Regional Director, E.S.I Corpn. And Anr vs Francis De Costa And Anr on 5 May, 1992

Equivalent citations: 1992 SCR (3) 23, 1993 SCC SUPL. (4) 100

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.P. Jeevan Reddy

PETITIONER:
REGIONAL DIRECTOR, E.S.I CORPN. AND ANR.

Vs.

RESPONDENT:
FRANCIS DE COSTA AND ANR.

DATE OF JUDGMENT05/05/1992

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
JEEVAN REDDY, B.P. (J)

CITATION:
1992 SCR (3) 23 1993 SCC Supl. (4) 100
JT 1992 (3) 332 1992 SCALE (1)1083

ACT:
Employees' State Insurance Act, 1949 : Sections 2(8), 51A, 51C, 51D, 75 and 76.
'Employment Injury'-Test to determine-What is Expressions-'In the course of employment' and 'Arising out of employment'-Scope of-Injury caused to employee by Employer's lorry on public road while employee was on way to join duty-Whether arises out of and in the course of employment.
'Employment Injury'-Relief-Availability of remedy under General Law of tort or under Special Law in other Acts-Whether bars relief under E.S.I. Act.
Doctrine of Coming in and Going from Work Place-Exceptions.
Maxim-'Eundo Morando. et Redeundo'-Meaning of.
Words and Phases:
'Accident'-Meaning of.
Interpretation of Statutes-Social Legislation-Interpretation of.
Constitution of India, 1950: Articles 38,39,41 and 43.

Social Justice-Workers-Right to health and medical treatment.

HEADNOTE:

The first-respondent was employed with J.P. Coats (P) Ltd., Koratty. On June 26, 1971 while he was going on his bicycle to join duty, on the road leading to the factory at a distance of 1 K.M. the Company's lorry hit him on left side of his body and knocked him down on the road. As a result of the accident, he suffered severe injuries and ultimately the Insurance Medical Officer certified that he was totally and permanently incapacitated to work in the factory. He laid a claim for the benefits before the Regional Director, Employees' State Insurance Corporation which was

24

rejected. Thereupon he filed a claim before the Employees' Insurance Court under Section 75 of the Employees' State Insurance Act, 1948 contending that since the injury was suffered by him while on the way to his duty, it is an `employment injury'. The respondent Corporation contended that it is not so, inasmuch as the accident took place on a public road. The Employees' State Insurance Court held in favour of the first respondent by holding that the respondent was going on the usual route along which he passes and repasses every day to and from the factory on the cycle purchased by him from the advance given by the employer and was not negligent in riding the cycle. Therefore, the injuries were caused to him in an accident while in the course of his employment and consequently he was entitled to the benefits under the Act. On appeal the High Court confirmed the findings of the Employees' State Insurance Court. Against the decision of the High Court, an appeal was preferred in this Court.

Referring the matter to a larger Bench, this Court,

HELD : Per K. RAMASWAMY, J. 1. The respondent was trekking the road to attend to duty which found to be the accustomed route to reach the factory and just few minutes before reporting to duty he was struck by the truck resulting in the employment injury. It, therefore, occurred during the course of his employment and thereby he is entitled to the amount as compensation under the Act. [56 GH, 57-A]

2. In determining whether a given accident occurred in the course of employee's employment, the factual picture as a whole must be looked at, and any approach based on fallacious concept that any one factor is conclusive must be rejected. The facts are of crucial importance, and the addition to or subtraction of one factor in a given situation may tilt the balance, whereas in another situation the addition or subtraction of the same factor may make no

difference. This, however, does not indicate that there are no principles in the light of which a court can decide whether an employee was acting in the course or arising out of his employment at the material time when the accident had occurred. [36D-E]

3. Literal construction of the phrase 'arising out of his employment' conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman due to the accident. But it is wide enough to cover the case where there may not necessarily be a

25

direct connection of the workman. There may be circumstances tending to show that the workman received personal injury due to the accident that arose during the course of or out of his employment. It would not mean that personal injury only must have resulted from the mere nature of the employment, nor it be limited to cases where the personal injury is referable to duties to which the employee has to discharge. The phrase 'arising out of the employment' applies to employment as such, to its nature, its condition, its workman is brought within the zone of danger and resultant injury disease or death. In the context of the claims of the labour for social justice under welfare legislation, the principle is that the employer and the employees are so inter-related and depend on each other, than it is in the interest of each that the other should survive, and it is in the interest of society that both should be kept functioniong in harmony with each other. The expression 'arising out of', therefore, requires the assistance of causal connection between the employment and the accident. The employment is the cause and the accident is the effect. The causal relationship between employment and the accident does not logically necessitate direct or physical connection. It may be of various steps, namely, direct, physical, approximate, indirect or incidental.

[33 GH, 34-A-D]

4. As a general rule the employment does not begin until the employee has reached the place of work. The ambit, scope or scene of his duty does not continue after he has left the place and the period of going and returning are excluded. But duty is not confined to the actual performance of work, it also applies when it is reasonably connected or incidental to the work. When the workman proceeds on a public road to his workplace or factory which is the accustomed road or route, the proximity of the place of accident, time and the obligation to report to duty are relevant and material facts to be kept in mind. [38-F]

5. The doctrine of coming in and going from workplace is subject to reasonable extension. It is common knowledge that the home is the employee's base from which it is his duty to start for work. When an employee travels by direct route from his home to the place of work but for that he has

no occasion to traverse the way though private/public road way is the normal or agreed or accustomed route to reach the workplace, he must be treated to be travelling in the course of his employment as incidental to join the duty or leaving the work place. [54 D-E]

26

6. The motive to use public or private transport or route to reach the place of accident is not relevant. The employee may use the place, public road or transport services as usual course of means of attending to or going from the place of work, office or factory. The test is whether the employee has exposed to a particular risk by reason of his employment or whether he took the same risk as is incurred by any other public using the public way otherwise then his employment. [54 F-G]

7. When a workman walks, rides the bicycle etc. along the public road/street to get to his work, his right to walk does not spring, undoubtedly, from employment, and he also may exercise it as a member of the public. Nevertheless the workman too uses the public/permitted private way as access/means to attend to duty. The question whether he had encountered the danger or the accident exercising his right and to be at the place of incident as a member of the public or as his integral course of employment must always be born in mind. While as a member of the public he may have a right to walk or ride a cycle, drive a car etc. but while walking or crossing the road/driving to reach the place of work or duty he encounters the danger or the accident, which he would not have encountered but for that employment, then it must be incidental to his employment. The motive which induces the employee to do a thing is not material. His motive to go by a particular route is also immaterial, whether it was to save time or to save himself from trouble. Whether the place at which the injury/death occurred was on the only route or at least the normal/accustomed route which the employee must traverse to reach the place of work and became the hazard of the employment is also relevant fact. The fact that the risk is common to all mankind does not prove that the accident had not arisen out of employment. [54H, 55A-E]

8. Sections 51A and 51C of the Act give statutory presumptions/grounds as to when an accident happen while traveling in an employer's transport, etc. The Act intends to reiterate the law declared by this Court, apart from creating some statutory presumptions. But it is no corollary to conclude that an accident arising out of and in the course of employment, in any other way, by necessary implication, should stand excluded. To the extent covered under Section 51A to 51D by statutory amendment stands incorporated in the Act but in other respects the court has to consider whether the accident had arisen out of and in the course of employment, dehors the statutory presumptions etc. provided in Sections

27

51A to 51D. [55 F-H, 56 A-B]

Gian Devi Anand v. Jeevan Kumar & Ors., [1985] Suppl. 1 S.C.R. 1, referred to.

9. The contention that the Motor Vehicles Act provides the remedy for damages for an accident resulting in death of an injured person and that, therefore, the remedy under the Act cannot be availed of lacks force or substance. The general law of tort or special law in Motor Vehicles Act or Workman Compensation Act may provide a remedy for damages. The coverage of insurance under the Act in an insured employment is in addition to but not in substitution of the above remedies and cannot on that account be denied to the employee. [56 C-E]

K. Bharati Devi v. G.I.C.I., A.I.R 1988 A.P. 361, referred to.

10. The Employees' State Insurance Act fastens in an insured employment statutory obligation on the employer and the employee to contribute in the prescribed proportion and the manner towards the welfare fund constituted under the Act - Section 38 to 51 of the Act - to provide sustenance to the workmen in their hours of need, particularly when they become economically inactive because of a cause attributable to their employment or disability or death occurred while in employment. The fact that the employee contributed to the fund out of his hardearned wages cannot but have a vital bearing in adjudicating whether the injury or occupational disease suffered by an employee is an employment injury. The liability is based neither on any contract nor upon any act or omission by the employer but upon the existence of the relationship which employer bears to the employment during the course of which the employee had been injured. [33 D-F]

11. It falls foul from the mouth of the appellant, a trustee de son tort who collected the premium from the employee and employer with a promise to expand it for disability, to attempt to wriggle out from the promise or to deprive the employee the medical benefit for employment injury covered by the insurance on the technicalities. It is estopped to deny medical benefit to the insured employee. Though the plea of estoppel was not raised by the respondent yet it springs from the conduct of the appellant. [56-F]

28

12. The Employees' State Insurance Act is a social security legislation. To promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction. The Court must seek light from loadstar Articles 38 and 39 and the economic and social justice envisaged in the Preamble of the Constitution which would enliven meaningful right to life of the worker under Article 21. [32-F]

13. Right to health, a fundamental human right stands

enshrined in socio-economic justice of our Constitution and the Universal Declaration of Human Rights. Concomitantly right to medical benefit to a workman is his fundamental right. Right to medical benefit is, thus, a fundamental right to the workman. [32-H, 33-A]

14. De hors the human Right and Constitutional goal, the march of jurisprudence emphasises that the law did not remain static but kept pace with the changing social demands to secure socio-economic justice to workman. [54-B]

Saurashtra Salt Manufacturing Co. v. Bai Valu Raja & Ors., A.I.R. 1958 S.C. 881; Mackinnon Mackenzie & Co. (P) Ltd. v. Ibrahim Mahommed Issak, [1970] 1 S.C.R. 869; B.E.S.T. Undertaking, Bombay v. Agnes, [1964] 3 S.C.R. 930, referred to.

The Regional Director of the E.S.I.C. v. L. Ranga Rao & Anr., (1981) 2 Karnataka Law Journal 197; Sadugunojaban Amrutlal & Ors. v. E.S.I. Corporation, 22 (1981) Gujarat Law Reporter, 773; Bhagubai v. Central Railway, (1954) 2 L.L.J. 403; Regional Director, E.S.I. Corpn., Trichur v. K. Krishnan, 1975 K.L.T. 712; Commissioner for the Port of Calcutta v. Mst. Kaniz Fathema, A.I.R. 1961 Calcutta 310, referred to.

Upton v. Great Central Railway Co., 1924 A.C. 302; Fitzgerald v. W.J. Clarke & Son, 1908 (2) King's Bench 796; Mcdonald v. Steamship Co., 1902 (2) King's Bench 926; Titley

JUDGMENT:

Querous (Owners), 1933 Appeal Cases, 494; Simpson v. L.M. & S. Railway Co., 1931 A.C. 351; Nelens Colliery Co. Ltd. v. Hewistson, 1924 Appeal Cases 59; Weaver v. Tredeger Iron & Coal Co. Ltd., 1940 Appeal Cases 955; McCullum v. Northmbrian Shipping Co. Ltd., 1932 (147) Law Times Report 361; Canadian Pacific Railway Co. V. Lockhart, 1942 Appeal Cases 591; Blee v. London & North Eastern Railway Co., 1937 (4) All England Reports 270; Noble v. Southern Railway Co., 1940 A.C. 583; Scott v. Seymour, (1941) 2 ALL E.R. 717 (C.A.); Dover Navigation Co. Ltd. v. Graig, 1939 (4) All England Reports 558; Dennis v. White (A.J.) & Co., 1917 A.C. 479; In R. v. Industrial Injuries Commissioner, 1966 (1) All England Reports 97; Moncollas v. Insurance Officer and Ball v. Insurance Officer. (1985) 1 All England Reports 833; Smith v. Stages & Anr., (1989) 1 All England Reports 833; united States Fidelity & Guaranty Co. v. Elizabeth W. Giles, 276 U.S. 154; Cudahy Packing Co of Nebraska v. Mary Ann Parramore, 263 U.S. 154; Cudahy Packing Co. of Nebraska V. Mary Ann Parramore, 263 U.S. 418; Freire v. Matson Navigation Co., 19 Cal 2d 8, 188 p.2d 809 (1941), referred to.

Halsbury's Laws of England, Fourth Edition, Vol. 33, para 490 at p.369, referred to.

Larson's Workmen's Compensation Law, Vol.1 s.15, referred to.

Per B.P. Jeevan Reddy, J.

1. The respondent-employee cannot claim any disablement benefit under the Employees' State Insurance Act for the injuries suffered by him.

[69-D]

2. A reading of the definition of 'employment injury' under Section 2(8) of the Employees' State Insurance Act shows that for constituting an employment injury it must not only be caused by an accident arising out of his employment but must be one arising in the course of his employment. The words 'arising out of and in the course of employment' are not defined in the Act or the Rules and Regulations thereunder. While both the expressions 'arising out of' and 'in the course of employment' are not defined in the Act or the Rules and Regulation thereunder. While both the expressions 'arising out of' and 'in the course of' do not mean the same thing, both of them do denote and contemplate a causal connection between the accident (which leads to injury) and the employment. The accident, in order words, must not be unconnected with the employment.

[58-C, 60 C-D]

3. Any injury suffered by an insured employee as a result of an accident occurring on a public road or a public place, even while going to or returning from the place of employment cannot be treated as an employment injury. Once it is found that the accident took place on a public road, it becomes immaterial whether that place is one mile or one furlong away from the workplace. Of course, if the employee suffers an injury while travelling, whether voluntarily or as a condition of service, by a transport provided or arranged by the employer it will be an employment injury. Similarly, if the accident takes place on the premises of the employer, it will be treated as one arising out of and in the course of employment. It is, however, necessary to clarify that if an employee suffers an injury while travelling by a public transport or while proceeding along a public road in the course of performance of his duties e.g., medical representatives, linesmen employed by Electricity and Telephone undertakings, repair and maintenance personnel employed to go to the residential and other places, (where the units/gadgets are installed), to attend them and so on. (68 H, 69 A-C]

4. In respect of injuries suffered in accidents not arising out of and in the course of employment, i.e., in the case of injuries other than employment injuries, remedies and forums are different e.g., Motor Vehicles Act, (Sections 110-A) Railways Act (Sections 82-A and 82-J) and so on. If an employee covered by the Act suffers an injury on account of an accident not arising out of and not in the course of his employment, he is not without a remedy in law. Forum may be different; procedure may be different; but he certainly has a remedy; just as an other citizen of this country; neither less nor more. [60 F-G] Saurashtra Salt Manufacturing Company v. Bai Valu Raju and Ors., A.I.R. 1958 S.C. 881; General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes, [1964] 3 S.C.R. 930; Mackinnon Machenzie & Co. Pvt Ltd. v. Ibrahim Mahommed Issak, [1970] 1 S.C.R. 869, referred to.

Bhagubai v. Central Railway, Bombay, 1954 (2) Labour Law Journal 403; Regional Director ESIC v. L. Ranga Rao & Anr., 1981 (2) Karnataka Law Journal 197; Sadgunaben Amrutlal & Ors. v. The Employees' State Insurance Corporation, (1981) 22 Gujarat Law Report 773; Regional Director E.S.I. Corporation, Trichur v. K. Krishnan 1975 Kerala Law Times 712; Commissioners for the Port of Calcutta v. Mst. Kaniz Fatema, A.I.R. 1961 Vol. 48 Calcutta 310, referred to.

Cremins v. Guest, Keen & Nettlefolds, Ltd., 1908 (1) K.B. 469; Gane v. Norton Hll Colliery Co., (1909) 2 K.B. 539; John Stewart and Son (1912) v. Longhurst, (1917) Appeal Cases 249; Howells v. Great Western Railway, (1928) 97 L.J. K.B. 183; Weaver v. Tredegar Iron & Coal Co. Ltd., (1940) 3 All England Reports 157;Hill v. Butterley Co Ltd., (1948) 1 All England Law Reports 233; Alderman v. Great Western Railway Company, (1937) Appeal Cases 454; Netherton v. Coles, (1945) 1 All England Law Reports 227; Jenkins v. Elder Demspter Lines Ltd., (1953) 2 All England Law reports 1133; Blee v. London and North Eastern Railway Co., (1938) Appeal Cases 126, referred to & CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1174 of 1979.

From the Judgment and Order dated 25.11.1977 of the Kerala High Court in A.S. No.638 of 1974.

K.T.S Tulsi, Addl. Solicitor General, Ms. Anil Katyar, T.C. Sharma and C.V.S. Rao for the Appellants.

N.Sudhakaran for the Respondents.

The Judgments of the Court were delivered by K. RAMASWAMY, J. This appeal, by special leave, arises against the judgment of the Kerala High Court in A.S. No. 638 of 1974 dated November 25, 1977. The respondent was an employee in M/s. J & P Coats (P) Ltd. at Koratty. He had to attend the duty in the second shift at 4.30 p.m. On June 26, 1971 while he was going on his bicycle to join duty, on the road leading to the factory at a distance of 1 k.m. the company's lorry hit him at 4.15 p.m. on left side of his body and knocked him down on the road. As a result his left collar bone and left shoulder were fractured and ultimately the Insurance Medical Officer certified that the respondent was totally and permanently incapacitated to work in the factory. He, therefore, laid the claim before the E.S.I. Court under S.75 of the Employee's State Insurance Act, Act No. 34 of 1948 for short 'the Act' which found that the respondent was going on the usual route along which he passes and repasses every day to and from the factory. The cycle was purchased by him from the advance given by the employer. He was not negligent in riding the cycle. The injuries were caused to him in an accident while in the course of his employment and that, therefore, he is entitled to the benefits under the Act. On Appeal the High Court confirmed these findings.

Section 2(8) of the Act defines employment injury thus:-

> "employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India."

A reading thereof would show that a personal injury caused to an employee by an accident or occupational disease arising out of and in the course of his insurable employment whether the accident occurred within or outside the territorial limits of India is an employment injury. The crucial but ticklish question of considerable importance is whether the injury caused by an accident on a public road, while on his way to join the duty just 15 minutes before reporting to duty at a distance of 1 k.m. from the factory premises, arises out of and in the course of his employment?

Accident has not been defined under the Act. The popular and ordinary sense of the word 'accident' means the mishap or an untoward happening not expected and designed to have an occurrence is an accident. It must be regarded as an accident, from the point of view of the workman who suffers from it, that its occurrence is unexpected and without design on his part, although either intentionally caused by the author of the act or otherwise. It may also arise in diverse forms and not capable of precise definition. The common factor is some that concrete happening at a definite point of time and an injury or incapacity result from such happening.

The Act seeks to cover sickness, maternity, employment injury, occupational disease, etc. The Act is a social security legislation. It is settled law that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction. The Court must seek light from loadstar Arts. 38 and 39 and the economic and social justice envisaged in the Preamble of the Constitution which would enliven meaningful right to life of the worker under Art. 21. Article 39(e) enjoins the State to protect the health of the workers under Art.41 to secure sickness and disablement benefits and Art.43 accords decent standard of life. Right to medical and disability benefits are fundamental human rights under Art. 25(2) of Universal Declaration of Human Rights and Art.7(b) of International Convention of Economic, Social and Cultural Rights. Right to health, a fundamental human right stands enshrined in socio-economic justice of our constitution and the Universal Declaration of Human Rights. Concomitantly right to medical benefit to a workman is his/her fundamental right. The Act seeks to succour the maintenance of health of an ensured workman. The interpretative endeavour should be to effectuate the above. Right to medical benefit is,thus, a fundamental right to the workman.

Moreover, even in the realm of interpretation of statutes Rule of Law is a dynamic concept of expansion and fulfillment for which the interpretation would be so given as to subserve the social and economic justice envisioned in the Constitution. Legislation is a conscious attempt, as a social direction, in the process of change. The fusion between the law and social change would be effected only when law is introspected in the context of ordinary social life. Life of the law has not been logic but has been of experience. It is a means to serve social purpose and felt necessities of the people. In times of stress, disability, injury, etc. the workman needs statutory protection and assistance. The Act fastens in an ensured employment statutory obligation on the employer and the employee to contribute in the prescribed proportion and the manner towards the welfare fund constituted under the Act (Ss.38 to 51 of the Act) to provide sustenance to the workmen in their hours of need, particularly when they become economically inactive because of a cause attributable to their employment or disability or death occurred while in employment. The fact that the employee contributed to the fund out of his/her hardearned wages cannot but have a vital bearing in adjudicating whether the injury or occupational disease suffered/contracted by and employee is an employment injury. The liability is based neither on any contract nor upon any act or omission by the employer but upon the existence of the relationship which employer bears to the employment during the course of which the employee had been injured. The Act supplant the action at law, based upon not on the fault but as an aspect of social welfare, to rehabilitate a physically and economically handicapped workman who is adversely effected by sickness, injury or livelihood of dependents by death of a workman.

Literal construction of the phrase "arising out of his employment" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman due to the accident. But it is vide enough to cover the case where there may not necessarily be a direct connection of the workman. There may be circumstances tending to show that the workman received personal injury due to the accident that arose during the course of or out of his employment. It would not mean that personal injury only must have resulted from the mere nature of the employment, nor it be limited to cases where the personal injury is referable to duties to which the employee has to discharge. The phrase "arising out of the employment" applies to employment as such, to its nature, its condition, its workman is brought within the zone of danger and resultant injury, disease or death. In the context of the claims of the labour for social justice under welfare legislation, the principle is that the employer and the employees are so inter-related and depend on each other that it is in the interest of each that the other should survive, and it is in the interest of society that both should be kept functioning in harmony with each other. The expression "arising out of", therefore, requires the assistance of casual connection between the employment and the accident. The employment is the cause and the accident is the effect. The casual relationship between employment and the accident does not logically necessitate direct or physical connection. It may be of various steps, namely, direct, physical, approximate, indirect or incidental.

In Upton v. Great Central Railway Co., 1924 A.C. 302 it was held that the right to compensation given under the Workman Compensation Act is no remedy for negligence on the part of the employer but is rather in the nature of an insurance of the workman against certain sort of accident. The peril of injury which the workman faces must not be something personal to him; "it must be incidental to his employment". In Saurashtra Salt Manufacturing Co. v. Bai Valu Raja & Ors., AIR 1958 SC 881, relied on by Sri Tulsi, learned Additional Solicitor General, construing the words "in the course of employment" under Section 3(1) of the Workman Compensation Act, 1923, this Court held that as a rule the employment of the 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, the journey to and from the place of employment being excluded. However, that stict rule was held to be subject to the theory of notional extension.

In Fitzgerald v. W.J. Clarke & Son, 1908(2) King's Bench 796 Buckley, L.J. explaining the phrase ` out of and `in the course of employment' observed thus:

> "The words `out of point, I think, to the origin or cause of the accident; the words `in the course of' to the time, place and "circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident. The later words relate to the circumstances under which and accident of the character or quality takes place. In Mcdonald v. Steamship Co., 1902(2) King's Bench 926 laying emphasis on the role of place in determination of the course of employment of a workman, it was pointed out thus:-
>
> "If path of his duty both to go and to proceed from the working where he is engaged and so long as he is in a place which his person other than those was engaged would

have no right to be, and indeed, he himself would have no right to but for the work of his employment, he was, I think normally still be in the cause of employment.

Lord Halsbury in Titley & Co. v. Cattrall, 1926(1) King's Bench 488 at 490 observed that actual ownership or control by the employer of the spot where an accident occurred is not essential. The workman goes there on his way to and from his working and he may be regarded as in the course of his employment while crossing the dock or other open space to and from the spot where his work actually lies. Such passage is within the contemplation of both the parties to the contract as necessarily incidental to it.

In Bai Valu Raja's case, AIR 1958 SC 881 it was held that "the strict rule is subject to the notional extension of the employer's premises so as to include and area which the workman and prepasses 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".

Therefore, 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 not only the theory of notional extension as a link but also social justice envisaged under the Constitution and the Act, to alleviate the hardship suffered by the employee.

The Court in Mackinnon Mackenzie & Co.(P) Ltd. v. Ibrahim Mahommed Issak,[1970] 1 SCR 869 at 878 noticed the development of the law from the decisions of the House of Lords that the place of accident need not necessarily be in the factory premises but outside thereto as well. In Rosen v. S.S. Querous (Owners), 1933 Appeal Cases, 494 Lord Buckmaster explained the phrase of Lord Thankerton in Simpson v. L.M. & S. Railway Co., 1931 A.C. 351 that the place referred to therein was not the exact spot at which the accident may have occurred, but meant in that case the train on which the workman was travelling and in the later case the ship on which the workman was employed. Thus,it could be seen that the accident may occur while the workman was on his way to attend the duty or during his return from duty. The place need not necessarily be in the premises of the factory etc. In determining whether a given accident occurred in the course of employee's employment, the factual picture as a whole must be looked at, and any approach based on fallacious concept that any one factor is conclusive must be rejected. The facts are of crucial importance, and the addition to or subtraction of one factor in a given situation may tilt the balance, whereas in another situation the addition or subtraction of the same factor may make no difference. This, however, does not indicate that there are no principles in the light of which a court can decide whether an employee was acting in the course or arising out of his employment at the material time when the accident had occurred.

The course of employment has been used in tort law as a test to determine the vicarious liability of the employer to the world at large. The Latin phrase " eundo morando, et redeundo" to mean that while at his place of employment and while entering and leaving it the doctrine of employer's

liability was extended to matters arising while the workman was coming to the place of work, or leaving it, workman is on the employer's premises. But duty is not confined to the actual performance of work, but also applies when it is reasonably connected or incidental to the work.

The question in this case is whether the casual connection between the accident and the employment would be extended beyond the factory premises to a distance of one Km., while the injured workman was on his way on a public road to attend to the duties. Before adverting to the concepts of duty, time and place of accident, in the context of an accident to an employee, it may be necessary to notice the development of law in various countries in relation to compensation to the workman under the respective workman compensation statutes. New Zealand Workmen's compensation system, pursuant to the recommendation in 1966 by the Royal Commission appointed in that behalf, recommended that the Workman Compensation Act based on contract should be replaced by a unified system of accident rehabilitation and was accepted by the House of Representatives'; abolished the common law action for damages for personal injuries and adopted in all embracing "

> national accident insurance system". In Australia the Committee of inquiry, appointed in this behalf, in its report stated that:
>
> (1) The systems have failed to grapple, in any way, with the rehabilitation of the injured worker.
>
> (2) There is no uniformity between compensation systems throughout Australia.
>
> (3) It provides no protection for the 15 per cent of the workforce who are self-employed.
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> (4) Though in name the system aims to protect injured workmen, it limits coverage to injuries sustained during working hours leaving the workers to fend themselves thereafter. It recommended full coverage. Accordingly, necessary amendments were brought about. The American National Commission on States Workman's Compensation Laws also had gone into the question to provide an adequate, prompt and equitable system of compensation. The Commission laid emphasis to settle the dispute out of court and other methods. Now the fact is that though general public are exposed to risks on streets and on public paths, some state Supreme Courts held that it does not change the character of the risk to workman. Accordingly, compensation was awarded.

Industralised nations like France, Federal Republic of Germany, Poland, Sweden, Britain and Yugoslavia adopted the most advantageous alternatives to workman's compensation system i.e. social security system. In United Kingdom, Workman's Compensation Act was replaced by Social Security Schemes.

In Halsbury's Laws of England, Fourth Edition, Volume 33, Para 490 at p.369 it is stated thus:-

"Accident travelling to and from work. The course of employment normally begins when the employee reaches his place of work. To extend it to the journey to and from work it must be shown that, in travelling by the particular method and route and at the particular time, the employee was fulfilling an express or implied term of his contract of service. One way of doing this is to establish that the home is the employee's base from which it is his duty to work and that he was travelling by direct route from his home to a place where he was required to work, but that is only one way of showing this; the real question at issue is whether on the particular journey he was travelling in the performance of duty, or whether the journey was incidental to the performance of that duty and not merely preparatory to the performance of it. If the place where the accident occurs is a private road or on the employer's property, the accident is in the course of the employment because he is then at the scene of the accident by reason only of his employment and he has reached the sphere of his employment. The test is whether the employee was exposed to the particular risk by reason of his employment or whether he took the same risks as those incurred by any member of the public using the highway.

Thus as a general rule the employment does not begin until he has reached the place of work. The ambit, scope or scene of his duty does not continue after he has left the place and the period of going and returning are excluded. When the workman was proceeding on a public road to his workplace or factory which is the accustomed road or route, the proximity of the place of accident, time and the obligation to report to duty are relevant and material facts to be kept in mind.

Lord Atkinson in Helens Colliery Co. Ltd. v. Hewitson, 1924 Appeal Cases 59 while reiterating this principle where there is an agreement between the colliery company and the railway company to provide special train for the conveyance of the colliery company's workmen to and from the colliery and the place of the residence of the workmen, observed thus:

"If each collier was bound by his contract to travel to his employer's colliery by this provided train, then `cadit questio' The collier would be in the course of his employment when he was doing a thing he was bound by his contract of service to do. But the conferring upon a collier of a privilege which he is free to avail himself of or not, would, `prima facie' impose no duty whatever upon him to use it".

In special circumstances, however, such an obligation might be implied:-

"It must, however, be borne in mind that if the physical features of the locality be such that the means of transit offered by the employer are the only means of transit available to transport his workman to his work, there may, in the workman's contract of service, be implied a term that there was an obligation on the employer to provide such, means and a reciprocal obligation on the workman to avail himself of them".

In Weaver v. Tredeger Iron & Coal Co. Ltd., 1940 Appeal Cases 955 (f) the facts were that a collier was injured when trying to board a train. The train was owned by a railway company, but the platform was situated by the side of a railway line which ran through the colliery premises, and was accessible from the colliery premises only. The employees of the Colliery used it under an arrangement between their employers and the company whereby specified trains were stopped at the platform to take the men to and from their homes at a reduced fare, which was deducted by the employers from the workmen's wages. The workmen were free to go home by means of the main road which ran past the colliery, but in practice nearly every employee used the railway. On those facts it was held by the House of Lords that as a rule, employment does not commence until the workman has reached his place of employment, and it does not continue after he has left that place, the periods of going to and returning from the place being generally excluded. This however, is not and invariable rule, and the employment does not necessarily end when the `down tools' signal is given, or when the workman leaves the actual workshop where he is working. There may be some reasonable extension both in time and space, as for instance, where the workman travels to and from his work by some form of transport provided by his employers, and which he is under a contractual duty to use or where he is using the means of access to and egress from his place of employment. As the workman was making use of facilities provided by his employers for leaving the place of employment, which he had not left at the time of the accident, and as the duty of leave the employment in a permitted manner had not been completed, the accident arose in the course of and out of the employment, and he was entitled to compensation.

Lord Wright held thus:-

> "He was on his way home on a public conveyance. He had no greater right to claim that his employment was continuing than if he had been bicycling home on the public street when the accident happened. The fact that the colliery had arranged with the railway company to provide a special train for the men did not extent the course of the employment, as it would have done if the men were found by their contract of employment to use the train, or, it may be, if there was no other possible way for the men to get to and from their home, or from or to the colliery".

House of Lords upheld the claim for compensation. In McCullum v. Northmbrian Shipping Co. Ltd., 1932 (147) Law Times Report 361 the House of Lords were concerned with a situation that the workman after discharge of his duties as bosum in the ship, he was offered a job of night watchman for Saturday night, and he agreed to undertake that duty which commenced from 6 p.m. to 6 a.m. Therefore, on the next day he was due to report at 6 p.m. to take up his duty as a night watchman, and "shortly before that hour he left his home, where he had spent the day, in order to go to the harbour. He called in a public house just outside the entrance to the dock premises and had a glass of bear and then proceeded on his way. He was never seen thereafter alive and his body was recovered on the 18th October from the King's Dock, about 1000 yards from the Newbrough's berth, at a place to which it might have been carried by the tide from the proximity of the ship's berth". The death was not due to drowning, but due to fracture of the skull, haemorrhage and shock. The nature of the injuries found on the body being consistent with the deceased having fallen and struck his head against something and then fallen into the water. It was a stormy night of heavy rain and

strong wind. On those fact considering whether the accident had occurred during the course of his employment, Lord Macmillam speaking for the unanimous House held that:

> "But it is manifestly impossible to exhaust their content by definition, for the circumstances and incidents of employment are of almost infinite variety. This at least, however, can be said, that the accident in order to give rise to a claim for compensation must have some relations to the workman's employment and must be due to a risk incidental to that employment as distinguished from a risk to which all members of the public are alike exposed. Beyond this, the decision in each case must turn upon its own circumstances. In each case the character of the employment must necessarily be a vital element in determining whether a particular accident has arisen out of and in the course of it....."

It was further held that:

> "Till he has reached the ship or her appurtenances a seaman who has been on shore on leave is deemed not to have re-entered the sphere of his employment. Unless and until he has reached what has been described as a provided access to his ship, i.e., an access provided by his employers, the seaman returning from leave is regarded as still in a public place outside the area of his work. The rigidity of his doctrine has been so far relaxed But, so far as I am aware, there has been no case in which this House has decided in terms that a seaman who on his way to rejoin his ship meets with an accident while traversing private dock premises is disentitle to compensation. It has been recognised 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 coming 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. Take the analogy of a domestic servant, which is peculiarly in point, for a domestic servant, like a seaman, "lives in," and the scene of a domestic servant employment is the master's house just as the ship is the scene of the seaman's employment. I imagine no one would doubt that a maid servant returning home from her night out and meeting with any accident in the private avenue of her master's house, though at a point a quarter of a mile from the house, would be entitled to compensation. And equally so if she suffered an accident on a private access to the house which, although not the property of her master, she had permission to the traverse only as one of the household servants". (emphasis supplied) In Canadian Pacific Railway Co. v. Lockhart, 1942 Appeal Cases 591 while dealing with the use of private motor car in disregard of company's instructions while travelling to execute the master's work the workman sustained injuries due to negligent driving of the company employee. Dealing with vicarious liability of the master the privy council pointed out at p.601 thus:

> "The means of transport used by him on these occasions was clearly incidental to the execution of that which he was employed to do. He was not employed to drive a motor car, but it is clear that he was entitled to use that means of transport as incidental to the execution of that which he was employed to do provided the motor car was insured against third party risks".

In Blee v. London & North Eastern Railway Co., 1937(4) All Eng. Reports 270 on January 21, 1935, a workman finished his ordinary day's work at 5.15 p.m. and again he would have to join at 7.20 a.m. on the following day, at 10.30 p.m., on that same evening, he was called for emergency duty as per terms of the contract and he was going to attend the duty, and was knocked down by a motor car while crossing the street on his way to work. Later, he died from the injuries sustained. In the claim for compensation under Workman's Compensation Act reversing the award of the arbitrator, court of appeal held that employment commenced from the time the workman left his home and that the accident arose in the course of the employment.

In Noble v. Surthern Railway Co.,1940 A.C. 583 the employee met with an accident on his way to Railway Station to report to duty. The House of Lords held that his proceeding from the hotel to the railway station was to report duty and was during the course of his employment. His motive which induced the workman to do a thing was held not material. In Scott v. Seymour, (1941) 2 All E.R. 717 at 722 (C.A.). The Duty of the injured (girl) was to get the milk. While proceeding to the farm she mounted on the horse back and she fell down and was injured. Lord Justice luxmoore held that she was within the sphere of employment, The fact that she was to encounter danger of riding on a horse was held to be immaterial from the point of view of employee. The contention that she was not to ride the horseback to go to form was negated and was held to be entitled to compensation.

In Dover Navigation Co. Ltd. v. Graig, 1939 (4) All E.R. 558 the deceased had been employed as a Sailor of a Ship which was sent to mosquito-infected river. In the way of journey, it was found that the death was out of Yellow Fever/or Malaria caused by mosquitoes' bite. It was contended by the employer and was found favour with arbitrator that the death was caused by the natural cause and this was a risk shared by everybody in the locality. The court of appeal, reversed it and held that the words `arising out of and `in course of connote a certain degree of casual relation between the accident and the employment. It is impossible to exactly define in positive terms the degree of that casual connection, but certain negative propositions may be laid down. For example, the fact that the risk is common to all mankind does not prove that the accident does not arise out of the employment. Nor can it be held that the death or injury from the forces of nature e.g. earthquake and lightning, is not, merely because the accident is due to the force of nature, and accident arising out of the employment. It has to be shown that the workman was specially exposed by reason of his employment to the incident of such a force. If it can be shown that the workman was exposed by reason of his employment to the risk of infection by decease-bearing bacteria, it is not difficult in coming to the conclusion that illness or decease so caused is due to and accident arising out of his employment. In my opinion, there is no distinction between the extent and the nature of the casual relation in the one case or the other. Lord Finlay, L.C. in Dennis v. White (A.J.) & Co., 1917 A.C. 479 held that the fact that the risk may be common to all mankind does not disentitle a workman to compensation if in the particular case it arises out of the employment. It seems as irrelevant that all

other residents in the locality are subject to the same risk of accident as it is that all persons using the street are subject to the same risk as the servant employed to work in the street..... I myself am inclined to think that common risk of natural forces must mean the operation of the natural forces must mean the degree and to the extent that they would operate in the area in which the workman could be said to the exposed to the unemployed. A seaman may be directed to serve in places abroad where the forces of nature, heat,cold, flood and tempest, cause much greater risk of injury than they do at home. In such cases, I personally doubt whether the fact that persons ordinarily to be found in the locality are exposed to such risks is of any importance. They are exposed to the risk as residents in the area. He is exposed to the risk because he is required by his employment so to expose himself..... The judge should have considered whether the seaman was exposed to that risk by reason only of his employment. Lord Wright held that, "it is not legitimate to seek to write into the section definitions and limitations which the legislature have not thought fit to insert. An incidental injury arose out of the man's employment must be such that the accident has some sort of causal relation with them, although not necessarily an active physical connection. The phrase `arising out' of the employment is not due to the nature of employment. The Dennis case was explained by Lord Wright holding that a boy's employment required him to proceed by bicycle through the streets. He was knocked down and injured. It was nothing to point out that everyone who bicycles in the street incurs a similar risk, or that the risk is general and ordinary. The observation of Lord Finlay, L.C., that `the accident was necessarily incidental to the performance of the servant's work, all inquiry as to the frequency or magnitude of the risk is irrelevant' was adhered to and followed. It was further held that indeed, in cases of this type once the actual facts are ascertained, it is for the court to ask itself whether, on those facts, the accidental injury arose out of the employment. In the present case, the answer to the question seems clear and inevitable, The seaman sustained the fatal injury because his employment took him to a river or a roadstead or a sandbank on which his vessel grounded on the West Coast of Africa. Though the Circumstances are different, he was as much exposed by the exigencies of his employment to the risk being bitten by the mosquitoes as Mrs. Thom was exposed to the risk of the falling building, or the boy Dennis to the risk of being run over in the street. The infliction of the bites was an accident.

(emphasis supplied) In Nobel v. Southern Railway Co. (supra) the appellant's husband was passed fireman. He was instructed to go to East Croydon to carry out his duties there. He had to walk from the locomotive depot to Norwood Junction and then proceed by train to East Croydon. On his way he took a shorter rout along the line and was killed by an electric train. On a claim for compensation by the appellant, the House of Lords by separate but concurrent opinions held that "the deceased has not deviated from the safe route in order to fulfill any propose of his own". Since he was going about his allotted job, the necessary inference was that he was walking along the line for the purpose of and in connection with his employer's trade or business. Therefore, the appellant was held to be entitled to recover compensation.

(emphasis supplied) In R.V. Industrial Injuries Commissioner, (1966) 1 All Eng. Reports 97, the facts were that Mr. Culverwell was employed as a semi-skilled fitter by British Cellophane, Ltd. During lunch break due to over crowd in the smoking booth he was squatting on the floor, a fork-lift truck was driven past going from one part of the factory to another and ran into Mr. Culverwell and he was severally injured and his leg pelvis was broken and his hip was dislocated. On a claim for

compensation for industrial injuries under Section 7 of the National Insurance (Industrial Injuries) Act, 1946, the management contented that it was not an industrial injury and the accident did not occur in the course of his employment nor arose out of employment. Repelling it Lord Denning, M.R. observed at p.101 that in the early days the Workman's Compensation Act was interpreted too narrowly. The House of Lords also did not appreciate the social significance of that legislation. They debarred men from compensation when Parliament thought that they ought to have it. I felt that we are going back to the old narrow interpretations of this provision. I think it plain that a man can be acting in the course of his employment, even though he is doing something which was not his duty to do. Thus, when Mr. Culverwell went down for the break, when he was there waiting to go into the smoking booth, it was in the course of his employment, although he did not go in pursuance of any duty owed to his employer.

In Noncollas v. Insurance Officer and Ball v. Insurance Officer, (1985) 1 AII E.R. 833 two appeals were disposed of by a common judgment. Nancollas was a Senior Disablement Resettlement Officer employed by the Department of Employment. He lived at West Worthing. His employment involved, in addition to his work at his main office at Worthing, he had to attend to other job centres visiting disabled persons in his area. On October 30, 1980 he went to Guildford to attend a Conference about a particular disabled person. He returned to his home that evening. On the following day he was returning by a Car. On the way he met with an accident. He laid his claim for insurance under S.50 (1) of the Social Security Act, 1975. Mr. Ball was a Sub-inspector Police Officer and also a Finger Print Expert. He was also a Sailing Instructor to the Cadets, at Embassy, 40 miles from Wakefield. He telephoned to the Police Station and thereafter he was proceeding to Embassy on his Motor Cycle. His means of transport was approved by superior officer. He was entitled to mileage allowance. When he was going to Embassy, he met with an accident. He too laid his claim under Social Security Act. The claims of both were rejected by the Tribunal. On appeal, Johan Donaldson L.,J. speaking for the court of appeal, held that the precedents provide guidance as to the approach to be adopted, rather than providing any answer in a particular case. Furthermore, "since many of the authorities are of some antiquity and date from a period when the employment relationship was not inaccurately described as that of master and servant, the importance attached to the orders or instructions of the employer and the search for contractual duties may no longer be so appropriate". "The concept is unchanged, but in a changed social matrix, the foundation of the employment relationship is no longer so much based on orders and instructions as on requests and information" and contractual rights and duties are "supplemented by mutual expectations of cooperation". Both the instant appeals were concerned with whether the claimant was at the relevant time engaged on an activity which was in the course of his employment or whether he was going from his home to another place in order to resume the course of his employment. While at home, neither was acting in the course of his employment. " Had each completed the journey successfully, they would thereafter without doubt have been acting in the course of their employment". It was further laid down that "none of the authorities purports to lay down any conclusive test and none propounds any proposition of law which, as such, binds other courts". They do indeed approve an approach "which requires the court to have regard to and to weigh in the balance every factor which can be said in any way to point towards or away from a finding that the claimant was in the course of his employment".

(matter emphasised not indicated) In the end the decision must stand or fall on the correctness of his appreciation of the particular fact of their interrelation and, having weighed those facts, the correctness of his conclusion which is very largely one of the factors, that the claimant was or was not in the course of his employment. It was further laid down that the statute calls for `yes' or `no' answer to a broad question. The approach should be that of a jury and all the relevant evidence is it `yes' or `no'. Accordingly, it was held that both the appellants were performing their duties during the course of their employment and were entitled to insurance claims.

In Smith v. Stages & Anr., (1989) 1 AII E.R. 833 M/s Machin and Stages were employed as Paripatetic Laggers to install insultation at Power stations. They were stationed in Midlands and they were asked to attend the work at Pembroke. On finishing their duty at Pembroke on their way back to Midlands, they were travelling in the car driven by Machin. It crashed through a brick wall, resulting in serious injuries to them. For damages for master's vicarious liability they sued the defendant company contending that they had been acting in the course of employment while driving the car back to Midlands and the first defendant was negligent in driving the car. The contract provides payment of wages for travel time also. The Trial Judge held that the accident was not in the course of employment and that therefore, the company was not liable. The Court of Appeal reversed the decision and held that the employers were vicariously liable for Driver's negligence. On further appeal, Lord Goff of Chieveley in House of Lords held thus:

> "I propose first to consider the problem not in relation to his journey back from Pembroke when the accident in fact happened, but in relation to his journey out to Pembroke. I shall do so because I find it easier to consider the problem uncomplicated by the fact that Monday, 29th August, was a bank holiday or by the fact that Mr. Stages was being paid eight hours' sleeping time because he had worked through the night or Sunday, 28th August, although, as well appear, I consider both facts to be irrelevant .....
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> The fact that he was not required by his employer to make the journey by any particular means, nor even required to make it on the particular working day made available to him, does not detract from the proposition that he was employed to make the journey. Had Mr. Stages wished, he could have driven down on the afternoon of Sunday, 28th August, and have devoted the Monday to (for example) visiting friends near Pembroke. In such circumstances, it could, I suppose, be said that Stages was not travelling `in his employers'time. But this would not matter; for the fact remains that the Monday, a normal working day, was made available for the journey, with full pay for that day to perform a task which he was required by the employers to perform. Lord Brandon of Aakbrook agreed with Lord Goff. Lord Lowery with whom Lord Keith of Kinkel and Lord Griffiths agreed posed the question "Whether Mr. Machin was acting in the course of employment when driving the car at the time of the accident is a sole question for your Lordship to decide". On considering the question it was laid down that:-

> "The paramount rule is that an employee travelling on the highway will be acting in the course of his employment if, and only if, he is at the material time going about his employer's business. One must not confuse the duty to turn up for one's work with the concept of already being `on duty' while travelling to it.
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> It is impossible to prove for every eventuality and foolish without the benefit of argument, to make the attempt, but some prima facie propositions may be stated with reasonable confidence. (1) An employee travelling from his ordinary residence to his regular place of work, whatever the means of transport and even if it is provided by the employer, is not on duty and is not acting in the course of his employment, but, if he is obliged by his contract of service to use the employer's transport, he will normally, in the absence of an express condition to the contrary, be regarded as acting in the course of his employment while doing so. (2) Travelling in the employer's time between workplace (one of which may be the regular workplace) or in the course of a peripatetic occupation, whether accompanied by goods or tools or simply in order to reach a succession of workplaces (as an inspector of gas meters might do), will be in the course of the employment. (3) Receipt of wages (though not receipt of a travelling allowance) will indicate that the employee is travelling in the employer's time and for his benefit and is acting in the course of him employment, and in such a case the fact that the employee may have discretion as to the mode and time of travelling will not take the journey out of the course of his employment. (4) An employee travelling in the employer's time from his ordinary residence to a workplace other than this regular workplace or in the course of a peripatetic occupation or to the scene of an emergency (such as a fire, an accident or a mechanical breakdown of plant) will be acting in the course of his employment. (5) A deviation from or interruption of a journey undertaken in the course of employment (unless the deviation or interruption is merely incidental to the journey) will for the time being (which may include an overnight interruption) take the employee out of the course of him employment. (6) Return journeys are to be treated on the same footing as outward journeys.

All the foregoing propositions are subject to any express arrangements between the employer and the employee or those representing his interests. They are not, I would add, intended to define the position of salaried employees, with regard to whom the touchstone of payment made in the employer's time is not generally significant."

Accordingly, it was held that the employee was travelling on duty and employer was vicariously responsible for negligence driving of the Driver.

The English Workman's Compensation Act being founded on contract between the employer and employee, received strict construction though yet times some of the learned, noble Lords and Judges gave extended connotation. This distinction must be kept at the back of our mind when we apply that law to our conditions steeped with socioeconomic justice of our Constitutional creed.

In United States Fidelity & Guaranty Co. v. Elizabeth W. Giles, 276 U.S./p.154 Nephi Gilers, an employee of the appellant company, while crossing the railway track, on his way to work, was struck by the train and was killed. The widow laid the claim. The State Supreme Court denied the relief and on appeal, the U.S. Supreme Court held that the accident arose in the course of the employment and the master is not unconstitutionally deprived of his property without due process of law by making him liable for injury. The place of accident was access to the plant and is most convenient to the employee and has been used for long period of time without objection by the employer. The same view was reiterated in Cudohy Packing Co. of Nebraska v. Mary Ann Parramore, 263 U.S. p.418.

In Saurashtra Salt Manufacturing Co. v. Bai Valu Raja and Ors., AIR 1958 SC 881 it is true that in that case the way through which the deceased has to pass through was public way. In paragraph 8, this Court pointed out that both before and after remand, that the boat ferried across the creek were used by the public, everyone of whom had 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 had to proceed in the town of Porbander via public road. A workman then used at point A a boat, which was also used by the public, for which he had to pay the boatman's dues, to go to point B. From point B to the salt works there is an open sandy area of a specified length and width, which was also open to the public. On those facts it was held that the workman was on a public road and that, therefore, it was not in the course of employment, unless the very nature of employment makes it necessary in employment to be there. He was certainly in the course of employment if he reached the place of work or a point or an area which came within the theory of notional extension, outside of which the employer was not liable to pay compensation for any accident happening to him. This Court, therefore, while upholding the theory of notional extension disallowed the claim of compensation on those peculiar facts.

In B.E.S.T. Undertaking, Bombay v. Agnes, [1964] 3 SCR 930 P.N. Raman, the bus Driver, left the bus in the depot, boarded another bus to go to his residence. The bus met with an accident resulting in injuries to Raman, who died later. It was held per majority that since the employer provided the means of transport, the accident had arisen out of and in the course of employment. It was further held that though the doctrine of reasonable or notional extension of employment developed in the context of specific workshops, factories or harbours, equally applies to bus services. The doctrine necessarily will have to be adopted to meet its peculiar requirements. Accordingly, it was held that the accident arose out of employment.

In The Regional Director of the E.S.I.C. v. L. Ranga Rao & Anr., (1981) 2 Karnataka Law Journal 197 on Sudhendra Kumar was an employee of M/s Mysore Breaveries Ltd. On his way to the factory he had to pass on National Highway No.4 between Bangalore and Tumkur. When he reached in front of Suryodhaya Mills about 2 Km. away from his factory, he was struck by a truck on August 10, 1978 at about 9.45 p.m. He had to report for duty at 10.00 p.m. On those facts the Division Bench speaking through K. Jagannath Shetty, J. (as he then was) held that it was immaterial whether the employee was travelling in a public transport vehicle or was going on a public road or private land, when he suffered injury. He must have the choice of going through any route which was convenient for him and to come by any mode of conveyance which was economical of him. These matters cannot be considered with any set pattern and greater latitude must be given to the employees in growing

cities and towns. The Act enlarges the concept of employment injuries and not narrows it down. It was held that the accident had occurred during the course of employment and the corporation was held to be liable to pay compensation.

In Sadugunjaban Amrutlal & Ors. v. E.S.I. Corporation, 22 (1981) Gujarat Law Reporter, 773 the appellant's husband was employed as a jobber in the Aruna Mills Co. Ltd. and he was an insured person under the Act. His duty hours were from 8.00 a.m to 4.30 p.m. On December 22, 1974, he felt giddy while on duty. He was given medical treatment. On the next day he was to report to duty at 8.00 a.m. He left his residence at about 7.20 a.m. to attend his duty. He walked for a short distance to the bus stop whereat he had to board the bus to carry him to the mill. While waiting for the bus, he complained of discomfort to one of his co- workers who was also waiting at the bus stop. After the bus arrived at the spot while getting into the bus, he collapsed and became unconscious. When he was taken to the hospital, he was declared dead. Insurance claim was negatived on that ground that it was not an employment injury under the Act. While negativing the claim of the Corporation, the Division Bench speaking through Thakkar, J. (as he then was) held that there may be reasonable extension in both time and place and the workman may be regarded as in the course of his employment, even though he has not reached his employer's premises. The facts and circumstances in each case should be examined very carefully to determine whether the accident arose out of and in the course of employment, keeping in view at all time the theory of notional extension. The employer's premises includes an area which the workman passes and re-passes in going to the actual place of work. The theory of notional extension can be made recourse in any reasonable manner to ascertain whether an accident to a workman may be regarded as in the course of employment, though he had not actually reached his employment premises. Accordingly, it was held that the widow of the employee was entitled to the compensation.

In Bhagubai v. Central Railway, (1954) 2 L.L.J. 403 the Bombay High Court, held that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face than a casual connection is established between the accident and the employment. In that case while the deceased was going to attend the factory, he was shot dead by unknown man and it was held that he died during the course of employment.

Regional Director, E.S.I. Corpn., Trichur v. K. Krishnan, 1975 K.L.T 712 and Commissioner for the Port of Calcutta v. Mst. Kaniz Fathema AIR 1961 Cal. 310 merely followed the ratio in Saurashtra Salt Manufacturing Co. v. Bai Valu Raja and Ors., AIR 1958 SC 881 and no new principle was laid. Therefore, they render little assistance to the appellant.

In Kentucky Law Journal, Vol. 59 p.55 on the caption the 'Going and Coming' Rule, it was stated at p.56 that it was unfair to an employee who was subject to call at all hours, or who was required to be en route to work at a distant site, or at an unusual or dangerous hour, etc, to deny the right of compensation. It is his work that requires to make the dangerous journey. Richard D. Cooper in his 'The Operating Premises Exception To the Going and Coming Rule' in the same Journal commenting on the right of the employee to receive compensation for an injury arising out of and in the course of his employment stated that many exceptions have been applied to the going and

coming rule, and one of the principal exceptions widely applied throughout the employment is that injuries sustained by an employee while going to or from his place of work or upon premises owned or controlled by his employer are generally deemed to have occurred in the course of employment. Dealing with the exception he stated at p.154 disposition of any case at law requires flexibility in the principles for use in the decision and the suggestions and guidelines should not be construed as an attempt to straitjacket formula of the court. Rather, what is needed is a statement of factors which are to be considered in determining whether the employee's injurious activity was well connected.....

In Larson's Workmen's compensation Law, Vol.1 in s.15.11 it was stated that the course of employment is not confined to the actual manipulation of the tools of the work, nor to the exact hours of work...In s.15.12 it was stated that one influential writer says that there is no reason is principle why states should not protect employees for a reasonable distance before reaching or after leaving the employer's premises. Some courts have extended the premises idea to areas which are not owned or even controlled by the employer, but which are so closely associated with it that they are in effect part of the premises. Such a test has been helpful in a number of cases, but again it cannot qualify as a statement of legal principle.....In s.15.15 it was stated that a workable explanation of the exception to the premises rule, it is not nearness, or reasonable distance, or even the identifying of surrounding areas with the premises; it is simply that when a court has satisfied itself that there is a distinct 'arising out of' or casual connection between the conditions under which claimant must approach and leave the premises and the occurrence of the injury, it may hold that the course of employment extends as far as those conditions extend. In s.15.21 it was stated that the difficulty would dissolve instantly if the courts confronted with this question would simply face squarely the question whether the extension of course of employment to off-premises injuries is based on any principle to which the public private distinction is relevant. Plainly it is not....For that matter, every travelling salesman uses the highway in his right as a member of the public and not by any right conferred by his contract of employment, yet no one questions that he is in the course of employment on the highway....If the only means of access to the place is over a piece of public road which includes a dangerous railroad crossing, the technical status of the road as public or private is surely immaterial. In s.15.31 the case Freire v. Matson Navigation Co., 19 Cal. 2d 8, 118 P.2d 809 (1941) has been referred to, wherein the claimant, while still on a public thoroughfare was injured due to a traffic congestion caused by the arrival of all sorts of trucks, cars, and pedestrians, that workman came there on business of the claimant's employer. The injury was held to be in the course of employment on the theory that the zone of employment danger has been extended beyond the gate by the employment created dangers in the street. It was held that it is rather a matter of reaching out and covering a particular hazard which has a sufficiently close work connection to impel the courts to find temporary room for it within the course of employment concept.

De hors the Human Right and constitutional goal, the march of Jurisprudence emphasises that the law did not remain static but kept pace with the changing social demands to secure socio-economic justice to workman.

It would thus be held that the employment of a workman does not commence until he has reached the place of employment and does not continue after he has left the place of work, the journey to and

from the place of employment being excluded. An employee travelling from his residence to his place of work ordinarily is not on duty and is not acting in the course of his employment. But travelling as a part of duty between place of work and residence is in the course of his employment when the employee is entitled to payment of travelling allowances/wages is part of duty. The employee then is travelling on the employer's time. He will be acting in the course of his employment. The doctrine of coming in and go from workplace is subject to reasonable extention. It is common knowledge that the home is the employee's base from which it is his duty to start for work. When an employee was travelling by direct route from his/her home to the place of work but for that he/she has no occasion to traverse the way though private/public road way is the normal or agreed or accustomed route to reach the workplace, he/she must be treated to be travelling in the course of his/her employment as incidental to join the duty or leaving the work place. The accident is in the course of his employment because he/she is then at the scene of the accident by reason only of his/her employment and he/she has reached the sphere of employment. The test is whether the employee has exposed to a particular risk by reason of his/her employment or whether he/she took the same risk as is incurred by any other public using the public way otherwise then his/her employment. The accident occurred while using transport provided by the employer is during the course of employment. The motive to use public or private transport or route to reach the place of accident is not relevant. The employee may use the place, public road or transport services as usual course of means of attending to or going from the place of work, office or factory. The proximity of time and place of accident to the time of reporting to the duty or after duty time are relevant facts to be reckoned. No hard and fast rule can be laid. When a workman walks/rides the bicycle etc. along the public road/street to go to his/her work, his/her right to walk does not spring, undoubtedly, from employment, and he/she also may exercise it as a member of the public. Nevertheless the workman too uses the public/permitted private way as access/means to attend to duty. The question whether he/she had encountered the danger or the accident exercising his/her right and to be at the place of incident as a member of the public or as his/her integral course of employment must always be born in mind and is a question of fact to be considered in each case. While as a member of the public he/she may have a right to walk or ride a cycle, drive a car etc. but while walking or crossing the road/driving to reach the place of work or duty he/she encounters the danger or the accident, which he/she would not have encountered but for that employment, then it must be incidental to his/her employment. The motive which induces the employee to do a thing is not material. His/her motive to go by a particular route is also immaterial, whether it was to save time or to save himself/herself from trouble. Whether the place at which the injury/death occurred was on the only route or at least the normal/accustomed route which the employee must traverse to reach the place of work and became the hazard of the employment is also relevant fact. It is impossible to exactly define in positive terms the degree of casual connection. The fact that the risk is common to all mankind does not prove that the accident has not arisen out of employment. It must be shown that the employee was exposed to the risk by reason of employment, though the risk may be common to all. The residents may be exposed to the risk as residents but the employee is exposed to the risk because he/she is required by his/her employment so to expose himself/herself. On the facts in a given case, if the court would come to a positive conclusion, the incident/injury/death arose out of and during the course of employment.

It is true, as contended by Shri Tulsi, that Ss.51A and 51C of the Act give statutory presumptions/grounds as to when an accident happen while travelling in an employer's transport, etc. The Act intends to reiterate the law declared by this court, apart from creating same statutory presumptions. But it is no corollary to conclude that an accident arising out of and in the course of employment, in any other way, by necessary implication, should stand excluded. In Gian Devi Anand v. Jeevan Kumar & Ors., [1985] Suppl. 1 SCR 1 a Constitution Bench of this Court was called upon to consider under Delhi Rent Act by expressly defining heirs of tenant of residential accommodation are tenants whether to exclude heirs of the tenant for commercial tenancy. It was contended that by necessary implication it stood excluded. This Court negatived that contention and held that the statute by necessary implication did not exclude the heirs of the tenant in occupation of commercial accommodation and applied the general law relating to succession and the contract and upheld that they are tenants for commercial premises as well. To the extent covered under Ss.51A to 51D by statutory amendment stands incorporated in the Act but in other respects the court has to consider whether the accident has arisen out of and in the course of employment, de hors the statutory presumptions etc. provided in Ss. 51A to 51D.

The next contention that the Motor Vehicles Act provides the remedy for damages for an accident resulting in death of an injured person and that, therefore, the remedy under the Act cannot be made availed of lacks force or substance. The general law of tort or special law in Motor Vehicles Act or Workman Compensation Act may provide a remedy for damages. The coverage of insurance under the Act in an insured employment is in addition to but not in substitution of the above remedies and cannot on that account be denied to the employee. In K. Bharati Devi v. G.I.C.I., AIR 1988 A.P. 361 the contention that the deceases contracted life insurance and due to death in air accident the appellant received compensation and the same would be set off and no double advantage of damages under carriage by Air Act be given was negatived.

It falls foul from the mouth of the appellant, a trustee de son tort who collected the premium from the employee and employer with a promise to expend it for disability, to attempt to wringgle out from the promise or to deprive the employee the medical benefit for employment injury covered by the insurance on the technicalities. It is estopped to deny medical benefit to the insured employee. We are conscious of the fact that the plea of estopple was not raised by the respondent but it springs from the conduct of the appellant.

Applying the above law to the facts, the necessary conclusion is that the respondent was trekking the road to attend to duty which found to be the accustomed route to reach the factory and just few minutes before i.e. 15 minutes before reporting to duty he was struck by the truck resulting in the employment injury. It, therefore, occurred during the course of his employment and thereby he is entitled to the amount as compensation under the Act. The appeal is dismissed but without costs.

B.P. JEEVAN REDDY, J. This appeal raises a question with respect to the meaning and ambit of the expressions "in the course of employment" and "arising out the employment"

> expressions occurring in the definition of "employment injury" in clause (8) of Section 2 of the Employees' State Insurance Act, 1948. The appeal is preferred by the

E.S.I. Corporation against the judgment and order of a Division Bench of the Kerala High Court dismissing its appeal.

The first respondent, Francis De Costa, was employed with J & P Coats (P) Ltd., Koratty, second respondent in this appeal. He was an insured employee. On 26.6.1971 he was going on a cycle, owned by him, to report to duty at the factory. While he was at a distance of one kilometer from the factory, he was hit by a lorry belonging to the employer. As a result of the accident, he suffered severe injuries and was declared totally and permanently incapacitated for work in the factory. It was so certified by the Insurance Medical Officer. The employee-first respondent laid a claim for the benefits under the Act before the Regional Director, E.S.I. Corporation (the appellant herein) which was rejected. The first respondent thereupon moved the Employees' Insurance Court for relief under Sections 75 and 76 of the Act. His case was that since the injury was suffered by him while on the way to his duty, it is an 'employment injury'. The Corporation, however, contended that it is not so, inasmuch as the accident took place on a public road. The E.S.I Court held in favour of the first respondent, against which the Corporation preferred an appeal to the High Court unsuccessfully.

The facts found by the E.S.I. Court and accepted by the High Court are to the following effect: On that day, the first respondent had to report for duty at 4.30 P.M. The first respondent was proceeding to the factory on his cycle, following the usual route along which he passed every day to and from the factory. The cycle on which he was riding was purchased by him from the advance given to him by the employer with a view to facilitate speedy arrival at the factory. The first respondent was not guilty of negligence while riding the cycle.

It is on the above facts that the question arising herein has to be answered.

The Act was enacted by Parliament since it thought it expedient to provide for certain benefits to employees in the case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. Section 2 is the interpretation clause, Clause (8) whereof defines 'employment injury' in the following terms:

"(8) "employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;)"

A reading of the 'definition' shows that for constituting an employment injury it must not only be caused by an accident arising out of his employment but must be one arising in the course of his employment. Both ingredients must be satisfied. Chapter IV (Section 38 to 45B) deals with the contributions to be made both by the employers and the employees while Chapter V specifies the

benefits which can be extended to the insured persons. (Section 46 inter alia provides for periodical payment to an employee disabled as a result of an employment injury as well as to the dependents of an insured person who dies as a result of employment injury). Section 51 read with the First Schedule prescribes the amounts payable in case of disablement. Section 51-A to 51-D were added by the Amendment Act 44 of 1966. Section 51-A creates a rebuttable presumption to the effect that the accident arising in the course of employment shall be presumed, in the absence of evidence to the contrary, to have arisen out of that employment as well. The Section reads as follows:

> "51A. Presumption as to accident arising in course of employment for the purpose of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment."

Section 51-B provides that an accident shall be deemed to arise out of and in the course of employment notwithstanding that at the time of the accident, the employee was acting in contravention of the provision of any law applicable to him or of any orders given by his employer. It is not necessary to quote the section for the purpose of this case. Section 51-C, though not directly relevant is still of some significance herein and may, therefore, be set out in full:

> "51-C. Accidents happening while travelling in employer's transport. (-)(1) An accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if-
>
> (a) the accident would have been deemed so to have arisen had he been under such obligation and
>
> (b) at the time of the accident, the vehicle-
>
> (i)is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and
>
> (ii)is not being operated in the ordinary course of public transport service.
>
> (2) in this section "vehicle" includes a vessel and an aircraft.)"

According to Section 51-C, where an employee is travelling in a vehicle provided by or on behalf of the employer, and where the travel is to or from the place of work, if any accident occurs resulting in injury to the employee, it shall be deemed that he has suffered the injury arising out of and in the course of employment even if he was under no obligation to travel by that vehicle, so long as the vehicle is not being operated in the ordinary course of public transport service. Section 51-D provides that where an accident occurs while meeting an emergency it shall be deemed to arise out

of and in the course of employment. It is not necessary to notice the section for the purpose of this case. Section 74 in Chapter VI provides for constitution of the Employee's Insurance Court while Section 75 specifies the questions/disputes which are within the jurisdiction of such Court.

In this case the first respondent-employee had not yet reached the factory. At the time of accident he was travelling along a public road, to go to the factory. He was following the usual route which he was following every day for going to and for returning from the factory. He was riding a cycle owned by him which was purchased by him from out of the advance given by the employer for his convenience. The cycle was not provided by the employer, nor was it owned by the employer. The place of accident was one kilometer away from the factory. The accident occurred 15 minutes before the hour when he had to report to duty. While travelling on the public road he was hit by a lorry owned by the employer. Can it be said in the circumstances that he suffered the injury in an accident "arising out of and in the course of his employment"?

The words "arising out of and in the course of employment" are not defined in the Act or the Rules and Regulations made thereunder. They have no doubt been the subject matter of several decision not only under this Act but also under the Workmen's Compensation Act where to these expressions occur in Section 3. These seemingly simple words have led to a good deal of divergence of judicial opinion. While both the expressions "arising out of" and "in the course of" do not mean the same thing, both of them do denote and contemplate a causal connection between the accident (which leads to injury) and the employment. The accident, in other words, must not be unconnected with the employment. This in turn raises the question when does an employment begin and end. For this purpose, one has necessarily to turn to decided cases. But before doing so, it is well to keep in mind two relevant factors: (i) the Act is a piece of social legislation-a beneficial legislation. It creates a fund, contributed both by the employees and the employer (Section 26) to meet and provide for sickness, maternity and employment injuries to insured employees (Section 28). Any interpretation placed upon the above words should be such as to advance the object underlying the Act and (ii) in respect of injuries suffered in accidents not arising out of and in the course of employment, i.e., in the case of injuries other than employment injuries, remedies and forums are different e.g., Motor Vehicles Act, (Section 110A) Railways Act (Sections 82-A to 82-J) and so on. In other words, if an employee covered by the Act suffers an injury on account of an accident not arising out of and not in the course of his employment, he is not without a remedy in law. Forum may be different; procedure may be different; but he certainly has remedy; just as any other citizen of this country; Neither less no more.

Coming to decided cases, I may start with the decisions of this Court.

In Saurashtra Salt Manufacturing Company v. Bai Valu Raja and Ors. (A.I.R. 1958 S.C. 881) the meaning of the expression "in the course of his employment" occurring in Section 3(1) of the Workmen's Compensation Act fell for consideration. The workman concerned therein was employed in a salt work. He was returning home after finishing his work. He had first to traverse a public path, then pass through a sandy area in the open and finally across a creek by a ferry boat. While crossing the creek in the ferry boat it capsized due to bad weather and drowned. A claim for compensation was laid which dispute ultimately reached this Court. It was found in that case as well that the

workman was following the usual and ordinary way to go to and return from the salt works. Imam, J. speaking for himself and N.H. Bhagwati and Gejendragadkar, JJ. stated the law in the following words:

> "7 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 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 extention 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 extention."

After noting the fact that the ferry was not provided by the employer, the learned Judge held as follows:

> "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 his employment makes in necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his homes 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 extention, 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 extention 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 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."

(The Salt works was situated across a creek opposite Porbandar. Point A is the place where employee going from Porbandar got into the ferry. They alighted at point B. From point to one could go Salt works passing through the sandy area. On the sandy area near point B there was also a public foot-path leading to Salt-works at point D.) According to this decision an employee who travels

along a public road in a public vehicle that is or may not be provided or arranged by his employer and suffers an injury from an accident, cannot be said to have suffered the injury, in the course of his employment, even though he is proceeding to his place of work or returning therefrom- unless, of course, he is at such public place or on such public transport in the course of his employment, For example, an employee may be required to travel throughout the city or a particular area in the course of discharge of his duties as in the case of a Medical Representative. It may also be a case where an employee may be sent on an errand or on some work or duty assigned by the employer and in that connection he travels by a public vehicle along a public road.

The next decision is in General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes, [1964] 3 S.C.R. 930. In this case the deceased employee was the bus driver of the appellant corporation. After finishing the work for the day, he left the bus in the depot, and boarded another bus to go to his residence. That bus met with an accident resulting in injuries to him leading to his death. His widow laid a claim under the Workmen's Compensation Act. The question was, whether the death of the employee occurred in an accident arising "out of and in the course of his employment" within the meaning of Section 3(1) of the Workmen's Compensation Act. Subba Rao and Mudholkar, JJ. answered the question in favour of the employee while Raghubar Dayal, J. ruled to the contrary. The majority noticed that a bus driver employed by the appellant- corporation is given the facility to travel in any bus belonging to the Corporation to reach the place of his duty and also while returning therefrom. This facility was found to have been provided not as a matter of grace but as a matter of right of the employees, with a view to increase the efficiency of the service. In other words, it was found that travelling by bus to reach or return from the place of duty was a condition of his service and that there was an implied obligation on the part of the employee to travel in the buses of the Corporation as a part of his duty. In these circumstances, it was held, the accident had occurred during the course of employment. The majority approved and applied the principle of the decision of Court of Appeals in Cremins v. Guest, Keen & Nettlefolds, Ltd., (1908) 1 K.B. 469 the facts of which case were somewhat similar to the case before them.

The above principles were reiterated in Mackinnon Machenzie & Co. Pvt. Ltd. v. Ibrahim Mahommed Issak, [1970] 1 S.C.R. 869 though the decision therein actually turned on the facts of that case.

We may next notice certain decisions of the High Courts in this country relied upon by the first respondent. The first case is in Bhagubai v. Central Railway, Bombay, (1954) 2 Labour Law Journal 403 a decision of a Division Bench of the Bombay High Court comprising Chagla, CJ. and Dixit, J. The deceased was a Mukadam employed in the Central Railway at Kurla station. He lived in the railway quarters adjoining the railway station. The only access for the deceased from his quarters to the railway station was through the compound of the railway quarters. On 20th Dec., 1952 the deceased left his quarters a few minutes before midnight in order to join duty. Soon thereafter he was stabbed fatally by some unknown person. It was not disputed before the Court that "that the accident arose in the course of his employment". The only contention urged by the employer-railway was that the accident did not arise out of the employment of the deceased. Chagla, CJ. referred to certain English decisions and a few earlier decisions of the Bombay High Court and held thus:

> "In our opinion, once the applicant has established that the deceased was at a particular place and he was there because he had to be there by reason of his employment and he further establishes that because he was there he met with an accident, he had discharged the burden which the law placed upon him. The law does not place an additional burden upon the applicant to prove that the peril which the employee faced and the accident which arose because of that peril was not personal to him but was shared by all the employees or the members of the public."

The principle applicable in these matters, according to the learned Judge, is this:

> "Now, it is clear that there must be a causal connexion between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he had to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connexion is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him, the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces had nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connexion is established between the employment and the accident."

This is evidently a case where the accident took place on the premises of the employer. The deceased was a railway employee. His place of work was the railway station. He lived in the railway quarters adjoining the station. He was proceeding from his quarter to the station. Thus he was on the employers' premises when he was fatally attacked. This case, therefore, does not help the respondent. It may also be seen that this case was decided before the decisions of this Court referred to above.

The next decision is in Regional Director ESIC v. L. Ranga Rao & Anr., (1981) 2 Karnataka Law Journal 197. This is a case arising under the Employees State Insurance Act. The deceased-employee was run over by an unidentified motor vehicle at 9.45 p.m. while he was on his way to join duty at the factory at 10.00 p.m. The accident took place on a national highway at a distance of two kilometers from the factory. A Division Bench of the Karnataka High Court, speaking through Jagannatha Shetty, J. (as he then was) referred to the definition of "employment injury" in section 2(8) of the Act and observed:

> "It may be sufficient if it is proved that the employee having regard to his employment has to be at a particular place and by reason of his being in that

particular place he has to suffer an injury by accident. If that much is proved, then a causal connection is established between the accident and his employment and he shall be held to have suffered an employment injury.

We may also point out that it is also immaterial whether an employee was travelling in a public transport vehicle or an omnibus at the time of an accident. It is equally immaterial whether he was going on a public road or a private lane when he suffered an injury. He must have the choice of going in any route which is convenient for him to go and any mode of conveyance which is economical to him. These matters cannot be considered with any set pattern and greater latitude must be given to the employees in growing cities and towns."

In Sadgunaben Amrutlal & Ors., v. The Employees' State Insurance Corporation, Vol.22 (1981) Gujarat Law Report 773 the employee was standing at the bus stop for boarding a bus which would take him to the place of his work. The transport was not provided by the employer. He had not been feeling well allegedly on account of strain of his work. While waiting at the bus stop, he collapsed and became unconscious. He was taken to the hospital but he died even before reaching the hospital. Medical Examination revealed that he died of acute cardiac failure. Thakkar, J. speaking for the Bench opined that a liberal test must be adopted in these matters designed to achieve the social objects underlying the enactment. He upheld the claim.

On the other hand, the learned Additional Solicitor General appearing for the corporation relied upon the decisions in Regional Director E.S.I. Corporation, Trichur v. K. Krishnan, (1975) Kerala Law Times 712 rendered by the Division Bench comprising Balakrishna Eradi and George Vadakkel, JJ. and Commissioners for the Port of Calcutta v. Mst. Kaniz Fatema, A.I.R. 1961 Vol.48 Calcutta 310, a decision of the Division Bench of Calcutta High Court Comprising S.. Lahiri, CJ. and R.S. Bachawat, J. In both these cases the accident occurred on a public road while the employee was going to or returning from the place of his work. It was held that it cannot be said that the accident has arisen out of and in the course of employment.

At this stage, a brief reference to some of the decisions rendered in U.K. may be in order. Most of the reported decisions are those where the accident took place either on the premises of the employer or while travelling by or on a vehicle provided/arranged by the employer. In Gane v. Norton Hill Colliery Co., (1909) 2 K.B. 539 an employee working in a Colliery left his work and was proceeding by a route which crossed certain railway lines belonging to and under the control of his employer. While trying to cross a railway line he met with an accident and was seriously injured. The workman could have gone by another safer route but since that was longer, he adopted the shorter one which was indeed used by all the workmen who lived in the same direction as the injured employee. It was found that the said shorter route was used with the knowledge and consent of the employer. On these facts the Court of Appeal found that the accident must be said to arise out of and in the course of employment within the meaning of the Workmen's Compensation Act, 1906. Practically same are the facts in John Steward and Son (1912) v. Longhurst, (1917) Appeal Cases 249. A carpenter, employed in repairing a barge lying in dock, was returning after the work was over. It was a dark night. While proceeding along the quay, he fell into the sea and drowned. The employees had leave

to pass through the dock on their way to and from the barge. It was held by the House of Lords that inasmuch as the man was on the dock premises solely by virtue of his contract of service the accident arose out of and in the course of employment. Again in Howells v. Great Western Railway, (1928) 97 L.J.K.B. 183, a dock labourer employed to load cargo into a steamer took a shorter route instead of taking the specified route. The specified route was a longer one. All the workers used to follow the shorter route to the knowledge of the Company officials. While going by the shorter route, the employee was knocked down and killed. The Court of Appeal held that since the accident took place on the premises of the employer and also because he was going by the accustomed route, though not permitted, the accident must be said to arise out and in the course of employment. In Cremins v. Guest, Keen & Nettlefolds Limited, (1908) 1K.B. 469 the accident took place on a platform under the exclusive use of the employer. A train was provided by the employer for transporting the workers free of charge. In the circumstances, it was held by the Court of Appeals that it was an implied term of the contract of service that the colliers should have the right to travel by train, to and fro, without charge. In the circumstances, it was held that the employer was liable. In Weaver v. Tredegar Iron & Coal Co. Ltd., (1940) 3 All England Law Reports 157, the House of Lords reviewed the entire case law and held that where the accident took place on a platform owned by the Railway Company with which the employer had an arrangement for transporting the employees and the accident took place on such platform, the accident must be said to have arisen out of and in the course of his employment. Lord Porter observed that the exigencies of service, the practice obtaining therein and the nature of service must all be looked into to ascertain the scope of duty and employment. In Hill v. Buterley Co. Ltd., (1948) 1 All England Law Reports 233, the accident took place on the property of the employer. The Court of Appeal held the employer liable.

We may now refer to cases where the accident took place on a public road while the employee was going to or returning from the place of work. In other words, in these cases, the accident did not take place on the premises of the employer or while travelling by a vehicle/carriage owned or provided by the employer. In Alderman v. Great Western Railway Company, (1937) Appeal Cases 454, the employee was living at Oxford. The place of his duty was at another place called Swansea. He had a lodging at Swansea also. While going to duty from his Swansea lodging, he met with an accident. It was held by the House of Lords that the employer is not responsible. The test evolved in this case was - was the employee subject to control of the employer at the time of accident ? If not, it was held, he was like any other member of public. In Netherton v. Coles, (1945) 1 All England Law Reports 227 the workman was employed by a building contractor. He had to work at the place specified by the employer. He was provided a travelling allowance. Travelling allowance was a condition of his service. The employee was returning from the workplace on a motorcycle. The accident took place on the road. The Court of Appeal said that the employer was not responsible. The reason for this holding is that the journeys of the workman did not form part of his service since he was at liberty, outside the working hours, to choose his own time and method of transport to and from his actual work and the accident happened after completion of his work. In Jenkins v. Elder Dempster Lines Ltd., (1953) 2 All England Law Reports 1133, the deceased was employed on a ship. The ship was moored against a mole. The deceased had gone out and was returning to the ship. It was a dark night. While on the mole, he slipped and fell into the sea. He drowned. It was held by the Court of Appeals that the accident cannot be said to have arisen out of and in the course of his employment. The test applied by the Court of Appeals is "was the workman at the relevant time

acting within the scope of his employment ?"

A situation which is now covered by Section 51-D of the E.S.I Act, arose in Blee v. London and North Eastern Railway Company, (1938) Appeal Cases 126. By the terms of employment, the employee was bound to attend to emergency calls outside his duty hours. For this extra work he was paid from the moment he left his house and till he reached back. He was called on such an emergency duty and while going there he was knocked down by a vehicle and died. It was held that the accident must be said to have arisen out of and in the course of his employment.

From the above decisions, it emerges clearly that any injury suffered by an insured employee as a result of an accident occurring on a public road (or a public place), even while going to or returning from the place of employment cannot be treated as an employment injury. Once it is found that the accident took place on a public road, it becomes immaterial whether that place is one mile or one furlong away from the workplace. Of course, if the employee suffers an injury while travelling, whether voluntarily or as a condition of service, by a transport provided or arranged by the employer it will be an employment injury. Similarly, if the accident takes place on the premises of the employer, if will be treated as one arising out of and in the course of employment. It is, however, necessary to clarify that if an employee suffers an injury while travelling by a public transport or while proceeding along a public road in the course of performance of his duties e.g., medical representatives, linesmen employed by Electricity and Telephone undertakings, repair and maintenance personnel employed to go to the residential and other places, (where the units/gadgets are installed), to attend to them and so on.

I do not propose to set out the relevant principles exhaustively. It is neither possible nor desirable. I am only stating certain principles keeping in mind the facts of the case before us. In view of these principles, I am of the opinion that the respondent employee herein cannot claim any disablement benefit under the E.S.I. Act of the injuries suffered by him.

The appeal has to succeed and is hereby allowed. ORDER In view of difference of opinion Registry is directed to post the appeal before the Bench of three Judges for deciding the matter.

T.N.A. Matter referred to Larger Bench.