

> "The words 'out of' necessarily involve the idea that the accident arises out of a risk incidental to the employment. An accident arises out of the employment where it results from a risk incidental to the employment, as distinguished from a risk common to all mankind, although the risk incidental to the employment may include a risk common to all mankind."

12. Lord Buckmaster, in the case of ***John Stewart and Son Ltd. v. Longhurst [(1917) AC 249],*** observed that whether a situation arises 'out of or in the course of employment' can only be determined on a case-to-case basis:

> "Some of the reported cases, which have been fully referred to by the Lord

> Chancellor, appear to me to have made the same mistake and to have attempted to define a fixed boundary dividing the cases that are within the statute from those that are without. This it is almost impossible to achieve. No authority can with certainty do more than decide whether a particular case upon particular facts is or is not within the meaning of the phrase."

The facts of each case must be examined separately. One case cannot be relied upon to conclusively decide the outcome of the other. Hence, the facts of this case must be examined in light of the context that they are situated in.

13. The case of ***Andrew v. Failsworth Industrial Society [(1904) 2 K. B. 32],*** lays down that the accident need not be connected to the work, as long as the employee was in a position that arose out of the employment. Collins, M. R. observed as follows:

> "Though [the accident] may not be connected with, or have any relation to, the work the man was doing, yet, if in point of fact the position in which the man was doing the work, and the place he must necessarily occupy whilst doing the work are a position and a place of danger which caused the accident, it may fairly be said

> that it arose out of the employment, not because of the work, but because of the position"

14. English courts have also held that injuries to employees on their way back home fall within those 'arising out of employment.' In ***Lawrence v. George Matthews Ltd. [(1929) 1 KB 1],*** the deceased was employed as a commercial traveller by coal merchants, who paid him a commission for all orders obtained for them. While on his way home on his motorcycle after completing a trip, he was struck fatally by a falling tree which was blown down by a gale. In proceedings for compensation, the Court of Appeal held by a majority that the accident arose out of the employment of the deceased on the ground that the deceased's employment brought him to a spot which, owing to the existence of the tree, had a quality that resulted in danger. The fact that the tree fell due to forces of nature was immaterial, as the immediate cause of the accident was the falling of the tree.

15. Indian Courts have also expounded upon the phrase 'arising out of and in the course of employment' in great detail.

In the case of ***B.E.S.T. Undertaking vs Agnes(AIR 1964 SC 193),*** this Court laid down as under:

> "Under Section 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 as 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 this tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employer 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 insofar 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."

16. The case of ***Mackinnon Machenzie & Co. (P) Ltd. v. Ibrahim Mahmmed Issak [(1969)2*** **SCC** ***607]*** is also relevant to understand the meaning of 'arising out of employment'. Justice Ramaswami, delivering the judgment for a three Judge Bench of this Court, held:

> "…The words 'arising out of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words, there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of

> special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation, must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act…"

17. This Court in ***Regional Director Employees' State Insurance Corporation v. Francis De Costa [(1996) 6 SCC 1]***, laid down three principles for the claimants to prove before they can claim compensation under S. 2(8) of the Employees' State Insurance Act, 1948:

> "(1) there was an accident, (2) the accident had a causal connection with the employment and (3) the accident must have been suffered in course of employment."

As Section 2(8) of that Act is in *pari materia* with Section 3(1) of the the Act, these principles are relevant for cases under the latter.

18. Again, in the case of ***Union of India v. Surendra Pandey [(2015) 13 SCC 625]*** this Court has explained the principle of notional extension of employment giving examples as under:

> "It was also pointed out by Lord Denning in the aforesaid case of *R.* v. *National Insurance Commr., ex p Michael* that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment, may be extended even to cases while an employee is sent on an errand by the employer outside the factory premises. But in such cases, it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his work place in the usual course of his employment. Latham, C.J. in *South Maitland Railways Pty. Ltd.* v. *James* observed that when the workmen on a hot day in course of their employment had to go for short time to get some cool water to drink so as to enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for water." (emphasis supplied)

19. The aforementioned observations are reiterated by this Court in a number of subsequent judgments, including in the case of ***Manju Sarkar v. Mabish Miah [(2014) 14 SCC 21)].***

20. From the aforementioned, it is clear that the presence of the deceased on the road in question was incidental to his employment as a sales engineer. As he had to go to the Hero Honda Factory to conduct a filter test, he was merely doing what was required of him as an employee. Thus, his accidental death on the way back after completing his work falls squarely within Section 3(1) of the Act.

21. Having regard to the facts and circumstances of the case on hand, it needs to be concluded that the accident arose out of employment inasmuch as the very nature of the employment of the deceased made it necessary for him to be there.

By recording the aforementioned finding on the first issue, the matter is returned to the Commissioner under the Act for deciding the remaining issues framed by him.

22. The appeal is disposed of. No costs.

.....
.....J.
(R.K. Agrawal)

..
.....J.
(Mohan M. Shantanagoudar)

New Delhi
Dated: 9th August, 2017

ITEM NO.1501 COURT NO.11 SECTION XIV
(for judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10265/2017 @ SLP (C)No. 30379 of 2014.

DAYA KISHAN JOSHI & ANR. Appellant(s)

VERSUS

DYNEMECH SYSTEMS PVT LTD. Respondent(s)

(HEARD BY HONBLE R.K. AGRAWAL AND HONBLE MOHAN M. SHANTANAGOUDAR, JJ.)

Date : 09-08-2017 This matter was called on for pronouncement of judgment today.

For Appellant(s) Mr. Jinendra Jain, AOR

For Respondent(s)

Hon'ble Mr. Justice Mohan M. Shantanagoudar pronounced the judgment of the Bench comprising Hon'ble Mr. Justice R.K. Agrawal and His Lordship.

Leave granted.

Appeal is disposed of in terms of the signed reportable judgment.

Pending applications, if any, stand disposed of.

(B.PARVATHI) (TAPAN KUMAR CHAKRABORTY)
COURT MASTER (SH) BRANCH OFFICER

(Signed reportable judgment is placed on the file)