

1940

*Present : Wijewardene J.*PERERA *v.* BROWN & COMPANY.S. C. No. 859—*Workmen's Compensation.**Workmen's compensation—Assault resulting in death—Accident—Course of employment—Workmen's Compensation Ordinance, s. 3 (Cap. 117).*

Where a workman died as the result of an assault committed by another outside the premises where they worked together, in consequence of a dispute that had arisen some days previously at the time of their common employment,—

*Held*, that death was caused by an accident within the meaning of section 3 of the Workmen's Compensation Ordinance, but that the accident did not arise out of or in the course of employment within the meaning of the section.

**A** PPEAL from an order made on a claim under the Workmen's Compensation Ordinance.

*J. R. Jayawardene* (with him *M. M. Kumarakulasingham*), for applicant.

*F. C. W. VanGeyzel*, for respondent.

*Cur. adv. vult.*

April 15, 1940. WIJEYWARDENE J.—

The applicant-appellant is the widow of one Edwin Perera, a workman employed under the respondent firm.

The respondent firm, which has its head office in Colombo, entered into a contract to instal a dynamo at the Borstal Institute at Watupitiwela. The firm sent a number of workmen including Perera to Watupitiwela. Perera was paid on an hourly basis, the hours of work being 8 A.M. to 5 P.M. When working at Watupitiwela, Perera received in addition a daily allowance of 50 cents to cover any extra expenditure he had to incur in living out of Colombo. The firm did not provide accommodation for the workmen at Watupitiwela but informed them that they could make use of any accommodation available at the premises with the permission of the authorities in charge of the premises.



On April 1, 1939, while Perera was attending to some work, one of his fellow workmen asked for his screw driver. Perera searched for it and found it missing. Shortly afterwards a small screw driver was found by a fellow workman of Perera in the possession of Soysa, himself a workman employed at the premises. It is not clear from the evidence whether Soysa was also a workman employed under the respondent firm. The screw driver was identified by several workmen as the property of the respondent firm and claimed by Perera as the one with which he worked. Soysa on the other hand claimed the screw driver as his own, but gave it to Perera and abused Perera and his fellow workmen, who said it was the property of the respondent firm. Nothing further happened till April 4. By noon that day, Perera finished his work and was arranging to return to Colombo when his superior asked him to stay back until the machine was tested. At 6 P.M. that day, Perera and some other workmen went to bathe. On their way back to their lines they went to a tea-boutique, where they met Soysa who threatened them again and attempted to hit Perera. They went back to their lines at about 6.50 P.M., and had their meals. Some time afterwards Perera got out when he was assaulted fatally by Soysa. He died the next day.

The questions of law to be considered in this appeal are:—

- (1) Whether Perera's death was caused "by accident" within the meaning of section 3 of the Workmen's Compensation Ordinance;
- (2) Whether the injury was caused by accident (a) arising out of Perera's employment, and (b) in the course of Perera's employment.

There is no difficulty in answering question (1) in the affirmative in view of the decision of the House of Lords in *Board of Management of Trim Joint District School v. Kelly*<sup>1</sup>, where Viscount Haldane, L.C., held that "accident" is a mishap unexpected by the workman irrespective of whether or not it was brought about by the wilful act of someone else.

There are numerous English decisions, which seek to elucidate the words "arising out of employment", and "in the course of employment" but it is almost hopeless to try and reconcile them. It may, however, be taken as an accepted principle that these words in the section should be given an extensive interpretation. But even with such an interpretation could it be said that Perera received his injury in the course of his employment? His work for the day was over at 5 P.M. He was under no obligation to live on the premises. It was merely a privilege conferred upon Perera of which he could have availed himself or not as he pleased. In remaining on the premises after the hours of work Perera was not doing something in discharge of a duty to the respondent firm directly or indirectly imposed upon him by his contract of service—*vide St. Helens Colliery Co., Ltd. v. Hewilson*. Nor do I think that it could be stated that the accident arose out of the employment. There is no evidence whatever as to the immediate circumstances, which resulted in the assault on Perera. It was admitted at the argument before me that Soysa was indicted for murder but was found guilty of culpable homicide not amounting to murder. This could only be accounted for by the fact that

<sup>1</sup> (1914) A. C. 667.

<sup>2</sup> (1924) A. C. 59.



Soysa pleaded successfully (a) that he acted under grave and sudden provocation or (b) that acting in the exercise of the right of private defence he exceeded the power given to him by the law or (c) that he committed the act without premeditation in a sudden fight. I shall, however, deal with this part of the case on the assumption that the assault was in some way connected with the suggestion that Soysa made a dishonest claim to the screw driver. It cannot be said that employment under the respondent firm involved a special risk to be assaulted by a person against whom a workman may make such a suggestion. It is a risk that any one may run. Perera by his employment did not expose himself to a risk not incurred by an ordinary member of the public—*vide Lee v. Breckman*<sup>1</sup> and *Smith v. Stepney*<sup>2</sup>. I think that *Board of Management of Trim Joint District School v. Kelly* (*supra*) could be distinguished as in that case there was some evidence of the unruly character of the pupils with whom the deceased person had to deal and there was a finding by the County Court Judge to that effect. It may perhaps be added that in cases under the corresponding Statute in England, the County Court Judge acts as an arbitrator and “his award can, therefore, be set aside only if it is apparent that there was no evidence to support it or if an error in the law appears on the face of it”.

I dismiss the appeal but I make no order as to the costs of appeal.

*Appeal dismissed.*

