
(1957) 05 CAL CK 0026
In the Calcutta High Court
Case No : A.F.O.O. No. 51 of 1956

Dukhini Rajaharin

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 29-05-1957

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)

Citation : AIR 1957 Cal 653

Hon'ble Judges : Chakravartti, C.J;K.C. Das Gupta, J

Bench : Division Bench

Advocate : Nalini Kanta Mukherjee, for the Appellant;Sunil Kumar Basu and Pratap Chandra Choudhury, for the Respondent

Final Decision : Allowed

Judgement

Chakravarth, C.J.—This is an appeal on behalf of one Dukhini Rajaharin, widow of Tilokdhari Rajwar, a person who was employed under the Corporation of Calcutta as what has been called a Conservancy or lorry cooly. He died on the 3rd day of October, 1953, as a result of an accident which was not denied. The widow's case was that on the day In, question and at the time when the accident had occurred, the lorry on which her husband had been serving was being backed near the Bellaghata Bridge and her husband was, as it was quaintly put", "showing hands to the pedestrians." While he was doing so, the lorry, it was said dashed him against a wall and injured him so severely that he died in the Campbell Hospital on the self-same day. On the above recital of facts, the widow contended that her husband had died of personal injury caused to him by an accident arising out of and in the course of his employment under the Corporation of Calcutta and that consequently she was entitled to an amount of Rs. 1,500 as compensation on the basis of the monthly wages of her deceased husband which were Rs. 50 per month.

2. "As I have already stated the Corporation of Calcutta did not deny that Tilakdhari Raj-war had died in course of an accident, nor that he had been

employed under the Corporation. It appears to have been contended that while an accident did happen, it did not happen exactly at the site alleged, but the exact location of the place of accident appears to be immaterial. The wages of the deceased employee were also admitted to have been Rs. 50 per month, as alleged by his widow. The only substantial defence raised was that in view of the nature of his duties, Tilakdhari Rajwar was not a workman within the meaning of the Workmen's Compensation Act.

3. The respondent's case was that her husband was a workman within the definition of that term, as given in Clause (i) of Schedule II to the Workmen's Compensation Act, read with Section 2(1)(n). More specifically stated, the respondent's case was that her husband had been employed otherwise than in a clerical capacity in connection with the operation of a vehicle, propelled by mechanical power. I may say at once that, in the application itself the appellant alleged that her husband had been a lorry cooly as also a cleaner. No evidence that he had been a cleaner was given, but the contention that he came under Clause (i) of Schedule n to the Act was based upon the statement of his duties as made by her sole witness, Suraj Rajbhar, in the course of his cross-examination.

4. In his examination-in-chief the witness stated that Tilakdhari Rajwar had been a cooly of a Conservancy lorry, belonging to the Corporation of Calcutta. The only other statement material to his duties which the witness made was that, on the day in question, when the driver was moving the lorry back, the deceased "was showing hands to the pedestrians". If his evidence had been left there and there had been no cross-examination at all, there would be no evidence whatever on which the appellant could have claimed her husband to have been a workman. She was, however, to be assisted by the lawyer for the respondent Corporation who elicited by his cross-examination facts which the appellant's own lawyer had failed to do. In answer to questions put to him in cross-examination, the witness stated that the deceased "used to move the handle of the lorry. He also used to show hands to the pedestrians, at the time of turning back the lorry." There can be no question that the witness was competent to depose as to the things he was speaking to. because he said that he used to work with? Tilakdhari Rajwar.

5. The position, therefore, is that although the deceased employee has been designated as a Conservancy cooly or a lorry cooly, no evidence of any kind was given on behalf of the respondent Corporation as to what his actual duties were. It need hardly be pointed out that the mere description or designation "cooly" does not carry with it any implication of any particular kind of duties performed by a person, bearing the designation. The only positive evidence that there is in the case about the duties of the deceased is that his duties were, or included, starting the engine of the lorry, presumably in the morning, and signalling to pedestrians and warning them of the backward movement of the lorry at the time it was backed. Since the language is that the deceased "used to" perform those duties, the only legitimate conclusion is that those were, or at least were amongst, the normal duties of his post.

6. The learned Commissioner for Workmen's Compensation, however, has held that the cooly of a Conservancy lorry cannot be said to be a person employed in connection with the operation or maintenance of a vehicle propelled by steam or other mechanical power. In taking that view, he has relied upon his own view of the evidence in this case and his reading of two decisions which he has cited. The learned Commissioner's reading of the evidence, I regret to have to say, was a complete misreading. He seems to have thought that the evidence amounted to no more than that the deceased was "showing hands to the pedestrians" at the time of the accident or at most that only on certain and rare occasions would he engage himself in that manner. Having thus disposed of the two alleged duties of "showing hands to pedestrians" and "moving the handle of the lorry" as work only casually done by the deceased, the learned Commissioner proceeded to observe that the main and substantial occupation of the deceased was employment as a Conservancy cooly. He seems to have thought that since the deceased was called a Conservancy cooly or called a lorry cooly by his own widow his duties must mainly have been loading & unloading of rubbish or at least doing something which was in no way connected with the operation or maintenance of the lorry in which he was employed. Why the learned Commissioner should have permitted himself to take that view is not clear, because, as I have pointed out, on the side of the respondent Corporation there is no evidence whatever as to what the duties of the deceased as a Conservancy cooly were.

7. The view which the learned Commissioner took as to the law applicable was bound to be coloured or, if I may say so, discoloured by the wrong view which he took of the facts. For the law which he thought had been authoritatively laid down, he went to two decisions, one of Harries C. J., and Banerjee J., in the case of *Prativa Das Gupta v Corporation of Calcutta* 55 Cal WN 496 (A) and another *S. B. Das Gupta J.*, and myself in the case of *Paresh Chandra Ganguly Vs. Jawahir Press, Calcutta*, (B). I am not a little surprised that the learned Commissioner should have considered either of the two decisions cited by him to be relevant. The first of the cases was concerned with a person employed, under the Corporation of Calcutta as a Building Inspector who had met his death, at the hands of a riotous mob. It was contended on his behalf that he was a workman, because he was "employed in the construction, repair or demolition of buildings and other like constructions and, therefore, came under Clause (VIII) of Schedule II to the Act. Harries C. J. who delivered the judgment of the Court, pointed out that a Building Inspector employed by the Corporation had nothing to do with the construction of buildings and that, in any event the work which the deceased was employed to do was substantially work of a nature which would not bring him within the category of persons employed in the construction, repair or demolition of buildings. It was in that context that the learned Chief Justice observed that in coming to a conclusion as to whether a man was or was not a workman, his ordinary work was to be regarded and that if the work in which a person was substantially employed was work which would not bring him within

the category of workmen, the fact that on very rare occasions he might do something that would bring him within that category would not suffice for the purposes of the Act. No exception need be taken to those propositions laid down by the learned Chief Justice which I would respectfully accept. I cannot, however, see what application those principles or propositions have in the present case, because it is not the evidence that the accused workman "showed hands to pedestrians" or "moved the handle of the lorry" only on rare occasions and that the work in which he was substantially employed was something different. Even less relevant to the present case is the decision of S. R. Das Gupta J., and myself. It is true that in that case also we were concerned with a person who could perhaps be described as a conservancy coolie and whose duties were, or included, loading of garbage in Corporation lorries with a forked instrument and unloading them into railway wagons at the Chingrihata platform. Because the workman had to load the refuse on the lorry from the street and proceed to Chingrihata platform and to unload the same into railway wagons there, it was contended that he was a workman within the meaning of Clause (xii) of Schedule II to the Act. being a person employed upon a "railway", as defined in Clause (iv) of Section 3 and Sub-section (1) of Section 148 of the Indian Railways Act. The contention was rejected by us, because we, held that in order to establish that the workman was employed by the Corporation in a way which could be said to be fulfilling a contract with the Railway Administration the railway concerned must be a separate administration and not an administration owned by the Corporation itself. The artificial meaning which would make the wagons at the Chingrihata platform "railway" wagons would not suffice for the purposes of the definition. Again I fail to see how the learned Commissioner could think that he could, derive any assistance from that decision.

8. There is no genus or species of employees, going by the name of conservancy coolies and having known, ascertainable or invariable duties. Because a certain view was taken of the status of a particular employee, called a conservancy coolie, on the evidence given regarding his duties and because it was held that that particular employee was not a workman, it can by no means be said that all employees, who may bear the designation of a conservancy coolie, howsoever employed, must be excluded as a matter of law from the category of a workman. The learned Commissioner for Workmen's Compensation seems to have fallen exactly into the error of reading the decisions relied upon by him as laying down general propositions. He seems to have overlooked the elementary principle that whether or not a particular employee is a workman must be decided by reference to the duties performed by him as disclosed by the evidence and not by the designation borne by him and still less by any decision given in another case with respect to another employee bearing, it might be, the same name for his calling. There may be conservancy coolies under the Corporation of Calcutta whose sole duty it is to load and unload rubbish and who have nothing what ever to do in connection with the operation or maintenance of the lorries on which they serve. There may be other employees, also called conservancy coolies, whose duty it is

to help the driver or help the maintenance or operation of conservancy lorries in other ways. There may be a third class of employees whose duties might be a combination of the two kinds I have mentioned. Many other possibilities can be thought of, So far as the present case is concerned, the only duties of the deceased employee which have been proved are duties which show him to have been a person employed in connection with the operation of a lorry which was a vehicle propelled by mechanical power. In order that a lorry may be operated, it must be made to move; and in order that it may be made to move, its engine must be started. So also must pedestrians near about a moving lorry be warned by signals if it is to be backed and unless the pedestrians in the vicinity of the lorry are so warned off, it cannot be backed safely, that is to say, safely operated backward. "In connection with" is an expression of wide content and the deceased employee in the present case, who used to start the engine of the lorry to which he was attached and also helped in backing it safely when it needed to be backed, was clearly employed in connection with its operation. He thus came clearly under Clause (i) of Schedule II and was clearly a workman as contemplated by the Act.

9. If the deceased was a workman, there is no other disputed question to decide. His wages, as I have already stated, were admitted to have been Rs. 50 per month. According to Section 4(1)(a) of the Act, where death results from the injury caused to a workman by accident and the workman was in receipt of monthly wages falling within the limits shown in the first column of Schedule IV, the amount of compensation in the case of an adult must be the amount shown against such limits in the second column of the Schedule. According to the second column of the Schedule, the compensation awardable in the case of the death of an adult whose monthly wages were between Rs. 45 and Rs. 50 is Rs. 1,500. That was the amount claimed by the appellant and an award of that amount must, therefore, be made in her favour.

10. In the result, the appeal is allowed, the judgment and order of the learned Commissioner for Workmen's Compensation are set aside & the appellant's application, for compensation is allowed, We award her a compensation of Rs. 1,500 on the basis of the admitted wages of her deceased husband and the scale laid down in Schedule IV and we award her further the costs of this appeal --the hearing-fee being assessed at three gold mohurs. She will also have the costs of the application which we assess at Rs. 17.

K.C. Das Gupta, J.

11. I agree.