
(1988) 04 PAT CK 0005
In the Patna High Court
Case No : L.P.A. No. 3 of 1983 (R)

Gulabdei Ahir

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 30, 4, 4A

Citation : (1989) ACJ 1072 : (1988) PLJR 1122

Hon'ble Judges : S.B. Sanyal, J;B.P. Singh, J

Bench : Division Bench

Advocate : T.K. Das, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sanyal, J.—This Letters Patent Appeal is directed against a judgment of this Court rendered u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter to be referred to as "the Act") rejecting the claim for compensation by the wife of the deceased on the ground that the deceased was employed in a clerical capacity in the Railways and thus, not covered by the definition of workman u/s 2(1)(n) read with Schedule II, Clause (i) of the Act.

2. Facts: The deceased was employed by Eastern Railway administration as Head Trains Clerk. He was murdered while in course of duty, when he had gone to the railway yard for operation of railway wagons and coaches, on 13.4.1967 by miscreants. The claim was laid by the wife of the deceased for a lump sum compensation of Rs. 10,000/- as provided u/s 4 of the Act read with Schedule IV. The Railways assailed the claim, inter alia, on the grounds that the claimant is not the legally married wife; that the claim is barred by limitation; that the death was not in course of the deceased's employment; and that the claim is not maintainable in law as well as in fact.

3. In support of the claim the claimant examined a few witnesses and also produced documentary evidence. Exh. W-5 is a letter of the Chief Yard Master to

the Divisional Personnel Officer stating the Petitioner to be a supervisory staff and he was on twenty-four hours duty. Witness No. 1 of the claimant stated that the deceased was on the operation side looking after the movements of wagons in the yard with no fixed working hours. There were large number of clerks working under him. Witness No. 1, on behalf of the Railways, affirmed that there were about thirty-six Assistant Train Clerks and Senior Train Clerks who used to work under the deceased. The Assistants were required to take down the number of wagons. The deceased, on the other hand, with the assistance of the Assistants was to look after the operation and movement of the wagons and its maintenance. The deceased was a supervisory staff of the Railways. The responsibility and the duty of the deceased was such that he may be required by the Railways for operation of the wagons at any time of the day with no fixed duty hours. The post-mortem report (Exh. 3) dated 15.4.1967 shows that the deceased bore sharp cutting injuries which is said to be the cause of his death. The Presiding Officer, Labour Court, found the claim not barred by limitation and/or any other infirmity. It also held that the deceased met with his death in connection with some work in course of his employment. The wage statement filed showed the monthly wage of the deceased ranging between Rs. 300/- to Rs. 400/- but scuttled the claim on the ground that he was designated as clerk and therefore, outside the definition of workman under the Act as envisaged u/s 2(1) (n) read with Schedule II of the Act. An appeal was taken to the High Court by the claimant and the learned single Judge held that the nature of the job was only clerical, though the scheme of the Act is to compensate the employees who strictly come within the definition of the workman and whose nature of job put them to some amount of danger. The benefit of the Act is meant for such persons who are involved in the operation and maintenance of the Railways. It, further, held "there is nothing on the record to show that the job of the deceased employee was in any way related with the maintenance or the operational activities of the wagons whose number he was to note." It was, however, further held by the learned single Judge that "while performing his job and noting the number of wagons, he was murdered by some criminals but, of course, during the duty hours". Having so held the appeal was dismissed on merit.

4. Mr. Tara Kumar Das, Learned Counsel appearing on behalf of the claimant, contended that the deceased was a supervisory staff and was not working in a clerical capacity in the Railways. His duty required the operation of the railway wagons in the yard. In discharge of his responsibility he was assisted by 37 clerks whose duty was to take down the number of the wagons to facilitate the operational duty cast upon the deceased. There has been an admission of this fact by the Yard Master as would be evident from the exhibits as well as the evidence of the Railways" witness No. 1. According to the Learned Counsel, Railways have not even pleaded, in the show cause, that the deceased was working in a clerical capacity, therefore, he is outside the definition of workman. He has further contended that even assuming that the deceased was working in a clerical capacity even then the claim was maintainable in view of Schedule II,

Clause (xii). Nobody has appeared for the Railways. I have no difficulty in holding that the claim could only be entertained if the deceased is covered u/s 2(1)(n)(i) read with Schedule II Clause (i) of the Act. Clause (xii) of Schedule II deals with such persons who are employed by a contractor or sub-contractor fulfilling a contract with the Railways. Therefore, said clause has no application. I find, therefore, no merit in this submission of the Learned Counsel for the Appellant.

5. I, however, find considerable force in the argument of the Learned Counsel that the deceased was not working in a clerical capacity even though he was designated as Head Trains Clerk. It is now well settled that designation is not decisive in this matter but what is decisive is the nature of the duties and functions assigned to an individual. The deceased was to oversee the work of his subordinates. His duties and responsibilities required issuance of directions and control the movement of the wagons in the yard. A clerk, on the other hand, is a person doing routine work as a writer, copyist, account keeper, correspondence or stereotype work without any power of control or dignity or creativeness. It is true that in course of the supervisory duty of the deceased he might have been required to take down numbers of wagons which may be said to be of clerical nature. But, in deciding whether a particular person is doing clerical work or not, one has to find out the dominant nature of the work done by him. In my opinion, the clerical work done by the deceased was incidental to deceased's main work of supervising the operation of the movement of the wagons in the yard. Even though the learned single Judge was dealing with a Miscellaneous First Appeal, there has been no reference to any evidence, either oral or documentary, for the court to conclude that the deceased was only required to note down the number of the wagons and submit it to his office. From the impugned judgment it further appears that the learned single Judge was of the opinion that under the scheme of the Act a workman is a person who is exposed to some amount of danger and risk in performing his duty. I am afraid, there can be no such generalization. As for example Clause (xii) of Schedule II deals with all persons employed directly or through a sub-contractor by person fulfilling a contract with the railway administration. Clause (xiii) envisages inspector, mail guard, sorter or van peon in the Railway Mail Service, or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department is a workman. These entries negative the assumption of the learned single Judge in dismissing the claim as obviously there could be no hazard for discharging the work of a sorter or for doing outdoor work in the Indian Posts and Telegraphs Department. It may be true that persons doing hazardous work are also workmen within the meaning of Section 2(1)(n) read with Schedule II of the Act. In my opinion, the two courts have rejected the claim looking to the designation of the deceased and not the duties and responsibilities discharged by the deceased in connection with his employment. This has vitiated their decision. I am of the firm opinion, on the basis of the oral and documentary evidence made available to the learned single Judge in the form of a paper-book, that the deceased was not engaged in clerical capacity in the Railways. His duties required the proper operation of the

wagons in the yard of the Railways with the assistance of 37 Assistants whose work he had to control and also issuance of directions for proper operation and maintenance of the wagons in the yard. It is curious that the Railways nowhere pleaded in their show cause that the deceased was not a workman within the meaning of the Act but the Presiding Officer decided the point against the claimant even though not pleaded by the employer. In view of the finding of the Labour Court that the monthly wage of the deceased was Rs. 400/- , the compensation of Rs. 10,000/- claimed is within Schedule IV and Section 4 of the Act. The amount of Rs. 10,000/- claimed is not said to be excessive by the two courts below. Therefore, the Appellant shall be entitled to the said sum of Rs. 10,000/- claimed by way of compensation.

6. The next question, which falls for consideration, is whether the claimant shall, at all, be entitled to any interest on the said amount. Section 4-A envisages payment of compensation u/s 4 of the Act as soon as it fell due. It further envisages provisional payment based on the extent of liability which the employer expects and such payment shall be deposited with the Commissioner or paid to the workman, as the case may be, but if the employer makes a default in paying the compensation due under this Act, within one month from the date it fell due, the Commissioner has been authorised to award simple interest at the rate of 6 per cent per annum on the amount due together, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding 50 per cent of such amount to be paid by way of penalty. The courts have held that interest has to be paid from the date of accident or death till realisation. (See a Bench decision of Allahabad High Court in the case of Madan Mohan Verma Vs. Mohan Lal,). A similar view has been expressed in the case Jayamma Vs. Executive Engineer, P.W.D., . A Bench of the Bombay High Court has taken similar view in the case of Iqbal Shamshuddin Ansari v. Ghasi Salauddin Ansari 1980 Lab IC 125. I am, therefore, of the view that the claimant shall be entitled to the payment of simple interest at the rate of six per cent per annum on the sum of Rs. 10,000/- from 13.4.1967 till the actual payment of the compensation claim. She shall further be entitled to fifty per cent of the compensation claimed by way of penalty.

7. In the result, the Letters Patent Appeal succeeds with costs. The judgments of the learned single Judge and that of the Labour Court are set aside with the aforesaid directions. Hearing fee is assessed at Rs. 1,000/- .

B.P. Singh, J.

8. I agree.