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Court : Karnataka

Decided On : Nov-28-1967

Reported in : AIR1968Kant208; AIR1968Mys208; (1967)2MysLJ617

Judge : B.M. Kalagate and ;K.R. Gopivallabha Iyengar, JJ.

Acts : Workmen's Compensation Act, 1923

Appeal No. : Misc. First Appeal No. 2 of 1967

Appellant : Malatibai and ors.

Respondent : The Divisional Controller, Belgaum and anr.

Judgement :

Gopivallabha Iyengar, J.

(1) This appeal is filed against the order of the Commissioner for Workmen's Compensation, Belgaum, in File No. GB/WCA 3/1965, dated October 6, 1966.

(2) One Madhukar Mangesh Kekare was an employee of the Mysore State Road Transport Corporation, and he appears to have been working as a Traffic Controller at Belgaum under the control of the Corporation. He is said to have fallen on the ground on 17-9-`964 while he was on duty and subsequently he died on 19-9-1964.

(3) On 1-4-1965, the dependents of the deceased, who are now the appellants before us, made an application before the Commissioner for Workmen's Compensation, Belgaum, claim compensation of Rs. 8,000/-. This claim was resisted by the Corporation. One of the objections was that the deceased was not a 'workman' within the meaning of the Workmen's Compensation Act, 1923. They also contested the claim on other grounds.

(4) The Commissioner framed certain issues, of which the first issue is the one that arises for consideration in this appeal. It is as follows:

'Whether the deceased Sri Madhukar was workman within the meaning of the Workmen's Compensation Act, 1923.'

The Commissioner held against the claimants on this issue. In view of the above he stated that it was unnecessary to consider the other issues and, therefore, dismissed the appellants' application for the compensation. It is against this order that the present appeal is preferred.

(5) It is undisputed that the deceased was employed as a Traffic Controller. Regarding the scope of his duties, the Commissioner states in his order that

'..... It is admitted that the deceased was working as a Traffic Controller whose duty is to see that the bus arrives at the Bus Stand half an hour before its departure and that before its departure he is to count the number of passengers in the bus and verify it with tickets issued by the Conductor and make an endorsement on the Way Bill and make a note in the Register maintained at the Bus Stand also and that in the event of any breakdown he is to report to the Divisional Manager'.

(6) It was contended before the Commissioner, as is done here, that taking into consideration the duties that the deceased was performing, he would not come within any of the clauses of Schedule II of the Workmen's Compensation Act. The Commissioner holds that clause (I) of Schedule II, which the appellants contended applies to the deceased.

'is specially and expressly limited to persons employed in connection with the operation or maintenance of a vehicle propelled by mechanical power or by electricity. The traffic Controller is not concerned with the operation or maintenance of the bus.'

(7) It is contended by Sri. N. A.Mandgi, learned counsel for the appellant, that this finding of the Commissioner is not in accordance with law. His contention is that taking into consideration the several duties that had been assigned to the deceased, he comes within the meaning of the word 'workman,' as provided in clause (i) of Schedule II of the Workmen's Compensation Act. The relevant provision reads as follows:

'The following persons are workmen within the meaning of section 2(1)(n) and subject to the provisions of that section..... any person who is:--

(i) employed..... or/on a railway, in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle;.....'

(8) It is clear from the aforesaid provision that any person employed in connection with the operation of a vehicle propelled by mechanical power or in connection with the loading or unloading of any such vehicle would be a workman. It should also be noted that there is an exception provided in respect of persons who are employed in a clerical capacity.

(9) Considering the nature of the work that was being done by the deceased, it appears to us that the deceased was employed in connection with the operation of a vehicle propelled by mechanical power. He was to see that the bus arrived at the bus stand at the proper time and that its departure was also at the proper time. He was to count the number of passengers in the bus and verify it with the tickets, and make an endorsement on the way bill and also make a note in the register maintained in the bus stand, and he was also required to report to the Divisional Manager in the event of any breakdown. It was contended by the respondents' learned counsel that the duties of the deceased should be considered as clerical. But, looking at the nature of his duties which entails on the employee moving from

bus and then getting into the bus, checking the number of passengers and noting it down on the way bill, and reporting to the Divisional Manager, in the event of any breakdown, these functions cannot be considered to be clerical.

(10) Therefore, the only question that arises for consideration is whether these duties are in connection with the operation or maintenance of the vehicle or loading or unloading of the said vehicle. The words 'in connection' are quite wide as to include employees not merely operating the vehicle but also in connection with it otherwise. Similarly in regard to 'loading or unloading' a vehicle. The duties of the deceased appear to us to be connected with the operation of the vehicle. This conclusion is also supported by the exclusion of the clerical staff from the definition of the word 'workmen' in clause (I). If the exclusion of the persons employed in a clerical capacity is to be omitted from clause (I), it would mean that even persons who are employed in a clerical capacity would be 'workmen' within the meaning of clause (I). So the contention of the appellants that the term 'in connection with the operation of the vehicle' is not confined to the actual mechanical operation of the vehicle but extends to other activities connected with it, is sound. So, a person who is not employed in a clerical capacity but who is connected with the operation or maintenance of the vehicle propelled by mechanical power would be a workman. Therefore, the duties of the deceased are in connection with the operation of the vehicle. Further, in view of the fact that the deceased was also expected to report in the event of any breakdown of any vehicle, his duty should also be considered as being connected with the maintenance of the vehicle. Similarly his duties are also connected with the loading of the vehicle as he was to check the number of passengers in each vehicle. Hence it appears to us that he would come within the meaning of the term 'workmen' in clause (I) of Schedule II to the Act.

(11) In the view we take, the finding of the Commissioner for Workmen's Compensation on the first issue, is not in accordance with law and, therefore, it is set aside. The matter is sent back to the Commissioner to decide the other issues and dispose of the application in accordance with law.

(12) There will be no order as to costs.

(13) Order accordingly.

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