

(2012) 09 KAR CK 0251
In the Karnataka High Court
Case No : M.F.A. No. 12081 of 2006 (WC)

Divisional Manager, South Central Railway	APPELLANT
Vs	
Smt. Manjamma and Another	RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Citation : (2012) 09 KAR CK 0251

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Ajay U. Patil for Sri Ashok Harnahalli Associates, for the Appellant;
S.S. Yadrami, Advocate for R-1, R-2 service held sufficient, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—This appeal is directed against the Order dated 23.09.2006 passed by the Commissioner for Workmen's Compensation, Bellary in case No. CR 46/2006. One Pujari Anand was tightening the angular bolt, with his spanner, on bridge No. 7 near Tharanagar Narihalli Dam on 01.06.2002. When he lost the grip of the spanner, the spanner fell down. He also lost the balance and fell into the river from a height of about 40 feet. On the respondent No. 1 (the wife of the deceased) filing the claim petition, the Commissioner awarded the compensation of Rs. 4,15,960/-.

2. This appeal is filed by the South Central Railway's Divisional Manager. Sri Ajay U. Patil, the Learned Counsel for the appellant submits that there is no master-servant relationship between the appellant and the deceased, No documents whatsoever are produced to show that the deceased was employed by the Railways, that there was any contract by the Railways with the respondent No. 2 and that the deceased was employed by the respondent No. 2. He submits that the P.W. 2, who claims to be the deceased's co-worker has admitted in the course of cross-examination that he does not even know who is the respondent No. 2. He only states that he and the deceased were working for Rafiq and Badri.

3. Sri Ajay U. Patil submits that the work in question was entrusted to M/s. Sai Engineering Contractors, Thirupathi and not to M/s. Sai Engineer Construction Company Ltd., Guntakal. The said contractors are based in Thirupathi; but the respondent No. 1 furnishes the contractors address as if they are based in Guntakal. He submits that the showing of the bridge number in question is also incorrect.

4. His next limb of submission is that without there being any basis, the deceased's income is taken as Rs. 4,500/-per month. That it is on the higher side is the grievance of the appellant.

5. Sri S.S. Yadrami, the Learned Counsel for the respondent No. 1 submits that the deceased and the claimant are illiterate persons. They may have shown the bridge number as 47 as popularly called, but it is not in dispute that the deceased was working at the bridge in question on the fateful day. Even assuming that he was not directly employed by the Railways and that he was employed by a contractor, the liability to pay the compensation would be that of the Railways only. He read out Section 12(1) and (3) of the Employees Compensation Act, 1923 which is as follows:

12. Contracting.- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

6. On the income aspect of the matter, Sri Yadrami submits that the deceased was doing a heavy duty labour risking his life. PW-2 has deposed that he and the similarly placed heavy duty labourers were getting Rs. 4,500/- per month. No question or suggestion is put by the appellant to P.W. 2, in the course of cross-examination, to demolish or contradict the same.

7. The main object of enacting Section 12 of the said Act is to secure the compensation to the employees, who have been engaged through the contractor by the Principal Employer for the latter's ordinary part of business. The scheme of Section 12 of the said Act is intended to secure a workman the right to claim compensation not only against the immediate employer, be it a contractor or sub-contractor, but also against the Principal Employer.

8. It is common knowledge that the Railway Companies/Department preserve the railway-track, constructed as a bridge on the river. Constructing, repairing, etc., of the railway-lines undoubtedly constitute ordinary part of the business of Railways. The question of absolving the Principal Employer of its liability would arise only if the contract was to do certain things, not ordinarily a part of its business or trade. Section 12(1) of the said Act makes it obligatory for the Principal Employer to pay compensation to the accident victim or his dependent - claimants, once it is shown that the work executed by the contractor is ordinarily a part of the business or trade of the Principal Employer, who would have engaged his own employees to do such work, but for the contract.

9. The Principal Employer can always be fastened with the liability to pay the compensation. But he is entitled to the indemnification from the contractor. On the specious technical pleas that the bridge number is not correctly mentioned in the claim petition or that there is incorrect description of the contractor, the Railways cannot refuse to make the payment of compensation to the workman.

10. The appellant's statement of objections filed before the Commissioner is one of blank denials; it does not specify in what capacity the deceased was at the bridge tightening the nut-bolts. As an instrumentality of the State, Railways ought to have come out and produced the copies of the agreement, if any, between the Railways and the contractors. It is certainly not the case of the Railways that the deceased was there at the bridge as a tress-passer. Going by normal human conduct also, nobody would go to such risky places, unless his services are hired for gain.

11. A reference to the documents which have come into existence at an undisputed point of time is useful. The inquest mahazar states as follows:

On the same lines is the spot mahazar.

12. The claim of P.W. 2 that he and the deceased were getting Rs. 4,500/- per month is not disputed in the course of cross-examination by putting any question or suggestion. Further, considering the age of the deceased (30 years) and the high risk work for the doing of which he was employed, taking his income as Rs. 4,500/- per month is fair and reasonable.

13. Not finding any merit and any questions of law, much less substantial questions of law, I dismiss this appeal. The amount deposited by the appellant is ordered to be transferred to the Commissioner for Workmen's Compensation for being disbursed to the claimant, in accordance with law, No order as to costs. In

view of the disposal of the main matter, I.A. No. 2/2007 and Misc. Cvl. 100568/2010 do not survive for any consideration and they are dismissed as having become unnecessary.