

1929
 BOMBAY
 BARODA AND
 CENTRAL
 INDIA
 RAILWAY
 CO., LTD.
 v.
 RAJNAGAR
 SPINNING,
 WEAVING
 AND
 MANUFACTURING
 CO., LTD.

Murphy J.

learned Judge of Railway arrangements and of the duties of the Railway administration, is not really relevant in a case under this Risk Note. In the present case the evidence discloses no misconduct whatever, as far as I can judge, on the part of the Railway Company's servants, and it cannot fairly be inferred from the evidence which they have led. The plaintiff made no attempt whatever to prove any misconduct on their part, and the learned Judge's findings seem to be wrong. I agree, therefore, with the order proposed by the learned Chief Justice, that the rule should be made absolute and the claim in the suit dismissed with costs.

Rule made absolute.

B. G. R.

CIVIL REFERENCE.

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

PARSU DHONDI, APPLICANT v. THE TRUSTEES OF THE PORT OF BOMBAY, OPPONENT.*

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 July 31.

Workmen's Compensation Act (VIII of 1923), section 2, (1) (n); Schedule II, item (V)—Workman employed in docks—Injury sustained while arranging bales in godown—Workman not entitled to compensation—Interpretation of words "for the purpose of."

The joint effect of section 2 (1) (n) read with item (V) of Schedule II of the Workman's Compensation Act, 1923, is that the workman, who claims compensation, must be employed for the purpose of loading, unloading or coaling a ship when the injury occurred.

A workman 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, is not entitled to compensation if he is injured, while arranging the bales in the shed, by a bale which fell down.

REFERENCE made by J. F. Gennings, acting Commissioner for Workmen's Compensation, Bombay, under section 27 of the Workmen's Compensation Act, VIII of 1923.

Parsu Dhondi was employed by the Bombay Port Trust on June 23, 1928, to unload bales of cotton from

a railway wagon standing in the Victoria Docks and to take them to a shed adjoining the wharf. While engaged in stacking the bales in the shed a bale fell on his foot causing a permanent injury. He claimed compensation for the injury caused to him and contended that the bales of cotton he was stacking were intended to be placed on board a ship and it made no difference in principle whether the bales were taken from the railway wagon into the shed and deposited there or whether they were taken from the wagon to the wharf and deposited there. In either case he was employed for the purpose of loading a ship.

The Commissioner referred the following question to the High Court: "Was the applicant at the time when he met with the accident engaged for the purpose of loading a ship?"

The Commissioner was of opinion that the applicant was not so engaged at the time of the accident and gave the following reasons:—

"It is true that the wording of clause (5) of Schedule II, gives a wider scope to the employment than is the case with the other clauses. Clause 5 refers to a man being employed 'for the purpose of' loading, etc., whereas the other clauses refer to a workman employed 'in connection with' the service of a tramway, or employed 'in the construction of' a building. The words 'for the purpose of' certainly appear to me to have a wider meaning than the word 'in', but there must be some limit placed upon them. They cannot be extended indefinitely to cover all work, of whatever its nature, remotely connected with a ship and its cargo. Whereas persons employed 'for the purpose of' loading a ship would include such people as, tally clerks, supercargoes, overseers, and workers of that type the word 'in' might limit the employment to the people actually handling the cargo. I am, however, unable to accept the contention that any reasonable interpretation of the words 'for the purpose of' loading would bring the applicant in this case within the scope of the clause. There must be some measure of continuity definitely linking the work upon which a workman is engaged with the placing of the cargo into the hold of a ship. If such continuity is not necessary, it is difficult to see at what stage in a transport of a bale of goods to the docks the employment 'for the purpose of' loading a ship could be said to have commenced. For example, any persons handling goods on the Port Trust Railway are handling goods which are intended to be loaded into, or have been unloaded from, a ship. The coolies transshipping goods to railway waggons at the terminus of the railway could be said to be engaged 'for the purpose of' loading a ship because those goods would be taken down to the docks,

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unloaded, and some time or other, put on board a ship. It seems to me that this was not the intention of clause 5 and the use of the words 'for the purpose of' cannot cover the work that was being done in this case."

The reference was heard.

A. A. Adarkar, for *K. R. Bhende*, for the applicant.

O'Gorman, with Messrs. *Little & Co.*, for the opponent.

KEMP, Ag. C. J. :—This is a reference under the Workmen's Compensation Act, VIII of 1923. The applicant one Parsu Dhondi was employed by the Port Trust on June 23, 1928, to unload bales of cotton from a railway wagon standing in the Victoria Docks and to take them to a shed adjoining the wharf. From his evidence it appears that he was arranging the bales in the godown and that whilst he was stacking them one of the bales fell down and he sustained a fracture which is described in the medical evidence as a simple fracture of the middle third left leg (both bones). Under these circumstances he sought compensation under section 2, clause (1) (n) read with Schedule II, Item No. 5 of the Act. The joint effect of that section and sub-section and Item No. 5 in the Schedule is that the workman must be employed for the purpose of loading, unloading or coaling any ship. His injury occurred not whilst he was engaged in any such duty but whilst stacking the bales in the shed. It is not suggested he was injured whilst the bales were in process of being loaded on to the ship. The intention expressed in Item No. 5 in Schedule II is to restrict the compensation to persons who are occupied in the actual present operation of loading, unloading or coaling. That this is so is further borne-out by the Government Notification which, since the Act, extended the right to compensation to cases where the person injured is engaged in loading, unloading or fuelling a ship in any harbour, roadstead or navigable water (see Government Notification dated July 15, 1927, published in the *Bombay*

Government Gazette, Part I, page 1978). Section 7 of Act V of 1929 amended clause (5) of Schedule II and extended the protection to a person who is employed for the purpose of loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew. These tend to show that the intention of the Legislature was that the person injured should be directly concerned in the act of loading, etc., the ship. Under these circumstances, I am of opinion, in this case the applicant has no right to compensation under Item No. 5, Schedule II of the Act. Nor do I think the words "for the purpose of" in that sub-clause extend the benefits of the Act to him. It is unnecessary to consider how far, if at all, the Act applies to any one who is not actually concerned in *handling* cargo, etc. . . .

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The construction of Item No. 5 of Schedule II is a question of law although no question of law appears to have been specifically framed in the Commissioner's reference unless it is intended to be included in the issue which he has framed stating the facts of the case. I would answer the issue—"Was the applicant at the time when he met with the accident engaged for the purpose of loading a ship"—in the negative.

No order as to costs. Mr. O'Gorman for the Port Trust says that the Court may rest assured that the Trustees will consider the applicant's case sympathetically.

MURPHY, J. :—The workman in this case was injured while stacking certain bales in a shed alongside the wharf in the Victoria Docks, Bombay. It is contended before us that the words "for the purpose of" unloading, loading, etc., which are to be found in Schedule II (V) of the Workmen's Compensation Act, VIII of 1923, should be interpreted very liberally, and as implying a wider meaning than had the word "in" been used

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in their place. But it seems to me that such a meaning cannot be read into them and that the expression "for the purpose of" used in this connection means the same thing as "in" and that other words would have been used had it been intended to include a man, injured while engaged in preparations for the purpose of, ultimately, loading bales on to a ship. In fact the same argument might be used to apply to the case of every person engaged in working on such bales at any one of the many steps which intervene from where the bales are pressed in the mill to where they are stacked ready for loading into a ship, and it is clear that a line must be drawn somewhere. I think that the meaning of the term used is clear, and that protection under the Act is meant for the workmen who are actually engaged in the process of handling the bales, so as to transfer them from the wharf to the hold of a ship which is actually being loaded. But the workman in question was only stacking the bales in a shed and it does not appear that the ship which was to carry them was then being loaded. I agree with the answer proposed by the learned Chief Justice to the question in the reference and think that the claimant cannot be awarded compensation in this case.

Order accordingly.

J. G. R.

APPELLATE CIVIL.

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August 14.

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Blackwell.
MAHOMEDALLI IBRAHIMJI (ORIGINAL DECREE-HOLDER), APPELLANT v.
LAXMIBAI HUSBAND'S NAME ANANT VASUDEV PALANDE (ORIGINAL
DEPENDANT No. 2), RESPONDENT.*

*Civil Procedure Code (Act V of 1908), Order XXXVIII, rule 5, Appendix F,
Form 6—Surety—Security bond—Compromise decree—Installments—Surety's
consent not obtained—Discharge of surety's obligation.*

When on an application for attachment before judgment, a surety executes bond in form 6 in Appendix F to the Civil Procedure Code, 1908, he is

*Appeal No. 34 of 1927 under the Letters Patent.