

(1959) 08 AHC CK 0013
In the Allahabad High Court
Case No : F.A.F.O. No. 38 of 1952

Bajnath Singh and Another

APPELLANT

Vs

The Oudh Tirhut Railway

RESPONDENT

Date of Decision : 06-08-1959

Acts Referred:

Railways Act, 1890 — Section 3(6)
Workmens Compensation Act, 1923 — Section 2, 2(2)

Citation : AIR 1960 All 362 : (1960) 1 FLR 44

Hon'ble Judges : S.N. Dwivedi, J;R.N. Gurtu, J

Bench : Division Bench

Advocate : J. Swarup and Hari Swarup, for the Appellant; Brij Lal Gupta, for the Respondent

Final Decision : Allowed

Judgement

Gurtu,J.

1. The appellants before us are the minor sons of Ram Lal Singh, They filed a claim for compensation u/s 10 of the Workmen's Compensation Act, 1923, before the Commissioner for Workmen's Compensation appointed under the said Act. Their statement of claim was registered as Miscellaneous Application No. 2 of 1948.

2. The claimants alleged that their father was employed as S.P.W. I. in the service of the Oudh Tirhut Railway at Sahjanwa railway station and that he died on 18-3-1947 from an accident resulting from collision of a light engine with a trolley which he was plying to measure the creep from Gorakhpur. Then the claim set out the details of the accident and stated that the claimants were the minor sons of the deceased and wholly dependent on him and that the family had heavily suffered for which legitimate compensation was due to the dependents and the members of the family. They stated that a claim for compensation made to the Railway had been rejected and they claimed a sum of Rs. 3,500/- by way of compensation. The cause title of this miscellaneous application No. 2 of 1948

showed the Oudh Tirhut Railway through its General Manager residing in Railway Quarters Gorakhpur as the opposite party. A written statement was filed by the opposite party the Oudh Tirhut Railway through the General Manager. We are not concerned with the other pleas in this written statement except plea No. 14 which runs as follows :

"That the defendant does not represent the railway owned by the State for the purposes of the civil suit."

We would like to add that the written statement admitted that the appellant's father B. Ram Lal Singh was employed as a S.P.W. I in the service of the Oudh Tirhut Railway."

3. Upon the pleadings of the parties the Commissioner for Workmen's compensation framed several issues. Issue No. 4 was in the following terms :

"Can a suit u/s 3 of the Workmen's Compensation Act be brought against the General Manager Oudh Tirhut Railway without impleading the Governor General?"

The Commissioner for Workmen's Compensation by his order dated 29-3-1949 found that the applicants were entitled to a compensation in the sum of Rs. 3,500/- but he dismissed the claim nonetheless upon the ground that the suit was not brought against the Governor General, who was the employer, as it should have been under the Workmen's Compensation Act but was brought against the General Manager of the named railway who was not the employer.

He was of the view that the General Manager, Oudh and Tirhut Railway could not be considered either as the employer or as the managing agent of the employer the Central Government and since the Oudh and Tirhut Railway was owned by the Central Government for that reason in his view the application for compensation should have been filed against the Governor General. He took the view that since the Governor General was not a party the application could not succeed.

He was of the view that the application could be brought against the General Manager only if it were proved that the General Manager was the "managing agent" of the Oudh and Tirhut Railway and that the onus of proving this lay on the applicants and he pointed out that between the Governor General and the General Manager there are other persons managing the railway namely the Railway Member of the Government and the Railway Board members and there could be only one "Managing Agent." He was of the view that the managing agent must have all the powers of the Central Government delegated to him and that there was nothing on the record to show that the General Manager, Oudh and Tirhut Railway had all such powers which the members of the Railway Board have. Finally he came to the conclusion that as the General Manager could not be considered to be the managing agent of the Central Government so no relief could be granted as the opposite party impleaded in the application was not the employer of Ramlal Singh deceased.

4. This first appeal from order has been filed by the claimants before this Court u/s 30 of the Workmen's Compensation Act. It is contended that the claim was properly preferred against the Oudh Tirhut Railway through its General Manager and that the Oudh Tirhut Railway through its General Manager was the proper person to be impleaded as the employer of Ramlal Singh father of the claimants. Arguments ancillary to the above submissions were also made with which we will deal later on. It now becomes necessary in order to adjudicate upon the rival contentions to examine certain provisions of the Workmen's Compensation Act, 1923 (Act No. VIII of 1923). It is an Act to provide for payment by certain class of employers to their workmen of compensation for injury by accident. "Employer" is defined by Sub-section (e) of Section 2 of the act as follows :

" "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;"

"Managing agent" is defined by Sub-section (f) of Section 2 as follows :

" "Managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer."

"Workman" is defined by Sub-section (n) of Section 2 as follows:

" "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employers' trade or business) who is :

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative district or Sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed on monthly wages not exceeding four hundred rupees, in any such capacity as is specified in Schedule II. Sub-section (2) of Section 2 of the Act enacts as follows :

"(2) The exercise and performance of the powers and duties of a local authority or of any department (acting on behalf of the Crown) shall, for the purposes of this Act unless a contrary intention appears, be deemed to be the trade or business of such authority or department."

Chapter II of the Act deals with "Workmen's Compensation" and sets out the employers' liability for compensation, Section 4 of the Act regulates the amount of compensation and Section 5 regulates the method of calculating wages. We need not deal with the other sections which follow until we come to Section 10

which is a section dealing with the notice of claim. Sub-section (1) thereof runs as follows :

"10 (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within one year of the occurrence of the accident or, in case of death, within one year from the date of death."

It is not necessary for the purposes of the discussion in hand to quote the rest of Section 10 of the Act. Chapter III contains Section 19 of the Act which says that if any question arises in any proceedings under the Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

Sub-section (2) of Section 19 states that no civil court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. Then there are sections which deal with the appointment of Commissioners and other ancillary matters. We then come to Section 23 of the Act which states that the Commissioner shall have all the powers of a Civil Court under the C. P. C. 1908, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the Commissioner shall be deemed to be a Civil Court for all the purposes of Section 195 of Ch. XXXV of Cr. P. C.] 898.

Under Section 30 of the Act an appeal is provided to the High Court from inter alia an order disallowing a claim in full or in part for a lump sum. The right of appeal u/s 30(1)(a) of the Act is restricted by a further provision that a substantial question of law should arise in the appeal. There are other restrictions which are not relevant for our purpose. The period of limitation for making a claim is also fixed at 60 days.

5. From the provisions of Section 19(2) of the Act it will be observed that the question of compensation under, the Act has been taken out of the jurisdiction of the Civil Courts except in the matter of appeal. A special authority is created u/s 19(1) of the Act namely the Commissioner. The Act regulates the procedure and the practice to be followed before the Commissioner. The C. P. C. is applied only to a very limited extent and for certain specific purposes only. The terms "employer", "Managing Agent" and "workman" are all defined. The term "workman" is also defined as including a railway servant. What is preferred before the Commissioner according to the Act by a person desirous of compensation is a claim. No plaint as such is filed.

It will thus be apparent that this Act creates special rights and provides a special

machinery with its own law of procedure for the adjudication of rights which the Act creates. The civil court only comes into the picture because of the provision for an appeal to the High Court. The question which arises in this case is as to who was the employer of this railway servant. We have already referred to the statement of claim and the reply and have pointed out that the claimants made an averment that their father was in the service of the Oudh and Tirhut Railway and this position was accepted in the written statement still the question is raised whether the General Manager of the Oudh and Tirhut Railway or the Oudh and Tirhut Railway through its General Manager is the employer of the father of these claimants.

6. We have already quoted the definition of the word "employer". It is to be noted that it is an inclusive definition and therefore the enumerated persons do not constitute the whole body of persons who may be considered to be employers. The Commissioner for Workmen's Compensation has held that it has not been established that the General Manager was the Managing Agent within the definition of the word "managing agent" in the Act, and he has pointed out that there are other bodies in between the Central Government and the General Manager, the Central Government being the ultimate owner of the railway, and thus the employer.

But the problem that we are examining, we think, is resolved by the provisions of Sub-section (2) of Section 2 of the Act which expressly state that the exercise and performance of the powers and duties of a local authority or of any department acting on behalf of the Government shall for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department, Now therefore the only question which has to be considered is whether the Oudh and Tirhut Railway is a department acting on behalf of the Government and is responsible for the running of the Oudh and Tirhut Railway; if so then the running of the railway will be deemed to be the business of the Oudh Tirhut Railway.

If the Oudh and Tirhut Railway constitutes a department of the Government or an authority in itself then the business carried on will be deemed to be its business and if as an authority or department it employed the claimants' father then it will be considered to be the employer. In the definition of a railway servant given in the Workmen's Compensation Act reference is made to the Indian Railways Act, 1890. We may, therefore, usefully refer to the Indian Railways Act to find out what exactly is the position in this case in regard to the running of the Oudh and Tirhut Railway by the General Manager.

We find that Section 3 Sub-section (6) of the Indian Railways Act, 1890 (Act No. IX of 1890) defines railway administration as "railway administration or administration in the case of a railway administered by the Government means the Manager of the Railway and includes the Government and in the case of a railway administered by a railway company means the railway company." Section 4(7) defines a "railway servant" as meaning any person employed by railway

administration in connection with the service of a railway. It would thus appear that the manager of the railway is the administration under the Indian Railways Act and the manager is equated to the Government.

He can therefore be said to be running the department which is directly concerned with the business of managing the railway. Since under the definition given in the Railways Act he is put on the same footing as Government itself it may even be said that he satisfies the definition of managing agent given in the Workmen's Compensation Act. In view of the definition of "railway administration" as given above he may be deemed to have all the powers of the Government necessary to the running of the business. We have referred to the statement in the claim that Ram Lal Singh was in the service of the Oudh Tirhut Railway.

These allegations were not denied by the opposite party, the Oudh Tirhut Railway. Keeping in view the definition of employer given in the Workmen's Compensation Act, which we have pointed out, is an inclusive definition and the definition is not limited to the enumerated kinds, we do not see any reason why it should not be held in this case that the General Manager of the Oudh and Tirhut Railway was the employer of this particular railway servant, the father of the claimants. We have regard also to the language of Sub-section (2) of Section 2 of the Workmen's Compensation Act, to which we have made a reference.

We think if ordinary persons were asked, after being told the facts of this case, the question as to who was the employer of the father of the claimants, they would certainly answer the Oudh and Tirhut Railway through its General Manager. We think it is a well settled proposition that in dealing with matters relating to the general public, statutes are presumed to use words in their popular sense *uti loquitur vulgus*. For authority we need only invite attention to Maxwell on Interpretation of Statutes 1953 Edn. p. 54. The authorities cited in support of the proposition are given at foot-note (m) on page 54.

It is not necessary to mention these cases specifically. We think it is permissible also to refer in this connection to a dictionary meaning as given in the Shorter Oxford English Dictionary. We have examined the meaning of the word "employer" and we find it to mean one who employs servants, workmen etc. for wages. We have no difficulty in view of what we have said in coming to the conclusion that the claimants' father was, having regard to the definitions and the scheme of the Workmen's Compensation Act, employed by the General Manager, Oudh Tirhut Railway or by the Oudh Tirhut Railway through its General Manager.

We must, we think, construe this Act in such a way that its purpose will be fulfilled. The Act relates to the question of compensation between employers and employees. Most of the persons who would be entitled to the benefit of this Act are illiterate persons and so far as they are concerned when they enter into the service of a railway which is run by a General Manager they do not think that

they are entering into the service of the Central Government but that they are taking up employment with the railway which for all practical purposes from their point of view functions as an independent authority or department.

No doubt there are officials further up in the hierarchy beyond the General Manager and there is no doubt of the ultimate ownership of the Central Government but the question is whether having regard to the provisions of Section 2 Sub-section (2) of the Workmen's Compensation Act and the definition of employer as given in Section 2(1)(e) of the Act, in all the circumstances it could be said that the employer in this case was the Oudh and Tirhut Railway through its General Manager, There is no written contract between the Governor General and the late employee produced in this case. We have no difficulty in answering the aforesaid question in favour of the appellants.

7. We may now state that we were pressed in this case with a Full Bench ruling of the Assam High Court in the case of Chandra Mohan Saha and Another Vs. Union of India (UOI) and Another, That was a case in which a claim was made u/s 80 of the Indian Railways Act for compensation and the opposite party impleaded was not the railway itself through its General Manager but was the Union of India. The contention advanced was that the Railway through its General Manager should have been impleaded and that the suit should fail because of nonjoinder and reliance was placed on Rule 13 of Order I C. P. C.

8. Section 80 of the Indian Railways Act lays down that a suit for compensation for injury to through booked traffic has to be filed against the railway administration on whose railway the injury has occurred. In the Assam case compensation was claimed under that section and the argument advanced was that the suit had to be filed against the railway administration and not against the Union of India.

9. For the purpose of this argument the definition of railway administration as given in the Railways Act was pressed and it was said that the railway administration meant the General Manager of the railway. That argument was countered by the Bench by pointing out that the word "railway administration" as defined in the Railways Act included the Government of the State and then it was said that a suit which was aimed at seeking a relief as against the Government had to be filed in accordance with the provisions of the Order P. C. and that Section 79 of C. P. C. clearly indicates that "in a suit by or against the Government the authority to be named as plaintiff or defendant as the case may be shall be (a) in the case of a suit by or against the Central Government -- the Union of India and (b) in the case of a suit by or against a State Government-- the State."

It was argued in reply that Section 80, Railways Act, requires service of notice on the General Manager of the Railway in the case of a suit against the Central Government but it was said that only a notice was required to be delivered to the General Manager but a suit if it sought a relief against the Government had to be

filed in accordance with Section 79 of the Code and it was the view of the Bench that Section 79 of the C. P. C. and Section 80 of the Railways Act were no way in conflict because the railway administration under the definition given in the Railways Act included the Government. It was however pointed out that if the plaint failed to establish a cause of action against the Central Government a suit would fail. In the end the Bench was of the view that it was not necessary to implead the particular railway through its General Manager and the suit was not bad for non-joinder.

10. Now it may be pointed out at once that the present claim is in no way a suit under the C. P. C. It is merely a claim which is initiated by an ordinary petition and not by a plaint and it is initiated before a Commissioner who is not a civil court. We have already indicated that the C. P. C. is applied only to a limited extent by Section 30 of the Workmen's Compensation Act. This claim moreover is also not a claim under the Railways Act at all and therefore Section 80 of the Railways Act is immaterial.

Also because of what we have indicated Section 79 of the C. P. C. is not attracted. We do not therefore think that the case of the Assam High Court compels us to hold that the claim for compensation should have been against the Central Government and that it was made against the wrong person. However if in their claim the claimants had made out that their deceased father was an employee of the Central Government then of course the position would have been different but the allegation specifically is that his employer was the Oudh and Tirhut Railway through its General Manager.

11. We think that the court below erred in coming to the conclusion that the claim preferred must fail because the Oudh and Tirhut Railway through its General Manager was not the employer but the Central Government. The consequence must be that the appeal is allowed and in terms of the findings recorded by the Commissioner for workmen's compensation by the order under appeal, the claim made in the miscellaneous application filed before him must stand decreed to the extent of Rs. 3,500/-. The costs of this appeal will be paid by the railway to the appellants.