

03.07. 2023
item No.5.
n.b.
ct. no. 551

FMA 792 of 2008
with
IA No. CAN 1 of 2008(Old No. CAN 4242 of 2008)

Union of India
Vs.
Smt. Akterannessa & Ors.

Mr. Avinash Kankani,
Mr. Suman Majunder,
.....for the appellant.

Mr. Asit Kumar Hazra,
Mr. Animesh Samanta,
Ms. Soumi Chatterjee,
.... For the respondents.

The instant appeal has been preferred by Union of India through the General Manager, South Eastern Railway against the claimants/respondents, being aggrieved and dissatisfied with the judgment dated March 11, 2008 passed by the learned Commissioner Women's Compensation, 3rd Court, West Bengal in claim case No. 173/2001.

The sole ground, which raised by the appellant before the appellate Court is that the accident of the employee(deceased) was not arising out of in the course of employment.

It is the argument of the learned advocate for the Union of India that the learned Commissioner has committed an error in passing the impugned award in favour of the claimants without observing the fact that the

employee was died beyond the 210 meters from his place of employment. He also argued that there is no nexus between the accident and the course of employment of the said employee.

It appears from the impugned judgment that the learned Commissioner is of opinion that the victim was died during the course of his employment and within the periphery of his place of posting.

Learned advocate for the appellant is further argued that the opinion of the learned Commissioner regarding periphery of his employment is not correct. He pointed out that the written statement was filed by the Union of India with a specific fact that the dead body of the deceased was found about 210 meters away from KM 26/20 on the Eastern side of Chengail Railway Station. The deceased employee was on duty as Gate Keeper of Level Crossing Gate of KM 26/30 to 26/28. Thus, it cannot be said that the employee has died during the course of his employment.

Learned advocate appearing on behalf of the claimants/respondents submitted before this Court that the O.P.W. 1 i.e. Station Master, during the course of cross-examination specifically deposed that the employee when died was on duty. He further pointed out that no evidence was adduced on behalf of the Railway to prove otherwise. The ground taken by the learned advocate for

the appellant in this appeal is baseless and the order and judgment passed by the learned Tribunal is sustainable.

In support of his contention he cited decision of Madras High Court reported in **(2014(4) T.A.C 300(Mad)** wherein the employee died in a massive heart attack during the course of employment. So, it has been observed by the Hon'ble Madras High Court that the deceased died during the course of employment. He also cited another decision reported in **2014(4) T.A.C.315(A.P.)** where the Hon'ble Andhra Pradesh High Court has observed that one driver who died after a massive chest pain can be construed to be the death of the employee under the course of employment.

Heard the learned advocate, perused the judgment passed by the Hon'ble High Court, it appears that the only ground taken in this appeal is well advance by the Union of India through written statement. The view of the learned Commissioner was challenged. It is observed that learned Commissioner is of the opinion that the death of the employee was occurred accidentally within the periphery of the place of posting.

It is true that the Post- Mortem Report reflected that the death of the deceased was anti-mortem of accidental in nature. The dead body of deceased was found beyond 210 meters from KM 26/20. It is also directed that the deceased was employed as Gate Keeper within KM 26/30 to KM 26/28, which is far away from his place of death

In this Workmen's Compensation case, it appears that the deceased died during the time of his employment. It is true that there is no direct nexus in respect of accidental death of the deceased and his course of employment, but such non-existence of nexus need to be proved by the Railway/Union of India by sufficient and cozont evidences to negate the claim of the claimants. No such evidence is adduced, no documentary or direct evidence is there to prove that the deceased was left his employment and away from his place of posting and suffered the accident. It is also uncertain whether who carry the dead body of the deceased at far away from the place of his posting. To justify the plea of Railway, it must be proved that the deceased has left his place of posting or he had been at the place of his death for any reason other than his work of employment. The Railway did not adduce any such evidences.

There are no positive, direct or corroborative evidences on record to sustainable the plea of the railway.

Considering the same, it appears to me the interference with the impugned judgment and order passed by the learned Tribunal would be not justified.

Thus, at this juncture, I find no merit to entertain the appeal. Impugned judgment passed by the learned Commissioner is sustained. The impugned award passed by the learned Tribunal is hereby affirmed with a rider that the award was carry 12% per annum after one month

from the date of the accident. The Union of India has already deposited the entire awarded sum with the office of the Commissioner.

The claimants/ respondents are at liberty to withdraw the sum with accrued interest. If it appears that the accrued interest along with principal is less than the awarded sum passed by this Court, then they shall make a prayer before the Union of India to obtain the balance amount.

With the above observation, FMA 792 of 2008 is disposed of.

All connected applications, if any, are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)