

(1954) 03 CAL CK 0018

In the Calcutta High Court

Case No : A.F.O.O. No. 265 of 1952 against order of Commr. Workmen's Compensation, West Bengal

Sahari Rajwarni

APPELLANT

Vs

Chief Executive Officer, Corpn. of Calcutta

RESPONDENT

Date of Decision : 08-03-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Railways Act, 1890 — Section 3(4)
Workmens Compensation Act, 1923 — Section 2(1), 30

Citation : AIR 1955 Cal 307 : (1954) 1 LLJ 633

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

Bench : Division Bench

Advocate : Arun Prokas Chatterjee, for the Appellant; Sunil Kumar Basu, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti C.J.

1. This is an appeal on behalf of one Sahari Rajwami whose application for compensation on account of the death of her -husband, Chamari Rajwar, has been dismissed by the Commissioner.

2. According to the petition of the appellant, her husband sustained an injury "in course of his employment outdoor as a labourer in the Motor Vehicle Department." We are informed that the duties of the deceased person included loading of garbage in Corporation lorries with a forked instrument and unloading them into a railway wagon at the Chingrihata platform. It is alleged and not disputed that on 10-5-1951, he received an injury in the region of his ankle from the pronged instrument with which he was unloading the garbage at the railway platform and that wound having subsequently turned septic, it led to an attack of tetanus to which the man succumbed on 18-5-1951. On those facts, there could be no doubt that the injury arose out of the employment of the man and that it

was also suffered in the course of his employment.

3. The real question, however, is, was the employment of the man "such as made him a workman within the definition contained in the Act? Before the Commissioner, reliance appears to have been placed only on Clause (26) of the Schedule and it appears to have been argued that since it was the duty of the person concerned to load and unload garbage, he could be said to have been employed in the handling of goods. That argument did not appeal to the Commissioner, although he regretted having to decide against the widow.

4. Before us it was sought to be argued by Mr. Chatterjee that in view of the evidence in the case, the deceased came under Clause (12) of Schedule II and that the Commissioner ought so to have held. The evidence relied upon by Mr. Chatterji is the deposition of the Assistant Foreman of the Corporation in the Motor Vehicle Department. He stated that the deceased "had to load the refuse to the lorry from the street and proceed to Chingrihata platform and to unload the same into railway wagons there." On that evidence, Mr. Chatterjee has contended that the deceased must be taken to have been employed upon a railway as defined in Sub-section (4) of Section 3 and Sub-section (1) of Section 148, Railways Act, 1890, inasmuch as he was employed on the railway platform; secondly, that he was also employed by a person fulfilling a contract with the Railway Administration, inasmuch as the Corporation must have a contract with the Railway for the carriage of the refuse; and thirdly that he was also employed directly by a person fulfilling a contract with the Railway Administration, because it was not disputed that the deceased person was employed directly under the Corporation.

5. Clause (12) was not relied upon before the Commissioner. Had there even been a "prima facie" case that the widow might succeed on the basis of Clause (12), we might have considered whether we would not direct a remand of the case on appropriate terms, but having considered the language of the clause more closely, we have come to the conclusion that no useful purpose will be served by remanding the case. The facts which have got to be found before a case can be brought under Clause (12) have not been found in the case. They might, it is true, be found on a remand, but it appears to us that there is practically no chance of two cardinal facts being found in favour of the appellant :.

As I have already stated, "railway", as contemplated by Clause (12), is "railway" as defined in Sub-section (4) of Section 3, Railways Act. That definition defines "railway" as railway "for the public carriage of passengers, animals or goods." The "railway" contemplated, therefore, is a railway which is employed in the transport of goods, animals or passengers on behalf of and for the public and which must cater to the public, if required, provided accommodation is available. It is hardly possible that the railway which is employed in clearing the City's refuse and taking them to the dumping ground is a railway for public carriage.

In the second place, the only clauses of sub-s. (4) under which the present case might conceivably come would be Clause (a) and (c). The first speaks of all land within the fences or other boundary-marks indicating the limits of the land appertaining to the railway. The second, so far as is material, speaks of stations. It may be conceded that a railway platform would come under one or other of those clauses, but Clause (12) of Schedule II, Workmen's Compensation Act, speaks of a person who is "employed upon a railway". It is noticeable that the definition of "railway" does not include railway wagons and if the present case is to be brought under Clause (12) it will have to be held that the deceased person was a workman, because he was employed upon a railway platform. To my mind, "employed upon a railway" means employed upon or employed in some work to be done on or in regard to the various places or component "parts of a railway, as enumerated in the definition section. In the present case, if the deceased workman can be said to have been employed on anything concerning a railway at all, he was employed only in unloading the refuse into the railway wagons, but wagons are not included in the definition of "railway". So far as the platform is concerned, he was only walking over it, but doing nothing to it.

6. It was also pointed out by the learned Advocate for the Corporation that in order that the Corporation could be said to be fulfilling a contract with the Railway Administration, the railway concerned in the present case would have to be a separate administration and not an organisation owned by the Corporation itself. That proposition is obviously correct and it is again a question of fact as to whether the railway which carries the City's refuse is the property of the Corporation or is an independent organisation.

7. Having regard to the numerousness of the questions of fact which require to be found in the appellant's favour before the case of her husband can be brought under Clause (12) and having regard to the obvious difficulties, some of which I have mentioned, I am not inclined to entertain an argument under Clause (12), raised for the first time in appeal.

8. The appeal is accordingly dismissed, but we shall make no order as to costs.

S.R. Das Gupta J.

9. I agree.