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Present : Keuneman J.

DIAS, Appellant, and JANE NONA, Respondent.

751—*Workmen's Compensation C. 3 62/41.**Workmen's Compensation (Cap. 117), s. 3—Workman employed by Superintendent of estate after hours—Death by snake bite—Liability of employer.*

The deceased was employed as a factory worker in the store of an estate. His work ceased for the day at 4.30 P.M. It would appear that he had entered into a private arrangement with the Superintendent by which he was permitted to live in his bungalow and obtain his meals. It was no part of his contract with the estate. On the day in question about 7 P.M. the deceased went to close a cage in which fowls belonging to the Superintendent as well as the deceased were kept. The deceased was bitten by a snake and died as a result.

Held, that the deceased did not receive personal injuries by an accident arising out of and in the course of his employment under the proprietor of the estate within the meaning of section 3 of the Workmen's Compensation Ordinance.

A PPEAL from an order of the Commissioner under the Workmen's Compensation Ordinance.

E. F. N. Gratiaen (with *N. M. de Silva*), for respondent, appellant.

No appearance for claimant, respondent.

Cur. adv. vult.

November 24, 1942. KEUNEMAN J.—

This is a proceeding under the Workmen's Compensation Ordinance and the only question which remains for determination is whether the deceased Simon Singho received personal injuries by an accident arising out of and in the course of his employment.

The respondent to the application appears to be Mr. S. Dias of Savitri, Turret road, Colombo, who carries on business under the business name of Dias Peiris & Co. He appears to have been the party who actually contested the proceedings but to judge by the caption it is rather difficult to know who is the real respondent because the caption shows that at one place the Superintendent of Kekirihena estate, Analawatta, is the respondent and another place shows Dias Peiris & Co., as the respondents. I think it would suffice if we treat the present proceedings on the footing of the liability of Mr. S. Dias who carries on business under the name of Dias Peiris & Co.

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It appears that the deceased Simon Singho was employed as a factory worker and that he was working in the store. According to the Superintendent, Mr. Mendis, the deceased used to work in the factory and storehouse and the curing shed and the deceased commenced work at 7 A.M., worked until 11.30 A.M. and then re-started after meals at 1 P.M., and ceased work for the day at 4.30 P.M. For this work the deceased was paid at the rate of 52 cents a day. That appears to have been his regular working hours and it was not part of his contract with the proprietors of the estate that he should have any accommodation or lodging on the estate itself. It appears, however, that he had entered into some kind of private arrangement with the Superintendent of the estate by which he was permitted to live in the bungalow of the Superintendent and obtain meals at the rate of Rs. 6 a month. There is some evidence that for some period he was helping the cook and in fact functioned for one month in place of the cook. This is the evidence of the Conductor of the estate, Sergius de Silva. This is not admitted by the Superintendent of the estate who gave evidence and who says that he had a cook whom he employed all throughout and that the deceased never cooked for him. He added that if the deceased did cook it would be contrary to the instructions of the employers.

However that may be, it appears that the deceased on the day in question at about 7 P.M., went to close a fowl cage. In that cage there were apparently fowls belonging to the deceased as well as fowls belonging to the Superintendent. The deceased was bitten by a snake and died as a result of that bite. I cannot see myself that it can be said that this was an accident arising out of and in the course of his employment under the proprietor of the estate. It seems clear on the evidence that as far as the proprietors are concerned he was employed only during the working hours of 7 A.M. to 4.30 P.M., and it was not a part of his employment to remain on the estate after the hour of 4.30 P.M. It is possible that the deceased entered into some kind of private arrangement with the Superintendent of the estate, but it is by no means established on the evidence that it was any part of his employment under the proprietors that he should work after the hour 4.30 P.M., that he should continue to work till 7 P.M., or that his work included that of looking after the fowl cage at all. It is not clear on the evidence of Sergius de Silva, the Conductor, that he was actually employed to act for the cook at the time when the accident took place. It is possible that at this time he was merely being permitted by the Superintendent to stay in the bungalow and obtain his food at Rs. 6 a month. I do not think this can be regarded as a hazard arising out of and in the course of his employment under the respondent. I think, therefore, that as far as the respondent S. Dias is concerned he cannot be made liable to pay compensation in respect of this accident. I do not, of course, decide what liability, if any, attaches to the Superintendent of the estate in his personal capacity. That matter has not been gone into in these proceedings.

The appeal is allowed.

Appeal allowed.