

(1999) 12 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 905/97

Smt. Rambha Bai

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 02-12-1999

Acts Referred:

Employers Liability Act, 1880 — Section 1(5)
Railway Claims Tribunal Act, 1987 — Section 10, 13, 13(1), 13(1A), 15
Railways Act, 1989 — Section 123, 124, 124A

Citation : (2000) 1 MPHT 573 : (2000) 1 MPLJ 384

Hon'ble Judges : D.P.S. Chauhan, J;A.K. Mishra, J

Bench : Division Bench

Advocate : P. Diwakar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

This appeal u/s 23 of the Railways Claims Tribunal Act, 1987 is directed against the order dated 5-3-97, passed in Claim Case No. OA/620/96 by the Railways Claims Tribunal, Bhopal Bench, Bhopal whereby the claim of the petitioner was rejected by the Tribunal as having no jurisdiction to entertain the same.

Issue No. 1 was as "Whether the applicant proves that the applicant's husband death was owing to the accident as contemplated u/s 124 and Section 124A of the Railways Act, 1989 ?" and in this issue the Tribunal considered the position regarding its jurisdiction analysing the provision of Section 123(a) which defines the word "accident" as an accident of the nature described in Section 124 of the Railways Act, 1989 (for brevity hereinafter referred to as the Act). Section 124 which relates to extent of liability is extracted below :

"124. Extent of liability:-- When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle

a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident."

The liability is only when in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, would entitle the passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof. The question for consideration developed as to whether the word "train" has been defined under the Act or even under the Railways Claims Tribunal Act, 1987.

Learned counsel for the petitioner submitted that the word "train" has to be given a wider meaning so to serve the cause of justice otherwise a person who suffered injuries or the dependents of the person who had died in the accident would not receive anything by way of damages. It is a fact that "train" has not been defined. But, reading Section 124 it makes it clear that a trolley cannot be a train.

Learned counsel submitted that the accident took place with a trolley and a goods train and the submission is that the trolley should be treated as a passenger train as per requirement of Section 124 of the Act. The trolley which met the accident was fitted with a motor, and therefore, it was mechanically propelled trolley and not a men driven trolley. In the same Act, the trolley and the train are used and it cannot be treated that the two words used in the same enactment carry one single meaning. If the trolley is to be interpreted as train then it amounts creation of a fiction, which is the job of the legislature.

It is well known principle of law that if a word in statute is not defined then it would be given the meaning which is known in the common parlance. In this regard a reference may be made to case of *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, . In the *Stroud's Judicial Dictionary*, Vol. 5, meaning of the train is given as "a series of trucks propelled by hydraulic power into a goods station", was a "train upon a railway" within Section 1(5), *Employers' Liability Act, 1880* (43 & 44 Vict., C. 42) (*Cox v. Great Western Railway*, 9 Q.B.D. 106). This shows that a train upon railways was found comprehensive and it was said that "speaking in a general way, the legislature meant that a locomotive engine by itself, or anything that was drawn along a railway or was in course of being drawn along a railway by that locomotive engine, should be included in a "train". "Train" under Sections 2 and 310 of the *Railways Act of Canada 1919* was held to include an engine running by itself and pulling another engine after it. Although no cars were attached to it and it was

held that an engine and its tender are not to be considered as a train.

Section 13 of the Railways Claims Tribunal Act, 1987 deals with the jurisdiction, powers and authority of Claims Tribunal and the bar of jurisdiction is contained u/s 15 which says that on and from the appointed day, no Court or other authority shall have or be entitled to exercise any jurisdiction, powers or authority in relation to the matters referred to in Sub-sections (1) and (1-A) of Section 13.

Such considered extent is not covered u/s 13 and, therefore, the jurisdiction so far as the present case is concerned in relation to the Civil Court is not to be treated as excluded. Apart from this the Workmen's Compensation Act is a special Act and Section 10 deals with the claims. Learned counsel submitted that he may be permitted to avail the remedy under the Workmen's Compensation Act, 1923 as the petitioner was pursuing the remedy as he was advised under the forum under the Railways Claims Tribunal Act and for the delay the Commissioner under the fifth proviso has the ample power to condone the delay.

On the basis of submission we consider that justice should not be denied to any person and now the petitioner wants to resort to the remedy under the Workmen's Compensation Act, we permit the petitioner to avail the remedy as may be available under the law and as may be advised.

In view of above the petition is dismissed without expressing any opinion on the merit of the subject matter.