

1960

Present : T. S. Fernando, J.

VALLIAMMA, Applicant, and TRAFFORD HILL RUBBER  
ESTATES LTD., Respondent

*S. C. 1—Workmen's Compensation Application C3/75/58*

*Workmen's Compensation Ordinance (Cap. 117)—Section 3—Injury suffered by workman—" Arising out of his employment "*.

A Tamil labourer who was employed in a rubber estate was engaged in his ordinary work on 29th May, 1958, in one of the divisions of the estate which was situated in an area, where, on that date, there was tension due to unprecedented racial enmity between the Tamils and the Sinhalese. At about 3 p.m. a gang of Sinhalese villagers came on to that part of the estate in which the Tamil labourer was working alone by the side of a road and inflicted injuries on him which resulted in his death within a few hours.

*Held*, that the accident which resulted in the death of the workman could not be regarded as *arising out of his employment* within the meaning of section 3 of the Workmen's Compensation Ordinance.

THIS was a reference to the Supreme Court under section 39 of the Workmen's Compensation Ordinance.

*S. C. Crossette-Thambiah*, for the applicant.

No appearance for the respondent.

*E. R. de Fonseka*, Crown Counsel, as *amicus curiae* on notice from Court.

*Cur. adv. vult.*

September 13, 1960. T. S. FERNANDO, J.—

The Commissioner for Workmen's Compensation has, in terms of section 39 of the Workmen's Compensation Ordinance (Cap. 117) submitted for the opinion of this Court the question whether the accident which resulted in the death of a workman in the circumstances set out hereunder can be regarded as *arising out of his employment* within the meaning of section 3 of the Ordinance.

The deceased Ponniah was a Tamil and a labourer on Trafford Hill Rubber Estate and was working on 29th May, 1958, in one of the divisions of the estate. The estate is situated in Galagedera, one of the many areas in which at this time there was tension due to unprecedented racial enmity between the Tamils and the Sinhalese with resulting disturbances involving physical violence and damage to property. At about 3 p.m. on this day a gang of Sinhalese villagers came on to that part of the estate in which the deceased was engaged in his ordinary work and subjected him to an assault causing injuries on him, which injuries resulted in his death within a few hours.

The Commissioner is apparently satisfied that the injuries to the workman were caused by an accident arising *in the course of* his employment, but invites the opinion of this Court on the remaining question whether the accident was one *arising out of* his employment.

It would have been useful for my present purpose if the facts relating to the accident had been inquired into by the Commissioner in greater detail, but Mr. Crossette-Thambiah who argued the matter before me on behalf of the applicant with conspicuous fairness stated that Ponniah had been directed by the conductor of this estate to do the work of “forking” the earth close to one of the roads running by the estate. No other labourer was working close to him at the time. While engaged in his work, he was unfortunate enough to be espied by some Sinhalese villagers who were out that day to assault Tamils and who happened to be going along the road close to where Ponniah was working. The villagers came on to the estate, got hold of Ponniah and subjected him to the beating which proved fatal. It was not suggested that either Ponniah or the conductor who allocated work to him was aware of any risk of attack by the Sinhalese on the Tamils working in the estate that day. In answering the question submitted to this Court I shall consider the statements made by Mr. Crossette-Thambiah as supplementing the admitted facts.

The meaning of the expression “arising out of his employment” appearing in legislation relating to Workmen’s Compensation has been the subject of much judicial comment, but the multitude of cases on the subject only serves to emphasize the difficulty of applying the principles to be gleaned therefrom to the particular facts of a given case.

“Nothing can come ‘out of the employment’”, said Buckley, L.J. in *Mitchinson v. Day Brothers*<sup>1</sup>, which has not in some reasonable sense its origin, its source, its *causa causans* in the employment. That the injury must be one resulting in some reasonable sense from a risk incidental to the employment has I think been decided over and over again”. Lord Atkin in *Brooker v. Thomas Borthwick & Sons (Australasia) Ltd.*<sup>2</sup> dealing with this point stated:—

“The principle which emerges seems to be clear. The accident must be connected with the employment: must arise “out of” it. If the workman is injured by some natural force such as lightning, the heat of the sun, or extreme cold, which in itself has no kind of connection with employment, he cannot recover unless he can sufficiently associate such injury with his employment. This he can do if he can show that the employment exposed him in a special degree to suffering such an injury. But if he is injured by contact physically with some part of the place where he works, then, apart from questions of his own misconduct, he at once associates the accident with his employment and nothing further need be considered. So that if the roof or walls fall upon him, or he slips on the premises, there is no need to make further inquiry as to why the accident happened”.

<sup>1</sup> *L. R. (1913) 1 K. B. 608.*

<sup>2</sup> *(1933) A. C. 676*

and again at page 678 :—

“ Their Lordships’ attention was drawn to various decisions in cases in which workmen were injured by bombs and shells from bombardment during the war. They do not refer to them in detail, for they appear to confirm the conclusions which their Lordships have reached. Neither bombs nor shells have ordinarily anything to do with a workman’s employment. It is therefore necessary to show special exposure to injury by them. They represent exactly for this purpose the operation of such forces as lightning, heat or cold.”

I am grateful both to Counsel for the applicant and to Crown Counsel who appeared at the instance of this Court for the assistance they have given me in regard to reported decisions bearing on the question that has been submitted to this Court. Mr. Crossette-Thambiah, while frankly stating the difficulties in his way, sought to bring the case of this workman within the statute by contending that he was exposed to danger by reason of his having been compelled to work alone and unprotected in proximity to the road where he was an obvious target for the rioters as distinguished from the case of the other Tamil labourers who were in numbers in the middle of the estate well out of sight from the road and who thereby escaped assault that day. This is similar to an argument addressed to Wijeyewardene, J. and rejected by that learned judge in *Charles Appu v. Controller of Establishments*<sup>1</sup>. Reliance was there placed by counsel on what may be termed the fourth proposition contained in the judgment of Russell, L.J. in *Lawrence v. George Mathews (1924) Ltd.*<sup>2</sup> :—

“ Sufficient causal relation or causal connection between the accident and the employment is established if the man’s employment brought him to the particular spot where the accident occurred, and the spot in fact turns out to be a dangerous spot. If such a risk is established, then the accident “ arises out of ” the employment, even though the risk which caused the accident was neither necessarily incident to the performance of the man’s work, nor one to which he was abnormally subjected.”

What was meant by a dangerous spot in the passage reproduced above was explained by Lawrence, L.J. in *Holden v. Premier Waterproof and Rubber Co. Ltd.*<sup>3</sup> (a decision of the Court of Appeal of England in which it was held that the risk of being attacked by a madman did not arise out of the employment either by reason of the duties performed by the workman concerned or by reason of the locality in which they were performed) when he observed that—

“ I think it is plain that what is meant by a dangerous spot in this connection is a spot which owing to its locality is in fact inherently dangerous although the danger may be a lurking danger and not known to any one, such as a wall with a bad foundation which may collapse—

<sup>1</sup> (1946) 47 N. L. R. 464.

<sup>2</sup> (1929) 1 K. B. D. 19.

<sup>3</sup> (1930) 23 B. W. C. C. 471.

a tree which may fall ; it does not mean that because the accident happened at a particular spot, and because the workman did in fact incur danger at that spot, that therefore it was a dangerous spot within the fourth proposition.”

There was nothing inherently dangerous, in this sense, in the place where Ponniah happened to be working at the time the villagers attacked him. The motive for the attack was obviously that Ponniah was a Tamil. The risk of Ponniah being beaten up because he was a Tamil was not, in my opinion, one reasonably incidental to his employment as a labourer on this estate or one which had any kind of connection or association with his employment.

I would therefore answer in the negative the question submitted by the Commissioner whether the accident which caused the death of the workman arose out of his employment.

There will, of course, be no costs of this proceeding.

*Commissioner's question answered in the negative.*

