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No. 18 of 1960.

In the Privy Council.

UNIVERSITY OF LONDON W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED LEGAL STUDIES

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND.

50980

BETWEEN

CATHERINE LEE *Appellant*

AND

LEE'S AIR FARMING LIMITED *Respondents.*

Case for the Appellant

RECORD.

10 1. This is an appeal from a judgment, dated the 18th December, 1958, of the Court of Appeal of New Zealand (Gresson, P., North and Cleary, JJ.) holding, on a case stated by the Compensation Court of New Zealand under the Workers' Compensation Rules, 1939, that on the facts set out in the case the Appellant's deceased husband could not hold the office of Governing Director of the Respondents and also be a servant of the Respondents. p. 15.
pp. 1-5.

2. The following are the provisions of the Workers' Compensation Act, 1922, relevant to this appeal :—

“ 2. In this Act, unless a different intention appears—

20 ‘ Employer ’ includes any body of persons, corporate or unincorporate, and the representatives of a deceased employer :

...
‘ Worker ’ means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether remunerated by wages, salary, or otherwise . . .

30 3. (1) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall be liable to pay compensation in accordance with provisions of this Act.

(2) This Act applies only to the employment of a worker—

(a) In and for the purposes of any trade or business carried on by the employer ;

... ”

The Workers' Compensation Amendment Act, 1950, obliges (subject to certain exemptions irrelevant to this appeal) every employer of a worker in any employment to which the principal Act applies to insure, with an authorised insurer, against his liability to pay compensation under the principal Act.

3. The following are the facts set out in the stated case :— 10

p. 2, ll. 23-31.
p. 32, ll. 31-38.

(A) The Appellant's husband (hereinafter called "the deceased") formed a Company called "Lee's Air Farming Limited," for the purpose of carrying on the business of aerial top dressing. This Company was incorporated on the 5th August, 1954. Its capital consisted of 3,000 £1 shares, of which 2,999 were issued to the deceased and one to a Solicitor.

p. 2, l. 32-
p. 3, l. 1.
pp. 22, 33.

(B) Paragraph 32 of the Articles of Association of the Company appointed the deceased to be Governing Director of the Company for life. The paragraph also provided that full government and control of the Company should be vested in him, and he might 20 exercise all the powers vested in the Directors and all the powers of the Company not required by statute to be exercised by the Company in General Meeting. Paragraph 33 provided (after amendment) that "the Company shall employ the said Geoffrey Woodhouse Lee as the chief pilot of the Company" at a salary to be arranged by the Governing Director. Paragraph 36 provided that the Governing Director should not be disqualified by his office "from contracting with the Company whether as vendor, purchaser or otherwise."

p. 3, ll. 38-41.

p. 4, ll. 34-38.

(C) The deceased worked for the Company as its pilot con- 30 tinuously from the date of the incorporation until the 5th March, 1956. On the 5th March, 1956, while the deceased was piloting an aeroplane in the course of the Company's aerial top dressing operations, the aeroplane crashed and the deceased was killed.

p. 3, ll. 25-32.

p. 3, l. 42-p. 4, l. 20.

(D) The Secretary of the Company submitted to an authorised insurer under the Workers' Compensation Amendment Act, 1950, on behalf of the Company, an employer's statement of wages dated the 23rd July, 1954. This statement set out the wages paid by the Company to the deceased, apportioned between his work for the Company as an aerial top dressing pilot, as a tractor 40 driver and generally. On the 8th July, 1955, the Secretary sent to the insurers a similar statement. On both occasions the insurers sent in return an assessment of premium, the premium was paid and a policy was issued. Throughout these negotiations the brokers acting for the insurers knew the relationship of the deceased to the Company, who the employees of the Company were and the full extent of their respective activities and duties.

pp. 34-36.

(E) The deceased exercised full and unrestricted control of the affairs of the Company and all its operations. p. 4, ll. 21-33.

(F) The Appellant and her four infant children were wholly dependent on the deceased. The salary payable to the deceased by the Company up to the time of his death was such that the Company, if liable to compensate the Appellant under the Act, was liable to pay her £2,430 for compensation and £50 for funeral expenses. p. 4, ll. 39-43.

10 (G) On the 15th April, 1957, the Appellant issued a Writ against the Company (the Respondents) claiming the said sums under the Act. By their Defence, the Respondents denied that the deceased had been a "worker" within the meaning of the Act, on the ground that he had been the controlling shareholder and Governing Director of the Company. p. 2, ll. 1-18.

4. The action came before Archer, J., in the Compensation Court on the 31st March, 1958. The learned Judge stated a case for the opinion of the Court of Appeal, reciting the facts set out above and asking whether at the time of the accident the deceased was employed by the Respondents as a "worker" within the meaning of the Workers' Compensation Act, 1922, and its amendments. p. 2, ll. 19-20.
p. 5, ll. 13-17.

5. The stated case came before the Court of Appeal (Gresson, P., North and Cleary, J.J.) on the 27th November, 1958, and the judgment of the Court was delivered by North, J., on the 18th December, 1958. The learned Judge summarised the facts, and said the Court interpreted the question as meaning, whether, on the admitted facts, the deceased could hold the office of Governing Director of the Company and also be a servant of the Company. There was no doubt that the relationship of master and servant could exist between a Company and one of its Directors, but the question posed in this case was, he said, whether a Director to whom the Company had entrusted all its powers could thereafter create the relationship of master and servant between the Company and that Director. It was true that a Company was a legal entity distinct both from its shareholders and from its Directors, but if the powers of management were vested in a sole Director he alone could exercise those powers. The learned Judge said the question was whether the deceased, being himself the whole "directing mind" of the Company, could also be a servant of the Company. The test, he held, was still whether the contract subjected the supposed servant to the command of the employer not only as to what he should do but also as to how he should do it. The act of incorporation had operated as a delegation of substantially all the powers of the Company to the deceased for life, and no power of management had, the learned Judge said, remained in the Company. The contract of employment had been between the deceased and the Company, but on the deceased had lain the duty both of giving orders and of obeying them. There could, in the opinion of the Court, exist no power of control, and therefore the relationship of master and servant had not been created. The Court of Appeal accordingly answered the question posed, as amended by them, in the negative. p. 11-14.
p. 12, ll. 20-24.
p. 12, ll. 25-30.
p. 12, l. 40
p. 13, l. 8.
p. 13, ll. 37-41.
p. 14, ll. 11-37.
p. 14, ll. 21-25.

6. The Appellant respectfully submits that the judgment of the Court of Appeal was wrong. The question before the Court was whether the deceased was a "worker" as defined by the Act, i.e., a "person who has entered into or works under a contract of service . . . with an employer." The Respondents were bound by the Articles of Association to employ the deceased, and the deceased in fact worked for the Respondents as a pilot on their business. The contract between the deceased and the Company was a valid contract between two different legal persons, even if the Company in making the contract acted through the deceased. Similarly, the Company was entitled under the contract to control both what the deceased 10 did and how he did it, and this control remained the control of the Company whoever might be the agent empowered by the Company to exercise it. The Appellant accordingly submits that the deceased entered into a contract of service with the Respondents and worked under that contract, and on both grounds was a "worker" within the meaning of the Workers' Compensation Act.

7. The Appellant respectfully submits that the judgment of the Court of Appeal of New Zealand was wrong and ought to be reversed, and the question submitted to that Court by the stated case ought to be answered in the affirmative, for the following (amongst other) 20

REASONS

- (1) BECAUSE the deceased entered into a contract of service with the Respondents ;
- (2) BECAUSE the deceased worked under a contract of service with the Respondents ;
- (3) BECAUSE there was no incompatibility between the position of Governing Director of the Respondents and the position of a servant of the Respondents ;
- (4) BECAUSE the deceased was a "worker" employed by the Respondents within the meaning of the Workers' 30 Compensation Act, 1922.

A. C. PERRY.

J. G. LE QUESNE.

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BLYTH, DUTTON, WRIGHT & BENNETT,
112 Gresham House,
London, E.C.2,
Solicitors for the Appellant.