

**Dilip Singh Vs. General Manager, Central Railway and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Sep-06-2001

**Reported in :** 2003ACJ1257; (2002)IILLJ966MP; 2002(5)MPHT461;  
2002(2)MPLJ220

**Judge :** Bhawani Singh, C.J. and ;Arun Mishra, J.

**Acts :** Workmen's Compensation Act, 1923 - Sections 3

**Appeal No. :** M.A. No. 1752/1999

**Appellant :** Dilip Singh

**Respondent :** General Manager, Central Railway and ors.

**Advocate for Def. :** N.S. Ruprah, Adv.

**Advocate for Pet/Ap. :** A.D. Mishra, Adv.

**Judgement :**

Bhawani Singh, C.J.

1. This appeal is directed against the order of the Commissioner under the Workmen's Compensation Act, 1923 dated June 7, 1999, whereby the claim of the claimants has been dismissed,

2. Shortly stated, the facts of the case are that Rewal Singh (deceased) was employed with the respondents as Khalasi/Gangman. He was receiving monthly wages of Rs. 1006/- and was 32 years old when the accident took place on December 31, 1997. Claimants are children of the deceased. They were minors at the time of the accident and their mother left the house after being unable to bear the shock of the death of her husband and her whereabouts are not known even now. After reaching the age of majority, the claim petition has been filed claiming compensation of Rs. 1,90,497.00 and salary for 13 days.

3. Respondents have stated that the deceased was on leave from December 26, 1987 to December 30, 1987. He was to report for duty on December 31, 1987, but during the course of leave, he died. Therefore, the claimants cannot be paid compensation. The wages for 13 days is pending with the respondents which the claimants can take after completing necessary formalities. Therefore, the claim is liable to be dismissed.

4. On the pleadings of the parties, the Commissioner framed issues for determination of the dispute between the parties, among them, the most important are whether the deceased died during the course of leave or he died before reporting for duty.

5. The Commissioner has come to the conclusion that it could not be proved that the accident took place while the deceased was on duty. Consequently, the claim has been dismissed. Therefore, it has been challenged by the claimants through this appeal.

6. Shri Ruprah, learned counsel for the respondents, contended that there is no case for interference, since the claimants have not been able to prove that the deceased died while on duty. He relied on the Apex Court's decision in case of Regional Director, E.S.I. Corporation v. Francis De Costa AIR 1997 SC 432 : 1996 (6) SCC 1 : 1997-I-LLJ-34. It is also contended that claim has been preferred after lapse of two years period of limitation prescribed under the Act. The submissions are opposed by the learned counsel for the appellants.

7. The accident took place on December 31, 1987. Dilip Singh has stated that he was 10 years old on the date of the accident, which means he attained majority on December 31, 1997. The claim has been filed on September 19, 1996. Other claimants were also suffering from the same disability. Therefore, in terms of Section 6 of the Limitation Act, 1963, the claimants could prefer the claim after the disability of minority was over. Therefore, the claim has been filed within limitation and the objection by the respondents is liable to be dismissed.

8. Next question is whether the accident took place while Rewal Singh was on duty. After going through the evidence of the parties in this case minutely, we find that the deceased was on leave from December 26, 1987, which means his leave was over in the midnight of December 30, 1987 and he was to join the work on December 31, 1987. Shri Ruprah submits that he died on December 31, 1987 when he was on leave and was to report for duty. This is completely an erroneous assessment of evidence. Actually as stated above, his leave was over by midnight of December 30, 1987 and he was to resume work on December 31, 1987. Respondents have not stated that he was assigned work in the office with some officer at the railway station, nor it is the case of respondents that before joining duty, deceased was to report with some officer and after doing so, he was to be assigned work. This being so, the legitimate conclusion is that the deceased, who is stated to be Khalasi/Cleaner/Gangman was to work as khalasi and laying earth at the railway track. The accident took place at the railway track of the railway station where he was cut in the yard by the 394 passenger train. Therefore, it cannot be said that the deceased was not on duty at the time of accident and the contention raised by Shri Ruprah to the contrary is liable to be dismissed. The decision on which reliance has been placed by Shri Ruprah is not applicable to the facts of this case.

9. Adverting to the question of determination of compensation, we find that deceased was earning Rs. 1006 per month, (one thousand for our purpose). Therefore, 40% of this amount would come to Rs. 400 to be multiplied by the relevant factor of 203.85, Therefore, the compensation works out to Rs. 81,540.00 with 50% penalty and interest at the rate of 6% per annum.

10. The amount be calculated from February 1, 1988 with interest at the rate of 6% per annum on the amount of Rs. 81,540.00 till date of recovery and paid to the claimants. Out of the amount of compensation 33% is awarded to Kumari Smita alias Munni (claimant No.3) which shall be deposited with some nationalised bank in F.D.R., in her name through the manager of the bank by the respondents till she attains majority. Rest of the amount of compensation be paid to Dilip Singh and Kumari Geeta equally. The appellants shall also be entitled to cost of Rs. 5,000.00. The amount be paid within two weeks.

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