Works Manager, Carriage And Wagon Shop, ... vs Mahabir on 6 April, 1953

Equivalent citations: AIR1954ALL132

JUDGMENT

Misra, J.

1. This appeal arises out of a case for compensation under Section 3, Workmen's Compensation Act. The sole point which requires determination in the appeal is whether the accident which occurred on 22-5-49, in the railway yard at Lucknow and resulted in the loss of both legs of the respondent Mahabir, a machine man employed in the Carriage and Wagon Shops of the East Indian Railway, Alambagh, Lucknow, arose 'out of and in. the course of his employment' within the meaning of Section 3 of the Act.

2. The facts are no longer in dispute. Mahabir lives in village Mahmudpur which is close to Malhaur railway station on the East Indian Railway. He used to come free of cost to Lucknow junction every morning from Malhaur along with other employees in a workmen's special provided by the --railway and proceed after crossing the lines to the Alambagh Workshop which is at a distance of about a mile from the junction across the railway yard. This was a somewhat shorter route and it was taken as a matter of routine for going to and coming from the works in preference to a sub-way and two other overbridge routes which were also available. When the workmen were on night shift, they were provided with special permits for travelling by ordinary passenger trains free of charge between Lucknow junction and Malhaur station. Mahabir was on duty on the night between the 21st and 22nd May, 1949. He finished work at 5.30 a.m. and was returning as usual to the Luck-now junction station over the yard in order to catch the passenger train which left there at 8 a.m. for Malhaur. When he was within a short distance of the station platform he crossed the line and in doing so he was run over by a shunting engine at about 6.30 a.m. As a result of the accident Mahabir's legs were crushed and they had to be ultimately amputated.

3. The claim which gives rise to the present appeal was preferred by the respondent after due formalities. The commissioner appointed under Section 20, Workmen's Compensation Act awarded a sum of Rs. 4900/- as compensation against the appellant, the Works Manager, Carriage and Wagon Workshop. The money was deposited with the Commissioner and the decision is now challenged under Section 30 of the Act.

4. The relevant portion of Section 3(1), Workmen's Compensation Act reads:

> "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) .....

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

(i) .....

(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 expression 'out of and in the course of his employment' occurring in the aforesaid section has been the subject of interpretation in numerous cases and it has been found almost a hopeless task to give such a comprehensive or exhaustive meaning as may be applicable to all cases. It is plain that the phrase defines the time within which the accident must occur in order to saddle the employer with liability. In cases, therefore, which arise in consequence of an injury caused to an employee while he is actually engaged in the work for the doing of which he is employed, there can hardly be any room for controversy on the ground of interpretation for it would clearly fall within the section. The word 'employment', however, has been given a wider meaning than the word 'work' and it has been universally accepted that a man may be in the course of employment without being actually engaged on work for the doing of which he is engaged. In the well known case of -- 'St. Helen's Colliery Co. v. Hewinston', (1924) AC 59 (A), Lord Atkinson emphasised that a workman acts in the course of his employment not Only when he is engaged in doing something in discharge of a duty to his employer which is directly or indirectly imposed upon him by his contract of service, but also when, he is engaged in acts, 'belonging to and arising out of it.' Thus where a workman is injured when he is on his way to or from his work, Courts have in appropriate cases held that the accident arose in the course of his employment, the principal point to be regarded in such cases being whether he was doing something which was implied in his contract or in other words whether it was necessarily involved in or connected with the workman's duty to his employer. As held in the two English cases to be referred to hereafter, the language used is of wide amplitude and it covers not only the nature of the employment but its conditions, obligations and incidents as distinguished from risks which are common to all mankind and not directly connected with employment in the above sense (vide the address of Lord Shaw in -- 'Simpson v. Sinclair', (1917) AC 127 (B) and that of Lord Loreburn in -- 'Dennis V. J. C. White & Co.', (1917) AC 479 (C).

From what has been said above, it would appear to be a legitimate corollary that what may be called environmental accidents, that is accidents resulting from the surroundings in which the workman is employed or through which he has to reach his place of work in order to carry out his obligations to his employer, may fall within the scope of the phrase 'arising out of or in the course of his

employment.' This rule is subject of course to court exception in those cases where the accident occurs in a public place and the risk faced by the workman was not on account of the employment as such but on account of his presence at the spot as a member of the public. The law insists in this latter type of cases that in order that the employer should be chargeable the presence of the workman at the spot must be traceable to an obligation imposed upon him by the employer. In cases, however, where the risk of injury is traceable to the employment in the sense that at the time of the accident the workman was at the spot in his capacity as a workman, the provisions of Section 3, I conceive, will apply fully. The case of -- 'Howells v. Great Western Rly.', (1928) 97 LJKB 183 CD) may be referred to in this connection. There a dockyard labourer, John Howells, generally used to take along with the other dock labourers, as a matter of routine while going to his steamer to load cargo, a short cut which involved the crossing of some railway lines, in preference to the route via the metalled road provided by the employers. One day he was knocked down and killed by a railway engine while going across. In an action by Howells' widow and his infant child the County Court ruled that since the deceased did not go by the way provided for the labourers, but used instead an unauthorised route and since he was not doing anything which he was under any obligation to his employer to do, the accident could not be deemed to arise in the course of his employment. The Court of Appeal overruled this view. It held that since the workman was in the employer's premises and was proceeding to work over an accustomed & permitted, though not provided, route the accident must be considered to have arisen out of and in the course of employment. The following observations of Lord Atkin L. J. may be reproduced here with advantage:

> "It is obvious that there is a margin between the time when a man 'actually begins and actually leaves his employment and the time when he has entered upon the course of his employment. All these cases that were cited in the case that I have referred to of -- 'Howells v. Powell Duffryn & Co.', (1926) 1 KB 472 (E) are cases which illustrate the proposition which now seems to me to be quite fully established, that it is not the moment at which a man reaches the actual place where he is going to begin to earn wages that his employment begins. Here there were dock premises and there are a number of dock cases where the man's employment began when he reached the dock premises which belonged to his employers, and, if one may say so in this case, the man began to incur the very special risks of his employment which were incident to the fact that he was employed in a dock. I think it is quite ridiculous to suggest that he only began the course of his employment when he actually got to shed No. 2 where he would begin to load the ship."

Cases like -- 'Holmes v. Great Northern Rly.', (1900) 2 QB 409 (P) and -- 'Sharp v. Johnson & Co.', (1905) 2 KB 139 (G) lay down the same principle.

5. It was urged on behalf of the appellant that in order to charge the employer, the workman must prove--

> (a) That it was obligatory for him to take the more dangerous route, and he must further show

(b) That the case did not fall within proviso (b) (ii) appended to Section 3(1), Workmen's Compensation Act.

6. On the first part of the argument, apart from what I have already said, it has to be kept in mind that the route adopted by Mahabir was the customary route in the sense that the shop workers always went to and from their place of work through the yard. Therefore the implied consent of the employers in this behalf will have to be presumed, it would, I apprehend, be wrong to press into use in this connection, as was sought to be done by the appellant's learned counsel, the provisions of Section 122, Railways Act which penalizes members of the public for entering the railway 'unlawfully'. I say so because Mahabir was neither a member of the public at the time of the accident, nor was he crossing the lines 'unlawfully' inasmuch as he did so in the normal way with the tacit permission of the railway officials. Notwithstanding the existence of safer routes, therefore, I would be prepared to hold that the accident is covered by Section 3. In this connection I am inclined to adopt if I may do so with respect the principle enunciated by Lord Macmillan in -- 'Northumbrian Shipping Co. v. McCullam', (1932) 101 LJKB 664 (H). The following observation contained in his address is of particular importance:

> "It has been recognized time and again that the sphere of a workman's employment is not necessarily limited, to the actual place where he does his work. If in going to or corning from his work he has to use an access which is part of his employer's premises or which he is only entitled to traverse because he is going to or coming from his work, he is held to be on his master's business while he is using that access."

He further observed:

> "The seaman who on his way back to his ship has left the public highway with its risks common to all wayfarers and has entered the private premises of the harbour in which his ship lies with its special risks to which only those who have business at the harbour are exposed, seems to me to have come within the protection of the Act, for if he sustains an accident while using this access he sustains it by reason of risks incidental to his employment which he would not have encountered but for his employment."

The same principle has been adopted in -- 'Urmila Dasi v. Tata Iron Steel Co. Ltd.', AIR 1928 Pat 508 (I), -- 'Veerabhadra Naicker v. Gangamma', AIR 1943 Mad 352 (J); -- 'Ramabrahman v. Traffic Manager, Vizagapatam Port', AIR 1943 Mad 353 (K) and -- 'Hill v. Butterley Co. Ltd.', 1948-1 All ER 233 (L). In the last mentioned case a workman while crossing her employer's premises on her way to the office to 'clock in' before starting work slipped on any icy slope and was injured. There was no public right of way across the premises and no actual road there but a practice had sprung up during a number of years without objection by the employers by which the inhabitants of a neighbouring village crossed part of the premises where the accident occurred to reach an adjoining railway station. It was held by the Court of Appeal that the accident arose 'out of and in the course of the workman's employment because the employers had allowed the crossing of the premises snd the risk incurred by the workman was not identical with the risk, incurred in a public street by members

of the public. It is noticeable that there was no element of compulsion in any of these cases.

6a. '1924 AC 59 (A)' which I have already referred to in another connection was cited by the appellant's learned counsel along with a number of other cases which have been noticed in the judgment of my learned brother Brij Mohan Lall J. for the proposition that when an accident occurs at a time or place when the workman is not actually engaged in his legitimate work, it is incumbent on him to establish that his presence at the spot was obligatory. The principle, however, which is laid down in these cases is, as stated above, applicable only to the limited class of claims which arise where the workman met with the accident and received the injury complained of not because he was a workman of his employer but as a member of the public. The facts of -- 'Hewitson's case (A)' may be examined to illustrate this point. The colliery there had made arrangements with the railway company to take its workmen to the works at a reduced fare which was payable in the first instance by the company but ultimately deducted from the workmen's wages and it undertook also to indemnify the railway company against claims for accidents. The trains, however, by which the men were carried were used by the public equally as much as by the workmen of the colliery. One day Hewitson was injured in an accident which occurred on the railway and he claimed compensation. The action failed because it was found that he met with the accident in common with the other travellers, that he could, if he so desired, use other means of transport and that his employment did not make it obligatory on him to travel over the railway. Here Mahabir's injuries were not caused by the use of any transport, optional or otherwise, either provided by the railway or by any other agency. He was injured on the employer's premises which were used as the normal way of approach to the workshop by the tacit consent of the railway officials. Cases occurring on the public highway or public conveyances cited on behalf of the appellants need not, therefore, detain us.

7. The case remark would apply to cases decided on the basis of added peril.

8. On the second point urged on behalf of the appellant, there is no material for thinking that the crossing of the yard amounted to wilful disobedience of any orders expressly given or of any rules expressly framed by the railway for the purpose of securing the safety of the workmen. As stated above, Section 122, Railways Act does not apply. The appellant places reliance on a manual of instructions called 'Safety First Instructions' contained' in a pamphlet issued under the authority of the Indian Railway Conference Association. These instructions are not on the record and there is no evidence to indicate that they were ever brought to the knowledge of Mahabir, nor is there anything which might go to show that they were framed with the necessary formalities under the rule making powers of the railway.

9. For the reasons given above, I regret I am unable to agree with my brother Brij Mohan Lall J. who thinks that the employer can be called upon to pay compensation, only if it was obligatory on the employee to adopt the route which he was taking when the injury occurred.

10. I would dismiss the appeal with, costs.

Brij Mohan Lall, J.

11. This is an appeal under Section 30(1)(a), Workmen's Compensation Act (8 of 1923) by the Works Manager, Carriage and Wagon Shop, East Indian Railway, Alambagh, Lucknow, against the decision of a Commissioner appointed under the said Act awarding a sum of Rs. 4,900/- as compensation to the respondent. The amount has been deposited by the appellant with the Commissioner and the usual certificate prescribed by the third proviso to Section 39(1) of the Act has been filed. The correctness of the amount of compensation was not challenged before us. The only point argued was whether there was a liability to pay on the part of the appellant.

12. The respondent was employed as a machine man at the Carriage and Wagon Shop (hereafter described, for brevity's sake, as C. & W. Shop) of the East Indian Railway at Alambagh, Lucknow. He is a resident of village Mahmudpur. In order to reach the place of his employment he had to board a train at railway station Malhaur and to detrain at Lucknow Junction railway station. From there he had to walk a distance of about one mile to reach the C. & W. Shop which lines on the other side of the railway line. Three different routes exist for covering this distance. In two of these routes there are bridges over the railway line and in the third there is a sub-way. Thus all these three are perfectly safe routes.

13. For performing the railway journey the railway administration had issued a permit to the respondent, and the latter could travel both ways without making any payment. But there is nothing to indicate that there was any obligation on the part of the respondent to necessarily perform the journey with the help of the said permit. He could as well go by bus or any other conveyance.

14. There was no obligation whatsoever on the part of the railway administration to provide conveyance from Lucknow Junction railway station to the C. & W. Shop. Nor was the railway company to make any payment to the respondent in lieu of providing conveyance for this distance.

15. On 21-5-1949 the respondent had night duty to perform. His duty hours expired at 5.30 a.m. on 22-5-1949: Thereafter he went towards the Lucknow Junction railway station in order to catch the train for Malhaur which was to leave Lucknow Junction at 8 a.m. But instead of following any one of the aforesaid three safe routes the respondent chose to go through the 'yard'. Obviously he wanted to follow a shorter route. While crossing the railway line he was run over by a train and eventually both his legs had to be amputated. It is this circumstance which provided the basis for the claim.

16. The appellant's defence was that the injuries were not caused to the respondent by an accident "arising out of and in the course of his employment" within the meaning of Section 3 of the Act. This contention was overruled by the Commissioner. Hence this appeal.

17. It is to be remembered that the C. & W. Shop area is totally separate from the area of the 'yard'. There is an enclosure round the C. & W. Shop. Similarly, the 'yard' is fenced on both sides. No portion of the C. & W. Shop falls within, the 'yard' and no portion of the 'yard' lies within the C. & W. Shop. The two units, viz., the C. & W. Shop and the 'yard', have different sets of employees. The employees of the C. & W. Shop have no business to be in the 'yard' and vice versa. In other words, it was no part of the respondent's duty to be in the 'yard'

18. The words "arising out of and in the course of his employment" have been borrowed in the Workmen's Compensation Act from the English statute. In the circumstances, English decisions are of great help in interpreting this clause.

19. Prima facie it appears that, if a workman suffers any injury after his duty hours are over, he cannot legitimately contend that he received the injury by means of an accident "arising out of and in the course of his employment". The test laid down in -- 'Parker v. Owners of Ship Black Rock', (1915) AC 725 (M) was: whether the workman at the time he sustained the injury by accident was discharging a duty which he owed to his employer?

20. This test was approved of in a later case, Viz., -- '(1924) AC 59 (A)'.

21. A somewhat similar test was laid down by Lord Sumner, in his oft-quoted dictum in --'Lancashire and Yorkshire Rly. Co. v. Highley', (1917) AC 352, at p. 372 (N) in the following language:

> "Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, 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."

22. Applying these tests, one arrives at the conclusion that the respondent was not discharging a duty towards the employer when he crossed the, railway line. His duty did not at all require him to enter the 'yard' and to expose himself to the risk of being run over by a train. As a matter of fact, Section 122, Railways Act makes it penal to unlawfully enter upon a 'railway'. The term 'railway' has been defined in Section 3(4) of the said Act and it includes, inter alia, 'lines of rails'. Therefore, it is obvious that not only it was no part of the respondent's duty to cross the railway lines, but in doing so he was doing a forbidden act for which he might have been prosecuted. The circumstance that other persons also similarly trespassed on the railway lines and were not prosecuted did not make the trespass by the respondent legal. It may be possible in the case of a private individual to infer an implied consent on his part to let people cross his land. But certainly such an implied permission cannot be imputed to the railway administration which is an official body, particularly in face of the statutory prohibition contained in Section 122 of the Act. The mere circumstance that the officials for the time being did not care to prosecute the trespassers did not confer any right on trespassers to cross the line, much less did it make the respondent's act in committing the trespass a part of his official duty.

23. It will, therefore, follow that according to the tests laid down above the respondent was not performing any part of his duty while he crossed the railway line. The danger to which he exposed himself was not a part of his official duty.

24. It was contended on behalf of the respondent that as soon as he started from his home for his place of business he should be deemed to have entered upon his duty and should be presumed to be continuing on duty till the time he reached home. In other words, the time spent in going to the

place of duty and in returning home should be treated as having been spent on duty. This proposition is too widely stated. There is no authority in support of this proposition. Even the case of -- 'Cremins v. Guest, Keen & Nettlefolds, Limited', (1908) 1 KB 489 (O) which goes the longest way in support of the respondent's contention but which, as will presently be shown, was later on overruled, did not go to this extent. In that case the employer company had made arrangements for the conveyance of the colliers to and from their Houses. The workmen had the right, but not the obligation, to travel by the train provided by the employers. One of the colliers was knocked down and killed while waiting on the platform for the train. His widow was awarded compensation and the deceased was supposed to be on duty. But the learned Judges guarded themselves against being; understood to hold that in every case a workman should be supposed to be on duty while going from his place of business to his house and vice-versa. Cozens-Hardy M. R. expressed himself on page 472 in the following language, viz., "To avoid misconception, I desire to say that I base my judgment on the implied term of the contract of service, and that it by no means follows that every workman is entitled to the protection of the Act whenever an accident happens to him on his way from his home to his employers' place of business."

This ruling was overruled by the House of Lords in -- '(1924) AC 59 (A)'. The test laid down in that case was that if the workman had the right, but not the obligation, to travel by the conveyance provided by the employer, he could not claim compensation. But if he was bound by the terms of his employment to travel by the means of communication provided by the employer, he had a valid claim. The 'ratio decidendi' was that if he was so bound, he, by using that means of conveyance, was performing a part of the contract with his employer and was discharging a duty which, under the terms of his employment, he was bound to perform. If there was such an obligation on his part and if he was performing a duty, he was protected and he satisfied the test laid down above. The same view was reaffirmed by the House of Lords in the case of -- 'Newton v. Guest, Keen, and Nettlefolds, Ltd.', (1926) 135 LT 386 (P).

25. In this country also the same view has been adopted by different High Courts. The Nagpur High Court followed this view in -- 'Mt. Champi v. Shaw Wallace & Co.', AIR 1937 Nag 397 (Q).

26. The Patna High court subscribed to this view in -- 'Becharam Mallik v. Khas Joyrampur Colliery', AIR 1940 Pat 599 (R).

27. The Calcutta High Court adopted the same view in the case of -- 'Tobacco Manufacturers 'India) Ltd. v. Mrs. Marian Stewart', AIR 1950 Cal 164 (S). In that case the deceased workman's widow had claimed compensation on the ground that her husband, while using the cycle which had been provided by the employer and which he was bound to use, had been knocked down and killed. The Court, while reaffirming the aforesaid principle, held that it had not been proved that the cycle had been supplied by the employer and therefore the very basis of the suggestion that the deceased was doing something which he was bound by the terms of his employment to do disappeared. On that ground the claim was rejected.

28. Certain cases were cited before us in which compensation was allowed to the workman, or, in the case of his death, to his legal representatives. But they were all cases in which it was found on

facts that the workman was, or should be deemed to have been, employed, in his master's work at the time when he received the injury. No principle different from that discussed above was laid down in any such case.

29. Another argument advanced on behalf of the respondent was that if a workman meets with an accident at any place on his master's premises he can claim compensation even if he had ceased to do Ms master's work at that time. I have examined the cases cited in support of this proposition, but I have come to the conclusion that no such general principle has been laid down in any case. The decisions in which the master's liability was enforced on the ground that the workman met with an accident on his (master's) land were those in which it was found that it was a part of the workman's duty to be at the place where he met the accident. The leading case on the subject is that of -- '(1932) 101 LJ KB 664 (H)'. That was a ease in which a seaman returning from his home to the ship in the evening in order to attend to his duty as a watchman during night met with an accident in the dock premises before he could reach the ship and before he could assume his duty. Compensation was awarded to his legal representaives because it was found that the deceased "sustained the accident by reason of risks incidental to his employment, which he would not have encountered but for his employment." On page 667 there is a definite finding of fact that the deceased had to traverse the private premises of his master in order to reach the place where he was to perform his duty and "which but for his employment he would have had no right to traverse and which were of such a character as to expose him to special risks to which his death is attributable." In other words, there was a clear finding of fact that it was a part of his duty to go through the area which exposed him to risks. In the present case, there was, as already stated, no obligation on the part of the respondent to enter the 'yard' to incur the risk which he did.

30. The case of -- 'Rani Bala Seth v. East Indian Rly.', AIR 1951 Cal 501 (T) is also distinguishable. In that case a workman was returning from duty and had not left the master's premises when he met with the accident. There were four different routes, but three of them were found to be unsafe for one reason or another. There was a clear finding that the workman had to follow the fourth route which he did. In other words, there was, in the circumstances of the case, an obligation on the part of the workman to go by the fourth route. Consequently, the master was held bound to pay compensation to the widow of the deceased.

31. Another case cited for the respondent was that of -- 'John Stewart and Son Ltd. v. Long-hurst', (1917) AC 249 (U). In that case a carpenter, (who was employed in repairing a barge lying in dock) after finishing his day's work, started on a dark night to walk along the quay to the dock gates, but fell off the quay and was drowned. The dock was private property and was not open to the public, but the workmen had leave to pass through the dock on their way to and from the barge. While allowing a claim for compensation, Lord Atkinson expressed himself on page 258 in the following words, viz.:

> "It unquestionably conferred upon him the right, if permitted by the dock company, to traverse the premises of that company from the dock gate to the place where the barge he was working on lay. 'It imposed upon him an obligation to do so.' He had no right or obligation to do this save under and by virtue of his contract of employment."

It was this obligation which served the basis of the claim being granted and it distinguishes this case from the present one.

32. '1948-1 All ER 233 (L)' is another case cited on behalf of the respondent. In that case compensation was awarded to a workman who, while crossing her employers' premises on her way to the office to "clock in" before starting work, had slipped on an icy slope and got injured. But the basis of the decision is to be found in the judgment of Scott L. J. on page 234 where he observed as follows:

> "She, therefore, met her accident quite close to the 'clocking in' office where she was bound to go as part of her duty before she started her daily work at the surgery."

33. As already pointed out, all these cases are distinguishable from the present one because the respondent was not at all bound to go to the place where he met with the accident. The theory of the accident happening on the 'master's premises' is based on the supposition that it was a part of the servant's duty to be on that portion of the master's premises where the accident took place. Suppose a workman, after finishing his work in the workshop, goes to the master's private garden which place is not open to workmen and there meets with an accident, he cannot claim compensation from the master on the ground that accident took place on the 'master's premises'.

34. The doctrine of "added peril" was also referred to during the course of arguments and reference was made to the cases of -- 'Stephen v. Cooper', (1929) AC 570 (V); -- 'AIR 1943 Mad 353 (K)' and -- 'Gouri Kinkar Bhakat v. Radha Kissen Cotton Mills', AIR 1933 Cal 220 (W). The basis of all these decisions is that if a workman, while performing his master's work, undertakes to do something which he is not ordinarily called upon to do and which involves extra danger, he cannot hold the master liable. But this doctrine implies that the workman was, at the time of meeting the accident, performing his duties. Since, in the present case, the respondent was not, in my opinion, performing any part of his master's duty, the doctrine of "added peril", strictly speaking, does not apply. He was trespassing upon the railway line like any other member of the public and he was exposing himself to a risk common to all members of the public. The risk had nothing to do with the performance of his duties. It was held in the case of -- 'U Yan Shin v. Ma E Sein', AIR 1940 Rang 13 (XX that when the workman was sharing a risk common to all members of the public he could not claim compensation from, the master.

35. Two more cases were referred to on behalf of the respondent, viz., -- 'AIR 1928 Pat 508 (I)' and -- 'Bhut Nath Dal Mills v. Tirat Mistry', AIR 1949 Cal 295 (Y). They are cases on the interpretation of the term 'wilful disobedience.' In other words, they lay down an interpretation of the exception to the general rule provided in the proviso to Section 3(1), Workmen's Compensation Act. Since the respondent has failed to bring his case within Section 3(1) which creates a right in his favour, it is unnecessary to discuss whether or not the exception on which the employer could possibly rely applies.

36. The learned counsel for the appellant showed us a small booklet containing "Safety First" rules. The object was to avail of the exception provided in Section 3(1)(b)(ii). But, for the reasons already

indicated, it is unnecessary to examine this part of the case. Moreover, the learned counsel could not point out to us whether these rules had been framed under the clause of which he wanted to take the benefit.

37. For the reasons stated above, I have come to the conclusion that the respondent's injuries were not caused by an accident "arising out of and in the course of his employment" and therefore the employer is not bound to pay any compensation whatever to him. Consequently, I will allow the appeal and dismiss the respondent's claim with costs throughout.

By Court

38. Since there is a difference of opinion, let this appeal be laid before the Hon'ble Chief Justice for necessary orders under Rule 3, Chapter VIII, High Court Rules. The point which arises for determination in the case is whether the accident referred to in our judgments 'arose out of and in the course of employment' within the meaning of Section 3, Workmen's Compensation Act.

Sapru, J.

39. This appeal has been referred to me for opinion under Rule 3 of Chapter VIII of the High Court Rules, because of a difference of opinion between two learned Judges of this Court.

40. This appeal was presented to this Court under Section 30(a), Workmen's Compensation Act of 1923, by the Works Manager, Carriage and Wagon Shop, East Indian Railway, Alambath, Lucknow, against the decision of a Commissioner acting under that Act, who had awarded a sum of Rs. 4,900/- as compensation to the respondent. There is no question of the correctness of the amount of compensation, which indeed has been deposited by the appellant with the Commissioner, the usual certificate prescribed by the third proviso to Section 30(1) of the Act having also been filed. The point which requires consideration is whether for the accident of 22-5-1949, in the railway yard at Lucknow Junction there was any liability to pay compensation on the part of the appellant. The answer to this question depends upon whether the accident resulting in the loss of the respondent's legs arose out of and in the course of his employment within the meaning of Section 30 of the Act.

41-43. There is no controversy as regards the facts. (After stating the facts, the judgment proceeds as under:) The question for consideration, therefore, is whether the appellant's defence that the injuries were not caused to the respondent by an accident "arising out of" and "in the course of his employment" within the meaning of Section 3 of the Act is well founded. In order to appreciate this point J think it convenient to reproduce the relevant portion of Section 3(1), Workmen's Compensation Act: (Vide para 4 of the Section.) The plain intention of the section would seem to be to fasten liability for compensation upon the employer, independently of any neglect or wrongful action on the part of the employer or his servants, if the accident to the workman occurs out of and in the course of his employment. Much controversy has gathered round those expressions but there seems to be no doubt that if an injury is caused to an employee while he is actually engaged in doing the work for which he is employed, the employer is responsible. The important word to my mind is, 'employment.' Now it occurs to me that this word is of wider import than the word "work" or "duty".

It strikes me that the fallacy, if I may use that word with respect, into which Brijmohan Lall J. has fallen is that of looking upon "employment" as almost synonymous with "work" or "duty". It has been established, observed Viscount Finlay in -- 'John Stewart and Son (1912) Ltd. v. Longhurst', (1917) AC 249 at p. 252 (U) "by a series of decisions that employment for the purposes of the Workmen's Compensation Act may in many cases be regarded as existing before the actual operations of the workman have begun, and that it may continue to exist after the actual work has ceased."

Indeed the words 'in the course of employment' mean not only the actual work which the man is employed to do but what is incident to it, in the course of his service. The expression is not to be regarded as confined to the "nature of the employment." The expression applies to employment as such i. e. to its nature, its conditions, its obligations, and its incidents per Lord Shaw in '1917 AC 127 at p. 142 (B)'. I think that the view of Misra J. that it is legitimate to infer from what has been said above that, what may be called 'enviromental accidents' i.e. accidents resulting from the surroundings in which the workman is employed or through which he has to reach his place of work in order to carry out his obligations to his employer, also fall within the scope of the phrase 'arising out of or in the course of employment.' This rule, of course, is subject to the exception that where the accident occurs, as pointed out by Misra J., in a public place, and the risk faced by the workman is not due to his employment but to his being on the spot" as a member of the public; the employer will be liable only if the presence of the workman on the spot can be found traceable to an obligation imposed upon him by the employer. There is no difficulty, how ever, with cases where the accident takes place while the workman is on the spot in his capacity as an employee.

The Workmen's Compensation Act has created a new type of liability inasmuch as it makes an employer liable to pay compensation at a fixed rate to a servant incapacitated by an accident arising out of and in the course of his employment. This liability to pay compensation is independent of any neglect or wrongful act on the part of the master or his servant. In other words, it is not a liability which arises out of tort. Properly speaking, it is a liability which springs out of the relationship of master and servant. The total amount that a servant can get is fixed by the Act, is governed by a scale, and is dependent not on the suffering caused to this workman or the expenses incurred by him in his illness but on the difference between his wage earning capacity before and after the accident. I am mentioning all this to indicate that the words 'arising out of are intended to indicate, the origin or place of the accident. The accident must have relation to the servant's employment. This would include not only the period when he is doing the work actually allotted to him but also the time when he is at a place where he would not be but for Ms employment. These principles seem to me well established by a large number of cases to only some of which I propose to invite attention.

44. The first case on which attention may be focussed is that of -- 'Low or Jackson v. General Steam Fishing Co. Ltd.', 1909 AC 523 (21). In that case the appellant's husband's principal duty consisted in watching trawlers in Grant Harbour between their voyages. In order to perform that duty it used to be necessary for him to be sometimes on the trawlers and some times on the quay. Occasionally he had to provide his own food. This used to be brought to him by members of his family, but occasionally it became necessary for him to leave his place for a short time to get refreshments. On the evening on which the accident took place he went to a hotel situate at a short distance from the

quay to get some refreshment. On his return to the quay he proceeded to descend the fixed ladder attached to the quay for the purpose of getting on board one of the trawlers and while so doing he slipped, tell into the water & was drowned. Dealing with the above state of facts Lords James observed that the passing from the quay to the trawler arose out of and was in the course of the servant's employment and the fact that the deceased had been to the hotel did not alter the position. Lord Atkinson did not doubt that the accident could be said to have arisen out of and in the course of the deceased's employment. Even Lord Loreburn, L, C. who dissented from the majority view and held that the accident did not arise out of or in the course of the servant's employment, nevertheless observed that the provisions of a remedial Act such as the Workmen's Compensation Act is, should not be construed in any narrow spirit. 'A man', said Lord Loreburn, "may be within the course of his employment not merely while he is actually doing the work set before him but also while he is where he would not be but for his employment, and is doing what a man so employed might do without impropriety. It is always a question to be solved on the facts of a particular case and not much help can be given by attempts to formulate in more precise language the meaning of the words used by parliament'."

45. I greatly regret that I cannot agree with the view of Brijmohan Lall J. that the workman in this case was not discharging a duty towards the employer when the accident occurred. Going back home for rest after his duty hours were over was essential to him for the adequate performance of his duties. It is my misfortune that I am unable to agree with the view of Brijmohan Lall J. that if a workman suffers any injury after his duty hours are over, he cannot legitimately contend that he received an injury by means of an accident arising out of and in the course of his employment. In this particular case the workman's duty hours were over at 5-30 A.M. It was not possible for him to get back home by any train leaving before 8 A.M. He was at the place where he was not by choice but of necessity. For doing so he had to go to the Lucknow Junction platform as the only way in which he could get home was a railway train. Invariably he used to get to the railway station by crossing the lines. The workshop was 'attached to the railway station' and indeed was a part of it. The workers of the Workshop had been allowed in the past without any objection on the part of Railway authorities to get to the platform by crossing the lines. The workman could not, therefore be regarded as a trespasser within the meaning of Section 122, Indian Railways Act. He was a railway employee & even the workshop he was working in was subject to the control of the Railway department. The route taken by him was the route he was accustomed to daily as a matter of routine. It was a route used by similarly situated employees of the railway and the railway workshop with the implied permission of the railway authorities. On the admitted facts of the case the Railway authorities had by implication permitted workmen employed in the workshop to use this route. Actually when the accident occurred, he was on the railway premises and he could not help being so having regard to the interval that elapsed between his duty hours and the time at which the railway train was to leave the station for carrying him back home.

46. Attention may also be drawn to the case of -- 'Gane v. Norton Hill Colliery Co.', (1909) 2 KB 539 (Z2). This was a case of a collier employed at the respondent's Colliery, who used to get back home invariably from the colliery through a door, down some steps & across certain lines of railway upon which the colliery trucks are moved backwards and forwards, as occasions might require. That way was used not only by this particular collier but all the colliers coming from the same district. There

were no doubt two ways ay which the colliers might have left the colliery premises and gone home. One was by crossing a bridge and going a little further round and the other was in a different direction. The workman had the wheels of one truck driven over his legs and had both his legs amputated. Dealing with this state of facts, Lord Cozens-Hardy M. R. observed as follows:

> "What was the duty of this man and what was really the implied term of his employment. That he should when his duty's work was over, without loitering, and with all reasonable speed, leave the colliery premises by the accustomed and permitted route. That is what he did. It was in the course of his doing so that the accident happend. I feel bound to say in point of law that this accident, which happened in the immediate neighbourhood of the pit's mouth, close to the scene on the colliery premises, was an accident which happened in the course of his employment. The course of a collier's employment is plainly not limited at one end by the moment when he gets to the place where he is to use his pick, or at the other end by the moment when he comes up from the pit. It must include a reasonable interval of time and of space during which the employment lasts."

Lord Farwell L. J. held that even though the line was covered by trucks, the men always used that route and the accident must be deemed in these circumstances to have arisen out of & in the course of the employment of the workman.

47. Reference may also be made to the case of -- 'Blee v. London and North Eastern Rly. Co.', 1938 AC 126 (Z3). Now, in this case the deceased workman was a ganger in the employ of the London and North Eastern Railway Company. He was killed as the result of an accident while proceeding to fulfil an emergency call at the railway. His normal hours of work were from 7-20 A.M. to 5 P.M., but the terms of his contract included a condition that he could be ordered outside those hours to come to do emergency work on the railway. On the day in question the workman after coming back home retired to bed. He received a message to go to Hornsey siding where some trucks had derailed. He started at 10-30 to go to the siding, but while he was on his way there he was knocked down in the street by a motor car and sustained injuries from which he afterwards died. Lord Roche went in this case to the length of observing that a servant carrying a message for his employer through the public streets may be on duty or in the course of his employment while so doing. Having regard to the fact that there was evidence to support the conclusion that the appellant was on duty at the time of the accident, the view that he took was that the accident arose out of and in the course of the deceased man's employment. The fact that there were safer routes is in the context of this case immaterial. Misra J. has referred to the observations of Lord Macmillan in -- '(1932) 101 LJKB 664 (H)' and it is unnecessary to quote them further as they will be found reproduced in his judgment. Those observations clearly enunciate the principle that the sphere of a workman's employment is not to be regarded as restricted to the actual place he works. An employee who uses a way which is part of the employer's premises of which he can only traverse only when he is going to or coming back from his work is deemed to be on his master's service while actually using that means of communication. I think it will make the position clear if I were to invite attention to the actual illustration given by Lord Macmillan:

> "The seaman who on his way back to his ship has left the public highway with its risks common to all wayfarers and has entered the private premises of the harbour in which his ship lies with its special risks to which only those who have business at the harbour are exposed, seems to me to have come with the protection of the Act, for if he sustains an accident while using this access he sustains it by reason of risks incidental to his employment which he would not have encountered but for his employment."

48. The principle enunciated by Lord Macmillan has been followed, as pointed out by Misra J., in several cases to which reference has been made by him in his judgment. They have been discussed by him with his usual lucidity and I feel that it is unnecessary to multiply cases to illustrate this principle. Particular attention may, however, be drawn to the recent case of -- '1948 1 All ER 233 (L)'. As has been pointed out by Misra J., in this particular case, a workman got injured by slipping on an icy slope while she was crossing her employer's premises to 'clock in'. The facts of the case were that there was no public right of way to the premises and no actual way. Only for many years past it had become usual for the members of a neighbouring village to cross the premises without any objection in order to reach an adjoining railway station. On these facts, the Court of appeal held that the accident arose out of and in the course of employment.

49. Reference has been made by Brij Mohan Lall J. to -- 'Hewinston's case (A)'. He has also noticed some other cases. The exact principle which is deducible from these cases has been explained with lucidity by Misra J. and I am in agreement with him when he says that an examination of them will show that they have reference to that category of accidents which are received by a workman not as a servant of his employer but as a member of the public. The point to notice in this case is that the servant's injuries were not caused by any transport, compulsory or optional provided, by the railway. They were caused to him while he was on the actual premises. He was in no sense, as Brij Mohan Lall J. holds, a trespasser. He was using a way located in the premises which the responsible officers of the railway had invariably allowed to be used by him and the other employees of the Railway Workshop, the workshop itself being under the control of the Railway department.

50. In a careful argument which has been addressed by learned counsel for both the parties, reference has been made to a number of cases some of which have been considered by Misra J. and I propose to make brief comments on them. The first case to which attention may be invited, is that of -- 'G. I. P. Railway v. Kashinath Chimnaji', AIR 1928 Bom 1 (Z4). This was a case of a G. I. P. Railway Co. workman who was sent on a message by one of the Company's officers from Kalyan to Bombay. On arrival in Bombay, he was directed by another of the Company's officers to go back to Kalyan. On his way back he was travelling in an electric train. While he was standing at the door of the carriage which was left open and supporting himself on the vertical iron bar, the train, while going on a bridge, received a jerk and as a result of it he fell down on the lines and died consequently. In an action brought by his heirs, it was conceded by the Railway Co. that the accident occurred in the course of the workman's employment; but it was denied that it arose out of his employment. On these facts, it was held that the accident arose out of the employment of the workman and it could not be said that he took any greater risk than any ordinary traveller would do while travelling on one of these electric trains. It was further held, that the warning notice in connection with these electric

trains in which it was stated, inter alia, "do not stand near the door" had been framed not for workmen but for the purpose of securing the safety of passengers in general and that the defendant Company was not protected by this provision.

51. 'AIR 1943 Mad 353 (K)' was a case of two workmen who were employed by the contractor of the Vizagapatam Port authorities and were killed within the premises of the harbour. They had been engaged for loading manganese ore into ships at a dump within the harbour premises, the hours of work being from 2 p.m. to 10 p.m. On the day of the accident, these workmen, after having worked from 2 to 7-30 p.m., left the harbour premises to drink some coffee without any permission. It was usual for workmen to go away for short periods when convenient. While returning, they took a short cut which necessitated their crossing certain railway lines. While they were so doing, a railway engine ran into them and they were killed. The Railway authorities had put up a notice prohibiting persons from crossing railway lines. But the evidence showed that it was usual for workmen in the harbour premises to cross the line in spite of these prohibitions. The finding of the Commissioner under the Workmen's Compensation Act was that this practice had been permitted, connived or winked at by the employers of labour or responsible officials of the port. On these facts, it was held by the bench deciding the case that in leaving their work to take refreshment at 7-30 p.m., the workmen did what they were entitled to do as it would have been impossible for them to go on doing that heavy work from 2 p.m. to 10 p.m. without some break. It was further pointed out that, in crossing tile rail way line, the workmen were following the usual practice of the workmen engaged in the harbour, the prohibition being not an effective prohibition inasmuch as the responsible officials of the harbour had been conniving at its being disregarded. The accident having taken place in the harbour pre mises in the circumstances narrated above, the bench took the view that the risk which they ran was incidental to their employment and arose out of it.

52. 'AIR 1928 Pat 508 (I)' was a case of an employee of the Company who was killed by being run over by an engine in the works. The deceased workman was under a duty to start work at 6 a.m., but before so doing he had to change his 'check' and for that purpose it was usual for him to go to the check house. The deceased met with the accident while going to the check house. Kulwant Sahay J. pointed out that the learned Commissioner had found that the deceased was not guilty of disobedience of Rule 7 prohibiting employees to take short cuts over dangerous places inasmuch as the evidence showed that in spite of there being safety gates close to the place where the deceased met with the accident, the place was used, all along by employees without prevention. They were, indeed, in the habit of crossing the railway track as a short cut without any objection on the part of the Company or their agents. He made a distinction between a wilful act of disobedience of a rule and merely a thoughtless act. The bench came to the conclusion that there was no wilful disobedience of any rule on the part of the employee and the claimants were, therefore, entitled to compensation.

53. 'AIR 1951 Cal 501 (T)' was a case of an engine driver who was knocked down by a train at a railway platform and killed while returning to his quarters after finishing his day's duty. It was held on the above facts that inasmuch as he was knocked down and killed in the railway premises, it must be held that the accident arose out of and in the course of his employment.

54. 'Burma Oil Co. Ltd. v. Ma Hmwe Yin', AIR 1935 Rang 428 (Z5) was the case of a servant who was employed as a workman. He could go to his work by three different ways leading to his place of duty. He for his own convenience chose one way and quite before the usual time started off for his place of duty; on the way he was bitten by a snake and died. It was held that the accident did not occur either in the course of or out of his employment and the claimant was not entitled to any compensation.

55. No useful purpose will be served by considering at any length cases of accidents occurring on public highways and not on the premises of the employer.

56. I do not think that there is any question of added peril in this case and I do not propose to dilate on this point.

57. I am unable to understand how the workman can be said to have wilfully disobeyed any orders either expressly given or deducible from rules framed by the railway for the safety of the public. Reliance for this argument has been placed upon the Manual of Instructions contained in a booklet issued by and under the authority of the Indian Railway Conference Association. Misra J. refused to look into them as they had not been brought on the record. Apart from this, there is no evidence whatsoever to show that they were ever brought to the notice of Mahabir. I further agree with Misra J. that they cannot be presumed to have been issued with all the necessary formalities.

58. For the reasons given above J agree with the judgment of Misra J. and hold that the accident arose out of and in the course of employment. I would, therefore, maintain the order of the Commissioner. I direct that the papers of this case be laid before the Hon. the Chief Justice for orders.

By The Court Kidwai and Chaturvedi, JJ.

59. This case originally came up for disposal before a Bench consisting of Hon'ble L. S. Misra J. and our brother Brij Mohan Lall J. There was a difference of opinion, Misra J. being of the opinion that the appeal should be dismissed and our brother Brij Mohan Lall J. being of the opinion that the appeal should be allowed. In view of this difference of opinion the matter was placed before our learned brother Sapru J. who has agreed with the opinion expressed by Hon. Misra J. The decision of this appeal must be in accordance with the opinion of Sapru J., the third Judge to whom the matter was referred. We accordingly direct that the appeal be dismissed with costs.