

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/139/2018

Date of Order: 26.06.2019

Between:

Smt. VVV Lakshmi, W/o. late A.V. Surya Prakash
Aged about 50 years, Group C,
R/o. H. No. 2-1/1/5, 2nd Floor,
Near Dhana Lakshmi Kirana Stores,
Janapriya Nagar, Phase I,
Miyapur, Hyderabad.

... Applicant

And

1. Union of India,
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training),
Rep. by the Secretary, North Block, New Delhi.
2. The Union of India, rep. by its Secretary,
Ministry of Railways, New Delhi.
3. The Hon'ble Railway Board, rep. by the Chairman,
Ministry of Railways, New Delhi.
4. The General Manager,
SC Railways, Rail Nilayam,
Secunderabad.
5. The South Central Railway,
Rep. by its Divisional Railway Manager (T) SC,
Secunderabad.

... Respondents

Counsel for the Applicant ... Mr.P. Lakshmana Rao

Counsel for the Respondents ... Mr.T. Hanumantha Reddy,
SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed for rejecting the claim for Ex-gratia compensation made by the applicant.

3. Applicant's husband while working in the respondent organization as Assistant Station Master, died in a railway accident on 26.12.2009. The First Information Report No. 140/2009, dt. 26.12.2009 was registered by the Vikarabad Station House Officer. FIR confirmed that the applicant husband died in a railway accident. Later, the respondents have issued a service certificate on 22.01.2010 indicating the applicant as the wife of the deceased employee. Armed with the service certificate, when the applicant sought compensation under Ex-gratia Compensation Act, 1923 and the same was rejected by the respondents on the ground that the death did not occur in the course of the employment. Further, the applicant also filed WC No. 2/2014 before the Commissioner for Workmen Compensation and for release of benefits associated with accidents and the same was ordered on 16.07.2015. As the respondents have not released the ex-gratia compensation, the OA has been filed.

4. The contention of the applicant is that as per Railway Board orders vide RBE No. 139/2016, dt. 25.11.2016, the applicant is eligible to be paid ex-gratia compensation. Besides, the applicant cited Hon'ble Supreme Court judgments in BEST Undertaking, Mumbai vs. Mrs. Agnes, AIR 1964 SC 193 and Vijay L Malhotra Vs. State of UP & Ors, AIR 2000 SC 3513, in support of her contentions.

5. The respondents in their reply statement confirmed that the accident took place due to a railway accident. 3-Men Committee constituted for the purpose has concluded that the accident occurred when the applicant husband was returning to residence from office and therefore, his death cannot be construed as having occurred in the course of employment. Based on the said Committee report, the respondents have rejected the request of the applicant for ex-gratia compensation. However, based on the orders of the Commissioner for Employees Compensation and Dy. Commissioner of Labour, Ranga Reddy, in WC No.2/2014, dt.16.07.2015, the Railway administration has deposited a total sum of Rs.4,40,982/- plus another sum of Rs.17,361/- towards interest with a request not to disburse the compensation amount deposited till the final outcome of W.P., vide respondents letter dt. 10.09.2015. However, the Commissioner released certain amounts stating that no stay was granted in CMA 830/2015 by the Hon'ble High Court. Respondents contend that the two judgments cited by the applicant are not related to the present case because the first judgment is in regard to the payment of compensation under EC Act, 1923, but not ex-gratia lumpsum compensation and the second judgment is regarding payment of the interest on the delayed settlement. Besides, the applicant was paid death benefits under EC Act, settlement dues, provident fund and family pension at the rate of Rs.16,245/-. Over and above, the applicant has been appointed as Junior Clerk on compassionate grounds in the respondent organization. Moreover, the Railway Board orders dated 05.11.1999 clearly state that death should occur while performing

bonafide official duties. A casual connection should be established between the death and government service. The same has not been established in the applicant husband death and therefore, the ex-gratia compensation is not admissible. DOP & PW OM dt. 11.09.1998 specifies the clauses under which ex-gratia compensation can be granted. The applicant does not fall under any of the clauses.

6. Heard both the clauses and perused the material papers submitted.
7. The death of the applicant's husband took place when he was returning to his residence from office. This has been confirmed by the 3-men committee. The respondents have stated that the Railway Board order dt. 5.11.1999 calls for payment of ex-gratia lumpsum compensation only when the death of an employee occurs in the course of employment. As the said condition has not been satisfied, the respondents affirmed that the rejection is in order. However, the applicant has cited the judgment of the Hon'ble Supreme Court in General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, reported in AIR 1964 SC 193. Relevant portion of the said judgment reads as under:

“Under S.3 (1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension of both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he uses the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport.”

As seen from the above judgment, when the respondents are responsible for the safety of the employee, from the time he leave his office till he reaches his residence, the employee is considered to be on official duty. Besides, the Commissioner for Employee Compensation and Dy. Commissioner of Labour, Ranga Reddy vide order dt. 16.07.2015 in WC No. 2/2014, has answered the three questions:

- i) As to whether the applicant husband died in the accident that occurred during the course and out of his employment
- ii) If yes, as to whether the respondents are liable to pay compensation to the applicant.
- iii) To what amount of compensation.

In the said order of the Commissioner, it was concluded as under:

“In the result, it is held that the opposite parties are jointly and severally liable to pay compensation to the applicants for the death of the deceased workman, who died due to the injuries sustained by him in an accident that occurred on 26.12.2009, which arose out of and in the course of his employment under the opposite parties. The Compensation amounting to Rs.3,45,040/-, together with stamp fee of Rs.690/-, advocate fee of Rs.1,500/- totalling to Rs.3,47,230/- (Rupees three lakh forty seven thousand two hundred and thirty only) shall be paid by the opposite parties to the applicants along with interest @ 12% per annum on the amount of compensation from 17.10.2013 till the date of realization by means of a demand draft drawn on any Nationalized Bank in favour of the Commissioner for Employees’ Compensation and Deputy Commissioner of Labour, Ranga Reddy..”

In view of the observation of the Commissioner for Employees’ Compensation, there can be an iota of doubt regarding the fact that the applicant died in the course of employment. Once this fact is established,

the Railway Board orders vide RBE No. 139/2016, dated 25.11.2016 apply to the case of the applicant.

(II) The respondents have submitted verdicts of the Hon'ble Madras High Court dt. 24.11.1998 in CMA 908/1998 in support of their submission that unless an employee dies in the course of employment, he is not eligible for ex-gratia compensation. The Hon'ble High Court based its judgment on the findings of the Hon'ble Supreme Court in Regional Director, ESI Corporation & Anr Vs. Francis De Costa, 1996 (6) SCC 1

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 26th day of June, 2019

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