
(1999) 12 OHC CK 0019
In the Orissa High Court
Case No : M.A. No. 588 of 1996

Divisional Manager, S.E. Railway and Another	APPELLANT
Vs	
P. Vijayaratnam	RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Railways Act, 1890 — Section 3(2)
Workmens Compensation Act, 1923 — Section 2(1), 30

Citation : (2000) 2 ACC 743 : (2001) ACJ 1415 : (2000) 89 CLT 57 : (2001) 3 LLJ 415

Hon'ble Judges : Laxmikanta Mohapatra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923 has been filed against the order passed by the Assistant Labour Commissioner and Commissioner for Workmen's Compensation, Rourkela in W.C.C. Case No. 53 of 1991.

2. Case of the claimant before the Commissioner is that her husband P. Narayan Rao (hereinafter referred to as the "deceased") was engaged as Commission Vendor in Rourkela Railway Station Departmental Canteen by the present appellants on monthly wages of Rs. 1000/-. On September 10, 1991 when the deceased had gone to fetch kerosene he was run over by a goods train at about 7.50 p.m. and died on the spot. He was aged 41 years at the time of his death and the present respondent raised claim of Rs. 72,548/-towards compensation.

3. The appellants filed a joint written statement wherein it was admitted that the deceased was engaged as a Commission Vendor under the Rourkela Departmental Catering Unit, but he was not employed as a railway servant by the Railway Administration. On September 10, 1991 the deceased had gone for urgent work to Gopabandhupali and died as train ran over him. However, it was stated that the deceased was earning Rs. 961.95p. as monthly wage. Claim was

contested mainly on the ground that the deceased being vendor on commission basis, he was not a workman so as to come under the purview of Workmen's Compensation Act.

4. The Commissioner of Workmen Compensation framed four issues and found that there was relationship of master and servant between the present appellants and the deceased. He further found that the deceased was a workman under the Workmen's Compensation Act and railway servant as defined u/s 3(2) of the Indian Railways Act, 1890. The Commissioner also found that the accident took place in course of employment and accordingly directed payment of compensation to the tune of Rs. 69,787.54p.

5. Mr. B. Pal, learned senior counsel appearing on behalf of the appellants has raised mainly two grounds: (1) Deceased was not a railway servant or workman so as to attract provision of Workmen's Compensation Act or Rules made thereunder; (2) The deceased was engaged as commission vendor under Railway Departmental Catering Unit, but was not a railway servant under the Railway Administration and as such cannot be treated as a railway employee.

6. While considering the question as to whether the deceased was a workman as defined under the Workmen's Compensation Act or not, it is necessary to refer to Section 2(1)(n) of the Workmen's Compensation Act. Under the said provision "workman" means, any person other than a person whose employment is casual in nature and who is employed otherwise than for the purpose of employer's trade or business. Section 8 of the Indian Railways Act, 1890 defines "railway servant" as a person not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as defined in Schedule-II. On reading of the evidence on record, it would show that the deceased was working from 6 a.m. to 6 p.m. or 6 p.m. to 6 a.m. as per the roster drawn by the Canteen Manager of Rourkela Railway Station. The deceased was entrusted to sell food stuff by preparing such food in stove. He could be suspended for reduction in sale. The Railway Establishment Manual provides for statutory canteens to be made available in stations. Vendors are medically examined by the Railway Administration and get free medical treatment at Railway Hospital. Dress and badges are provided to the vendors free of cost. Apart from this evidence, it is also admitted in the written statement that canteen services are a part and parcel of railway establishment. It is also admitted in the written statement that the deceased was under the control and supervision of the Commercial department for selling food to the travelling public on commission basis.

7. Learned counsel appearing for the Respondent relies on a decision reported in K.J. John, Assistant Public Prosecutor, Grade-I, Palai Vs. The State of Kerala and others, , M.M.R. Khan and others etc. Vs. Union of India and others, etc., Their Lordships have held that the employees under statutory and non-statutory recognised railway canteens are to be treated as railway employees. In the present case, it is admitted that the canteen services are part and parcel of the

railway establishment and is a statutory departmental canteen of the railways. Therefore, the deceased has to be treated as a Railway employee and comes within the purview of definition of workman as defined under Workmen's Compensation Act.

8. It is also argued on behalf of the appellants that the accident did not take place in course of employment. Learned counsel appearing for the respondent submits that whether the accident took place in course of employment or not is a finding of fact and is not available to be challenged in an appeal u/s 30 of the W.C. Act. Learned counsel appearing for the respondent relies on a decision in Union of India and Others Vs. Harish Chandra Goswami, . This Court in the said decision has held that "the finding to the effect that respondent No. 1 was a workman under respondent No. 2 and had sustained the injuries in an accident arising out of and in course of employment, is essentially a finding of fact not available to be challenged in an appeal u/s 30 of the Workmen's Compensation Act.

9. Evidence on record also proves that the deceased was engaged as commission vendor and while he was returning from Gopabandhupali carrying kerosene to be used in stove, he was run over by a goods train. In view of such evidence and the decision of this Court referred to above, I agree with the finding of the Commissioner that the accident arose out of and in course of employment. The quantum of compensation has not been challenged before this Court and there is no necessity to discuss the evidence with regard to the same. I find no merit in the appeal and the same is accordingly dismissed. Parties to bear their own costs.