

No. LIR/A/WCA/27205
Maharashtra State Elec. Board,
Prakashgad, Bandra (E)
Mumbai-400051.

Dt. 17th June, 1998.

CIRCULAR

Sub: New interpretation of the term
'employment injury' due to verdict
given by Honourable Supreme Court
in the case no. 1174 of 1979
dated 11th September 1996.

Of late the cases of accident while going to and from the work of place were decided on the lines of notional extension theory emerged out of Saurashtra Salt Manufacturing Company v/s. Bai Valu Raja (1958) II-LLJ-249. One of the question which came before the consideration of the Honourable Supreme Court in the aforesaid case was whether the accident to and from the place of employment was to be treated as in the course of and out of employment particularly in the context of the latest Supreme Court decision in the matter. The Honourable Supreme Court while deciding this particular case of Saurashtra Salt Manufacturing Company had laid down some principles within which any accident occurred has to be treated as in the course of and out of employment. The Honourable Court had observed that there can be some reasonable extension in both time and place to these principles. A Workman can be regarded as in the course of his employment even though he had not reached or had left his employers premises in special cases. It is for these principles the cases of employment injuries or employees meeting with a fatal accident on his way to or from place of employment were considered and benefits extended uptill now.

The Honourable Supreme Court of India consisting of Mr. A.M. Ahmedi, Chief Justice of India, Mr. Justice Suhas C. Sen and Miss Justice Sujata V. Manohar now in a judgment given in the case no. CA/1174/79 dt. 11th September 1996 has elaborately discussed the aforesaid theory and also other relevant judgments delivered in the cases of South Midland Railway Pty. Ltd. v/s. James (67 CLR 496), BEST Undertakings, Bombay v/s. Mrs. Agnes (1963-II-LLJ-619), Bahubai V/s. Central Railways Mumbai (1954-II-LLJ-403) and has given a revised Judgement.

The main points which has been discussed by the Honourable Supreme Court in the aforesaid case between the Regional Director, ESI Corporation v/s. Francis Decosta are the two familiar words "arising in the course of" and "out of employment". These two conditions viz. "arising out of" and "in the course of" employment are mandatory for the employee to be eligible for compensation under the relevant provisions of the Act. The word "arising out of" his employment the legislative gives restrictive meaning to employment injury. The

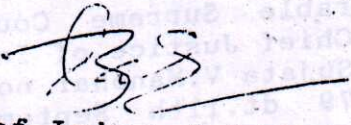
LIR file & Wicket file

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. In the context of Section 2(8) the words "out of" indicates that the injury must be caused by an accident which had its origin in the employment. A mere road accident while the employee is on his way to his place of employment cannot be said to have its origin in its employment in the premises.

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 word "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. The verdict of the Supreme Court in the case no.1174/79 indicates that unless there is a casual connection between the accident and the employment no accident case be treated as arisen out of employment.

The other words of limitation in Sub.Section (8) of Section 2 is " in the course of his employment". The Dictionary meaning of "in the course of" is "during", "while doing" and so this indicates that the accident must take place within or during the period of employment. The Journey to the factory may have been undertaken at scheduled time but this journey was certainly not in the course of employment.

In view of the discussions held in the aforesaid judgement delivered by the Supreme Court of India it is necessary that the meaning of the words "out of" and "in the course of employment" has to be seen carefully. The Honourable Court while discussing over this issue in the aforesaid case bearing no.CA-1174/79 dt.11th September 1996 has elaborately discussed the theory of notional extension also and had indicated the circumstances under which the accident is to be treated as in the course of and out of employment. This is circulated for the information of officers of LIR Section in the field to facilitate them to advise the field officers in the matter whenever required.


Addl. Chief Industrial Relations Officer

Copy s.w.cs to: 1) All the T.Ds 2) All C.Es (T&D), (Gen.O&M),
3) D.O.(P)/(Insp), M.S.E.B., Mumbai, M.S.E.B., Mumbai

4) C.I.R.O., M.S.E.B., Mumbai

Copy f.w.cs to: A.D.(E)/(P), M.S.E.B., Mumbai

Copy to: 1) All S.Es 2) All Dy.C.I.R.Os/I.R.Os/W.Os/L.Os/
A.W.Os.