

1953

*Present : Swan J.*

D. L. SENARATNE, Appellant, and H. A. MAGGIE NONA,  
Respondent

*S. C. 764—Workmen's Compensation C 3/171/51*

*Workmen's Compensation Ordinance (Cap. 117)—Section 2—Meaning of "workman".*

Where a casual labourer who was employed by the owner of an estate bungalow for the purpose of tarring the roof of the bungalow met with his death as the result of falling down from the roof—

*Held*, that the labourer was a workman employed for the purposes of the employer's trade or business so as to bring himself within the definition of "workman" in section 2 of the Workmen's Compensation Ordinance.

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

*N. M. de Silva*, for the respondent-appellant.

*S. W. Jayasuriya*, with *S. Sharvananda*, for the applicant-respondent.

*Cur. adv. vult.*

January 13, 1953. SWAN J.—

The only matter that arises for consideration on this appeal is whether the deceased K. L. Charles, husband of the respondent above-named, was a workman within the meaning of section 2 of the Workmen's Compensation Ordinance 19 of 1934 (Cap. 117). It is there stated that a "workman" means:—

"any person who is employed on wages not exceeding three hundred rupees per mensem in any such capacity as is for the time being specified in Schedule II, whether the remuneration is calculated by time or by work done or otherwise, and whether the contract of employment or service was made before or after the commencement of this Ordinance and whether such contract is expressed or implied, oral or in writing, but does not include—

- (a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business."

The Assistant Commissioner of Labour has found that the deceased met with his death as the result of falling down from the roof of an estate bungalow belonging to the appellant. He was tarring the roof at the request of the watcher of the estate. The Assistant Commissioner has rejected the evidence of the watcher and incidentally that of the appellant that the watcher was acting as an independent contractor in this instance. In other words there is a finding of fact that the appellant employed the deceased for this work through the agency of his watcher. It was without doubt casual employment—so that the question to determine is whether this casual employment was for the purposes of the employer's trade or business. The Assistant Commissioner has held that it was so, and I must uphold his finding. In *Manton v. Cantwell*<sup>1</sup> the House of Lords held that a casual labourer who met with his death while repairing a farmhouse in which the farmer lived was a workman employed for the purposes of the employer's trade or business so as to bring himself within the definition of "workman" in Section 13 of the Workmen's Compensation Act of 1906. With that holding I am in respectful agreement. The appeal therefore fails and I would dismiss it with costs

*Appeal dismissed.*

<sup>1</sup> 1920 A. C. 781.