

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Sen.

1937
July 28

ELLERMAN'S CITY AND HALL LINES, BY THEIR AGENTS MESSRS. KILLICK, NIXON & CO. (ORIGINAL OPONENTS), APPELLANTS *v.* ASIS THOMAS, MINOR SON OF THOMAS ANTON, BY HIS GUARDIAN MANVEL ANTON (ORIGINAL APPLICANT), RESPONDENT.*

Workmen's Compensation Act (VIII of 1923), section 2 (1), clause (n), section 5 and schedule II, clause (vii)—Carpenter employed to mend boxes unloaded from a ship within the limits of a port—Wages paid by the day—Whether carpenter falling within the definition of "workman"—Meaning of expression "monthly wages not exceeding three hundred rupees" and "handling" of goods.

The definition of "workman" in section 2 (1), clause (n), of the Workmen's Compensation Act, 1923, is not limited to workmen who are employed by the month, and would also include workmen employed by the day or by the week or by the year.

The expression, "monthly wages not exceeding three hundred rupees" within the definition, means wages which do not exceed on an average Rs. 300 a month.

A carpenter employed to mend boxes which have been unloaded from a ship, within the limits of a port subject to the Indian Ports Act, can be said to be employed in the handling or transport of goods within the meaning of clause (vii) of the Second Schedule of the Workmen's Compensation Act, 1923.

The word "handling" in its natural and literal meaning denotes physical contact with goods by means of the hands, that is, the employment must require the workman to use his hands upon goods, and certainly a carpenter repairing boxes in which goods are packed is using his hands in connection with the goods.

APPEAL against the decision of J. F. Gennings, Commissioner for Workmen's Compensation, Bombay.

Claim for compensation.

The deceased Thomas Anton was a carpenter employed by Messrs. Killick Nixon & Co., Agents for the Ellerman City and Hall Lines. His work was to attend at the sheds in the Alexandra Dock, where cargo was being unloaded from steamers, and to repair any broken boxes. He was paid Rs. 1-8-0 per day.

*First Appeal No. 119 of 1936.

On the night of June 22, 1935, Anton attended at No. 2 shed Alexandra Dock, where the steamship "City of Melbourne" was being unloaded. He was on night shift, but, owing to rain, no unloading was done and he remained in the shed until about 11-30, when it was decided that no work should be done that night and the workmen were sent home. Anton left the shed and nothing more was heard of him until two days later it was found that he had met his death by drowning.

1937
 ELLERMAN'S
 CITY AND
 HALL LISTS
 THOMAS

Anton's son preferred a claim in the Court of the Commissioner for Workmen's Compensation, Bombay. The Commissioner held that the workman fell into the water from the quay on which shed No. 2 was situated and therefore the accident arose both in the course of and out of his employment. He, therefore, made an award for Rs. 1,200 in applicant's favour. His reasons were as follows :—

"Section 2 (I) (a) defines a workman as any person . . . 'who is employed on monthly wages not exceeding Rs. 300 in any such capacity as is specified in Schedule II'. Mr. Lucas for the opposite party argues that the workman was employed on daily wages, and not on monthly wages, and therefore the section does not apply. This point has been taken before in this Court because, admittedly, the sub-clause (a) is not happily worded. The reply is that monthly wages has no specific meaning: it may have a number of meanings. Section 5, however, deals with the method of calculating wages and shows what monthly wages in this Act really mean. Therefore, the fact that a workman was employed on daily wages is not a bar to his obtaining compensation. The next point is whether the workman was employed within the meaning of any clause in Schedule II. The applicant claims that the deceased was a workman within the meaning of clause (vii) of Schedule II inasmuch as he was employed 'in the handling or transport within the limits of any port subject to the Indian Ports Act, 1908, of goods which have been discharged from or are to be loaded into any vessel'. Mr. Lucas argues that 'handling or transport' should be read together and that the meaning of the clause is that only those persons who actually take part in the process of moving the goods can be regarded as handling them: in effect that handling and transport are *sui generis*. With this I cannot agree. The word used 'or' and 'handling' and 'transport' have distinct meanings. Even the word 'handling' need not in the ordinary and natural meaning of the word imply physical contact with an object. In business one often refers to a firm 'handling' a particular line of goods and so on. But, in this case, the workman actually came in contact with the goods, because he mended them. Mr. Lucas lays stress on

1937

ELLERMAN'S
CITY AND
HALL LINES
v.
THOMAS

the fact that the cases or boxes were brought to him by coolies and were taken away by them and that all that the workman did was to mend them. I think that this clearly constitutes, 'handling' within the meaning of the clause and therefore find that the deceased was a workman."

The opponents appealed to the High Court.

G. C. O'Gorman, with Messrs. *Cragie, Blunt & Caroe*, for the appellants.

S. C. Joshi, with *B. G. Modak*, for the respondent.

BEAUMONT C. J. This is an appeal against a decision of the Commissioner for Workmen's Compensation making an award of Rs. 1,200 in favour of the representative of the workman. The facts found are that the alleged workman was employed by Killick Nixon & Co. as a carpenter, and his work was to attend at the sheds in the Alexandra Dock when cargoes were being unloaded from steamers and to repair broken boxes. The Commissioner has found that the deceased man was employed by Killick Nixon, and not by a sub-contractor, and that he met with death by drowning, and that the accident arose out of and in the course of his employment. Those are questions of fact which are not under appeal. But two points of law are taken in appeal. First of all it is said that the deceased man was not employed at monthly wages. He was in fact paid Rs. 1-8-0 a day, and it is not suggested that he was employed by the month. Now the definition of "workman" in section 2 (1) clause (n), of the Workmen's Compensation Act (VIII of 1923), is this:

" 'Workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

. . . (ii) employed on monthly wages not exceeding three hundred rupees, in any such capacity as is specified in Schedule II."

So that a workman appears to include a person whose employment is of a casual nature, and is also in connection with the employer's trade or business, though obviously such a person is not likely to be employed by the month. Then section 5 describes how wages are to be calculated. It is

said that this workman was not employed on monthly wages but in my opinion the reference to employment on monthly wages in section 2 (I), sub-clause (n), means employment at wages which do not exceed an average of Rs. 300 a month. It seems to me quite impossible, reading this Act as a whole, to say that it was limited to workmen who are employed by the month, so that it would not include workmen employed by the day or by the week or by the year. If that were the meaning of the Act, every employer could get out of it by employing his workmen otherwise than by the month. I feel no doubt whatever that the meaning of the expression "monthly wages not exceeding three hundred rupees" means wages which do not exceed on an average Rs. 300 a month. That construction is supported by section 5, although, no doubt, it would be possible, as Mr. O'Gorman says, to give effect to that section by holding that it is limited to cases in which the accident occurs during the first month.

Then the second point taken is that this workman does not come within Schedule II of the Act. The clause under which it is suggested that he comes is clause (vi) of the Second Schedule as amended, which reads as follows :—

"The following persons are workmen within the meaning of section 2 (I) (n) and subject to the provisions of that section, that is to say, any 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, or in the handling or transport within the limits of any port subject to the Indian Ports Act, 1908, of goods which have been discharged from or are to be loaded into any vessel."

Now the question is whether a man employed to mend boxes which have been unloaded from a ship within the limits of a port subject to the Indian Ports Act can be said to be employed in the handling or transport of goods. The words "handling" and "transport" being connected in the Schedule by the disjunctive "or" must, I think, be held to have distinct meanings. If the word "handling" be limited to handling in the process of transport, as Mr. O'Gorman contends that it should be, then one gives no meaning at all

1937

ELLERMAN'S
CITY AND
HALL LINESv.
THOMAS

Beaumont C. J.

1937

ELLERMAN'S
CITY AND
HALL LINES
2.
THOMAS

Beaumont C. J.

to the word "handling", because "transport" would cover handling in the process of transport. Therefore one must give to the word some wider meaning than handling in the process of transport. The word in its natural and literal meaning denotes physical contact with goods by means of the hands that is, the employment must require the workman to use his hands upon the goods, and certainly a carpenter repairing boxes in which goods are packed is using his hands in connection with the goods. I am not prepared to accept the view indicated by the learned Commissioner that handling may be used in the Schedule in the figurative sense in which it is sometimes employed in such an expression as handling a business. In my view a clerk who prepares a bill of lading relating to goods cannot be said to be handling the goods within the meaning of Schedule II. But a man who is employed to repair cases containing goods or to unload and re-pack goods seems to me to be employed in the handling of goods. Mr. O'Gorman has argued that the section is really intended to protect coolies whose employment in loading and unloading ships involves a certain amount of risk. I have no doubt that the risk of accident to a cooly engaged in loading or unloading a ship is considerably greater than the risk of accident to a carpenter who is employed in the godown to repair a box. But we are not concerned with whether the chances of an accident are great or small. As found on the facts an accident in this case occurred to the carpenter, and if he falls within the definition of a "workman", he is entitled to compensation. In my opinion he was employed in handling goods within the limits of the port, and that being so, the finding of the learned Commissioner was right. The appeal, therefore, must be dismissed with costs.

SEN J. I agree.

Appeal dismissed.

J. G. R.