1952 *Present :* **Nagalingam A.C.J.**

BABY NONA, Appellant, *and* ARTHUR SILVA, Respondent

S. C. 943—Workmen's Compensation Application No. C 25/1/51

Workmen's Compensation Ordinance—Distinction between workman and independent contractor.

Where a person was employed to work in quarries and was paid according to the quantity of metal that was delivered by him to the employer—

Held, that he was a workman within the meaning of the Workmen's Compensation Ordinance, and not an independent contractor.

APPEAL from an order of the Commissioner for Workmen's Compensation.

S. J. V. Chelvanayakam, Q.C., with *N. Nadarasa*, for the appellant.

K. C. de Silva, with *M. L. de Silva*, for the applicant respondent.

Cur. adv. vult.

[1] *(1950) 52 N. L. R. 91.*

[2] *(1949) L. J. R. 1022.*

March 12, 1952. NAGALINGAM A.C.J.—

The appellant who is the employer prefers this appeal against an order of the Assistant Commissioner for Workmen's Compensation dated 21st August, 1951, by which he adjudged the appellant liable to pay a sum of Rs. 2,875 to the applicant, the widow of one Lewis Singho, alleged to have been a workman under the appellant. The question for decision is whether the deceased person was a workman within the meaning of the Workmen's Compensation Ordinance or whether he was an independent contractor.

On behalf of the appellant it has been contended that there were several circumstances evidence of which was given before the Commissioner all of which point in the direction of the view that Lewis Singho was one who fell under the category of an independent contractor rather than that of a workman under the appellant. The circumstances relied upon are that the deceased person was paid according to the quantity of metal that was supplied by him to the employer, that he was not paid by the day or week or according to the period of employment. It was further stressed that though the bare fact of payment according to the quantum of metal that was supplied may not be decisive and in fact not inconsistent with the deceased person having been a workman under the appellant there was no evidence of a contract of service from which any inference could be drawn that he was a workman within the meaning of the Ordinance. Mr. Chelvanayakam rightly contended that there must be some proof of a contract of service.

Mr. de Silva for the applicant pointed to the fact that the deceased person had worked for a number of months in quarries within the Urban Council limits of Hatton in respect of which quarries the appellant it was who obtained licences to work them. This, no doubt, is a very strong circumstance and would normally lead to the reasonable inference that the workman was employed by the licensee of the quarry to work for him though payment to the workman was made on a piece work basis. It was, however, pointed out by Mr. Chelvanayakam that at the date when the deceased person met with the accident which resulted in his death he was not working in any of the quarries in respect of which the appellant had obtained a licence but that the deceased person was working in a quarry outside the Urban Council limits and situate on a neighbouring estate. He also pointed out further that there was evidence to shew that permission from the estate authorities was obtained by the deceased person.

The absence of either a licence in favour of the appellant or of evidence shewing that the appellant had interested himself in securing the quarry from which the metal was to be obtained does not conclude the matter. Suppose, for instance, a firewood dealer asked a wood-cutter to cut and supply him with firewood from any forest or jungle from which he could obtain supplies and offered to pay him for the quantity of firewood supplied, there can be little doubt that the answer to the question whether the wood-cutter was a workman of the firewood dealer would not be negatived by the fact that the wood-cutter was free to collect firewood

from any place he liked which was never under the control of the dealer ; the test would have to be, as Mr. Chelvanayakam himself suggested, was there or was there not a contract of service ?

Mr. Chelvanayakam relied upon the case of *Templeton v. William Parkin and Company Limited* [1]. There the facts were different, and one noteworthy feature of the contract between the parties was that the workman had to pay rent for the room of the employer which he occupied in order to perform his services and he was free to employ servants and dismiss them and take work from outside, although the employer had a first call on him. Mr. Chelvanayakam also referred to the Irish case of *Crowley v. Limerick* [2] where the circumstances were very similar to the present case and in that case the workman was held to be an independent contractor. The report of this case is not available, and it is hardly satisfactory to go by a brief note of the case. Mr. de Silva pointed to other cases digested on the same page where a contrary view would appear to have been taken by the English Courts on similar facts. I do not think any of these cases can be depended upon as a binding authority. Each case has to be decided upon its own facts.

In this case the learned Commissioner has accepted the evidence of the widow that her husband was employed under the appellant, and has been influenced in that acceptance by the evidence given by a fellow worker of the deceased person who is now employed under the appellant in a similar capacity, and who was described as a workman of the appellant. It is true that the appellant denied there was a contract of service. The learned Commissioner had the advantage of the test of the eye and on this appeal it is difficult to say that the finding of fact arrived at by him is wrong. The burden is on the appellant to prove that a finding is not warranted by the evidence and that the inference drawn cannot be sustained. The appellant has failed to satisfy me on this point.

I therefore affirm the order of the learned Commissioner and dismiss the appeal with costs.

Appeal dismissed.

[1] *(1929) 140 L. T. 519.*

[2] *(1923) 2 I. R. 78, digested in Butterworth : Digest of Leading Cases, 1938 edition, page 98.*