

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.433/2012**

% **25th April, 2014**

DELHI TRANSPORT CORPORATION Appellant
Through: Mr. Nitesh Kumar Singh, Advocate.

Versus

SRI KISHAN Respondent
Through: Mr. P.C. Dogra, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 30 of the Employee's Compensation Act, 1923 impugning the judgment of the Commissioner dated 3.8.2012 allowing the claim petition and awarding compensation against the appellant/DTC. Interest @ 12% per annum has also been awarded.

2. There are two basic issues on which the impugned judgment has to be set aside and as argued before this Court on behalf of the appellant.

3. Firstly, the accident in this case took place on 24.1.1986 and claim petition was filed before the Commissioner in the year 2006 i.e after

20 years. The limitation for filing of a claim petition before the Commissioner under Section 10 is two years from the date of accident or two years from the date of death. In the present case, since there is an accidental injury, the claim petition had to be filed by January, 1988. Even if there has to be condonation of delay of a period, yet, the same cannot be for a period of as large as 18 years because on condonation of such a large delay the whole purpose of limitation is lost. In my opinion, there is absolutely no ground whatsoever which is sufficient for the Court to accept the condonation of delay of as many as 18 years in filing of the claim petition before the Commissioner. The Commissioner should have therefore thrown out the petition *in limine* and not even have issued the notice, leave aside the question of allowing the claim petition.

4. The second reason why the claim petition had to be dismissed is that admittedly the accident took place while the respondent/claimant was travelling back home from the place of work. It is settled law in view of the judgment of the Supreme Court in the case of *Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Ors.*, **AIR 1958 SC 881** that when an accident happens while an employee is commuting to and fro from the place of employment to his house, the accident cannot be taken as an accident arising out of and in the course

of employment. The relevant paras of the judgment in the case of *Saurashtra Salt Manufacturing Co. (supra)* read as under:-

“7. As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension.

8. It is unnecessary for the purposes of this appeal to refer to the various decisions in England and in India explaining the aforesaid theory because even if on such a basis a workman may be regarded as being in the course of his employment at point B either while on his way to the salt works or returning from it, the question for our decision is whether he was still in the course of his employment when he was on his journey between points A and B of the map., Ext- 35. While the case was in the High Court attention of the learned judges was drawn to the failure of the Commissioner for Workmen's Compensation to examine witnesses to prove an alleged arrangement between the appellant and the Kharvas (ferry-walas) for the carrying of the workmen of the appellant by boat across the creek to enable them to be ferried to and from the salt works. The learned Judges of the High Court at first were inclined to order a remand for the recording of this

evidence, but, having regard to the view which they took of the recent decisions of the House of Lords in England, they thought it unnecessary to have such evidence recorded. In their opinion, on the material as already on the record, it must be held that the accident arose out of and in the course of the employment of the deceased workmen. In this Court, as already stated, we considered it necessary to have evidence taken in this connection and findings recorded thereon. The findings, on the evidence so recorded, is quite clear that there was no arrangement between the appellant and the Kharvas to ferry to and from the salt works, across the creek, any workman of the appellant. According to the evidence, workmen of the salt works are charged by the Kharvas when they cross the creek in their boats. The only concession made by them on their own account is not to make such a charge in the case of any person who is a Kharva - a fellow caste man. It is also clear from the evidence on the record, both before and after remand, that the boats ferried across the creek are used by the public, every one of whom has to pay the charge for being ferried across the creek with the exception of a person of the Kharva caste. To reach point A on the map a workman has to proceed in the town of Porbander via a public road. A workman then uses at point A a boat, which is also used by the public, for which he has to pay the boatman's dues, to go to point B. From point B to the salt works there is an open sandy area 450 to 500 feet long and 200 to 250 feet wide. This sandy area is also open to the public. From this sandy area there is a footpath going to the salt jetty, point C and a foot-track going to the salt works, point D. There is no question that the foot-track going to the salt works is a public way. The footpath from the sandy area to the salt jetty, point C, may or may not be used by the public. For the purpose of this case it may be assumed that a workman must necessarily use that footpath if he has to go to the salt jetty and from there to the various salt pans and salt reservoirs within the area of the salt works. It is well settled that when a workman is on a public road or a public place

or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends upto point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable.” (underlining added)

5. In the present case, admittedly the respondent was not travelling on the official transport but was travelling in a private transport to go back to his residence. In such circumstances, not only the accident does not arise out of and in the course of employment but also the judgment of the Supreme Court in the case of ***General Manager, B.E.S.T Undertaking, Bombay Vs. Mrs. Agnes, AIR 1964***

SC 193 will not apply because travelling at the time of accident was not in the official transport provided by the employer.

6. In view of the above, appeal is allowed. Impugned order of the Tribunal dated 3.8.2012 is set aside and the claim petition filed by the respondent would stand dismissed. Parties are left to bear their own costs.

7. Whatever amount has been deposited by the appellant in this Court or before the Commissioner can be withdrawn by the appellant alongwith accrued interest. The amount which is received by the respondent pursuant to the impugned judgment from the appellant can be recovered by the appellant from the respondent in accordance with law.

APRIL 25, 2014
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VALMIKI J. MEHTA, J.