

1945

Present: Wijewardene J.

S. K. J. PERERA, Appellant, and W. W. NONAIHAMY, Respondent..

302—*Workmen's Compensation C 3/58.*

Workmen's Compensation—Person employed to load and unload goods in a lorry—Employment in connection with the operation and maintenance of a vehicle—Ordinance No. 19 of 1934, Schedule II., s. 1.

A workman, who is employed in loading or unloading goods from a lorry, is one who is employed in "the operation or maintenance of a mechanically propelled vehicle for the carriage of goods" within the meaning of section 1 of schedule 2 of the Workmen's Compensation Ordinance.

Manicam v. Sultan Abdul Cader Bros. (38 N.L.R. 28) followed.

A PPEAL from an order made by a Commissioner under the Workmen's Compensation Ordinance.

H. V. Perera, K.C. (with him *N. M. de Silva* and *G. T. Samarawickreme*), for the defendant, appellants.

S. W. Jayasuriya for the applicant, respondent.

Cur. adv. vult.

May 21, 1945. WJYEWARDENE J.—

This is an appeal against an order made by the Commissioner under the Workmen's Compensation Ordinance awarding compensation to the applicant, respondent, as the dependent of one Nomis who died in consequence of injuries sustained by him while travelling in motor lorry No. Z 4225.

It was argued in appeal (i) that the appellants were not the employer of Nomis, and (ii) that Nomis was not a workman within the meaning of the Ordinance.

I hold against the appellants on the first point, as there is evidence in the case to support the finding of the Commissioner.

As regards the second point the evidence of the applicant and some of her witnesses was that Nomis worked in the motor lorry loading and unloading goods and that he was employed also as a cleaner of the lorry. Reading the judgment as a whole I have no doubt that the Commissioner accepted that evidence, but towards the end of his order he said, "At the time of his (Nomis) death he was engaged in work connected with the unloading of goods from the lorry Z 4225 and in view of this the deceased was a workman". Basing his argument on this paragraph in the order, the Counsel for the appellants contended that the Commissioner has accepted only the evidence that Nomis was employed in the loading and unloading of goods and that on that finding Nomis could not be regarded as a workman. His argument was briefly as follows:—The Ordinance mentions clearly in Schedule II the only persons who could be regarded as workmen. The section of that Schedule applicable to the present case is section 1 which refers to persons "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". A man employed in loading and unloading goods cannot be regarded as a person employed in connection with the "operation" of the lorry, as that word refers to the actual mechanical propulsion of the lorry.

I am unable to entertain that argument. If the word "operation" in that section has the limited meaning sought to be given to it, there was no necessity for the express provision in that section excluding those employed in a "clerical capacity". I think the word "operation" is used in a much wider sense and includes such activities as the loading

and unloading of goods in the case of lorries " used for the carriage of . . . goods for hire, or for industrial or commercial purposes ". I am in respectful agreement with the view taken by Soertsz, J. in *Manicam v. Sultan Abdul Cader Brothers* ¹.

I dismiss the appeal with costs.

Appeal dismissed.

