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DOCTRINE OF COMMON EMPLOYMENT

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EVOLUTION

The Doctrine of Common Employment has its origin in English Law. This doctrine is applied in 1837 in a case Priestly V. Fowler [1837] 150 E.R. 1030followed by Hutchinson V. York, New Castle and Berwick Rail Co. (1850) 5 Ex 343, Which was finally established as a part of English Law. In India, Workmen's Compensation was introduced in the Year 1926, which is introduced in England borrowed from Germany.

MEANING

The doctrine of Common Employment means the master is not liable for the negligent act done by one servant to another in their course of employment which is also known as Fellow Servant Rule. It is based on the implied contract of service. The employee impliedly in the risk to another employee. It is an exception to the rule master is vicariously liable for the act done by his employee. As there is more ambiguity in this doctrine, therefore, it is restricted to use this doctrine to a larger extend. Act of a servant in the employment means,

1. He must be engaged in the business to perform
2. The act occurs during the time and limit authorized for employment.
3. It shall be an act to serve a master.
4. The act should be done by the servant against another servant without the knowledge the master.

ESSENTIALS

1. The person and the wrongdoer must be fellow servants.
2. At the time of the accident, they must be engaged in common employment.

EXCEPTIONS

1. If the masters know the cause and consequences of the action.
2. If the master is negligent.
3. If the servant acting on behalf of the master.

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CASE LAWS

Case 1

Brocklebank Ltd. vs Noor Ahmode, (1941) 43 BOMLR 450.

Held - There is a serious question whether the doctrine of common employment is part of the law of India. It has indeed in England only been made endurable by reason of legislative measures. Thus the Employers Liability Act, 1880, established exceptions to its application, though with restrictions as to mode of procedure and amount of damages recoverable which made the Act unsatisfactory.

Later there came the series of Workmen's Compensation Acts commencing with that of 1897 which have given the workman rights against his employer in the nature of insurance against the risk of injury arising out of and in the course of his employment apart from negligence. These measures have made the doctrine of common employment less objectionable in England.

In addition the doctrine does not apply to claims by workmen for injuries caused by breaches of statutory duties imposed for their protection or for breach of duties personal to the employer.

Case 2

Young v. Edward Box, [1951] 1 TLR 789

When the owner of a lorry sent his servant on a journey, and putting the servant not only to drive also to give a lift to people at any circumstances. So here he was answerable for the manner in which the servant conducted himself on the journey not only in the driving but also in giving lifts in it. And all these are done by the servant in the course of his employment".

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Case 3

Sitaram Motilal Kakal v. Santanuprasad Jaishankar Batti, 1966 AIR 1697,

Held - Once the inadmissible evidence is rightly excluded, it is quite clear that this was an act done not on the owner's business but either on the business of the third defendant or that of the third and the second defendants together. It has not been proved to have been even impliedly authorised by the owner or to come within any of the extensions of the doctrine of scope of employment which we have noticed above.

Case 4

Pushpaba Purshottam Udeshi And Others v. Ranjit Ginning & Pressing Co. (P) Ltd. And Another, 1977 SCC 2 745.

The owner is also liable if the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes". The Supreme Court accepted the test and to that extent this may be taken as an extension of the doctrine of scope of employment. Thus, on the facts as we have found that the accident took place during the course of employment the decision in Sitaram Motilal Kalal is of no help to the respondents.

Case 5

Sadu Ganaji v. Shankerrao Deoraoji Deshmukh And Another, 1954 SCC ONLINE MP 53.

Held - The question for consideration in that case was whether the doctrine of common employment which originated in England in 1837 with 'Priestley v. Fowler', (1837) 3 M & W 1 (Z21), and which was regarded as firmly established in that country by 1860 should be regarded in 1936 in India as a rule in accordance with justice, equity and good conscience, particularly when the common law rule was altered by statute in England.

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If, therefore the instant case is to be decided in consonance with justice, equity and good conscience, we must ascertain the English common law as modified by statute law as regards the rights of an illegitimate son to inherit the estate of his mother's mother and see whether that law can be made applicable to our society and circumstances.

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