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LEGAL ANGLE

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DOCTRINE OF ADDED PERIL

Evolution:

The doctrine of added peril was enacted in the Workmen Compensation Act, 1923 to improve the working conditions of the employees. The purpose of the Workmen Compensation Act, 1923 is to compensate the employees who have suffered or were injured during the course of employment to meet expenses for treatment and livelihood. The employees shall recover damages only on the negligence of the employer in the employment and if the employee puts himself at risk, the employer shall not be liable, and here, the doctrine of peril was invoked.

Meaning:

The term "added peril" means the workmen who have done an act that is not a contract of service and such an act results in danger to the workmen. If the workmen on the course of his employment while performing his duty does an act which is not required to do and involved excess danger a result if any damage caused to him, the employer shall not be liable to pay compensation. The doctrine of added peril is a defence to the employer.

When the employee done an act which is not obliged by him to do and puts himself in dangers, the employer cannot be liable to pay compensation for the injuries caused. Therefore, the injury not caused out of employment, the employer is not entitled to compensate or benefit the employee.

Arising Out Of Employment:

The term "arising out of employment" includes conditions, obligations and incidents of employment. If there is any danger or injury on performing such obligations, conditions, and incidents of employment, then the injury is said to be arising out of employment.

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Test For The Applicability:

1. Whether the injury has arisen out of employment?
2. Whether the injury is caused while performing any conditions, obligations, and incidents for the contract of service?
3. Whether the act of the employer is required and results in danger during the course of employment?

CASE LAWS

Case 1

R. B Moondra & Co. v. Mrs. Bhanwari And Another, 1970 AIR RAJ LL 1.

Held - The meaning of the phrase 'added peril' and its application to cases arising under the Workmen's Compensation Act and lays down that if the act which the workman was doing was within the scope of his employment, the question of negligence greater or small in doing that act is irrelevant. In the circumstances it was reasonable for the workman to have petrol with him for the purpose of cleaning grease from his hands, its use not being expressly or impliedly prohibited, and, therefore, the accident arose out of his employment". This case, therefore, establishes that no matter how negligent or rash the workman's action, it arises out of the employment if it is within the scope of his duty as an employee.

Case 2

Mackinnon Mackenzie And Co. (P) Ltd. v. Ibrahim Mahmmed Issak, 1970 AIR SC 1906.

Held - If the cause of the workman was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the

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employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was acting, or should have been in the position in which he was, whereby in the course of that employment he sustained injury."

Case 3

K.Rathinam v. Apollo Enterprises, 2001 MLJ 1 651.

Held - The deceased had no work in that place and he has also not directed or called upon to participate in the rescue operations and as the accident to the deceased was the result of an added peril to which the workman by his conduct exposed himself which peril was not involved in the normal performance of the duties of his employment, the first respondent is not liable to pay any compensation. It is a case of added peril and he cannot hold the first respondent liable to pay compensation. But, anyhow, as seen from the order of the Deputy Commissioner of Labour, the insurance company, under the group insurance scheme has already paid a sum of Rs. 25,000 to the claimants and out of humanitarian grounds, the first respondent has also agreed to deposit a sum of Rs. 10,000 and the Commissioner has rightly directed the first respondent to deposit the said sum.

Case 4

Tamil Nadu Civil Supplies Corporation, Ltd. v. S. Poomalai, 1994 MLJ 2 124.

Held - The expression arising out of employment' is not confined to the mere nature of the employment. It applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reasons of any of those factors the workman is brought within the zone of special danger, the injury would be one arising "out of employment.' To put it differently, if the accident occurred on account of a risk which is an incident of an employment, the claim for compensation must succeed, unless of course, the workman has exposed himself to an added peril by his own imprudent Act.

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Case 5

Shri SankarKal, S/o Late Narayan Kal. V Sri Sunil Kumar Saha, S/O Late Nishi KantaSaha, 2012 SCC ONLINE GAU 439.

Held - The deceased voluntarily consumed heavy quantity of ethyl alcohol as result of which he died due to myocardial heart failure. Therefore doctrine of added peril was not applicable to case of deceased. Further a person could not be permitted to take advantage of his own wrong; he would not be allowed to found a claim upon his own iniquity. In the case at hand, the deceased voluntarily consumed heavy quantity of ethyl alcohol as a result of which he died due to myocardial heart failure. The doctrine of added peril, therefore, is applicable to the case of the deceased. Further, the maxim "Nemo ex proprio dolo Consequitur actionem", which means that a person cannot be permitted to take advantage of his own wrong, he will not be allowed to found a claim upon his own iniquity. The maxim is applicable in the case of the deceased workman. Maxim was applicable in case of deceased workman. Therefore Appeal was found without merit and hence dismissed.

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