1943 *Present* : **Jayetileke J.**

RAHIM, Appellant, *and* ELISAHAMY, Respondent.

Workmen's Compensation Case C 3/24/41.

Workmen's compensation—Death of bus conductor—Injuries caused in a fight between employees of rival companies—Accident arising out of his employment—Workmen's Compensation Ordinance (Cap. 117), s. 3.

Where the conductor of an omnibus was injured in the course of a fight between the employees of the omnibus and those of a rival company and died as the result of the injuries received,—

Held, that death was caused by an accident arising out of his employment within the meaning of section 3 of the Workmen's Compensation Ordinance.

APPEAL from an order of the Commissioner under the Workmen's Compensation Ordinance.

N. E. Weerasooria, K.C. (with him *S. A. Marikar*), for the respondent, appellant.—The accident in this case cannot be said to have arisen out

[1] *(1921) 43 All. 362.* [2] *8 C. L. Rec. 36.*

of or in the course of employment, within the meaning of section 3 of the Workmen's Compensation Ordinance. The legal position in this case is similar to that in *Perera v. Brown & Co.*[1]. See also *Armitage v. Lancashire and Yorkshire Railway Co.*[2].

The Commissioner has held that the motive of the fight as the result of which the deceased was injured arose out of his employment. There is no evidence of any rivalry between the two omnibus companies in question. Even if there was rivalry there is no evidence that it involved any special risk. Evidence of a special risk incidental to the employment of the deceased has to be led before the appellant can be made liable—*Mitchinson v. Day Brothers*[3]; *Weekes v. William Stead, Ltd.*[4].

J. M. Jayamanne (with him *I. Misso*), for the applicant, respondent.—The ruling in *Mitchinson v. Day Brothers* (*supra*) was not followed in *Mrs. Margaret Thom or Simpson v. Sinclair*[5]. The meaning of the expression "arising out of and in the course of employment" is fully dealt with in *Powell v. Great Western Railway*[6]. As long as the deceased conductor was in the omnibus and suffered injuries when he was there, the injuries must be held to have arisen out of the employment. An accidental injury sufficiently arises out of the employment if it befalls a man simply because of the place into which he is sent or taken by his employment. See *Vol. 56 Law Quarterly Review 156* and *Dover Navigation Co. Ltd. v. Craig*[7].

N. E. Weerasooria, K.C., in reply.—The accident must not only be in the course of the employment but must also arise out of it. The assault in the present case had no relation to the employment. *Mrs. Margaret Thom or Simpson v. Sinclair* (*supra*) does not overrule or expressly dissent from *Mitchinson v. Day Brothers* (*supra*).

Cur. adv. vult.

September 16, 1943. JAYETILEKE J.—

The applicant claimed compensation under the Workmen's Compensation Ordinance (Cap. 117) as a dependent of her son Babasingho, deceased, who, she alleged, died as a result of an injury by accident arising out of and in the course of his employment. Babasingho was employed by Mohideen & Company, of which the appellant was the proprietor, as a conductor of a motor omnibus which plied for hire between Anuradhapura and Matale.

Mant & Company also plied motor omnibuses for hire on the same route and there appears to have been business rivalry between the two companies for some time.

On the day of the accident the omnibus in which Babasingho worked was proceeding from Matale to Anuradhapura when two omnibuses belonging to Mant & Company obstructed it. The employees of Mant & Company then proceeded to attack the employees of the appellant and Babasingho received an injury which resulted in his death.

At the argument before me it was not contested that the death constituted an injury which arose in the course of Babasingho's employment, but it was urged that it did not arise out of it within the meaning

[1] *(1940) 41 N. L. R. 446.*
[2] *(1902) 86 L. T. 883.*
[3] *(1913) 108 L. T. 193.*
[4] *(1914) 111 L. T. 693*
[5] *L. R. (1917) A. C. 127.*
[6] *(1940) 1 All. E. R. 87.*
[7] *L. R. (1940) A. C. 190.*

of section 3 of the Ordinance as there was no evidence of a special risk incidental to the employment. That section is identical with section 1 of the English Act. Though the English Act was originally devised so as to be understood by everyone and therefore presumably to dispense with the need for any resort to lawyers, the decisions collected in *Willis' Workmen's Compensation Acts* show that it has put more money into the pockets of lawyers than any other piece of legislation. The connotation of the expression "arise out of the employment" has been much debated in a number of decided cases in England.

In *Upton v. Great Central Railway Company*[1], Viscount Haldane said, at page 307, that the conditions necessary to enable it to be said that an accidental injury arose out of the man's employment must be "such that the accident has some sort of causal relation with them, although not necessarily an active physical connection".

In *Lawrence v. Mathews, Limited*[2], Russell L.J. said:—"sufficient causal relation or causal connection . . . . 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."

The facts of the case of *Powell v. Great Western Railway Company*[3], seem to be similar to the facts of the present case. A fireman employed by a railway company, whilst carrying out his duties on his engine, was hit by a pellet from an airgun deliberately aimed at the engine by a boy of nineteen years of age.

Slesser L.J. said:—"This man was required, as part of his employment, to be on his engine. While on his engine, he was subjected to a particular peril, in that a misguided youth aimed at the locality where this man was required to work. In my opinion, the problem in the cases of assault of whether the assault on the man arises out of some danger which exist by reason of his employment, or whether it arises out of a quarrel which has no relation to the employment, does not arise here. This is a case of a man being, by reason of his work, brought into a locality which was dangerous, as in the case, for example, of certain ships being required to go into a mine-infested area, or whether it became dangerous after he got into a locality, by reason of somebody shooting at him, or dropping a bomb on the engine, or whatever it may be, matters nothing. This man suffered this casualty in the course of his employment, and it arose out of his employment, because he was at that place."

Goddard L.J. said:—"In this particular case the accident arose because a boy shot an airgun deliberately at a locomotive engine on the railway, and, missing that somewhat large target, he hit the fireman standing in the cab of the engine. If he had not been there, he would never have been injured. His service and duty required him to be there. Therefore, I entirely fail to see how it can be argued that this accident did not arise out of his employment, quite apart from the question of whether or not trains are an allurement to children. The deliberate act which here caused the accident was the firing at the engine. The accident happened to the workman because the workman's duty required him to be on the engine."

[1] *(1924) A. C. 302.* [2] *(1929) 1 K. B. 1.* [3] *(1940) 1 A. E. R. 87.*

The identical view has been taken by the House of Lords in *Dover Navigation Company, Limited v. Craig*[1]. Lord Wright said:—"An accidental injury sufficiently arises out of the employment if it befalls a man simply because of the place to which he is sent or taken by his employment."

In my view the question before me is concluded by these decisions and it is unnecessary to consider the decisions that were relied on by Counsel for the appellant. They have been dealt with in the passage quoted above from the judgment of Slesser L.J.

The accident to Babasingho arose, in my opinion, out of his employment, because it occurred by reason of his employment bringing about his presence at the particular spot at which he was injured.

I would dismiss the appeal with costs.

Appeal dismissed.