

APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao and
Mr. Justice Stodart.

1937,
December 14.

THE POLLACHI TRANSPORT, LIMITED, COIMBATORE
BY GENERAL MANAGER MR. G. D. NAIDU, COIMBATORE
(OPPOSITE PARTY), APPELLANT,

v.

ARUMUGA KOUNDAR (APPLICANT), RESPONDENT.*

*Workmen's Compensation Act (VIII of 1923), sec. 2 (n) (i) and
Sch. II, cl. (1)—“Workman”—Conductor of a motor bus
if a.*

The conductor of a motor bus is a “workman” within the meaning of the Workmen’s Compensation Act.

The word “operation” in clause 1 of Schedule II of the Workmen’s Compensation Act means the working of the vehicle. The duty of a conductor is not merely to sit in the car and issue tickets but also to see to the safety of the passengers in getting in and getting out, to the starting of the car and the stopping of the car at convenient places and co-operate with the driver in the proper running of the car throughout the journey. The conductor is therefore as much concerned with the operation of the mechanically propelled vehicle as the driver is within the meaning of that clause.

Nanda Kumar v. Pramatha Nath(1) followed.

V. *Vamaswami Ayyar* for K. *Rajah Ayyar* for appellant.

C. K. ~~Vishwanatha~~ *Ayyar* for Parakat *Govinda Menon* for respondent.

APPEAL against the order of the Court of the Commissioner for Workmen’s Compensation, Madras, dated 8th April 1936 and made in Workmen’s Compensation Case No. 190 of 1935.

* Appeal Against Order No. 222 of 1936.

(1) (1937) 42 C.W.N. 123.

The JUDGMENT of the Court was delivered by VENKATARAMANA RAO J.—This appeal is under section 30 of the Workmen's Compensation Act against an order granting compensation to the respondent for an injury he suffered while he was doing the duties of a conductor in a vehicle belonging to the appellant company which plied from Palghat to Pattancheri on 13th March 1935.

So far as the amount of the award is concerned, it has not been challenged before us. Two points were argued before us by Mr. V. Ramaswami Ayyar, the learned Counsel on behalf of the appellant company. One is the question of limitation and the other is that the respondent is not a "workman" within the meaning of the Workmen's Compensation Act. In regard to the question of limitation, his point is that while the accident took place on 13th March 1935, the claim to compensation was instituted on 12th December 1935 and notice of compensation was given only on 6th November 1935. It is true that under section 10 (1) of the Act, notice of the accident must be given as soon as practicable and the claim must be instituted within six months of the occurrence of the accident. But there is a proviso which provides :

"The Commissioner may admit and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been instituted, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or institute the claim, as the case may be, was due to sufficient cause."

The learned Commissioner has taken the fact of the man's illness, his being a complete wreck after his discharge from the hospital and all other circumstances into consideration in coming

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to the conclusion that there was sufficient cause which enabled him to exercise the discretion which is conferred on him under the proviso and he did not see any reason to disallow the claim. We see no reason to differ from his conclusions on this part of the case. We therefore overrule the plea of limitation.

The second contention is that having regard to the definition of section 2 (n) (i) of the Act taken in conjunction with Schedule II, clause 1, the respondent is not a "workman" because he could not be said to be a person connected with the operation or maintenance of a mechanically propelled vehicle. We are not inclined to agree with this contention either. The word "operation" in clause 1 of Schedule II means the working of the vehicle. So far as the duties of a conductor in this case are concerned, there is evidence that his duties are not only to issue tickets, to collect fares, sign time-sheets at Police stations but also, as admitted by D.W. 1, to look after the convenience of the passengers and their luggage and generally do all that is prescribed in the Motor Vehicles Rules. Apart from any question of evidence, the duty of a conductor is not merely to sit in the car and issue tickets but he has to see to the safety of the passengers in getting in and getting out, to the starting of the car and the stopping of the car at convenient places and co-operate with the driver in the proper running of the car throughout the journey. In our opinion, he is therefore as much concerned with the operation of the mechanically propelled vehicle as the driver is within the meaning of that clause. The question whether the conductor

of an omnibus is a "workman" within the meaning of the Act was recently considered by a Bench of the Calcutta High Court and they have taken the same view as we have taken; *Nanda Kumar v. Pramatha Nath*(1). As observed in that case, the presence of a conductor is not only desirable but is really necessary and is indeed obligatory for the purpose of the proper working of the bus. We are therefore of the opinion that the respondent is a "workman" within the meaning of the Act.

In the result, the appeal fails and is dismissed with costs.

A.S.V.

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APPELLATE CRIMINAL.

Before Mr. Justice Pandrang Row.

IN RE NEMICHAND PARAKH (ACCUSED), PETITIONER.*

1938,
January 26.

Indian Penal Code (Act XLV of 1860), sec. 405—Pledge of jewels—Sub-pledge of the same by pledgee with his financiers to raise capital at a lower rate of interest—Absence of dishonest intention—No express contract not to sub-pledge—Offence of criminal breach of trust, if.

The accused, in the regular course of his money-lending business, effected sub-pledges of the same jewels, for the same amounts and on the same dates as the pledges made to him, with his financiers or *khatadars* to raise capital at a lower rate of interest. There was no express contract taking away the right to make sub-pledges and there was no evidence to show that the sub-pledges were made with a dishonest intention.

Held: (i) The accused was not guilty of the offence of criminal breach of trust. Under section 179 of the Indian

(1) (1937) 42 C.W.N. 123.

* Criminal Revision Case No. 747 of 1937.