

LABOUR LAW PROJECT ON

***Judicial interpretation of the
expression 'arising out of and in the
course of employment'***

Prepared By

Shreya Prabhudesai

S.Y. L.L.M.

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Judicial interpretation of the expression ‘arising out of and in the course of employment’

Introduction: The Workmen Compensation Act, 1923 is the first beneficial legislation for labour in India. While the trade unionism and collective bargaining were in the preliminary stage, the then British Government enacted this statute for the welfare of labour and their bereaved families. It is essentially a social assistance measure, as it places the entire responsibility on the employer for the payment of compensation for death, permanent or partial and permanent disablement. This Act has total 36 sections and 4 schedules. Section 3 is the most important of the Act. It is the heart of the Act. It has five sub-sections.

OBJECT: The Workmen Compensation Act 1923, is the first legislation on labour welfare. The preamble of the Act says its object: ‘An Act to provide for the payment by certain classes of employers to their workmen, of compensation for injury by accident. Whereas it is expedient to provide for the payment of certain classes of employers to their workmen of compensation for injury by accident.’

Section 3 in The Workmen' S Compensation Act, 1923

3. Employer' s liability for compensation.-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable--

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

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

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

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

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

(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been

employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment: Provided that if it is proved,--

(a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

(b) that the disease has arisen out of and in the course of the employment; the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section: Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule

III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.]

(2A) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.]

(3) The State Government in the case of employments specified in Part A and Part B of Schedule III, and the Central Government in the case of employments specified in Part C of that Schedule, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this

section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.]

(4) Save as provided by² sub-sections (2), (2A)] and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is³ directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury--

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.¹

The phrase “arising out of and in the course of employment” has been incorporated in Section 3(1). This important phrase has been

¹ S.N. MISHRA 25TH EDITION- LABOUR AND INDUSTRIAL LAWS

taken from the English Act, 1897. The same has been adopted in other countries, viz. America, New Zealand, Australia, Canada etc.

It shows liability of the employer to pay compensation. The words out of and in the course of employment have been used conjunctively. Mr. Justice Frank Murphy of the Supreme Court of United States described this phrase as “deceptively simple and litigiously prolific.”

MEANING : The phrase shows casual connection of accident and employment. Strictly speaking, it rather denotes a point of time, than a factual connection with employment and the ‘accident in the course of employment’ means in the course of work, which the workman is employed to do and which is incidental to it.’

The phrase ‘arising out of employment ‘ means ‘during the course of the employment, the injury has resulted from some risk incidental to the duties of the service which, unless engaged in the duty owing to the master, it was reasonable to believe the workman would not otherwise have suffered.’

Section 3 reflects the object of the Act and more particularly the phrase “arising out of and in the course of employment” reflects the intention of the framers. It is the foundation principle of the Act. The accident which resulted in injury or death, must have connection with the employment and must arise out of it. This phrase is intended to safeguard the rights of the workers and their families, and at the same time, the inherent objective is to provide

the protection to the employers. Section 3 imposes liability upon employer to pay compensation to the workers only if the accident occurs “arising out of and in the course of employment”. He shall not be liable otherwise. Therefore it saves employees and employers to similar extent.

Section 3(1): Employer's liability for compensation.-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter: Provided that the employer shall not be so liable--

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding³ three] days;

(b) in respect of any⁴ injury, not resulting in death, caused by] an accident which is directly attributable to--

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

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

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

Analysis: The following is the analysis of Section 3(1).

1. **Personal Injury** : Personal injury means physiological injury. It may be external or internal. Personal injury is not defined under the Workmen Compensation Act, 1923. Section 2(8) of the Employees State Insurance Act, 1948 defines employment injury” which gives the similar meaning for the purpose of Workmen’s Compensation Act also.

Section 2(8) (The Employees State Insurance Act, 1948) “Employment injury means a personal injury to an employee caused by an 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.
2. **Accident:** Personal injury which may result into partial or total disablement must be caused by an accident.
3. **Worker:** Such accident and injury are caused to a workman employed by his employer.
4. Such personal injury is caused to a workman by accident *‘arising out of and in the course of his employment’*.
5. **Compensation:** If four essentials mentioned above are fulfilled, such worker is entitled to compensation in accordance with the provisions.
6. **Exceptions:** The proviso to Section 3(1) gives certain exceptions to the Employer’s liability for compensation. The exceptions for which the employer is not held liable are:

- (i) **Minor injuries:** In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days.
- (ii) **Drunkard:** If the workman is under the influence of drinks or drugs at the time of employment.
- (iii) **Wilful disobedience:** If the workman wilfully disobeys an order expressly given, or to a rule expressly framed, for the purpose of securing safety of workman.
- (iv) **Intentional removing of safety guard:** If the workman removes or disregards any safety guard or other device which he knows to have been provided for the purpose of securing the safety of workman.

Contributory Negligence: Every person is expected to take reasonable care of himself. Thus a man who keeps his hand outside the window of a railway coach or hangs on the footboard knowing the risk involved in such act invites the injury himself and cannot claim for damages. At common law, contributory negligence of the plaintiff is a complete defence to an action for damages of negligence of the defendant. The principle underlying the Doctrine of Contributory Negligence is when both the parties are equally to blame, neither can hold the other liable.

In Workmen's Compensation Act, 1923, this rule does not apply in toto. If a workman drinks or wilfully disobeys or intentionally removes any safety guard or other device, and suffers injuries, the employer is not held liable to the extent that injury is a partial

disablement under the proviso of Section 3 (1). To this extent the Doctrine of Contributory Negligence is applicable for the defence of the employer. However if the injury is of permanent disablement or death caused to the workman due to drinking of alcohol or drug, or wilful disobedience or intentional removing of safety guards or any other devices, then the doctrine is not a defence to the employer, and the employer is held liable under the proviso of Section 3 (1).

Vis Major : ‘Vis major’ means ‘act of God’. In law of torts, the act of God does not impose any liability upon the defendant. However, under the Workmen Compensation Act, 1923 the employer is held liable if any death or injury is caused to the workman by the act of God.

In AIR 1933 PC 225 case, a workman died due to thundering and lightning on a rainy day while he was on duty. The Privy Council held that the employer was liable to pay compensation to the dependants.

Three Tests: There are three tests to determine whether an accident has arisen out of and in the course of employment. They are:

- (i) That the workman was in fact employed on duties at the time of accident.
- (ii) That the accident occurred at the place of performance of his duties; and

- (iii) That the immediate act which lead to the accident is not so remote from the sphere of his duties to be regarded as something foreign.

Arising out of and in the course of employment: The expression “arising out of” suggests the cause of accident and the expression “in the course of” points out to the place and circumstances under which the accident takes place and the time when it occurred. A casual connection or association between the injury by accident and employment is necessary. The onus is on the claimant to prove that accident arose out of and in the course of employment. The employment should have given rise to the circumstances of injury by accident. But a direct connection between the injury caused by an accident and the employment of the workman is not always essential. Arising out of the employment does not mean that the personal injury must have resulted from the mere nature of employment and is also not limited to cases where the personal injury is referable to the duties which the workman has to discharge. The words “arising out of the employment’ are understood to mean that during the course of the employment, injury has resulted from some risks incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe the workman oherwise would not have suffered. There must be a causal relationship between the accident

and employment. If the accident had occurred on account of a risk which is an incident of the employment ; the claim for compensation must succeed unless ofcourse the workman has exposed himself to do an added peril by his own imprudence. This expression applies to employment as such, to its nature, its conditions, its obligations and its incidents and if by reason of any of these, a workman is brought within a zone of special danger and so injured or killed, the Act would apply. The employee must show that he was at the time of injury engaged in the employer's business or in furthering that business and was not doing something for his own benefit or accommodation. The question that should be considered is whether the workman was required or expected to do the thing which resulted in the accident, though he might have imprudently or disobediently done the same. In other words, was the act which resulted in the injury so outside the scope of the duties with which the workman was entrusted by his employer as to say the accident did not arise out of his employment.

In the course of employment refers to the period of employment and the place of work. It is neither limited to the period of actual labour nor includes acts necessiated by workman's employment. Another important question put by Francis H. Bohlen, is "how far a servant is entitled to go outside his appointed sphere in obedience to the orders of a superior. Of course, if such superior has the power to fix the spheres of labour for the workman, a workman, by obeying them merely passes into a new "course of employment",

but even if he has not, it seems that the servant is justified if he honestly believes that such superior is authorised to employ him. An injury received within a reasonable limits of time and space, such as while satisfying thirst or bodily needs, taking food or drink is to be regarded as injury received in the course of employment.

In *State of Rajasthan V. Ram Prasad and Another*², the workman died due to natural lightening while working at the site. It was held by the Supreme Court that in order that a workman may succeed in his claim for compensation it is no doubt true that the accident must have casual connection with the employment and arise out of it. But if the workman is injured as a result natural force of lightening, though it in itself has no connection with employment of deceased Smt. Geeta, the employer can still be held liable if the claimant shows that the employment exposed the deceased to such injury. In the present case the deceased was working on the site and would not have been exposed to such hazard of lightening had she not been working. Therefore the appellant was held liable to pay compensation.

In *R.B. Mundra & Co. V Mr. Bhanwari*³: The deceased was employed as a driver on the appellant's truck used for the purpose of carrying petrol in a tank. On the previous day he had reported to his employer that the tank was leaking and so water was put in it for detecting the place from where it leaked. The next morning the

² (2001) 1 L.L.J. 177 (SC)

³ A.I.R. 1970RAJ 111

deceased was asked by the appellant to enter the tank to see from where it leaked. Accordingly he enter the tank which had no petrol in it and for the purpose of detecting the leakage he lighted a match stick. The tank caught fire and the deceased received burn injuries and later on succumbed to death.

In this case it was contended that the workman has himself added to his peril by negligently and carelessly lightening a match-stick inside the petrol tank. It was held that the accident arose out of employment and the act of lightening the matchstick even if rash or negligent would not debar his widow from claiming compensation. If the act leading to the accident was one within the sphere of employment or incidental to it or in the interest of the employer, than the accident would be said to arise out of and in course of employment and the plea of added peril would fail. In this case the deceased did something in furtherance of the employer's work when the accident occurred although he was careless or negligent in as much as he lighted the matchstick instead of using a torch to detect the leakage. But because the tank was empty and partly filled with water on the previous night, he could not have little reason to foresee the risk involved.

In *M. Mackenzie v I.M. Issak*,⁴ a seaman on ship "Dwarka" was last seen at about 3 a.m. on December 16, 1961 on the Tween Deck and was found missing at 6.15 a.m. in the morning. A search was undertaken but the dead body was not found. The Additional

⁴ A.I.R. 1970 S.C. 1906

Commissioner made an inspectaion of the ship and found no medical evidence which could lead to the inference that the death was caused by an accident which arose out of seaman's employment. It was held that the commissioner did not commit any error of lawin reaching to the above finding. No compensation was payable in this case because on the facts there was no material for holding that death took place on account of accident which arose out of his employment. It was further held that in the case of death caused by the accident, the burden of proof rests upon the workman to prove that accident arose out of employment as well as in the course of employment. But it is not necessary that the workman must prove it by direct evidence. It may be inferred when the facts proved justify the inference.

In *Trustees Port of Bombay V. Yamunabai*,⁵ a bomb placed in the premises of a workshop by some unknown person exploded and caused injury to a workman. It was held that the wrokman was not responsible for placing of the bomb, and injury due to its explosion was caused at the time and place at which he was employed, therefor the injury was the result of an accident arising out of his employment. The rule is that if a particular accident would not have happened to a workman had he not been employed to work in the particular place and condition, it would be accident arising out of the employment.

⁵ A.I.R. 1952 Bom. 382

Likewise, where the workmen, working in some factory are injured due to crashing down within the factory premises of some aircraft, it will be an injury resulting from an accident arising out of the employment as the workmen are not responsible for the air crash and they are exposed to that danger by reason of their presence on the place of accident because of their employment.

In *Smt. Koduri V. Polongi Atchamma*,⁶ a person was the employee in the lorry belonging to his employer carrying quarry material from the quarry site to the work spot of the PWD. His duties were to load the material on the lorry and to go along with the same for unloading the material at the work-spot. While the lorry was moving he attempted to hit a rabbit passing on the road and in the attempt he fell down from the lorry and died. His wife claimed compensation for the loss of life of her husband. It was held that she was not entitled to compensation as it is not enough that injury should have been sustained by the workman during the period of his employment, it should have been in the course of the employment. The act which resulted in the accident must have some connection with the work for which the workman is employed. The workman must have been doing something which is part of his service though it need not be his actual work, it should be work naturally connected with the class of work and the injury must result from it. Applying this principle by no stretch of imagination, can it be said that hitting a wild rabbit which ran

⁶ (1969) Lab. I.C. 1415 (Andh. Pra.)

across the truck was part of service of the workman for which he was employed. The mere fact that the workman was, during the particular period, travelling in the employer's truck with the quarry material from the quarry site to the work spot is not enough.”

In *Chairman Madras Port Trust, Madras V. Kamala*,⁷ it was held that fetching food is part of employee's duty. Therefore, accident to an employee while fetching food is in the course of employment.

In *Public Works Department V. Kaunsa Gokul*, (1967) I L.L.J. 344 (M.P.) a gang while going to collect salary of the labourers from the office of the Public Works Department was murdered in the way at a place on which he sat down to take his meals near a well. He was found dead at a considerable distance from the place where other members of his gang were actually working on the road. The Court held that the death of Gokul was an accident arising out of his employment because the accident would not have happened had he not been engaged in that employment. In this case the accident arose because of the nature of employment that exposed him to some particular danger.

In *Tremain V. Pike*,⁸ It was held that the employer's duty is to take reasonable care for their safety. Safety means safety of the premises and the plant and to the method and conduct of the work.

⁷ A.I.R. 1970 Mad.386

⁸ (1970) 1 Kni. Ind. Rep. 318

Their duty is to take reasonable steps to avoid exposing the servant to a reasonable risk of injury.

In *Imperial Tobacco Co. (India) Ltd V. Salona Bibi*,⁹ a workman who suffered from high fever was recommended two days leave by the doctor. When returned on the third day the doctor found him suffering from malaria and pneumonia. He was again granted three days leave. After the expiry of three days when he came in a rickshaw to report to the doctor, his condition was so serious that he had to be taken upstairs to the dispensary in a stretcher. The doctor found him in almost a dying condition and therefore hastened to administer injection but he died after a few minutes. It was held that “ as the stress and strain of the journey was responsible for causing or precipitating the workman’s death, there was an accident arising out of and in the course of employment.”

In *Shakuntala Chandrakant Shresthi V. Prabhakar Maruti Garveli and Another*¹⁰ the appellant was the mother of a workman (cleaner in motor vehicle). The workman died of a cardiac arrest while travelling in the vehicle. The Commissioner for Workmen’s Compensation granted compensation. On appeal, the High Court held the conclusion that workman died as a result of an accident during course of employment was not sustainable. Hence this appeal was filed before the Supreme Court.

⁹ A.I.R. 1956 Cal.458

¹⁰ 2007 I L.L.J. 474 (SC)

The Supreme Court dismissing the appeal held that there must be a causal connection between injury and accident occurring in the course of employment and the onus was on applicant to show that strain resulted from work.

It was further observed that unless evidence was brought on record that death of workman by way of cardiac arrest had occurred because of stress or strain (which was held not proved in this case) the Commissioner had no jurisdiction to grant damages.

In *Divisional Manager, United India Insurance Co. Ltd V. Shanmuga Mudaliar T. and others*¹¹ A person was employed as a driver of the bus belonging to Mudaliar. He died of a heart attack at a bus stop where he stepped out to have refreshments. His widow claimed compensation which was awarded by the Commissioner for Workmen's Compensation against the insured employer and not the insurance company. In appeal filed by the employer, the learned single judge of the High Court held that the insurance company and the employer are both jointly and severally liable to pay compensation. And therefore two appeals were filed, one by the insurance company and other by the employer. It was held by the Division Bench of the High Court that the connection between accident and employment might be established if the strain had contributed to or accelerated the accident. If probabilities were in favour of the applicant, then the Commissioner for Workmen's Compensation was justified in inferring that the accident arose out

¹¹ (2003) I L.L.J. 776(Mad).

of and in the course of employment. In this case there could be no dispute that the driver died in the course of his employment since there was no occasion for him to be at the bus stand (where he died) unless he had been driving the bus. The death was capable of being attributed to the strain ordinarily inherent in the discharge of his duty.

Test to detect “ arising out of employment”

In *Ravuri Kotayya v. Dasari Nagavardhanamma*¹² Andhra Pradesh High Court has laid down the test by which is accident has arisen out of and in the course of employment can be established :

The workman was employed on or performing the duties at the time of accident.

That the accident occurred at or about the place where he was performing these duties or where the performance of the duties required him to be present.

That the immediate act which led to or resulted in the accident has some form of casual relation with the performance of these duties, and such casual connection could be held to exist if the immediate act which led to the accident is not so remote from the sphere of his duties or the performance thereof , as to be regarded as something foreign to them.

¹² 1961ALT 689: AIR 1962 AP 42

There are certain exceptions to the above rule like the accident involving some risk common to the general public and if he by his own act exposes himself to some added peril and has an accident.

Doctrine of Notional Extension:

There is no problem in detecting that the accident occurred in the course of employment when a workman is injured in the working place and in the working hour and doing his duty. The problem arises when these elements do not coincide together. But a workman if injured just near the work premises or just before joining the work or in the way to work, a problem arises. To address this kind of problem and give some kind of relief to the workmen, the theory of notional extension evolved.

“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 extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether

the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.”

Wider interpretation of duty

Court has given a wider and popular meaning of “duty” to expand the scope of this section. The court also talks about the service contract to determine which can be come under the preview of this section. Justice Cozens-Hardy M. R. said "..... it was an implied term of the contract of service that these trains should be provided by the employers, and that the colliers should have the right, if not the obligation, to travel to and from without charge." In the next case the court has interpreted the term “duty” in stricter sense.

In *Weaver v. Tredegar Iron Coal Co.*¹³ House of Lords after examining a large number of authorities given a wider meaning of “duty” but did not negated the duty test. In this case lord Atkin said that there can be no doubt that the course of employment cannot be limited to the time or place of the specific work which the workman is employed to do. It does not necessarily end when the "down tools" signal is given, or when the actual workshop where he is working is left. In other words, the employment may run on its course by its own momentum beyond the actual stopping place. There may be some reasonable extension in both time and space." Lord Porter further said that if an accident occurs while

¹³ (1940) 3 All. E.R. 157

coming to the workplace or leaving the place can be out of and in the course of employment if he is bound by the way he proceed under the terms of the contract of service express or implied. Here duty test was confirmed.

Expanding the preview of Service Contract:

In *St. Helens Colliery Co Ltd v. Hewlston*¹⁴ the court said that the injury did not occur in the course of employment because the employee was not bound or obliged to travel by that special train and he could have taken other transport. If he were bound by the service contract to travel by that train then it would have been in the course of employment (Lord Buckmaster). It was also added that if the place of work is like that there is no alternative means of transport other than the transport given by the employer then it can be concluded that there is an implied term in the service contract to use that transport (Lord Atkinson). [The same view was taken in *Mackenzie v. I.M. Issak* which says that a workman in a colliery is not in course of his employment while using the transport of the employer if he is not bound by the terms of the contract to travel by that transport.

There was a particular situation where employee has to take bus service to reach his workplace from home and vice versa. It was necessary for doing his duty efficiently and punctually which was a condition under his service . So, travelling in that bus was an

¹⁴ 1924 House Of Lords

implied condition to his duty. It was also said that this doctrine was developed to cover the factory, workshops and harbors but it can be applied in this kind of situation also. Compensation was granted holding that the accident arising in the course of employment. Though the court said what would be the indicator that when the work starts and ceases that depends on case to case basis.

In *Union of India v. Mrs . Noor Jahan*¹⁵ a railway gangman was ordered by his employer to go to another place for cleaning and in the way from one place to another accident happened. Justice Sukla observed that the accident has occurred in the duty hour and when he was going to do his duty on behalf of his employer and he concluded that the accident has occurred in the course of his employment.

Public Place and this Doctrine

There are some situations where this doctrine does not apply. When a workman is on the public road or public place and not there for fulfilling the obligation and his work does not make necessary to be there. The proximity of the work premises and spot of accident become immaterial. The notional extension of the place of work cease when workman come to a public road. There were some clarification made in the next case in this matter.

¹⁵ 1987 Sc 1192

In *Saurashtra Salt Manufacturing Co. v. Valu Raja* ¹⁶ Justice Jafer Imam said that,

“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 it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him.”

Expanding for Social Cause:

In later cases the court took more liberate stand in expanding the definition of notional extension realizing the social view point and objective of the act. The employee died on the way towards his workplace because of communal riot. It was argued by the appellants that the person died before the commencement of his work and outside the work place. There is no connection between the accident and the employment. High court of Madras has negated all this argument and allowed the compensation.

¹⁶ AIR 1958 SC 881

In *Superintending Engineer, T.N.S.E.B v. Sankupathy (T. M. T.)*¹⁷ an Ardhanari was died when he was coming to his work under appellant. Court said that “Since the Act is a welfare legislation, it is expected that the provisions would receive liberal interpretation so as to advance the object and purpose of the Act.” The court also observe that “in the course of employment” talks about the point of time and place of accident and “out of employment” talks about a casual connection between the accident and the employment and which according to the court is very narrow interpretation giving the modern industrial set up. So doctrine of notional extension should be used and even if the workman did not reach the place of work the workmen should get compensation for accident.

Occupational Diseases

Section 3(2): If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been

employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or

¹⁷ 2004(5) CTC 321 Mad First Bench

if a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment: Provided that if it is proved,--

(a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

(b) that the disease has arisen out of and in the course of the employment; the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section: Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be,

as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.]

(2A) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.]

(3) The State Government in the case of employments specified in Part A and Part B of Schedule III, and the Central Government in the case of employments specified in Part C of that Schedule, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.]

(4) Save as provided by² sub- sections (2), (2A)] and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is³ directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury--

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act

Conclusion:

The term “arising out of” has been subjected to judicial interpretation from the very beginning and in most of the times it has been seen that court has tried to give wide meaning to it. This phrase has been most of the time coupled with the “arising out of employment” . Even though the meaning of these two phrases are different then also there is an inseparable connection between them. Previously it was thought that arising “in the course” is a big circle and “ out of” is a small circle within it. But the new notion is that this two phrases are different circle which intersect somewhere. This two criteria need to fulfill to get compensation. These two phrases are conjunctive under this act. If these terms have been disjunctive a large area could have been covered and more number of workers could have been benefited and fulfill more efficiently the objective of the act as it would have been sufficient to prove only one condition.

Even though the judiciary has come up with the concept of notional extension which essentially wider the scope of the terms and cover the areas which is not conventionally considered under this terms. This doctrine appeared to be very helpful for workmen to get facility given under this act.

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