

Mahendra Kumar Vs. Union of India

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Court : Madhya Pradesh

Decided On : Aug-26-2013

Appellant : Mahendra Kumar

Respondent : Union of India

Judgement :

1 M.C.C. No.1336/2005 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR SINGLE BENCH: HONBLE SHRI JUSTICE A.K.SHRIVASTAVA M.C.C. No.1336 / 2005 APPLICANT: Mehendra Kumar S/o. Late Shri Bholu Ram R/o. New Sabji Mandi, Bhopal (M.P.) Versus RESPONDENT: Union of India Through General Manager Central Railway, CSTM, Mumbai -----

Applicant by Shri Rahul Choubey, Advocate. Respondent by Shri Govind Patel, Advocate. -----

ORDER

(26.08.2013) This review application has been filed against the order dated 13.04.2005 passed by this Court in Misc. Appeal No.12457/1997 whereby the appeal of the applicant was dismissed on the basis of preliminary objection raised by learned counsel for respondent that because the Railway Administration has not been sued in terms of Section 3(6) of the Railways Act, 1890 (in short Act of 1890.), the claim petition which was rejected by the Tribunal, was affirmed by this Court.

2. The contention of learned counsel for the applicant is that the decision of Supreme Court in the case of State of Kerala v. General Manager, Southern Railway, Madras AIR 197.SC 253.was passed on the basis of Act of 1890, however, the claim case was filed under the Railways Act, 1989 (in short Act of 1989.). 2 M.C.C. No.1336/2005 Learned counsel for applicant has invited my attention to the definition clause 2(32) of Act of 1989 wherein the railway administration has been defined and has submitted that if the definition is read conjointly in juxtaposition to section 107 of this Act it would be as clear like a noon day that only against railway administration the application would be filed. Hence, learned counsel for applicant submits that since on the basis of quoting the wrong provisions of law which were not applicable, the impugned order in the aforesaid Misc. Appeal has been passed, therefore, there appears to be a mistake apparent on the face of record and therefore this review application be allowed.

3. On the other hand, Shri Patel, learned counsel appearing for respondent argued in support of the impugned order.

4. Having heard learned counsel for the parties, I am of the view that this review application deserves to be allowed.

5. Admittedly the claim case was filed after the commencement of Act of 1989 since it was filed in the year 1996 and if that is the position, according to me, the provisions of Act of 1890 would not be applicable whereas the provisions of Act of 1989 would be applicable. It would be condign to quote Section 2(32) of Act of 1989, which reads thus:- (32) railway administration. in relation to - (a) a Government railway, means the General Manager of a Zonal Railway; and (b) a non-Government railway, means the person 3 M.C.C. No.1336/2005 who is the owner or leasee of the railway or the person working the railway under an agreement. Similarly it would be quite germane to quote Section 107 of the Act of 1989, which reads thus:- 107. Applications for compensation for loss, etc., of goods.- An application for compensation for loss, destruction, damage, deterioration, or non-delivery of goods shall be filed against the railway administration on whom a notice under section 106 has been served.

6. If the aforesaid two provisions are read conjointly since claim case was filed by the applicant under the Act of 1989 therefore neither the decision of General Manager, Southern Railway, Madras (supra) nor provisions of Act of 1890 would be applicable and thus the impugned order has been passed on the basis of the provisions of old Act of 1890 which were not applicable. Hence there is a mistake apparent on the face of record.

7. Resultantly, this review application is allowed and the impugned order dated 13.04.2005 is set aside. No costs. The Misc. Appeal is restored to its original number. Registrar (J.) is hereby directed to list the appeal for hearing before the Bench according to the roster. Let a copy of this order be placed in the file of Misc. Appeal No.12457/1997. (A.K. Shrivastava) Judge 26.08.2013 SS

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