

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. HARILAL
&
THE HONOURABLE MR. JUSTICE P. SOMARAJAN

MONDAY, THE 3RD DAY OF JULY 2017/12TH ASHADHA, 1939

MFA.No. 8 of 2013 (B)

AGAINST THE ORDER IN WCC NO.15/2011 OF THE COMMISSIONER FOR
EMPLOYEE'S COMPENSATION (DEPUTY LABOUR COMMISSIONER), PALAKKAD,
DATED 15-02-2012.

APPELLANTS/APPLICANTS:

1. SMT. AJEEMA, W/O. LATE RAZAK
2. RIYAS @ RIYAZUDDIN
3. FIROZKHAN, S/O. LATE RAZACK

ALL ARE RESIDING AT 21/547, KIZHAKKEVENNAKKARA
P.O. NOORANI, PALAKKAD.

BY ADV. SRI. P. V. CHANDRA MOHAN

RESPONDENTS/OPPOSITE PARTIES:

1. SOUTHERN RAILWAY
REPRESENTED BY GENERAL MANAGER,
SOUTHERN RAILWAY HEAD OFFICE,
CHENNAI, PIN CODE 600 003.
2. DIVISIONAL MANAGER
DIVISIONAL OFFICE, SOUTHERN RAILWAY,
PALAKKAD-678 001.

BY ADV. SRI. V. E. ABDUL GAFOOR, SC, RAILWAYS
BY SRI. C. S. DIAS, SC, RAILWAYS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
03.07.2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Harilal & P. Somarajan, JJ.

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Dated this the 3rd day of July, 2017

JUDGMENT

Harilal, J.

The appellants are the dependants of a deceased Railway employee, who died in an accident. The appellants claim that the deceased Razak was under the employment of the first Opposite Party as sweeper-cum-porter of Nethravathi 'A' Cabin. On 6.3.2000, while he was going to his cabin, he was hit by a train engine and he died on the spot. According to the appellants, the accident arose out of and in the course of employment. So also, he would come under the definition of “workman” and thereby the dependants are entitled to get compensation for the death. The Opposite Parties resisted the said claim contending that the application is not maintainable in law as the accident was not arising out of and in the course of employment of the deceased and the deceased was a permanent employee under the Railways and thereby he was excluded from the definition of “employee” in the Employees' Compensation Act, 1923.

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2. After considering the rival submissions, the Compensation Commissioner rejected the application on a finding that since the deceased was a permanent employee under the Railways, he was not an employee/workman as contemplated under Section 2(1)(n) of the Workmen's Compensation Act, 1923. The legality and propriety of the reasonings, whereby the application stands rejected, have come up before us in this appeal.

3. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

4. The short question that arises for consideration is whether the deceased Razak was a workman as contemplated under Section 2(1)(n) of the Workmen's Compensation Act, 1923. Section 2(1)(n) of the Workmen's Compensation Act, which defines "workman", reads as follows:

"2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context,--

.....

.....

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- (n) “**workman**” means any person who is --
- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989) not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or
 - (ia) (a) a master, seaman or other member of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,
(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
(d) a person recruited for work abroad by a company,
and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;
 - (ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does

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not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead include a reference to his dependants or any of them..”

5. On a bare reading of the definition itself, it is discernible that a permanent employee in any administrative, district or sub-divisional office of the Railway will not fall under the definition of “workman”. Coming to the present case, it has come out in evidence that the deceased Razak was a permanent employee, employed under the administrative department of the Railways for 23 years. That apart, it has come out in evidence that the wife of the deceased has accepted all service benefits including Group Insurance Scheme, leave surrender, provident fund dues, pension benefits etc. and the son of the deceased was given job on compassionate ground which was agreed by the applicants.

In the above analysis, the Compensation Commissioner is justified in finding that the deceased Razak was not a “workman”

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defined under the Workmen's Compensation Act and thereby the dependants are not entitled to get any compensation under the Act. Hence, there is no illegality or impropriety in the findings of the Commissioner. Hence, this Appeal is dismissed.

**K. Harilal
Judge**

**P. Somarajan
Judge**

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