

APPELLATE CIVIL.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and
Mr. Justice Dunkley.*

THE BOMBAY BURMA TRADING CORPORATION, LTD.

1936
Aug. 13.

v.

MA E NYUN.*

Workmen's Compensation Act (VIII of 1923), s. 2 (1) (n), Sch. II, Cl. 22—Person employed in training, keeping or working of elephants or wild animals, a workman—Person employed as messenger—Fatal accident whilst employed as messenger—Claim to compensation—Difference between English and Indian statutes—Statute, quasi-penal—Strict construction.

A person employed in the training, keeping or working of elephants is a workman within the meaning of s. 2 (1) (n) of the Workmen's Compensation Act, but when on a particular day such a person is employed by his employers as a messenger to carry a letter to a member of the staff and meets with a fatal accident during such employment he is not a workman within Schedule II of the Act, and consequently his dependents cannot claim compensation in respect of the fatal injury.

Parsu Dhondi v. The Trustees of the Port of Bombay, I.L.R. 54 Bom. 114—referred to.

Whilst the English statute applies to all workmen, the Indian statute only applies to certain defined classes of workmen, and casts a duty upon the Court of defining those classes with precision. The Workmen's Compensation Act is a quasi-penal statute and has to be construed, not with sympathetic leniency, but strictly.

In the matter of Maung Kyan, deceased, I.L.R. 9 Ran. 46; Ralli Bros. v. Perumal, I.L.R. 52 Mad. 747—referred to.

Beecheno for the appellant.

No appearance for the respondent.

GOODMAN ROBERTS, C.J.—This is an appeal under section 30 of the Workmen's Compensation Act against an award made to the respondent who is the mother of Maung Ba Aye, a person employed by the

* Civil Misc. Appeal No. 66 of 1936 from the order of the Commissioner, Upper Chindwin, in case No. 7 of 1935.

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Bombay Burma Trading Corporation in the capacity of an elephant driver. He was sent with a letter by a person whose duties correspond with those of a head forester for certain rice to be sent by Mr. Barlow who was the English assistant of the appellant company, and it was delivered; and it was on the way back on foot on the road that Maung Ba Aye, who had a companion with him, was attacked by a bear which came out from the jungle. The companion escaped, but Maung Ba Aye was fatally injured and died on his way to hospital.

We have to consider two points which have been laid before us for determination. The first is a contention by the appellants that at the time of the accident the deceased was not a workman within the meaning of the Workmen's Compensation Act, and the second is that if he were a workman within the meaning of the Act, the accident did not arise out of and in the course of his employment.

The definition of a workman in the Act is to be found in section 2 (1) (n), and means for the purpose of the present case any person who is employed on monthly wages not exceeding Rs. 300 in any such capacity as specified in Schedule II, and in Schedule II, clause (xxii) the term "workman" includes a person who is employed in the training, keeping or working of elephants or wild animals. By virtue of sub-section (3) of section 2 the Governor-General in Council has notified as hazardous certain other occupations and has added them to Schedule II. They are the felling and logging of trees, the transport of timber by inland waters, the control or extinguishing of forest fires and elephant catching operations.

We observe first of all in general that the respondent's son was employed in the training, keeping or working of elephants or wild animals, but we have

to consider whether he was so employed at the time at which he met the accident, and in relation to that matter our attention has been drawn to the case of *Parsu Dhondi v. The Trustees of the Port of Bombay* (1). In that case it was held that a workman who was employed to unload bales from a railway wagon standing in a dock and to take them to a shed adjoining the wharf and stack them there was not entitled to compensation if injured whilst arranging the bales in the shed by a bale which fell down. The acting Chief Justice pointed out that the provisions of the Act show that the intention of the Legislature was that the person should be directly concerned in the act of loading the ship, and that circumstance is seen when paragraph 5 of Schedule II of the original Act of 1923 is looked at. This original paragraph was thought to be too narrow, and the Legislature therefore amended it, and it now appears in a much wider form in paragraph 7 of Schedule II and covers operations which were not covered when the case of *Parsu Dhondi v. The Trustees of the Port of Bombay* (1) was decided.

We have also considered the case of *Ralli Bros., Madras v. Perumal* (2), and there the judgment of the learned Chief Justice Coutts Trotter contains these words :

“ There is this difference between the English and the Indian Statute that, whereas the former applies to all workmen, the latter only applies to certain defined classes of workmen and casts upon us, in my opinion, the duty of defining those classes with such precision as is possible.”,

and he goes on to examine the case of a person who was employed at a warehouse in receiving goods lowered by a crane inside a godown. These goods

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(2) (1929) I.L.R. 52 Mad. 747.

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were to be carried to a quay in carts for the purpose of loading in a ship some quarter of a mile away, and a workman in the godown was injured by the fall of a bale so lowered. It was held that he was not employed for the purpose of loading a ship within the meaning of clause 5 of Schedule II of the Act of 1923.

Now, it is clear that at the time that the deceased was being sent on a message to Mr. Barlow he was not employed in the task of training, keeping or working of elephants or wild animals. He was a person who was normally employed in that capacity but was being given other duties to perform on that particular day. He, therefore, was not running the risks incidental to persons who are employed in one of the hazardous occupations which form part of the Schedule or have been added thereto. If the Legislature desires in its wisdom to protect workmen employed upon those duties, that can be done by a notification under sub-section (3) of section 2 of the Workmen's Compensation Act that their occupation is a hazardous one. That fact was pointed out by Waller J. in *Ralli Bros., Madras v. Perumal* (1). But being obliged to administer the Act as it stands, we are constrained to say that the deceased was not a workman within the meaning of the Act for the purposes of this appeal. It is therefore unnecessary for this Court to consider the second question put before us, namely, whether the accident was one arising out of and in the course of his employment.

The Workmen's Compensation Act, as was pointed out by Chief Justice Page in *In the matter of Maung Kyan, deceased* (2), is a quasi-penal statute and it must not be interpreted with sympathetic leniency but must be construed strictly. It can always be altered by the

(1) (1929) I.L.R. 52 Mad. 747.

(2) (1930) I.L.R. 9 Rat. 46.

Legislature, but until the Legislature protects persons who may be and are protected in some other countries, the duty of the Courts is to interpret the Act as the Courts find it, and in this case we have no doubt in saying that the respondent is not entitled under the Workmen's Compensation Act to recover from the appellant company.

We, therefore, allow the appeal and dismiss the application for compensation.

DUNKLEY, J.—I agree that the order of the Commissioner for Workmen's Compensation must be reversed. The point of the decision in *Parsu Dhondi v. The Trustees of the Port of Bombay* (1) was that in deciding whether a person is a workman within the meaning of the Act the present occupation of the workman at the time when he met with the accident must be considered. No doubt, as an elephant driver the deceased Maung Ba Aye was a workman within the meaning of the Act, but although this was his normal occupation, at the time when he met with the accident he was employed in the subsidiary task of a messenger, and a messenger does not come within Schedule II of the Act and, consequently, he was not a workman within the meaning of the Act at the time when he met with the accident, and, therefore, the appellant company cannot be ordered to pay compensation to the respondent. It is conceded that the dependents of a messenger are not entitled to compensation under the Act, and merely because the deceased in the present case was for part of his time employed as an elephant rider, that cannot entitle his dependents to compensation when the accident occurred while he was being employed as a messenger.

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