

1950

Present : Nagalingam J.

ALICE NONA, Appellant, and WIMALATUNGA, Respondent

*S. C. 931—Workmen's Compensation No. C3/101/49*

*Workmen's Compensation Ordinance (Cap. 117)—Right of workman to recover compensation from principal of contractor under whom he is employed—Section 22, sub-sections (1) and (4).*

A was a building contractor who had taken a contract under Government to repair the Okampitiya Road. B was given a sub-contract by A to perform part of the contract. B employed workmen to transport gravel in lorries and heap it on various sections of the road. While some of these workmen, of whom C was one, were travelling in a lorry loaded with gravel an accident occurred and C died. The destination, however, of the lorry, at the time of the accident, was not any section of the Okampitiya Road but Buttala where A required the gravel for some rooms he was putting up for himself.

In an application for compensation made against A by the mother of C—

*Held*, that the accident which resulted in the death of the deceased occurred "on, in or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management" within the meaning of sub-section 4 of section 22 of the Workmen's Compensation Ordinance.

**A** PPEAL from an order of the Deputy Commissioner for Workmen's Compensation.

*K. C. de Silva*, for the applicant appellant.

No appearance for respondent.

*Cur adv. vult.*

December 26, 1950. NAGALINGAM J.

The appellant appeals from an order of the learned Deputy Commissioner for Workmen's Compensation dismissing her application for compensation in respect of the death of her son who she alleged had been employed under the respondent.

The learned Commissioner has found, and his finding has not been challenged, that the deceased was not in fact a workman employed by the respondent. But it is contended that compensation should have been awarded on the basis of the alternative finding of the learned Commissioner that the deceased had been employed by a contractor in the employ of the respondent. The learned Commissioner has held that it has not been established that the accident which resulted in the death of the deceased "occurred on, in or about the premises on which the principal has undertaken or usually undertakes to execute the work or which are otherwise under his control or management" within the meaning of sub-section 4 of section 22 of the Workmen's Compensation Ordinance.

The respondent in giving evidence described himself as a timber contractor and a building contractor and also stated that he was a registered Government contractor and that at the date of the accident he had taken a contract under Government to repair the Okampitiya Road. The deceased workman, according to him, was employed under a contractor of his named Albert Gunewardene who had been given a sub-contract to perform part of the contract which he had undertaken in regard to the repairs to the Okampitiya Road. The workmen, of whom the deceased was one, were engaged in widening the road at its bends, loading the lorries with gravel or earth so obtained and heaping it on other sections of the road in order that the gravel or earth may be spread on the surface of those sections. The transport of the gravel was by means of a mechanical tipper, that is to say, a lorry embodying a tipping mechanism.

The evidence discloses that the labourers had to do eight trips a day, four before the interval for the noon-day meal and four thereafter. It is in evidence that it was during the course of the fourth trip of the lorry when the workmen including the deceased were travelling in it which was then loaded with gravel that the accident occurred and that the destination of the lorry on that occasion was not any section of the Okampitiya Road but Buttala where the respondent required the gravel or earth for some rooms he was putting up for himself.

It would thus be apparent that the deceased workman was not engaged in any work connected with the contract undertaken by the respondent in regard to the repairs to the Okampitiya Road, but it is clear that the sub-contractor was, in transporting gravel to the respondent's premises at Buttala, executing work for the respondent himself.

On this state of the facts, the question that arises is whether it could be said that the sub-contractor was executing work which is ordinarily part of the trade or business of the principal. The respondent's own evidence is that he is also a building contractor, in other words, that that is one line of trade or business in which he is ordinarily engaged. If so, in putting up a building for himself he would merely be acting as his own contractor and in employing the sub-contractor the respondent contracted with the sub-contractor for the execution by the latter of part of the work which is ordinarily part of his own trade or business.

In the English Workmen's Compensation Act of 1924, the relevant provision is more stringent. The first part of section 6 of the Act, corresponding to section 22 of our Ordinance, runs as follows:—

“ Where any person (in the section referred to as the principal) in the course of or for the purpose of his trade or business contracts with any other person (in the section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work *undertaken by the principal*... ”

while under our Ordinance, for the words italicized the following is used:—

“ Which is ordinarily part of the trade or business of the principal ”. Even under the English Act it has been held that the word “ undertaken ”

includes not only work which the principal usually undertakes for others in the course of his own trade or business but also work which he may do on his own account, provided such work falls within the class of work he ordinarily carries on as part of his trade or business; for instance, it will include the case of a builder who wishes to build a house for himself and engaged a contractor to do part of the work for him—*per* Cozens Hardy M. R.<sup>1</sup>. Though our section 22 deviates as shown above in regard to the first part of sub-section I thereof from the corresponding English Act, yet sub-section 4 of our Ordinance introduces the notion suggested by the word “undertaken” in the English Act by using that term in sub-section 4 of the section in defining the premises where the accident should have occurred by enacting “that the premises should have been that on which the principal has undertaken or usually undertakes to execute the work. Notwithstanding the use of the term “undertaken” in sub-section 4, the principle enunciated that a person who carries on a particular trade or business may yet, in carrying out some work for himself that falls within the class of trade or business that he is already engaged in, be his own contractor would apply.

On the facts of this case it follows that the respondent was a contractor under Government to carry out repairs to the Okampitiya Road and was his own contractor in regard to the building of some rooms or, to be more precise having regard to the evidence, to filling with earth the floor of certain rooms which he had built and the sub-contractor Albert was employed by the respondent to attend to part of the repairs of the Okampitiya Road and to filling up of the rooms with earth. The place to which the gravel or earth was being transported at the time of the accident was premises belonging to the respondent. The accident itself did not take place on, in or about the premises where the gravel or earth was to be unloaded but while the lorry was yet on its way it was that the accident happened. Whether it could be said that, as the accident took place while the lorry was travelling to its destination probably some distance away from the place where the earth had to be unloaded, the accident did take place on, in or about the premises of the respondent is a further question that arises.

In interpreting the words “on, in or about the premises” the English Courts have given these words a wide interpretation. In the case of *Rogers v. The Mayor, Alderman and Burgesses of the Borough of Cardiff*<sup>2</sup> where the facts were that the Cardiff Corporation were the owners of a system of electric tramways and they employed the workman to attend to repairs, the workman, after attending to repairs at one particular spot was proceeding to effect repairs at another spot when he met with the accident. It was contended on behalf of the Corporation that as the workman had finished his task at one place and as he had not commenced work at the other place it could not be said that the accident had been met with by him “on, in or about the premises”. But the Court of Appeal held that the area of work was co-extensive with the tramway itself and that the workman was regarded as having been engaged on his task even when he proceeded to the new place of work after completing his job.

<sup>1</sup> (1910) 2 K. B. 903.

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

In the present case though the place at which the earth was to be unloaded may have been the only place owned by the respondent, nevertheless the whole area from the place where the earth was cut to the place where the earth was to be transported must be deemed to be the premises on, in or about which the respondent had undertaken to execute the work.

The respondent would on these facts become liable to pay compensation in respect of any workman who was engaged in the composite task of repairs to the road and filling up of the rooms with earth. I therefore hold that the respondent is liable to pay compensation in respect of the deceased workman. I set aside the order of the learned Commissioner and remit the proceedings to him for assessment of compensation. The petitioner will be entitled to the costs of this appeal and of the proceedings had before the Commissioner. The further costs will be in the discretion of the Commissioner.

*Order set aside.*

