

1936

Present : Soertsz A.J.

## MANICAM v. SULTAN ABDUL CADER BROS.

## S.C. No. 66—Workmen's Compensation.

*Workmen's Compensation—Person employed to wash lorry and to load goods—Employment in connection with the maintenance of vehicle—Ordinance No. 19 of 1934, Schedule II (2).*

A workman, who is employed to wash a lorry and to arrange bags when they are being loaded in it, is a person employed in connexion with the operation or maintenance of the vehicle within the meaning of section 2 of Schedule II of the Workmen's Compensation Ordinance, No. 19 of 1934.

THIS was an application under section 34 of the Workmen's Compensation Ordinance, No. 19 of 1934. The application was made by the widow of one Alvan Sivaguru for compensation on account of the death of her husband, which resulted from injuries sustained by him while employed on a lorry belonging to his employer. The Commissioner found that he was employed to wash the lorry and to arrange bags of rice and paddy in the lorry, when it was being loaded.

He held that the kind of work performed by the deceased did not bring him within the definition of "workman" in the Workmen's Compensation Ordinance.

*S. J. V. Chelvanayagam* (with him *H. W. Tambiah*), for appellant.—Section 1 of Schedule II of Workmen's Compensation Ordinance is applicable. Under this section the only kind of employment excluded is employment in a clerical capacity. By excluding one particular type of employment the legislature intended to include all other types of employment.

In construing the word "operation" when used in connection with a lorry regard must be had to the purpose for which the lorry is intended. In this case the lorry was used for the transport of goods. Therefore loading and unloading that lorry was work necessary for the "operation" of the lorry.

The Workmen's Compensation Ordinance must be construed as much as possible in favour of the Workman (*Roger v. Cardiff*<sup>1</sup>).

*L. A. Rajapakse* (with him *M. Maharoo*), for the respondent.—Our Ordinance, unlike the corresponding English Act, specifically lays down in Schedule II the list of persons who are included in the definition of "workmen" in section 2 (1). Section 1 of Schedule II refers to employment in connection with mechanically propelled vehicles. If the legislature intended to include within this section persons employed in loading and unloading a mechanically propelled vehicle as workmen within the meaning of this Ordinance it would have stated so specifically as it has done in section 6 of the Schedule which deals with employment in connection with ships.

Loading and unloading is in no way connected with the operation of a lorry. The word "operation" refers to the actual mechanical propulsion of the lorry.

*Cur. adv. vult.*

<sup>1</sup> (1905) 2 K. B. 832, 836.

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The question involved in this appeal arises from an application made by the dependant, in this instance, the widow of one Alvan Sivaguru, to the Commissioner appointed under the Workmen's Compensation Ordinance, No. 19 of 1934, for compensation on account of the death of her husband, which resulted from injuries sustained by him while he was on the lorry belonging to his employer, M. Sultan Abdul Cader, the respondent to this appeal.

The Commissioner found that the deceased worked on this lorry for a daily wage, his usual work being to arrange bags of paddy, rice, &c., in the lorry, when it was being loaded. The Commissioner appears to have accepted the evidence of those witnesses who stated that the deceased washed the lorry too. With regard to this, there had been a conflict of evidence.

But the Commissioner held that the kind of work performed by the deceased did not bring him within the definition of "workman" in the Ordinance, and that therefore the petitioner's application failed.

"Workman" is defined in the Ordinance as meaning "any person who is employed on wages not exceeding Rs. 300 per mensem in any such capacity as is for the time being specified in Schedule II. . . ."

The capacity relied upon by the petitioner for her claim is the capacity mentioned in paragraph 1 of that Schedule. It is in these terms: "Any person who is employed, *otherwise than in a clerical capacity*, in connexion with the operation or maintenance of any mechanically propelled vehicle (including a tramcar) used for the carriage or conveyance of passengers or goods for hire, or for industrial or commercial purposes".

The Commissioner says in his order that as he reads the paragraph "the operation or maintenance must be in connection with the *mechanism* of the vehicle itself" and he goes on to say "mere arrangement of the load clearly has nothing to do with this. It is true that the deceased is also said to have washed the lorry at times, but even this work, though necessary, no doubt, to maintain the lorry for a long life, is not by itself, in my opinion, an employment which falls within the definition contained in paragraph 1".

If the Commissioner's order means that notwithstanding the conflict of evidence on that point, he was satisfied that the deceased had been employed to wash the lorry at times, I am clearly of opinion that the deceased had been "employed in connexion with the . . . maintenance" of the lorry.

The words are very wide—employed *in connexion with* the maintenance of any mechanically propelled vehicle, &c. Washing the lorry, as the Commissioner himself points out, has a distinct bearing on its maintenance, and when a man is employed in washing it, he is obviously employed in connexion with its maintenance. Washing a lorry is one of the factors necessary for its maintenance. My view is equally clear that, even if the evidence that the deceased washed the lorry at times is disregarded, and the proved fact is taken to be that his work was arranging the bags which were being loaded on the lorry, the claim is none the less properly made

that he was "employed . . . . in connexion with the operation of a mechanically propelled vehicle used for . . . . industrial or commercial purposes".

If the legislature, when it used the word "operation" in that paragraph, used it to mean "operation" in connexion with the mechanism of the vehicle only, it was not necessary to exclude in express terms employment in a clerical capacity, for employment in such a capacity is excluded by the word itself. The fact that the only employment excluded is employment in a clerical capacity, clearly indicates that employment in all other capacities in connexion with the operation of the lorry is included. Moreover, in this case "the mechanically propelled vehicle" is one that falls within the meaning of the words "used for industrial or commercial purposes". It is a lorry that the owner, the employer of the deceased, used for transporting bags of rice, paddy, &c. The operation of such a vehicle for such a purpose calls for the exercise of numerous activities. Whoever does anything on the lorry relevant to the purpose in view, namely, the transport of goods by it, cannot but be said to be employed in connexion with the operation of the lorry.

Take the case of an omnibus. It is operated in order to carry passengers. It requires besides a driver and a cleaner, a conductor. Can it be said that the conductor is not employed in connexion with the operation of the omnibus? If the interpretation of the Commissioner is right, a conductor of an omnibus does not fall within the definition of workman in the Ordinance. Is there any justification for such an exclusion, when the express terms of the paragraph exclude only those employed in a clerical capacity?

I am, therefore, of opinion that the interpretation given to this paragraph 1 in Schedule II by the Commissioner is erroneous and I hold that the deceased was a workman within the meaning of that paragraph, and I remit the case to the Commissioner for consideration of the question of the amount of compensation due. I make no order for costs.

*Appeal allowed.*

