

I. L. R. Punjab and Haryana

(1967)1

APPELLATE CIVIL

*Before R. S. Narula, J.*M/S RAM SARUP AND ANOTHER,—*Appellants**versus*GURDEV SINGH AND ANOTHER,—*Respondents***First Appeal From Order No. 160 of 1962.**

March 4, 1966.

*Workmen's Compensation Act (VIII of 1923)—S. 2(1)(n)—Cleaner working on a truck—Whether a workman—Commissioner under the Act—Whether a civil Court—Motor Vehicles Act (IV of 1939)—S. 110-F—Whether bars the jurisdiction of the Commissioner to adjudicate the claim of the dependants of a cleaner who died as a result of accident—Motor Vehicles Act (IV of 1939)—Whether abrogates the provisions of the Workmen's Compensation Act (VIII of 1923)—Respective scope of the two Acts indicated.*

*Held*, that cleaning of a motor vehicle is essentially a part of its maintenance and the cleaner working on a transport vehicle is employed in connection with the operation and maintenance of the transport vehicle within the meaning of item (i) of Schedule II of the Workmen's Compensation Act and is, therefore, a workman as defined in section 2(1) (n) of that Act.

*Held*, that the Commissioner under the Workmen's Compensation Act is not a civil Court within the meaning of section 110-F of the Motor Vehicles Act and this section does not bar the jurisdiction of a Commissioner under the Workmen's Compensation Act to try a claim under that Act in respect of the death or bodily injury arising out of a motor accident in case where the claim is by a dependent within the meaning of section 2(1)(d) or by the injured person and is against an employer within the meaning of section 2(1)(c) if the deceased or the person who has suffered bodily injury was a workman as defined in section 2(1)(n) of the Compensation Act.

*Held*, that the Motor Vehicles Act does not repeal or abrogate the relevant provisions of the Workmen's Compensation Act, 1923. A claim under the Motor Vehicles Act can be filed, in a case where death has resulted from the accident, only by the legal representatives of the deceased. Minor brothers of a deceased, who are dependents within the meaning of the Workmen's Compensation Act, may or may not be his legal representatives. The scope of proceedings under

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the two Acts is different. From amongst the cases taken out of the jurisdiction of the ordinary civil Courts by section 110-F of the Motor Vehicles Act the cases triable by a Commissioner under the Workmen's Compensation Act form a separate category. The Court of the Commissioner under the Compensation Act is special Court and not an ordinary civil Court. The mere fact that the powers of the Commissioner are vested in a Senior Subordinate Judge or a District Judge does not mean that the Commissioner acts as a civil Court.

*First Appeal from the order of Shri J. S. Chatha, Commissioner under the Workmen's Compensation Act, Patiala, dated the 31st October, 1962, ordering the respondents to pay Rs 1,800 as compensation to the applicants.*

T. S. MANGAT, ADVOCATE, for the Appellants.

N. S. BHATIA, ADVOCATE, for the Respondents.

JUDGMENT.

NARULA, J.—This is an appeal under section 30(1) (a) of the Workmen's Compensation Act, 8 of 1923, hereinafter called the Compensation Act, against the judgment and award dated 31st October, 1962, of Shri J. S. Chatha, Commissioner under the Compensation Act at Patiala, Jangir Singh, brother of the respondents, was employed as a Cleaner on the truck of the appellant and was travelling in the said truck in the course of his employment when the vehicle overturned near Rajpura. As a result of the accident Jangir Singh was killed on the spot. The respondents, as dependents of the deceased, filed a petition before the Commissioner for payment of compensation. By order, dated October 31, 1962, the Commissioner allowed the application of the respondents with costs and ordered the appellant to pay Rs. 1,800 as compensation to them. This appeal has been preferred against that order.

At the hearing of the appeal before me on December, 3, 1965 Mr. T. S. Mangat, the learned counsel for the appellant, contended that each of the respondents was above the age of 18 years at the time of the accident and was, therefore, not a dependent as defined in section 2(d) of the Compensation Act. "Dependent" under that section includes a minor brother but not a brother who has attained majority. In the appeal no notice was issued to the respondents directly but the appellant got the notice issued to the guardian and next friend of the respondents on the assumption that they were minors. On the guardian having failed to represent the minors, Shri N. S. Bhatia, Advocate, had been appointed by this Court to

represent them as Court guardian. In view of the contrary stand taken up by the appellants I directed on December 3, 1965 that the appellant may appear personally to make a statement as to the age of the respondents at the time of the accident and at the time of filing this appeal. In pursuance of that order Ram Sarup appellant has appeared before me today and has made a statement in which he has denied complete knowledge of the age of the respondents either at the time of the accident or today. The only plea which the appellant had taken up at the trial of the petition before the Commissioner regarding the respondents not being the dependents of the deceased was that the respondents were not dependent on the deceased in the economic sense and that they were in fact being actually maintained by Mahan Singh, their next friend before the Commissioner. After carefully going through the evidence, the Commissioner rejected that plea. The learned Commissioner held that there is no reason to disbelieve the evidence produced on behalf of Gurdev Singh, etc., to the effect that they had really been dependent upon the deceased. The question of age of the respondents was not at all raised by the appellant before the Commissioner either in the appellant's written statement or at the time of arguments. The learned counsel tried to read the evidence led at the trial of the case to show that one of the witnesses for the respondents had stated that at least one of the respondents had attained majority at the time of the accident. No amount of evidence can be looked into on a plea which was never raised. Nor was the alleged discrepancy put to Mahan Singh when he entered the witness-box so that he could clarify the position. Even today the appellant himself is not able to say that the respondents were not minors at the time of the accident or as to what is their age now. In this situation, I do not find any force in the first argument of Mr. Mangat and hold that at the relevant time the respondents were dependents of the deceased within the meaning of section 2(d)(iii)(d) of the Compensation Act.

It is next contended by Mr. Mangat that the Commissioner should have dismissed the application of the respondents on the short ground that the deceased was not a "workman" within the meaning of section 2(n) of the Compensation Act. The relevant part of that definition is that workman means any person employed on monthly wages not exceeding 400 rupees in any such capacity as is specified in Schedule II to the Act. In Schedule II as many as 32 classes of employees are enumerated. Item (xxv) relates to persons employed

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as drivers. There is no separate category of "cleaners" or even "conductors" mentioned in the said schedule. The very first item in the Schedule provides that any person who is employed otherwise than in a clerical capacity in connection with the operation or maintenance of a vehicle propelled by mechanical power or in connection with the loading or unloading of any such vehicle would be a workman within the meaning of section 2(1)(n) and would be subject to the provisions of that section. Mr. T. S. Mangat contends that though a driver and a conductor of a motor vehicle would be employed in connection with the operation of the vehicle, a cleaner is not so employed. It is, therefore, contended by him that in the absence of evidence to show the nature of the duties of the deceased it cannot be said that merely by virtue of the nature of his employment as a Cleaner he was employed in connection with the operation or maintenance of the truck. I find no force in this contention. Cleaning of a motor vehicle is essentially a part of its maintenance. "Cleaning" has been defined in Stroud's Judicial Dictionary, Volume I, at page 497 as below:—

"To remove something, e.g., fluff, which is not part of machinery, but which is detrimental to the machinery while it is there, so that if not removed, it would stop the machinery, is to "clean" the machinery, within section 13 (1), Factory and Workshop Act, 1901."

Reliance is placed for that definition on the judgment of Darling, J., in *Taylor v. Dawson*, (1). Duties of Cleaners do not appear to have been separately set out in the Punjab Motor Vehicles Rules, 1940. But it is a matter of common knowledge that conductors employed on transport vehicles are loosely called "clearners". Duties of drivers and conductors of transport vehicles are set out in rule 4.43 of the Punjab Motor Vehicle Rules. Items (v) and (xvi) of the said rule read as follows:—

Item (v) "shall maintain the vehicle in a clean and sanitary condition."

Item (xvi) "shall take due care for the safe carriage of luggage belonging to the passengers".

These are the duties of a cleaner on a transport vehicle. I, therefore, hold that a cleaner working on a transport vehicle is employed in connection with the operation and maintenance of the transport vehicle within the meaning of item (i) of Schedule II of the Compensation Act and is, therefore, a workman as defined in section 2(1)(n) of that Act. So far as the duties of the cleaner in this particular case are concerned, the appellant cannot be allowed to make capital of want of evidence in that respect as he never raised any objection to the deceased not having been a workman within the meaning of the Act in his written statement. The learned counsel for the appellant relied upon the judgment of the Calcutta High Court in *Dukhini Rajaharin v. Corporation of Calcutta* (2), wherein it was held that whether or not a particular employee is a workman must be decided by reference to the duties performed by the person concerned as disclosed by the evidence and not by the designation borne by him and still less by any decision given in another case with respect to another employee bearing, it might be, the same name for his calling. With that general proposition of law there is no quarrel. But a Commissioner under the Compensation Act is called upon to decide whether a particular person was or was not a workman within the meaning of the Act only if and when the question is raised by the contesting party. In that case evidence would normally be led about the duties of the person concerned and the Commissioner would have to decide the issue on the basis of that evidence alone. As stated above, no such plea was raised in this case by the appellant at the trial stage. He cannot be allowed to raise this kind of a disputed question of fact at the appellate stage for the first time.

In the Calcutta case the person concerned was labelled a "conservancy coolie"; but it was proved from the evidence that his duties were connected with the operation of the lorry; namely to start the engine of the lorry to which he was attached and also to help in backing it safely when it needed to be backed. In that context; it was held that irrespective of the designation of the employee as a mere conservancy coolie he was a workman within the meaning of the Compensation Act as he was employed in connection with the operation of the vehicle. That was a reverse case. In the instant case, the very designation of the deceased raises a presumption of his having been employed to carry out the usual duties of a cleaner on a transport vehicle. If it was sought to show that in spite of

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being a clearner, it was no part of the duty of the deceased to do anything in connection with the operation or maintenance of the vehicle, it was necessary for the appellant to take up a specific objection to that effect. In these circumstances, I have no hesitation in repelling even the second contention of the appellant.

The last argument of Mr. T. S. Mangat is that the Commissioner under the Compensation Act had no jurisdiction to entertain or to adjudicate upon the claim of the respondents as the same was barred under section 110-F of the Motor Vehicles Act IV of 1939 as amended by Act 100 of 1956. The said section reads as follows:—

“110-F. Where any Claims Tribunal has been constituted for any area; no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunals for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.”

It is not disputed that a Claims Tribunal has been constituted for the whole of Punjab under the Motor Vehicles Act. But I do not think that a Commissioner under the Workmen's Compensation Act is a "Civil Court" within the meanings of section 110-F of the Motor Vehicles Act. A Civil Court is the Court of general Civil jurisdiction. In the absence of any statutory bar all civil cases have to be tried by civil Courts. Section 10-F of the Motor Vehicles Act has excluded from the jurisdiction of such a civil Court, i.e., Court of general civil jurisdiction, all claims for compensation which may be adjudicated upon by the Claims Tribunal appointed under that Act. An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 110 of the Motor Vehicles Act, lies exclusively to a Claims Tribunal. The nature of claims referred to in section 110(1) of the Motor Vehicles Act includes claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles. But such a claim under the Motor Vehicles Act can be filed (in a case where death has resulted from the accident) only by the legal representatives of the deceased. Minor brothers of a deceased, who are dependents within the meanings of the Compensation Act may or may not be legal representatives of a deceased. The scope of proceedings under

the two Acts appears to be different. From amongst the cases taken out of the jurisdiction of the ordinary civil Courts by section 110-F of the Motor Vehicles Act the cases triable by a Commissioner under the Workmen's Compensation Act form a separate category. The Court of the Commissioner under the Compensation Act is a special Court and not an ordinary civil Court. The mere fact that the powers of the Commissioner are vested in a Senior Subordinate Judge or a District Judge does not mean that the Commissioner acts as a civil Court. A petition under the Workmen's Compensation Act does not lie to a Civil Court but only to a Commissioner appointed under the Act. "Commissioner" has been defined in the Act to mean a person who is appointed as such under section 20. Under that provision the State Government may by notification in the official Gazette appoint "any person" to be a Commissioner for Workmen's Compensation. Sub-section (3) of section 20 authorises the Commissioner to choose one or more persons possessing special knowledge of any matter relevant to the question under inquiry to assist him in holding the inquiry for the purpose of deciding any case referred to him for decision under the Compensation Act. Even the power of transferring cases from one Commissioner to another is kept by section 21(5) of the Act in the State Government and is not vested in any Civil Court. Though by section 23 of the Compensation Act the Commissioner is given the powers of a civil Court under the Code of Civil Procedure for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling the production of documents and material objects, it has nowhere been laid down that the Court of the Commissioner shall be a civil Court for other purposes. The Commissioner under the Compensation Act is a mere Tribunal and is not a civil Court within the meaning of section 110-F of the Motor Vehicles Act. This question was raised before the learned Commissioner and he also held that the Motor Vehicles Act does not repeal or abrogate the relevant provisions of the Workmen's Compensation Act in the absence of any specific provision to that effect. I am in agreement with that view of the matter. I, accordingly, hold that section 110-F of the Motor Vehicles Act does not bar the jurisdiction of a Commissioner under the Workmen's Compensation Act from trying a claim under the latter Act in respect of death or bodily injury arising out of a motor accident in a case where the claim is by a dependent within the meaning of section 2(d) or by the injured person and is against an employer within the meaning of section 2(c) if the deceased or the person who has suffered bodily injury was a workman as defined in section 2(n) of the Compensation Act.

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No other point has been argued by the learned counsel for the parties in this case.

This appeal, therefore, fails and is dismissed but without any order as to costs.

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R. S.

CIVIL MISCELLANEOUS

*Before Inder Dev Dua and R. S. Narula, JJ.*

MAHANT SOM DASS,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1398 of 1964.

March 8, 1966.

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 14—Notification issued under not for consolidating holdings but for reserving land for common purposes—Whether can be made—High Court—Whether can determine if the Government was justified in issuing the notification.*

*Held*, that a notification under section 14 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, cannot be issued for the sole substantive purpose of reserving land for common purpose or assigning land to a Panchayat without consolidating the holdings.

*Held*, that the power of the Government to meddle with citizens' property under the Act is strictly confined within the four corners of the power conferred by it and if section 14(1) does not in terms, whether express or by necessary intendment, justify a notification for reserving land for common purposes without consolidating holdings, the High Court is competent and, indeed under a duty, to strike down a notification which seeks to reserve land for common purposes under this section. Such a notification would obviously be outside the statute and, therefore, ineffective.

*Case referred by the Hon'ble Mr. Justice R. S. Narula, on 22nd October, 1965, to a larger Bench for decision of the important questions of law involved in*

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