

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on 13th of September, 2024

Pronounced on 4th October, 2024

FAO No.940 of 2016 (O&M)

Reliance General Insurance Co. Ltd.

....Appellant

Versus

Pyari and another

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjeev Kodan, Advocate
for the appellant.

Mr. Vipul Sharma, Advocate/*Amicus Curiae*
for respondent No.1.

Mr. Shivam Sachdeva, Advocate
for respondent No.2.

PANKAJ JAIN, J.

CM No.2957-CII of 2016

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 165 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for

condonation of delay.

Consequently, the present application is allowed. The delay of 165 days in filing the instant appeal is hereby condoned.

FAO No.940 of 2016 (O&M)

Insurer Company is in appeal against the order passed by Commissioner under the Employees' Compensation Act, 1923 (hereinafter referred to as 'the Act of 1923) whereby the respondent/claimant has been awarded compensation to the tune of Rs.5,84,800/- as compensation along with interest calculated at the rate of 12% per annum from the date of one month after the accident till the actual date of realization.

2. Claimant filed claim petition under the Act of 1923 seeking compensation on account of death of her husband Radha Krishan who was employed as Boiler Coolie in a Sugar Mill/respondent No.1. As per the claimant, her husband left the house on 18th of December, 2007 for duty in the premises of respondent No.1 at District Karnal. While he was coming back to his house on foot, he was hit by some unknown vehicle near Kohand crossing on G.T. Road. He sustained serious injuries and later succumbed to the same.

3. The employment is not in dispute. There is no dispute w.r.t. the salary of the deceased. The appellant disputes the invocation of doctrine of notional extension by the Commissioner to hold that the deceased died during the course of employment.

4. Mr. Kodan counsel for the appellant submits that the deceased suffered injury while coming back to his house while on public road and thus, Commissioner erred in invoking doctrine of 'notional extension' in favour of the claimant and awarding compensation. He submits that the deceased died on a public road and cannot be held to have sustained injuries or died during the course of employment as required under Section 3 of the Act of 1923. Thus, the impugned order passed by the Commissioner deserves to be set aside.

5. Mr. Vipul Sharma, Advocate appearing as *Amicus Curiae* for respondent No.1 submits that as per settled proposition of law the doctrine of notional extension is applicable in cases arising out of Employees' Compensation Act. It has come on record that the deceased was coming back to his house after attending his duties and thus the Commissioner has rightly invoked the doctrine of notional extension and held the employer and insurer liable to pay compensation. Mr. Sharma has relied upon plethora of judgments to submit that the

moment the employee starts from his house to join duty, he is deemed to be in course of employment till the time he reaches back to his house as per the doctrine of notional extension.

6. I have heard counsel for the parties and have carefully gone through records of the case.

7. The pleaded case of the claimant is that her husband met with an accident on G.T. Road while he was coming back to his house on foot after attending his duty. Thus, the point of consideration is:

“Whether death of employee/deceased on a public road while coming back to his house from place of employment can be said to be injury caused by accident arising out of or in course of his employment?”

8. Before going into the facts of the case, it is imperative to peruse Section 3 of the Act of 1923. The expression ‘arising out of or in course of employment’ has been deployed in Section 3 of the Act of 1923. It deals with liability of employer for compensation and the same reads as under:

“3. Employer's liability for compensation.- (1) If personal injury is caused to a *[employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable --

- (a) in respect of any injury which does not result in the total or partial disablement of the *[employee] for a period exceeding three days;
- (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—
 - (i) the *[employee] having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the *[employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of *[employees], or
 - (iii) the wilful removal or disregard by the *[employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of *[employee],
- (c) Omitted by Act 5 of 1929.

(2) If an *[employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease

specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,--

- (a) that an *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and
- (b) that the disease has arisen out of and in the course of the employment,

the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that a *[employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this subsection for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a *[employee] employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this

section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A)] and (3) no compensation shall be payable to a *[employee] in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a *[employee] in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a *[employee] in any Court of law in respect of any injury--

- (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or
- (b) if an agreement has been come to between the *[employee] and his employer providing for the

payment of compensation in respect of the injury in accordance with the provisions of this Act.”

9. The expression, 'arising out of and in the course of his employment' has been a matter of continuous debate. The doctrine of 'notional extension' to interpret the aforesaid expression caught attention of the Apex Court in the case of **‘Saurashtra Salt Manufacturing Co. vs. Bai Valu Raja and others’**, 1958 AIR Supreme Court 881 wherein it was held as under:

“7.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.”

10. This doctrine was further clarified in the case of **‘General Manager, B.E.S.T. Undertaking, Bombay vs. Mrs. Agnes’**, 1964 AIR Supreme Court 193 wherein after considering various judgments passed under the English Law, Supreme Court observed as under:

“12. Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. Though at the beginning the word "duty" has been strictly construed, the later decisions have liberalized this concept. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion. But none of the decisions cited at the Bar deals with a transport service operating over a large area like Bombay. They are therefore, of little assistance, except in so far as they laid down the principles of general application. Indeed, some of the law Lords expressly excluded from the scope of their discussion cases where the exigencies of work compel an employee to traverse public streets and other public places. The problem that now arises before us is a novel one and is not covered by authority.

14.Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshop factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adopted to meet its peculiar requirements. While in a case of a factory, the premises of

the employer which gives ingress or egress to the factory is a limited one, in the case of a city transport service, by analogy, the entire fleet of buses forming the service would be the "premises". An illustration may make our point clear. Suppose, in view of the long distances to be covered by the employees, the Corporation, as a condition of service, provides a bus for collecting all the drivers from their houses so that they may reach their depots in time and to take them back after the day's work so that after the heavy work till about 7 p.m. they may reach their homes without further strain on their health. Can it be said that the said facility is not one given in the course of employment? It can even be said that it is the duty of the employees in the interest of the service to utilise the said bus both for coming to the depot and going back to their homes. If that be so, what difference would it make if the employer, instead of providing a separate bus, throws open his entire fleet of buses for giving the employees the said facility? They are given that facility not as members of the public but as employees; not as a grace but as of right because efficiency of the service demands it. We would, therefore, hold that when a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment."

11. Supreme Court in the aforesaid case referred to the ratio of law laid down in the case of **'Weaver vs. Tredegar Iron and Coal Co. Ltd.'** (1940)³ **All England Reporter 157**. Reference is to the following observations made by Lord Porter:

"In some cases, no doubt, it may be helpful to consider whether the man owed a duty to his employers at the time of the accident, and, indeed, if duty be construed with sufficient width, it may be a decisive test, but, so construed, to say that the man was doing his duty means no more than he was acting within the scope of this

employment. The man's work does not consist solely in the task which he is employed to perform. It includes also matters incidental to that task. Times during which meals are taken, moments during which the man is proceeding towards his work from one portion of his employers premises to another, and periods of rest may all be included. Nor is his work necessarily confined to his employer's premises. The man may be working elsewhere e. g. in building a house or in work on the road, or in work at a dock. The question is not, I think whether the man was on the employer's premises. It is rather whether he was within the sphere of area of his employment".

(emphasis supplied)

12. Thus, the question is not of the employer's premises, but the sphere of area of employment. The doctrine was again considered in **‘Mackinnon Mackenzie and Co. Private Ltd. vs. Ibrahim Mahommad Isaak’**, (1969) 2 SCC 607 wherein the Apex Court observed as under:

“5. To come within the Act the injury by accident must arise both out of and in the course. of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it." The words "arising out of employment" are understood to mean that "during the course. of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." In other words there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these factors

the workman is brought within the scene of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. ”

13. The aforesaid observations made by Supreme Court were reiterated in the case of **‘Rajanna vs. Union of India’, 1995 AIR Supreme Court 1966** wherein Supreme Court held as under :

“11. xxxx

This indicates that there must be a causal relationship between the accident and the employment the accident must be related to a risk which is an incident to the employment. The House of Lords in *Lancashire and Yorkshire Railway Co. v. Highley, [1917] A.C. 352*, relied on in the above decision, indicated the test as under :

"There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment....."

(emphasis supplied)

12. In Halsbury's Laws of England, Volume 33, Fourth Edition, the summary is stated thus :

"490. ACCIDENT TRAVELLING TO AND FROM WORK. - The course of employment normally begins when the employee reaches his place of work. To extend it to the journey to and from work it must be shown that, in

travelling by the particular method and route and at the particular time, the employee was fulfilling an express or implied term of his contract of service. One way of doing this is to establish that the home is the employee's base from which it is his duty to work and that he was travelling by direct route from his home to a place where he was required to work, but that is only one way of showing this; the real question at issue is whether on the particular journey he was travelling in the performance of a duty, or whether the journey was incidental to the performance of that duty and not merely preparatory to the performance of it. If the place where the accident occurs is a private road or on the employer's property, the accident is in the course of the employment because he is then at the scene of the accident by reason only of his employment and he has reached the sphere of his employment. The test is whether the employee was exposed to the particular risk by reason of his employment or whether he took the same risks as those incurred by any member of the public using the highway."

"496. ACCIDENTS TRAVELLING TO OR FROM WORK IN EMPLOYER'S TRANSPORT. - An accident happening while an employed earner is, with the express or implied permission of his employer, travelling as a passenger to or from his place of work in any vehicle which is being operated by or on behalf of his employer, or which is provided by some other person in pursuance of arrangements made with his employer, must be deemed to arise out of and in the course of his employment, even though the employed earner is not obliged to travel by that vehicle, if it would have been deemed so to have arisen if he had been under an obligation to travel by it provided that

the vehicle is not operated in the ordinary course of a public transport service."

(emphasis supplied)

13. There can be no doubt that there was a causal relationship between the accident in which the appellant sustained the injuries and his employment in the SPG for actual VEP security duty; and it was an incident of his employment to travel from the staff quarters to the South Block in the SPG vehicle according to the official arrangement. In our opinion, the meaning of the expression "actual VIP security duty" in the above circular must be the same as that of the words "in the course of the employment" in the Workmen's Compensation Act; and, therefore, the test for determining the liability for payment under the circular should also be the same. In our view, the tribunal was in error in making an unduly strict and narrow construction of the expression used in the circular."

14. The principle was again considered by Apex Court in the case of **‘Manju Sarkar and others vs. Mabish Miah and others’**, (2014) 14 SCC 21. In the said case, the deceased was employed by owner of a vehicle for a trip from place 'A' to 'B' and back. Truck developed a mechanical defect. Driver went to arrange the repair. Driver met with road accident. In these circumstances, Supreme Court held that the death was in due course of employment observing as under:

“9. According to the appellants, Sajal Sarkar on reaching Dharmanagar noticed some mechanical trouble in the truck and he got down to make arrangement for repairing the same and in the

night he met with an accident. Churaibari FCI godown is located in Dharmanagar. The Courts below have rejected the claim petition on the ground that there is contradiction in the claimants case since there was no mention of mechanical defect in the truck in the First Information Report. What is relevant is as to whether Sajal Sarkar continued to be in course of employment under respondent Nos.1 and 2 at the time of sustaining injuries in the accident culminating in his death. Sajal Sarkar was at Churaibari, Dharmanagar only on account of his employment as driver of the truck and there he met with the road accident.

10. This Court has in the celebrated decision in ***General Manager B.E.S.T. Undertaking, Bombay vs. Mrs. Agnes AIR 1964 Supreme Court 193*** laid down as follows:

“Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the “down tool” signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and, egress to and from the place of employment.”

11. As rightly contended by learned counsel appearing for the appellants there is a notional extension in the present case also and we would, therefore, hold that Sajal Sarkar met with the road accident in the course of his employment under respondent Nos.1 and 2. The Courts below have misdirected themselves while

dealing with this question and the finding rendered by them is perverse and unsustainable.”

15. Section 3 of the Act of 1923 was again interpreted by Supreme Court in the case of ‘**Daya Kishan Joshi and another vs. Dynemech Systems Pvt. Ltd.**’, (2018) 11 SCC 642. Supreme Court held as under:

“18. Again, in the case of *Union of India v. Surendra Pandey [(2015) 13 SCC 625]* this Court has explained the principle of notional extension of employment giving examples as under:

“It was also pointed out by Lord Denning in the aforesaid case of *R. v. National Insurance Commr., ex p Michael* that the extension of the meaning of the phrase “in the course of his employment” has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was “reasonably incidental” to employment, may be extended even to cases while an employee is sent on an errand by the employer outside the factory premises. But in such cases, it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his work place in the usual course of his employment. Latham, C.J. in *South Maitland Railways Pty. Ltd. v. James* observed that when the workmen on a hot day in course of their employment had to go for short time to get some cool water to drink so as to enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for water.”

(emphasis supplied)

19. The aforementioned observations are reiterated by this Court in a number of subsequent judgments, including in the case of *Manju Sarkar v. Mabish Miah [(2014) 14 SCC 21]*.

20. From the aforementioned, it is clear that the presence of the deceased on the road in question was incidental to his employment as a sales engineer. As he had to go to the Hero Honda Factory to conduct a filter test, he was merely doing what was required of him as an employee. Thus, his accidental death on the way back after completing his work falls squarely within Section 3(1) of the Act.”

16. The theory of notional extension was further elucidated by the Apex Court in the case of **Leela Bai and another vs. Seema Chouhan and another, (2019) 4 SCC 325**. Deceased in this case was a bus driver who fell off the roof of the bus where he was eating his meals. Supreme Court applying the doctrine of notional extension observed as under:

“7.Merely because the deceased was coming down the roof of the bus after having his meal, cannot be considered in isolation and interpreted so myopically to hold that he was off duty and therefore would not be entitled to compensation.

8. The deceased did not remain at the bus stand living in the bus as a member of the public or by choice after arrival at Burhanpur till departure for Indore the next morning. It is not the case of the respondent that the deceased was at liberty to proceed home and return at leisure the next morning after parking the bus at the Burhanpur bus stand at night. The Act being a welfare

legislation, will have to be interpreted in the facts of each case and the evidence available, to determine if the accident took place in the course of employment and arose out of the employment. In Agnes (supra) it was observed :-

"...The man's work does not consist solely in the task which he is employed to perform. It includes also matters incidental to that task. Times during which meals are taken, moments during which the man is proceeding towards his work from one portion of his employers' premises to another, and periods of rest may all be included."

9. In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of "notional extension" of the employment considered in Agnes (supra) as follows:-

"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 time this theory of notional extension."

10. If the requirement of the deceased to stay with the bus was integrally connected with the efficiency of the service to be provided to the public by respondent no.1 and the deceased was not present at the bus terminal with the bus in his nature as a

member of the public by choice, we see no reason why the doctrine of notional extension of the employment will not be applicable.”

17. The question of notional extension was considered by Three Judges Bench in the case of **Regional Director, E.S.I. Corporation vs. Francis De Costa, (1996) 6 SCC 1** wherein the Supreme Court while laying down three tests held as under:

“9.In the case of Regina v. National Insurance Commissioner, Ex parte Michael, 1977(1) Weekly Law Reports 109, the Court of Appeal in England had to construe a phrase "caused by accident arising out of and in the course of his employment" in Section 5(1) of the National Insurance (Industrial Injuries) Act, 1965. Lord Denning M.R. started his judgment with the observation :-

"So we come back, once again, to those all too familiar words 'arising out of and in the course of his employment'. They have been worth - to lawyers - a King's ransom. The reason is because, although so simple, they have to be applied to facts which vary infinitely. Quite often the primary facts are not in dispute : for they are proved beyond question. But the inference from them is matter of law. And matters of law can be taken higher. In the old days they went up to the House of Lords. Nowadays they have to be determined, not by the courts, but by the hierarchy of tribunals set up under the National Insurance Acts."

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11. Construing the meaning of the phrase "in the course of his employment", it was noted by Lord Denning that the meaning of

the phrase had gradually been widened over the last 30 years to include doing something which was reasonably incidental to the employee's employment. The test of "reasonably incidental" was applied in a large number of English decisions. But, Lord Denning pointed out that in all those cases the workman was at the premises where he or she worked and was injured while on a visit to the canteen or other place for a break. Lord Denning, however, cautioned that the words "reasonably incidental" should be read in that context and should be limited to the cases of that kind. Lord Denning observed :

"Take a case where a man is going to or from his place of work on his own bicycle, or in his own car. He might be said to be doing something "reasonably incidental" to his employment. But if he has an accident on the way, it is well settled that it does not "arise out of and in the course of his employment". Even if his employer provides the transport, so that he is going to work as a passenger in his employer's vehicle (which is surely "reasonably incidental" to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment. It needed a special "deeming" provision in a statute to make it "deemed" to arise out of and in the course of his employment."

29. Although the facts of this case are quite dissimilar, the principles laid down in this case, are instructive and should be borne in mind. In order to succeed, it has to be proved by the employee that (1) there was an accident, (2) the accident had a casual connection with the employment, and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any causal connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment.”

18. In the case of **‘Poonam Devi and other vs. Oriental Insurance Co. Ltd.’ (2020) 4 SCC 55**, Supreme Court after considering the series of binding precedents held as under :

“11. Coming to the facts of the present case, the deceased was driving the truck of respondent no.2 from Ambala to Meerut. Indisputably he was in the course of his employment. We can take judicial notice of the fact that considering the manufacturer's specification, the cabin of the truck was not air conditioned and would have been a baking oven in the middle of the afternoon in the sultry monsoon heat of June 2003, when the temperature was touching 42.60C in Yamunagar (Haryana) (source: weatheronline. in). It was a compulsion for the deceased to stay fresh and alert not only to protect the truck of respondent no.2 from damage but also to ensure a smooth journey and protect his own life by safe driving. We can also take judicial notice of the fact that the possibility of the truck also requiring water to prevent overheating cannot be completely ruled out. In these circumstances, can it be said that the act of the deceased in going to the canal to fetch water in a can for the truck and to refresh himself by a bath before continuing the journey was not incidental to the employment? Every action of the driver of a truck to ensure the safety of the truck belonging to the employer and to ensure his own safety by a safe journey for himself has to be considered as incidental to the employment by extension of the notional employment theory. A truck driver who would not keep himself fresh to drive in such heat would be a potential danger to others on the road by reason of any bonafide errors of judgement by reason of the heat. The theory of notional extension noticed in the Agnes (supra) and followed in Leela Bai (supra) is extracted hereunder:

"9. In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of "notional extension" of the employment considered in Agnes (*supra*) as follows:

"..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 time this theory of notional extension."

19. The aforesaid principle has been invoked by this Court also in the case of **State of Punjab and others vs. Manjit Kaur and others, FAO No.64 of 1994** *decided on 29th of July, 2024* holding as under:

"9. In the present case the deceased was employed for filling gharas on the slope of embankment of 'APS Hydel Channel' R.D.25300 to 25500 MTRS left side in Jhinjri valley. For reaching place of his duty he was to travel on the canal embankment. On the fateful day unfortunately while traveling on the canal embankment he died falling in the

canal. Thus no fault can be found with the findings recorded by the Commissioner that the death of deceased had connection with his employment and is thus result of an accident arising out of and in the course of employment of the deceased applying doctrine of notional extension.”

20. Thus, from the aforesaid precedents relating to the application of ‘notional extension’ the following propositions emerge:

- (i) As a rule, the employment of an employee does not commence until he has reached the place of employment and does not continue after he leaves the place of employment. However, this is subject to the theory of notional extension of the employer's premises;
- (ii) Theory of notional extension connotes that there may be some reasonable extension in both time & place. An employee may be regarded to be in the course of employment even though he had not reached or had left the employer's premises;
- (iii) An employee while on public road or in public place or in a public transport, is present there as a member of public and not in the course of employment unless

very nature of the employment necessarily requires for him to be there. The test for determining is “*whether he was within the sphere of area of employment or not*”; and

- (iv) The accident must have a causal connection with the employment.

21. Applying the aforesaid parameters to the present case, this Court finds that the Commissioner erred in the present case in invoking the doctrine of notional extension to hold that the deceased who was on public road while going back to his house after attending his duties died during the course of employment. Resultantly, the instant appeal is allowed. Impugned order is hereby set aside.

22. Pending application(s), if any, shall also stand disposed off.

October 04, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes