1938 *Present :* **Soertsz J.**

DON ASLIN *v.* SAMARAKONE BROS.

980—Workmen's Compensation.

Workmen's compensation—Building contract—Deceased workman employed by sub-contractor—Liability of building contractor—Casual workman—Ordinance No. 19 of 1934, ss. 2 and 22.

The appellants who were building contractors entered into a contract for erecting a market and for sinking a well in the market premises. In the course of sinking a well, blasting operations became necessary, which were entrusted to a sub-contractor and the latter employed a workman who met with his death as the result of an explosion caused by dynamite.

***Held,* that the deceased workman was employed in work in the course of an enterprise in which the appellants were engaged as part of their business as building contractors and that they were liable to pay compensation.**

A person "whose employment is of a casual nature" within the meaning of section 2 of the Workmen's Compensation Ordinance means one whose work is casual when regarded in relation to the employer's trade or business.

THIS was an application under section 34 of the Workmen's Compensation Ordinance, No. 19 of 1934. The application was made by the mother of the illegitimate children of the deceased workman for compensation on account of his death which was the result of an explosion caused by the use of dynamite which was found necessary to blast rock that was encountered in the sinking of a well.

The Commissioners held that the appellants as contractors were liable to pay a sum of Rs. 1,500 as compensation even though the appellants had engaged a sub-contractor who had employed the deceased, as the sub-contractor's work was within the scope of the contractor's employment.

C. Seneviratne, for appellants.—Section 2 of the Workmen's Compensation Ordinance, No. 19 of 1934, defines "workman" and specially excludes

"casual" workman who are employed otherwise than for the purpose of the employer's trade or business. The sinking of a well is not within the ordinary scope of a building contractor's work and in this case where rock was encountered in the sinking of a well, a contractor duly licensed to carry out blasting operations had to be engaged and such blasting operations are not part of the trade or business of a building contractor.

The engagement by the sub-contractor of an umbrella-maker working on the roadside clearly excludes the class of workman for whom compensation is provided in the Ordinance. Such a workman is a "casual workman employed otherwise than for the purposes of the employer's trade or business", and therefore is specially exempted from claim to compensation. In terms of section 22 of Ordinance where the principal contractor's work does not include blasting operations and is not ordinarily part of his trade or business the sub-contractor if any, and not the principal is liable. In this case even if the principal was called upon to pay any compensation that may be due by the sub-contractor, under section 22 the principal was entitled to be indemnified by the sub-contractor.

Cur. adv. vult.

February, 1938. SOERTSZ J.—

This is an appeal from an order of the Commissioner of Workmen's Compensation declaring that in terms of Schedule IV. of Ordinance No. 19 of 1934, the dependants of a deceased workman are entitled to compensation in a sum of Rs. 1,500, and calling upon the appellants to deposit that amount forthwith in order that the distribution of compensation may be considered under section 12 (2) of the Ordinance.

The facts are as follows : The appellants carry on the business of building contractors. They entered into a contract with the Urban District Council of Dehiwala for erecting a market, and for sinking a well on the market premises. In the course of sinking this well, they encountered rock, and blasting operations became necessary. They gave one Boteju a sub-contract for this purpose, and he employed the deceased workman to carry out that work.

On February 22, 1937, while the deceased was engaged on it, there was an explosion in which he received injuries that resulted in his death four days later. The respondent who is the mistress of the deceased, thereupon, applied to the Commissioner for compensation on behalf of the dependants of the deceased, namely, three illegitimate children of his of the ages of 9 years, 6 years, and 4 months, at the date of her application. The Commissioner made the order I have already referred to.

The appellants contend that they are not liable to pay compensation because (1) the deceased was not employed by them, (2) he was not a workman within the meaning of section 2 of the Ordinance.

In regard to the first of the contentions, the argument advanced was that section 22 (1) which would ordinarily have applied, did not apply in this instance, because the work entrusted for execution by or under the contractor Boteju, was not work that was 'ordinarily part of the trade or business of the appellants. On the evidence I find it impossible to sustain this argument. It is admitted that the appellants are building contractors. The fact that in their contract to build a market, they also

undertook to sink a well clearly indicates that they did not regard that work as foreign to their business. The evidence shows that it was only when they met rock in the course of excavation, that they found it more convenient to entrust blasting operations to Boteju. This blasting was something that became necessary in the course of an enterprise they were engaged in as part of their business as building contractors.

The second contention is based on the ground that the deceased was not a "workman". It was urged that he came within the description of "a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business", and was, therefore, outside the definition of "workman" in section 2.

Counsel for the appellants relied upon the evidence that the deceased was an umbrella mender at the time he undertook this job of blasting, and submitted that he was, therefore, employed in employment of a casual nature when he was carrying out blasting operations. But in my view, the whole of that part of the definition must be considered in examining this question, and not only the words "whose employment is of a casual nature". Section 2 provides that "a person whose employment is of a casual nature *and* who is employed otherwise than for the purposes of the employers trade or business" is not a workman. In this case, as I have already observed, the work the deceased was engaged in at the time of the accident was work which was ordinarily *part* of the appellants' business. If the appellants can be regarded as his employers, then clearly, the work done by the deceased was work for the purposes of the employer's trade or business. Now although the appellants did not directly engage the services of the deceased, yet by virtue of section 22 of the Ordinance, the deceased must be treated, in regard to the matter of compensation, as if he had been a workman immediately employed by them, because he was engaged in work which had by them been entrusted to Boteju "in the course of or for purpose of their trade or business". The deceased therefore escapes from the second condition of the section I have quoted above. But to put him outside the definition of "workmen" both conditions must be satisfied, namely, (1) that his employment was of *a casual nature,* (2) that it was *otherwise than for the purposes of the employer's trade or business.* In this instance even if his employment must be held to be of a casual nature it was nevertheless for the purposes of the employer's trade or business. But in my opinion the word casual must be interpreted with reference to the words "and who is employed otherwise than for the purposes of the employer's trade or business".

Those words serve to determine the meaning of the word casual in this context. Viewed in that way the words "a person whose employment is of a casual nature" mean, I think, a person whose work is casual when regarded in relation to the employer's trade or business. They do not mean a person who is employed in work that is not his usual or habitual work. If that is the meaning to be given to these words then a "jack of all trades" can never be a workman for the purposes of the Ordinance. There is no reason for thinking that the Legislature intended to punish versatility in this manner. I have no doubt that the Commissioner reached a correct conclusion. I dismiss the appeal.

Appeal dismissed.