
(1996) 04 MP CK 0040

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 320 of 1987

Sarat Chandra Nanda and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-04-1996

Acts Referred:

General Clauses Act, 1897 — Section 6
Railways Act, 1890 — Section 82C
Workmens Compensation Act, 1923 — Section 2

Citation : (1998) ACJ 274 : AIR 1997 MP 70 : (1996) ILR (MP) 151 : (1997) 1 MPLJ 119

Hon'ble Judges : Shamboo Singh, J; S.K. Dubey, J

Bench : Division Bench

Advocate : V.P. Verma, for the Appellant; S.K. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

These two appeals u/s 82F (2) of the Indian Railways Act, 1890 (for short "the Act") arise out of common award dated 7-5-1987 passed by Ex officio Claims Commissioner, Jabalpur, whereby the two applications No. 6/ 84 and 7/84 (Saratchand Nanda v. Union of India) filed u/s 82C of the Act claiming compensation for death of one N. K. Nanda and his wife Tapaswani Nanda, were dismissed holding that the appellants do not fall within the meaning of "dependant" as used u/s 82C of the Act.

Facts giving rise to the appeals are these: The appellants/claimants are the sons and daughters of N. K. Nanda and Tapaswani Nanda who on 15-9-1984 were travelling in first-class compartment of 143 Dn Kalinga Express holding Ticket Nos. 6519 and 6518 respectively which collided with a goods train at New Katni Junction as a result of which both with other passengers were killed in the train accident.

The appellants claimed compensation of Rs. 2,49,000/- for the death of N. K. Nanda who was a retired Deputy Commissioner of Excise and Rs. 1,00,000/- for the death of his wife Tapaswani Nanda and Rs. 9,000/- which the deceased N. K. Nanda was carrying with him which was lost in train accident. The respondent challenged the maintainability of the application for compensation u/s 82C of the Act, as the claimants are not "dependant" within the meaning assigned to it in clause (d) of Section 2 of the Workmen's Compensation Act, 1923 (for short the W.C. Act). On the evidence adduced by the parties, the Claims Commissioner held that the two deceased were bona fide passengers holding ticket Nos. 6518 and 6519 who died on 15th September, 1984 on account of accident of 143 Dn Kalinga Express, and for each death the compensation of Rupees 1,00,000/- was payable according to Schedule. The deceased were carrying Rs. 9,000/- cash for the marriage of their son which was lost in the accident. However, Claims Commissioner dismissed the applications holding that the claimants do not fall within the definition of "dependant" as defined u/s 2(d) of the W.C. Act.

Section 82A of the Act provides that the railway administration shall be liable to pay compensation for the loss occasioned by death or personal injury to a passenger and -also for loss, destruction or deterioration of animals or goods of the passengers caused due to a train accident in the course of working of railway and the railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent as set out in Sub-section (2). Sub-section (2) fixes the limit of liability which by amendment was enhanced from Rs. 50,000/- to Rs. 1,00,000/- in respect of any one person.

Short question involved in the two appeals is whether the claimants who were major at the time of accident are entitled to maintain the application for compensation as "dependant" within the meaning assigned to it under Clause (d) of Section 2 of the W.C. Act.

It is not disputed that the claimants were major and were independently having their earning source and were not dependant on the deceased. The expression "dependant" is not defined in the Act. However, in Explanation after Sub-section (3) of Section 82G of the word "defendant" has been defined to have the same meaning assigned to it in clause (d) of Section 2 of the W.C. Act. Section 82C of the Act reads thus:

"82-C. Application for compensation -

(1) an application for compensation u/s 82A arising out of any accident of the nature specified therein (may be made to the claims Commissioner) -

(a) by the person who has sustained the injury or suffered any loss, or

(b) by any agent duly authorised by such person in this behalf, or

(c) where such person is a minor, by his guardian, and

(d) where death has resulted from the accident, by any dependant of the

deceased.

(2) No application for compensation under this section shall be entertained unless it is made within three months of the occurrence of the accident, but the Claims Commissioner may on good cause shown allow any application to be made at any time within one year of such occurrence.

Explanation -- Where a Claims Commissioner is appointed u/s 82B with respect to any particular accident or accidents, the reference in this Sub-section to the occurrence of the accident shall be construed as reference to the date on which the Claims Commissioner so appointed assumes charge of his office.)

(2A) If an applicant desires to be paid interim relief u/s 82HH, he may send to the railway administration a copy of the application made under Sub-section (1) with a request for payment of such interim relief.

(3) If in an application for compensation under this section, any person makes a statement which is false and which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation -- In this section, (and Section 82HH) the word "dependant" has the meaning assigned to it in clause (d) of Section 2 of the Workmen's Compensation Act, 1923."

Shri V. P. Verma, learned counsel for the appellants, conceded that within the definition of "dependent" as defined in the W.C. Act, the claimants would not be entitled to maintain the application for compensation. However, he submitted that the Act was amended from 1st July, 1990, Chapter XIII, deals with the liability of railway administration for death and personal injury to passengers due to accident. In view of the definition of dependant given in Clause (b) of Section 123 of the Act, the application for compensation would be maintainable as wife, husband, son and daughter, and in the case the deceased passenger is unmarried or is a minor his parents, are enumerated in category (i) of clause (d) of Section 123. Therefore, the intention of the Parliament is that right to claim compensation should not be restricted as to the meaning assigned to "dependant" in Section 2(d) of the W.C. Act. Though, the accident occurred and applications for compensation were decided prior to the amendment of the Act, but the subsequent change in law should be taken into consideration, as appeal in a continuation of the suit, reliance was placed on a decision of the Supreme Court, in case of Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva and Others, and in case of Smt. Dayawati and Another Vs. Inderjit and Others, .

The meaning of the word "dependant" as stood prior to amendment, has now been deleted from the corresponding new Section 123, by redefining it in the Act itself in clause (b) of Section 123. The basic difference in the two definitions as assigned in Section 2(d) of the W.C. Act and in Clause (b) of Section 123 of the Act, is "dependant" on the earning of the deceased : Category (i) of clause (d) of

Section 123 of the Act, enumerates the persons i.e. the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parents who need not be dependant wholly or partly on the earning of the deceased. The qualifying adjectives like minor, legitimate and unmarried, widowed have been dropped in the new definition. Therefore, in view of the amended definition in the Act, even an earning member who is not dependant on the deceased is entitled to claim compensation if he is an enumerated person in category (i) of Section 12(b), but this definition cannot be applied retrospectively as it gives a substantive right to claim compensation only to a dependant who falls within the meaning as assigned to it under clause (d) of Section 2 of W.C. Act.

True, the legislature in its wisdom can legislate a law prospectively as well as retrospectively. However, it is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Therefore, the submission that the new definition of the "dependant" in Section 123(b) of the Act should be taken into consideration cannot be accepted as it has not been expressly or by implication made retrospectively applicable, as from the language of the amended provision in the Act it is clear that there are no sufficient words in statute to show intention of the Parliament to affect the existing rights, therefore, the amended definition would be "deemed to be prospective only" *"nova constitutio futuris formam imponere debet non praeteritis"*. In other words, the provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. See decision of the Supreme Court in case of *State of Madhya Pradesh and others Vs. Rameshwar Rathod*, and the observations in *Principles of Statutory Interpretation*, 5th edition, 1992, by Shri G. P. Singh, at page 293.

It is also well settled principle of law that rights of the parties are to be determined at the commencement of lis. The amended Act is not clarificatory, recently, the Supreme Court in case of *R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan (deceased by legal representatives)*, while dealing the provisions of Section 4(1)(2) of the Benami Transaction (Prohibition) Act, 1988 (45 of 1988) and its earlier decision in *Mithilesh Kumar and Another Vs. Prem Behari Khare*, and Section 6 of the General Clauses Act, 1897, observed in para 17, thus:--

"The presumption against retrospective operation is not applicable to declaratory statutes. As stated in *Craies* and approved by the Supreme Court :

"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the Common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error whether in the statement of the common law or in the interpretation of

statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word enacted."

But the use of the words "it is declared" is not conclusive that the Act is declaratory for these words may, at times be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language "shall be deemed always to have meant" is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore if the principal Act was existing law when the Constitution came into force the amending Act also will be part of the existing law."

In view of the fact that the rights are to be determined at the time of commencement of the lis, and that Chapter XIII of the Act has not been made retrospectively applicable, expressly or by implication, therefore, subsequent change in law cannot be taken into consideration for holding the application for compensation filed u/s 82C of the Act as maintainable, as the appellants do not fall within the definition of "dependant" as given in Explanation after Sub-section (3) of Section 82C and the meaning assigned to it u/s 2(d) the W.C. Act.

In the result, the appeals fail and are dismissed with no order as to costs.