2025 INSC 904

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6986 OF 2015
(@ SPECIAL LEAVE PETITION (C) NO. 16573 OF 2012)

DAIVSHALA & ORS. APPELLANT (s)

VERSUS

ORIENTAL INSURANCE
COMPANY LTD. & ANR. RESPONDENT(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Shahu Sampatrao Jadhavar was employed as a watchman in the Respondent no. 2-Sugar Factory. His duty hours were from early morning 3 am to 11 am. On 22nd April 2003, he left home on his Motorcycle to report for duty. However, unfortunately, he never reached his place of work. When he was 5 kms away from the factory,

his motorcycle was involved in a fatal accident. He left a large family behind. A widow, four children and his mother.

2. In a claim filed under the Employees' Compensation Act, 1923 (hereinafter the 'EC Act') the employer and the insurance company set up the defence that the accident had not arisen out of or in the course of his employment, since the accident occurred outside the precincts of the factory. Overruling the same, the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad awarded a sum of Rs 3,26,140/- along with interest @ 12 per cent per annum from 22.05.2003 to the family members. The Insurance Company was directed to deposit the amount since there was a valid Insurance Policy. The employer was asked to pay 50 per cent of the awarded amount as penalty. The employer and the Insurance Company were directed to pay the amount of penalty and the awarded compensation within one month from the date of the order.

3. Aggrieved, the Insurance Company filed First Appeal No.2015 of 2011 before the High Court of Judicature of Bombay, Bench at Aurangabad. The High Court has reversed the findings of the

Commissioner and set aside the order holding that since the deceased was on his way to his employment, the accident cannot be said to have its origin in the employment. The aggrieved family members are in appeal by way of special leave.

4. The High Court, to support its conclusion, relied on the judgment dated 11.09.1996 of this Court rendered in ***Regional Director, E.S.I. Corporation & Another*** vs. ***Francis De Costa and Another***, (1996) 6 SCC 1. The said judgment arose under the Employees' State Insurance Act, 1948 (hereinafter the 'ESI Act'). However, the crucial phrase employed in the operating Section of both the ESI Act and the EC Act, were the same. The Employees' Compensation Act, 1923 was originally known as the Workmen's Compensation Act, 1923.

5. We have heard Mr. Atul Babasaheb Dakh, learned counsel for the appellants and Ms. Amrreeta Swaarup, learned counsel for the respondent No.1-Insurance Company. Respondent No.2 employer, though served, has not entered appearance.

6. Learned counsel for the appellant submitted that looking to the nature of the work of the deceased, the peril which he faced was not something personal rather it was incidental to his employment.

Learned counsel contended that there was causal connection between the employment and the accident. Learned counsel relied on the theory of notional extension to support his plea. Learned counsel submitted that the EC Act is a beneficial legislation intended for the welfare of the employees. Learned counsel submitted that after the order of the trial Court, the Insurance Company had deposited the compensation with interest and the appellants were permitted to withdraw the principal amount. Learned counsel submitted that subsequent to the judgment in ***Francis De Costa (supra)***, Section 51E has been introduced in the ESI Act and, as such, the judgment in ***Francis De Costa (supra)*** can no longer govern the situation.

7. Learned counsel for the respondent No.1-Insurance Company submitted that the accident cannot be said to have its origin in the employment. Learned counsel contended that the employment cannot commence until the employee has reached the place of work and what happened before that could not be said to be in the course of employment. Learned counsel strongly relied on the judgment in ***Francis De Costa (supra)*** and certain judgments relied upon in the said judgment. Learned counsel distinguished the judgment in ***General***

Manager, B.E.S.T. Undertaking, Bombay vs. ***Mrs. Agnes***, (1964) 3 SCR 930 = 1963 SCC OnLine SC 252 and submitted that in the said case the employee was given the facility to travel back home in the bus by the employer therein and, as such, the theory of notional extension was applied. According to the learned counsel, the said theory can have no application to the facts of the present case. According to the learned counsel, the employee was engaged in "a purely personal matter while commuting to or from work".

8. We have carefully considered the submissions of the learned counsel for the parties and perused the records.

QUESTIONS FOR CONSIDERATION:

9. The primary question that arises for consideration in this case is whether the accident which caused the death of the deceased could be said to have arisen out of and in the course of employment?

10. Certain incidental questions also arise which have been set out later in the judgment.

STATUTORY PROVISIONS: -

11. Before we advert to the holding in ***Francis De Costa (Supra)***, it will be useful to refer to the relevant statutory provisions in the EC Act as well as the ESI Act. Section 3 of the EC Act 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 ……."

12. Section 46(1)(d) (which deals with 'Benefits') and Section 2(8) (which deals with 'Employment Injury') in the ESI Act, are set out hereinbelow: -

> **"Section 46. Benefits**
>
> **(1)** Subject to the provisions of this Act, the insured persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely,-
>
> **(d) periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit);**
>
> **Section 2(8) "employment injury"** means a personal injury to an employee caused by **accident or an occupational disease arising out of and in the course of his employment, being an** insurable employment, whether the accident occurs or the

> occupational disease is contracted within or outside the territorial limits of India."
>
> (Emphasis supplied)

13. It will be noticed that both under the EC Act and under the ESI Act the entitlement arises to the employee for recompense if the accident arises out of and in the course of his employment.

HOLDING IN *FRANCIS DE COSTA (SUPRA)*: -

14. In ***Francis De Costa (Supra)*** the employee met with an accident when he was on his way to the place of employment, at a distance of 1 km, from the place of work. This Court found against the employee by holding as under: -

> **"5.** …… Therefore, the employee, in order to succeed in this case, will have to prove that the injury he had suffered arose out of and was in the course of his employment. Both the conditions will have to be fulfilled before he could claim any benefit under the Act. **It does not appear that the injury suffered by the employee in the instant case arose in any way out of his employment. The injury was sustained while the employee was on his way to the factory where he was employed. The accident took place one kilometre away from the place of employment. Unless it can be said that his employment began as soon as he set out for the factory from his home, it cannot be said that the injury was caused by an accident "arising out of … his employment". A road accident may happen anywhere at any time. But such accident cannot be**

said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment.

6. In our judgment, by using the words "arising out of … his employment", the legislature gave a restrictive meaning to "employment injury". The injury must be of such an extent as can be attributed to an accident or an occupational disease arising out of his employment. "Out of", in this context, must mean caused by employment. Of course, the phrase "out of" has an exclusive meaning also. If a man is described to be out of his employment, it means he is without a job. The other meaning of the phrase "out of" is "influenced, inspired, or caused by: out of pity; out of respect for him" (*Webster's Comprehensive Dictionary* — International Edition — 1984). In the context of Section 2(8), the words "out of" indicate that the injury must be caused by an accident which had its origin in the employment. A mere road accident, while an employee is on his way to his place of employment cannot be said to have its origin in his employment in the factory. The phrase "out of the employment" was construed in the case of *South Maitland Railways Pty. Ltd.* v. *James* [67 CLR 496] where construing the phrase "out of the employment", Starke, J., held

"the words 'out of' require that the injury had its origin in the employment".

7. Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act. The words "accident … arising out of … his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment.

8. The other words of limitation in sub-section (8) of Section 2 are "in the course of his employment". The dictionary meaning of "in the course of" is "during (in the course of time, as time goes by), while doing" (*The Concise Oxford Dictionary*, New Seventh Edition). **The dictionary meaning indicates that the accident must take place within or during the period of**

employment. If the employee's work-shift begins at 4.30 p.m., any accident before that time will not be "in the course of his employment". The journey to the factory may have been undertaken for working at the factory at 4.30 p.m. But this journey was certainly not in the course of employment. If 'employment' beings from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the doorstep of his house, the accident will have to be treated as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided."

(Emphasis supplied)

ENACTMENT OF SECTION 51E WITH EFFECT FROM 01.06.2010 IN THE ESI ACT: -

15. If ***Francis De Costa (Supra)*** is to be applied as it is, the appellants will be out of Court. However, a very important statutory intervention happened on 01.06.2010 in the ESI Act, wherein Section 51E was introduced. Section 51E reads as under: -

"**51E. Accidents happening while commuting to the place of work and vice versa. -** An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established."

THE FURTHER INCIDENTAL QUESTIONS THAT ARISE IN THE CASE:

16. Section 51E clearly neutralised the holding in ***Francis De Costa (Supra)*** when it provided that an accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment. The only condition was that nexus between the circumstances, the time and place in which the accident occurred and the employment had to be established.

17. In considering the applicability of Section 51E of the ESI Act to the case of appellant certain threshold questions need to be addressed:-

(i) Does Section 51E of the ESI Act have retrospective effect so as to cover an accident that has taken place on 22.04.2003 when the Section was enacted on 01.06.2010?

(ii) Assuming Section 51E of the ESI Act applies, would the said interpretation enure to the benefit of the appellants whose claim arises under the EC Act?

(iii) Lastly, assuming both the above questions are answered in favour of the appellants are the ingredients of Section 51E attracted to the facts of the present case?

BENEFICIAL NATURE OF THE ESI ACT 1948: -

18. The ESI Act was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury as well as for making provisions for certain other matters in relation thereto. Section 46 deals with the benefits that the insured persons, their dependents and other persons mentioned in the Act are entitled to. This Court in ***Bombay Anand Bhavan Restaurant*** v. ***Deputy Director, Employees' State Insurance Corporation and Another***, (2009) 9 SCC 61, while rightly characterizing the ESI Act as a beneficial legislation and a law intended to provide for social security, held as follows: -

> **"20.** The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. **The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law.** The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the

> courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. **The Act, therefore, must receive a liberal construction so as to promote its objects."**
>
> (Emphasis supplied)

19. It was further held that the Act was intended to ameliorate various risks and contingencies which the employees face while working in an establishment or factory. This Court held that the Act was intended to promote the general welfare of the workers and, as such, called for a liberal interpretation: -

> **"21.** This Court (*sic* The High Court), in *ESI Corpn.* v. *Jayalakshmi Cotton and Oil Products (P) Ltd.* [1980 Lab IC 1078 (A.P.)] has observed that the ESI Act is a social security legislation and was enacted to ameliorate the various risks and contingencies which the employees face while working in an establishment or factory**. It is thus intended to promote the general welfare of the workers and, as such, is to be liberally interpreted."**
>
> (Emphasis supplied)

20. What is important to note is that the ESI Act applies to all factories, including factories belonging to the Government and also to establishments or class of establishments, industrial, commercial, agricultural or otherwise notified in the official gazette under Section

1(5) of the Act. In fact, the principal difference between the ESI Act and the EC Act is that while the ESI Act applied to the employees of factories and notified establishments as mentioned above, the EC Act applied to employees under all other employers as defined.

21. The 62nd report of the Law Commission on the EC Act submitted under the chairmanship of former Chief Justice of India, Justice P.B. Gajendragadkar, in Para 1.11, rightly noticed the distinction as under:

> **"1.11.** After the passing of the Employees' State Insurance Act, the area of application of the Workmen's Compensation Act has diminished, to a certain extent. But the Employees' State Insurance Act applies only to (i) factories, and (ii) notified establishments, and in the rest of the cases the Workmen's Compensation Act still holds the field."

BENEFICIAL NATURE OF THE EC ACT: -

22. The EC Act was enacted to provide for the payment by certain classes of employers to their employees of compensation for injury by accident. Section 3, as set out earlier, provides that if personal injury is caused to an 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 the Act. Section 4 sets out that where

death results from the injury an amount equal to 50 per cent of the monthly wages of the deceased employee multiplied by the relevant factor ought to be paid.

23. The EC Act is also a beneficial piece of legislation. In 2016, this Court in ***Jaya Biswal & Others*** v. ***Branch Manager, IFFCO Tokio General Insurance Company Limited & Another***, (2016) 11 SCC 201, while holding that the EC Act was a social welfare legislation meant to benefit the workers and their dependents and to give the employees a sense of security held as under: -

> **"20. The EC Act is a welfare legislation enacted to secure compensation to the poor workmen who suffer from injuries at their place of work.** This becomes clear from a perusal of the preamble of the Act which reads as under:
>
> "An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident."
>
> This further becomes clear from a perusal of the Statement of Objects and Reasons, which reads as under:
>
> "… The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, ***renders it advisable that they should be protected, as far as possible, from hardship arising from accidents*.**
>
> An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate

safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects to such accidents as do occur. ***The benefits so conferred on the workman added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour. At the same time, a corresponding increase in the efficiency of the average workman may be expected.*****"**

21. Thus, the EC Act is a social welfare legislation meant to benefit the workers and their dependants in case of death of workman due to accident caused during and in the course of employment should be construed as such."

(Emphasis supplied)

24. At this stage, it is important to notice one provision in the ESI Act which bars receiving or recovering compensation under any other law if compensation has been received under the ESI Act, viz. Section 53, which is extracted hereinbelow: -

"53. Bar against receiving or recovery of compensation or damages under any other law. -

An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act."

This is only set out to demonstrate how the ESI Act and the EC Act operate in close tandem.

IS SECTION 51E OF THE ESI ACT CLARIFICATORY?

25. It is in this background that the question whether Section 51E, enacted on 01.06.2010, will have retrospective application needs to be decided. Thereafter, the further question of applying the said meaning to the EC Act will have to be addressed. Unless we find that Section 51E is clarificatory and declaratory in character, the question of applying it retrospectively will not arise. A declaratory Act is one which is enacted to remove doubts existing as to common law or the meaning or effect of any statute. Was Section 51E enacted to clarify and set at rest any serious doubt that obtained earlier? It has been held by this Court that an Act will be declaratory if it is intended to remove doubts and if its object was to supply an obvious omission or to clear up any ambiguity as to the meaning of a previously existing statute. In such an event, this Court has held that the said statute being declaratory and clarificatory in nature, it can be given retrospective effect.

26. In the classic work, Justice G.P. Singh's *Principles of Statutory Interpretation* (14th Edition), the following passage occurs to describe what declaratory statutes are. It will be useful to extract the same:-

> **"(i) Declaratory statutes**
>
> The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: "**For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes.** Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. " But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. **An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.** It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' or 'shall be deemed never to have included' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective

effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law."

27. The said passage has been quoted with approval in several judgments of this Court, namely, ***Commissioner of Income Tax, Bombay and Others*** vs. ***Podar Cement Pvt. Ltd. and Others***, (1997) 5 SCC 482 and ***State Bank of India*** vs. ***V.Ramakrishnan and Anr.***, (2018) 17 SCC 394.

28. It has also been held in ***Podar Cement Pvt. Ltd. (supra)*** applying the said interpretation as under:-

"54. From the circumstances narrated above and from the memorandum explaining the Finance Bill, 1987 **(*supra*), it is crystal clear that the amendment was intended to supply an obvious omission or to clear up doubts as to the meaning of the word "owner" in Section 22 of the Act.** We do not think that in the light of the clear exposition of the position of a declaratory/clarificatory Act it is necessary to multiply the authorities on this point. We have, therefore, no hesitation to hold that the amendment introduced by the Finance Bill, 1988 was declaratory/clarificatory in nature so far as it relates to Section 27(*iii*), (*iii-a*) and (*iii-b*). Consequently, these provisions are retrospective in operation. If so, the view taken by the High Courts of Patna, Rajasthan and Calcutta, as noticed above, gets added support and consequently the contrary view taken by the Delhi, Bombay and Andhra Pradesh High Courts is not good law.

(Emphasis supplied)

29. Equally so, in ***K. Govindan and Sons*** vs. ***CIT, Cochin***, (2001) 1 SCC 460 holding an explanation to sub-section (8) of Section 139 of the Income Tax Act introduced with effect from 01.04.1986 to be applicable to Assessment Year 1984-85, this Court held as under:-

> "22. The view taken by us that a first or initial assessment under Section 147 of the Act is a "regular assessment" within the meaning of Section 139(8) of the Act, has been the position of law even before the explanation in Section 139(8) was added by amendment. In that view of the matter the explanation merely clarified the position taking it beyond the pale of doubt. **Parliament thought it necessary to add the explanation with a view to remove the doubt raised in certain decisions of different High Courts in which a contrary view was taken.** Thus the explanation is merely a clarificatory provision and has application to the period of assessment in the case i.e. Assessment Year 1984-85."
>
> (Emphasis supplied)

30. It is now time to apply the said principle to the case at hand to examine whether Section 51E is clarificatory in character or not. The question whether any accident occurring while commuting from the residence to the place of work and vice versa constituted an accident arising out of and in the course of employment has vexed the Courts for very long, resulting in diverse findings based on individual facts.

31. As early as in 1958, this Court had to grapple with the said issue in ***Saurashtra Salt Mfg. Co.*** v. ***Bai Valu Raja & Ors.***, 1958 SCC OnLine SC 131. This Court recognized the theory of notional extension and set out the statement of law 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."**
>
> (Emphasis supplied)

Thereafter, on facts, it was held as under: -

> **"8……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."
>
> (Emphasis supplied)

32. On facts, the claim for compensation was declined. What is however, significant is that this Court recognized the theory of notional extension which is to be applied to an area outside the precincts of the office premises. However, it was left to be determined in each case as to whether the area fell within the notional extension or not.

33. Jurists across the world were also grappling with this difficult question. Lord Denning in his inimitable style in ***Regina*** V. ***National Insurance Commissioner, Ex Parte Michael***, (1977) 1 WLR 109 graphically described the scenario thus:-

> "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; or

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."

34. Thereafter, the learned Judge recognized that the phrase "in the course of his employment" will include doing something which was reasonably incidental to the employment, when he held as under in ***Ex Parte Michael (supra)***.

"**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'. See *Alderman* v. *Great Western Rly. Co.* [(1937) 2 All ER 408 : 1937 AC 454] ; *Netherton* v. *Coles* [(1945) 1 All ER 227] . **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: see *Vandyke* v. *Fender* [(1970) 2 All ER 335, 340 : (1970) 2 QB 292, 305] . It needed a special 'deeming' provision in a statute to make it 'deemed' to arise out of and in the course of his employment (*see* Section 8 of the 1965 Act)."**
>
> (Emphasis supplied)

35. It will be noticed that, in the extract above, towards the end a mention is made of special deeming provision which covered cases of accidents happening while travelling in employer's transport. This scenario is very similar to Section 51C of the ESI Act which deals with accidents happening while on employer's transport, which was introduced with effect from 28.01.1968.

36. However, before we discuss Section 51C of the ESI Act, we need to discuss the judgment of this Court dated 10.05.1963 in ***Agnes (Supra)***. In ***Agnes (Supra)***, one Nanu Raman a bus driver of the appellant company therein after finishing his work boarded another bus to go to his residence. That bus was involved in an accident resulting in his death. Agnes - his widow sued for compensation under the EC Act and contended that her husband died in an accident arising out of and in the course of employment. This Court, while affirming the

judgment of the High Court, which granted compensation by a majority held as under: -

> "**12.** Under s. 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 ques-tion, 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 of both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he uses the means of access and egress to and from the place of employment……**
>
> **14.** …….As the free transport is provided in the interest of ser-vice, having regard to the long distance a driver has to traverse to go to the depot from his house and vice versa, the user of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as a part of his duty. He is not exercising the right as a member of the public, but only as one belonging to a service. The entire Greater Bombay is the field or area of the service and every bus is an integrated part of the service. The decisions relating to accidents occur-ring to an employee in a factory or in premises be-longing to the employer providing ingress or egress to the factory are not of much relevance to a case where an employee has to operate over a larger area in a bus which is in itself an integrated part of a fleet of buses operating in the entire area. **Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshops, factories or harbours, equally applies to such a bus service, the doctrine necessarily will have to be adapted 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, one, in the case of a city transport ser-vice, 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 utilize 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.”**

(Emphasis supplied)

37. In ***Mackinnon Mackenzie and Co. (P) Ltd.*** vs. ***Ibrahim Mahmmed Issak***, (1969) 2 SCC 607, this Court dealing with the phrase “arising out of and in the course of employment” held 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 those factors the workman is brought within the zone 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…."
>
> (Emphasis supplied)

Here again, the court used the phrase to mean nature, condition, obligation and incidents of employment. It will be noticed that this Court in ***Agnes (supra)*** too, while applying the theory of notional extension, adapted it in its application to the facts of the said case.

38. ***Agnes (supra)*** was delivered on 10.05.1963. By an amendment with effect from 28.01.1968 (added by Act 44 of 1966), Section 51C was introduced in the ESI Act in the following terms:-

> **"51C. Accidents happening while travelling in employer's transport.**
>
> (1) An accident happening while an employee is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if

(a) the accident would have been deemed so to have arisen had he been under such obligation; and

(b) at the time of the accident, the vehicle

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and

(ii) is not being operated in the ordinary course of public transport service.

(2) In this section Vehicle includes vessel and an aircraft."

39. It will be noticed that a law which came to be laid down in ***Agnes (supra)*** while interpreting the phrase "arising out of and in the course of employment" in the EC Act was given effect by a statutory recognition in the ESI Act. This is set out to demonstrate the cognate nature of the EC Act and the ESI Act. Both the statutes seek to ameliorate the conditions of workmen and provide them social security benefits and improve their conditions of service.

40. The 62nd Report of the Law Commission of India on the EC Act was submitted in October, 1974 under the Chairmanship of Chief Justice (Retired) P.B. Gajendragadkar. As rightly set out in the Report, the purpose of Workmen's Compensation laws was to eliminate the hardship experienced under the common law system by providing for

payment of benefits regardless of fault and with a minimum of legal formality. Further, the Law Commission Report analyzed several provisions of the ESI Act including Section 51A, 51B, 51C and 51D. In para 3.3 of the Report, while discussing Section 51C of the ESI Act, the following crucial observations were made:-

> "Having carefully considered all aspects of the matter, we are of the view that Section 51C of the ESI Act should be adopted with modification that **it should not be necessary that the transport of provided by the employer if the workman is travelling directly to or from the place of employment."**
>
> (Emphasis supplied)

41. These observations were made after exhaustive analysis of the legal position prevailing in different jurisdictions on the issue of accidents occurring outside the employer's premises while the workman is on his way to and from his work. The Law Commission Report also discussed the International Labour Convention of 1964 for compensation on way to work accidents.

42. The High Courts in India were also engaged with this issue about the interpretation of the phrase "arising out of and in the course of employment" with regard to accidents occurring while proceeding to

the place of work by the employee. In ***Sadgunaben Amrutlal*** vs. ***ESI Corporation***, 1981 Lab 1C 1653 a judgment doubted by this Court in ***Francis De Costa (supra)***, the Division Bench of the Gujarat High Court took the view that the theory of notional extension is an elastic and flexible formula to be applied in a purposeful manner. The High Court in that case extended the benefits to the dependents of the employee even though the death occurred at a public bus stop while the employee was boarding the bus to reach the workplace.

43. Earlier in ***Bhagubai*** vs. ***Central Railway***, (1954) 2 LLJ 403 even though the employee was proceeding to the workplace, since he was proceeding through the premises belonging to the employer, where he was stabbed the dependents were given the benefit. This Court in ***Francis De Costa (supra)*** did not adversely comment on the said judgment.

44. This parade of case law is only to highlight that there was considerable doubt and ambiguity surrounding the phrase "accident arising out of and in the course of employment" insofar as cases concerning accident occurring to employees while proceeding to work

and vice versa, and different rulings had, depending on facts, interpreted them differently. Even the theory of notional extension had its own peculiarities. It was to clarify and put beyond doubt the meaning of the phrase "accident arising out of and in the course of employment" insofar as accidents occurring to employees while proceeding to the workplace and vice versa that Section 51E was enacted in the ESI Act. In view of that, we have no manner of doubt that the said amendment is clarificatory in character and will have retrospective effect.

MEANING OF THE PHRASE "DEEMED TO HAVE" IN SECTION 51E OF THE ESI ACT: -

45. There is one more aspect to be dealt with here. The words "deemed to have" used in Section 51E is not in the context of legal fiction. It is well settled that the expression "deemed" is sometimes used to impose for the purpose of a statute an artificial construction for a word or phrase that would not otherwise prevail. Very often, it is also used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that it includes what is obvious, what is uncertain and what is, in the

ordinary sense, impossible. [See ***Hira H. Advani*** vs. ***State of Maharashtra***, (1969) 2 SCC 662]

46. In ***St. Aubyn*** vs. ***Attorney-General,*** (1951) 2 All ER 473, Lord Radcliffe felicitously explained the concept as under:-

> "The word 'deemed' is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

It is very clear that the word "deemed" in Section 51E is employed to put beyond doubt a particular construction, that hitherto was uncertain.

STATUTES 'IN PARI MATERIA': -

47. The question further remains whether assuming Section 51E is retrospective would the interpretation flowing out of 51E of the ESI Act be imported into the EC Act to interpret the phrase "accident arising out of and in the course of employment" to decide whether it will include accidents happening to employees while commuting to the place of work and vice versa. Before we answer the question, we would make it absolutely clear that it is not our endeavour to import Section

51E of the ESI Act into the EC Act. All that we are examining here is whether a meaning given to the phrase "arising out of and in the course of employment" insofar as it dealt with accidents happening while commuting to the place of work and vice versa in the ESI Act, could be said to be the same for the phrase "accident arising out of and in the course of employment" occurring in Section 3 of the EC Act.

48. First of all, the operative phraseology occurring in Section 3 of the EC Act is the same as the one that it occurs in Section 2(8) of the ESI Act which defines, 'employment injury'. Secondly, as held by this Court and as noticed hereinabove, both Acts are beneficial legislations intended as social security measures to ameliorate the conditions of employees. As rightly noticed by Chief Justice (Retd.) Ganjendragadkar in the 62nd Law Commission Report the only difference between the two statutes was that while the ESI Act applied to factories and notified establishments, the EC Act applied to other employers, as defined. The case law, as noticed hereinabove, also indicates how ***Saurashtra Salt (supra)*** and ***Agnes (supra)*** which were under the EC Act was applied in ***Francis De. Costa (supra)***, a case arising under the ESI Act. Equally, the High Court of Gujarat in

Sadgunaben Amrutlal (supra) a case under the ESI Act, had discussed the ratio in ***Saurashtra Salt (supra)*** which arose under the EC Act.

49. It is well settled that where statutes in *pari materia* serve a common object in absence of any provision indicating to the contrary, it is permissible for a court of law to ascertain the meaning of the provision in the enactment by comparing its language with the other enactment relating to the same subject matter.

50. In Justice G.P. Singh's *Principles of Statutory Interpretation* (14th Edition), dealing with statutes in *pari materia*, the following passage finds mention:-

> **"Statutes in pari materia**
>
> It has already been seen that a statute must be read as a whole as words are to be understood in their context. **Extension of this rule of context permits reference to other statutes in pari materia, i.e. statutes dealing with the same subject-matter or forming part of the same system. VISCOUNT SIMONDS in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including "other statutes in pari mate-ria". As stated by LORD MANSFIELD: "Where there are different statutes in pari materia though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory** of each other."
>
> (Emphasis supplied)

51. In the ***State of Madras*** vs. ***A. Vaidyanatha Iyer***, 1958 SCR 580, this Court held as under:-

> "… Therefore where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. **It may here be mentioned that the legislature has chosen to use the words 'shall presume' and not 'may presume' the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but s.4 of the Prevention of Corruption Act is in *pari materia* with the Evidence Act because it deals with a branch of law of evidence, e.g. presumptions, and therefore should have the same meaning**…."
>
> (Emphasis supplied)

52. In *Craies on Legislation* (9th Edition) dealing with statutes in *pari materia* has the following observation in para 20.1.26.

> "**Statutes in pari materia**
>
> Two Acts are said to be in pari materia if taking all their circumstances into account it is natural to construe them as if they formed part of a single code on a particular matter. Where this is found to be the case the result is that definitions in one may be applied to expressions found in another, and decided cases setting out principles of application to one will be applied to the other.
>
> The fact that two statutes have the same titles may be indicative of their being in pari materia. As Bridge L.J. said in R. v Wheatley-
>
> "Looking at the two statutes [the Explosives Act 1875 and the Explosive Substances Act 1883], at the nature of the

> provisions which they both contain, and in particular at the short and long titles of both statutes, it appears to this court that clearly they are in pari materia, and that conclusion alone would seem to us to be sufficient to justify the conclusion which the judge reached that the definition of the word 'explosive' found in the 1875 Act is available to be adopted and applied under the provisions of the 1883 Act."

53. In ***State of Assam and Another*** vs. ***Deva Prasad Barua & Another***, (1969) 1 S.C.R. 698, this Court while construing Section 19 of the Assam Agricultural Income-tax Act, 1939 gave it the construction given to Section 22 of the Indian Income-tax Act and held as under:-

> "… Moreover s.19 is in *pari materia* with s.22 of the Income-tax Act and the law which has been laid down by this Court, while interpreting the provisions of that section, must govern the construction of the provisions of s.19 as well."

54. In ***AG*** vs. ***Prince Ernest Augustus of Hanover***, Lord Viscount Simonds observed as follows:-

> "For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of **the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy**."
>
> (Emphasis supplied)

55. Applying the above principle, we interpret the phrase "accident arising out of and in the course of his employment" occurring in Section 3 of the EC Act to include accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, provided the nexus between the circumstances, time and place in which the accident occurred and the employment is established.

56. The following undisputed facts emerge in this case: -

a) The deceased – Shahu Sampatrao Jadhavar was employed with the respondent No.2-Sugar factory;

b) He was employed as watchman and his duty hours on 22.04.2003 was 3 AM to 11 AM.

c) It is undisputed that he was proceeding to his workplace when the accident occurred at place which was 5 kms (approx.) from the workplace while the employee was proceeding towards the workplace.

In view of the above, considering that the deceased was a night watchman and was dutifully proceeding to his workplace to be well on

time, there was a clear nexus between the circumstances, time and place in which the accident occurred and his employment as watchman. The accident having clearly arisen out of and in the course of employment, the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad was justified in ordering the claim under the EC Act by his judgment of 26.06.2009.

57. The appeal is allowed and the judgment of the High Court of Judicature at Bombay, Bench at Aurangabad dated 01.12.2011 in First Appeal No. 2015 of 2011 is set aside and the judgment of the Commissioner for Workmen's Compensation and Civil Judge, Senior Division, Osmanabad in Workmen's Compensation Application No. 28 of 2005 dated 26.06.2009 is restored. No order as to costs.

.....J.
[**MANOJ MISRA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
28th July, 2025