

APPELLATE CIVIL.

Before Rankin C. J. and Costello J.

1932

April 25, 26.

KARNANI INDUSTRIAL BANK, LIMITED

v.

RANJAN.*

Employer and Workmen—Workmen's compensation—Principal, liability of, for damages for injuries to workmen while working under principal's contractor—Workmen's Compensation Act (VIII of 1923), s. 12.

Under section 12 of the Workmen's Compensation Act of 1923, a principal is not liable for damages for injuries caused to a workman whilst working under a contractor employed by the principal, unless the work entrusted to such contractor was ordinarily part of the trade or business of the principal.

Notwithstanding a clause in the memorandum of association of the Karnani Industrial Bank, stating one of its objects to be "to build, erect, construct, lay down, enlarge, alter, equip, improve and maintain any offices, buildings, warehouses, godowns, factories, wharves, mills, jetties, roadways, tramways, railways", it was held that additional evidence was necessary to show whether building a house was ordinarily part of the trade or business of the said bank.

Rabia v. The Agent, G. I. P. Railway (1) referred to.

APPEAL FROM ORIGINAL ORDER.

The Karnani Industrial Bank were putting up a building at Park Street. Contracts were given to different contractors for different work of construction. One Kamil Sardar was the contractor to put up certain joists in that building. The applicant, a workman engaged by the said Kamil Sardar to do the said work, was injured in the leg by the fall of a joist in course of doing the same. Thereupon, the applicant applied under the provisions of the Workmen's Compensation Act for damages against the appellants. The learned Commissioner decreed Rs. 514-8 as damages against the appellants. Hence this appeal.

*Appeal from Original Order, No. 489 of 1931, against the order of A. L. Blank, Commissioner for Workmen's Compensation, Bengal, dated Oct. 7, 1931.

Nripendrachandra Das for the appellants. The appellants could only be liable under section 12 of the Act, if hoisting of joists were part of their ordinary business. That not being so, the appellants are not liable. See *Rabia v. The Agent, G. I. P. Railway* (1).

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Phaneendrakumar Sanyal for the respondent. This point was not argued before the Commissioner. Referred to clauses 13 and 14 of the Memorandum of Association of the Karnani Industrial Bank.

RANKIN C. J. This is an appeal from the order of the Commissioner for Workmen's Compensation, Bengal. The applicant was a workman engaged by one Kamil Sardar to do the work of putting up certain joists in a building in Park Street. Kamil Sardar was employed as a contractor by the Karnani Industrial Bank. It appears that the Karnani Industrial Bank was causing this house to be put up and it was getting the house put up by contracting with different people to do different parts of this work. It had evidently not entered into a contract with one builder to do the whole work, but it entered into contracts with particular persons employed in that behalf that particular parts of the work should be done on behalf of the bank. In these circumstances, the applicant having met with an injury by a joist falling on his leg, the Commissioner has fixed the compensation at a lump sum of Rs. 514.

Originally, the application was brought against Rai Bahadur Sukhlal Karnani personally, but, in view of his written statement, the Karnani Industrial Bank was added as an opposite party and, in the end the Commissioner has made this award against the Bank.

The matter coming before us, it is pointed out that the liability of the bank depends upon the terms of section 12 of Act VIII of 1923. That section deals with a case where the principal, as it calls him, in

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the course of or for the purposes of his trade or business contracts with any other person called the contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal. If these conditions are fulfilled, the principal is made liable for compensation to the contractor's men. The first question, therefore, to which the Commissioner had to address his mind was—Is it ordinarily part of the trade or business of this bank to put up joists as a house building operation? Any ordinary notion one has of banking business would lead one *prima facie* to give a firm answer in the negative to that suggestion. The only evidence that was before the Commissioner to satisfy him that it was ordinarily part of the business of this bank to undertake the erection of joists in a house is the circumstance that in the memorandum of association of the limited company, there is among the thirty-six objects of the usual redundant character one, No. 14, which says "to build, erect, construct, lay down, enlarge, alter, equip, improve and maintain any offices, buildings, warehouses, godowns, factories, wharves, mills, jetties, roadways, tramways, railways." On this basis and on the basis of the fact that this bank was building this house, the Commissioner found in favour of the applicant saying thus: "It is clear that the bank constructed the house in the course of its business as such bank and it is clear also from paragraphs 13 and 14 of the Memorandum of Association of the Karnani Industrial Bank, Limited, that the bank was competent to do so." I quite agree with the Commissioner that these two propositions are both clear; but they are not the tests laid down by section 12. The general notion of section 12 is that if it is ordinarily part of the business of a person to execute certain work, then ordinarily he will do that work by his own servants; he is not to escape liability for any accident that takes place merely by interposing a

contractor—the contractor undertaking to do what ordinarily the principal would do for himself. But if any body is entitled to say that he is outside that principle—if, for example, he went to a builder to build a house for him, I should suppose that body to be a bank which ordinarily would not take house building operations into its own hands at all. Of course, my notion of banking business may not be the same as the notion of the Karnani Industrial Bank. Merely because it is called a bank, I cannot say, as a matter of law that it has not got this business of a speculative builder or the business of building houses for itself. I cannot say that it is not part of its ordinary business except upon some evidence. It seems rather extraordinary that any person engaged in banking business should go so very far from ordinary banking business, but, in the particular circumstances of this case, as neither the parties nor the Commissioner appear to have appreciated what the test is in the Act, it would only be fair to the applicant to let the matter go back to the Commissioner to have this question determined upon evidence if there is any reason to suppose that putting up a house is ordinarily part of the business of the Bank. I may say here that it is by no means evident to me that clause 14 of the memorandum of association was intended to entitle the bank to build houses in the sense of building them itself as distinct from getting them built in the ordinary way as one would expect a bank to do. There is Indian authority upon the meaning of section 12 in the case of *Rabia v. The Agent, G. I. P. Railway* (1).

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In these circumstances, this appeal must be allowed, the order of the Commissioner must be set aside and the matter must be remanded to him to deal with this question of fact upon further evidence according to law.

There will be no order as to costs in this appeal.

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COSTELLO J. I agree that this matter should go back for further consideration by the learned Commissioner. It is to be observed that the language of section 12 of Act VIII of 1923 is somewhat more specific than the language used in the corresponding section of the English Act of 1925. That section is section 6. The words there are:—

Where any person (in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act, *etc.*

So, section 6 of the English Act applies where the work is “undertaken” by the principal. Even so, the English authorities are all one way in this respect: the work must be of a kind which is part of the business or trade of the principal who carries it out. The words of the Indian statute, as I have said, are even more specific because the section says that the work must be work “which is ordinarily part “of the trade or business.” In this connection, I would refer to the case of *Skates v. Jones & Co.* (1). In that case, the respondents were two shop-keepers. They also kept a billiard saloon. They were minded to join together in running a skating rink. They bought an existing iron structure and made a contract with a person for its removal and re-erection. The applicant, that is to say, the workman while employed on this work by the person with whom the two shop-keepers contracted was injured by accident and in respect of his injuries he claimed compensation from the respondents, that is to say, the two shop-keepers who were the principals. It was held that the work in which the applicant was injured was not undertaken in the course of or for the purposes of the respondents’ trade or business and that, therefore, they were not liable to pay compensation. Also it has been held in English authorities that it is the duty of the arbitrators as they are called, and therefore, in

(1) [1910] 2 K. B. 903.

India it is the duty of the Commissioners in India, to find as a fact that the work undertaken is so undertaken as part of the ordinary trade or business of the person or persons who are to be put in the position of the principal for purposes of section 12. Looking at the judgment of the learned Commissioner, it does not appear that he has fully directed his mind to the importance of that part of section 12, because I find that he says at the top of page 21 of the paper book : "The learned pleader's argument on behalf of the "opposite party No. 2 based on the language of section "12 does not assist the employer for the present "proceedings are not indemnity proceedings." That observation of the learned Commissioner seems to indicate that he has not considered the question of whether or not the erection of the building with which this matter is concerned was ordinarily part of the business of the Karnani Industrial Bank. I agree with my Lord, therefore, that this matter should be remanded. It is desirable and necessary that there should be a definite finding on that question.

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Appeal allowed : case remanded.

A. K. D.