
(1977) 07 CAL CK 0044
In the Calcutta High Court
Case No : F.M.A. No. 453 of 1972

General Manager, Eastern Railway

APPELLANT

Vs

Sukumar Indu

RESPONDENT

Date of Decision : 05-07-1977

Acts Referred:

Railways Act, 1890 — Section 3, 3(7)

Workmens Compensation Act, 1923 — Section 2(1)

Citation : 81 CWN 999 : (1977) 2 ILR (Cal) 116

Hon'ble Judges : Sankar Prasad Mitra, C.J.;S.K. Datta, J

Bench : Division Bench

Advocate : Smriti Kumar Roy Chowdhury, for the Appellant;Anil Kumar Banerjee and Sudhir Kumar Saha, for the Respondent

Final Decision : Dismissed

Judgement

Sankar Prasad Mitra, C.J.—This appeal arises out of an order of the Workmen's Compensation Commissioner which he passed on December 15, 1971. The Respondent was employed in the office of the Divisional Engineering Construction, Eastern Railway, at Lilooah. On June 3, 1968, he came to the Chowringhee Railway Accounts office for the purpose of getting pay bills of Railway employees passed. While he was returning from Chowringhee office to the office at Lilooah he met with an accident and suffered injuries. The Commissioner has awarded compensation for Rs. 6,300 (Rupees six thousand and three hundred) on the basis of 50 per cent loss of earning capacity and corresponding costs and hearing fee.

2. The question which the Railway authority has raised for our consideration relates to the construction of Section 2(1)(n)(i) of the Workmen's Compensation Act, 1923. Let us quote the relevant provisions of the Statute. These are:

2(1)(n)"Workman"means any person...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 Railway.

Section 3(7) of the Indian Railways Act, 1890, gives the definition of a "Railway servant". A "Railway servant" means any person employed by a Railway administration in connection with the service of a Railway.

3. Reading Section 3(7) of the Indian Railways Act, 1890, with the provisions of Section 2(1)(n)(i) of the Workmen's Compensation Act, 1923, quoted above, the position appears to be that any person who is employed by a Railway administration but not permanently employed in any administrative, district or Sub-divisional office of a Railway is a "workman".

4. The expression "not permanently employed in any administrative, district or Sub-divisional office" was considered by Niyogi J. of the Nagpur High Court in *Secretary of State v. Mt. Geeta widow of Imam and Ors.* AIR 1938 Nag. 91 (92, 93). In this case the deceased was engaged as a hospital peon. The Railway Company was contending that he was not a workman within the meaning of the above definition. Niyogi J. has dealt with this contention. It is useful for us to set out extensively what the learned Judge had to say. Dealing with the contention of the Railway administration Niyogi J. stated:

The expression used in Section 2(1)(n)(i) is "not permanently employed in any administrative, district or sub-divisional office of a Railway". The Railway Company contend that the expression "permanently employed" means a Railway servant who is "permanently engaged" as opposed to one who is "temporarily engaged" the claimants on the other hand contend that it means one who "habitually or continuously works" in office.

I confess the construction of that expression is by no means easy. The language appears to be clear but involves difficulty in its application. The well-known rule is to construe the language of a statute in its ordinary grammatical sense unless it leads to some incongruity or manifest absurdity. I have therefore to see which of the two interpretations proposed stands this test. The two interpretations proposed by the parties differ in this that while the Railway Company lays emphasis on the duration of the employment, the claimants stress the nature and venue of the employment. If duration of the employment is to be a test, it will logically follow that a Railway servant who is not permanently employed, that is to say, a person who is temporarily employed will fall under the definition of "workman". The result will be that a privilege which is given to a temporary servant is denied to a permanent servant. To put at more concretely, a person working as a substitute for six months in place of a permanent incumbent in the District Office will be entitled to be regarded as a workman while the permanent servant for whom he acts as a substitute will not be a workman. The position becomes still more anomalous if such a rule is applied to the case of Imam, the deceased. Supposing he had been ill for six months and his substitute, who would necessarily be a temporary servant (that is, a servant "not permanently employed"), had sustained a fatal injury, the Railway Company on its own interpretation would be bound to admit him to be a workman and pay compensation to his dependants. If so, will it be reasonable to exclude Imam

from the purview of the import of the term "workman"?

It is obviously illogical for the Railway Company to say "we will compensate for the loss of the life of a substitute because he was not a permanent servant, but we are not bound to compensate his principal because he was a permanent servant". Such a situation is untenable and could not have been intended by the Legislature. Furthermore, it must be observed that the compensation is not a remedy for negligence on the part of the employer but it is rather in the nature of insurance of the workman against certain risks of accident, as was pointed out by Lord Haldane in (1924) A.C. 302 *Upton v. G.C. Railway*. Can it be said that a temporary servant is exposed to risks and that a permanent servant is not? If risk is incidental to the employment, there is no reason why the Legislature should be partial in showing its tenderness to the temporary servant only.

The word "employment" has a twofold meaning : It may mean (i) engagement, that is, contract of service, or (ii) work in the course of employment. It is in the latter sense that the work appears to have been used in the list of persons described in Schedule 2, Workmen's Compensation Act. The expression "not permanently employed in any office of a Railway" contemplates such servants as are not required to perform their duties continuously or habitually in the office, that is to say, indoors, but occasionally have to do outdoor work in the course of their employment. The word "permanent" denotes continuity and the expression in its concrete application will mean not continuously working in any office. I concede that this may appear to be a forced interpretation but it yields a sense which accords with the experience of practical life. To sum up, the plain grammatical meaning of the expression under consideration leads to absurdity while extending the enacting words beyond their commonplace import yields a rational meaning. The task of making the choice involves me in no difficulty. I have no hesitation in accepting the second interpretation which avoids imputation of an absurd intention to the Legislature.

5. We are inclined to agree with the conclusion of Niyogi J. and his reasons for those conclusions. It seems to us that the expression "not permanently employed in any administrative, district or sub-divisional office of a Railway" in Section 2(1)(n)(i) of the Workmen's Compensation Act, 1923, excludes a person who has to work habitually and continuously in the office and has no outdoor duties at all. If it can be established by evidence that the person concerned had to perform outdoor duties in course of his employment in addition to his duties in the office itself, he would be a "workman" within the meaning of the Act. We have to apply these principles to the facts of the case before us. The evidence of the claimant is : "My work consists of drawing up pay-sheets, to do all correspondence work at Calcutta and to get bills passed etc".

6. It is common case that to get bills passed he had to come from the Lilloah office to the Chowringhee Accounts office of the Railway and return from that office whenever occasion arose. He was not, therefore, habitually and continuously engaged in any administrative, district or sub-divisional office of a

Railway. In the premises, he was a "workman" within the meaning of Section 2(1)(n)(i) of the Act. The accident occurred, as we have stated, on June 3, 1968, when he had gone from his Liloah office to the Chowringhee office to get bills passed and was returning from the Chowringhee office to the Liloah office.

7. As the evidence adduced by the claimant remains unchallenged, although we do not agree with the reasonings advanced by the Workmen's Compensation Commissioner, we accept the conclusion that the claimant was a "workman" and uphold the award of compensation he has made.

8. The appeal is, accordingly, dismissed. There will be no order as to costs.

S.K. Datta, J.

9. I agree.