

(1938) 11 CAL CK 0018

Calcutta High Court

Case No: Appeal from Original Order No. 108 of 1938

East Indian Railway
Administration

APPELLANT

Vs

Minaram Dosad

RESPONDENT

Date of Decision: Nov. 14, 1938

Final Decision: Dismissed

Judgement

Derbyshire, C.J.

This is an appeal by the employers against an award made under the Workmen's Compensation Act by the Commissioner for Workmen's Compensation, Bengal, awarding the applicant, the Respondent herein, a sum of Rs. 735 as compensation for injuries received in an accident which, the Commissioner held, arose out of and in the course of the employment of the Respondent by the Appellants on October 20th, 1924. The Respondent was a mistri employed by the Appellants to do, amongst other things, repairs to signals and points on the railway. He lived at Konnagore. At about 8 P.M., on October 20th, 1924, the Respondent was instructed by his superior at Konnagore to go to Bally and make some repairs to the railway points there. The Appellants provide him with a third class pass on the railway and he is in the habit of travelling on the railway with that pass when he executes the orders of the superiors. He went to Bally by train, did the work and on his way back from Bally to Konnagore, he fell from the foot-board of the carriage in which he was travelling whilst the train was in motion and his leg was run over and part of it was amputated. He was taken to hospital and after his discharge from hospital he was employed by the Appellants as a Chowkidar from August 29th, 1925, down to same date in 1935, when he was discharged by the Appellants. He never made any claim for compensation under this Act until 1935. Sometime about 1925, the Respondent received a gratuity of Rs. 500 from the railway company.

2. The learned Commissioner has entertained this claim presumably after giving consideration to the proviso to sec. 10 of the Act; although we are not definitely told that he has, we must assume that he has. That point does not arise in this appeal.

On August 10th, 1936, the then Commissioner made an order in favour of the present Appellants, dismissing the present Respondent's claim for compensation. The workman preferred an appeal to this Court and this Court remanded the matter back to the Commissioner for him to hear further evidence. The learned Commissioner has heard further evidence and after hearing it he has made an award in favour of the workman of the amount mentioned.

3. This accident happened a long time ago. For that reason full evidence as to the details of it is difficult to obtain and the case is difficult in consequence. The Respondent says that after he did his work at Bally, he caught the last train back from Bally towards Konnagore. He travelled in one compartment and his mate travelled in another compartment. When the train stopped at Uttarpara, where his mate lived, he got down to give his mate some of the tools he had used. Whilst he was talking to his mate he had his back turned to the compartment he had recently left, and did not notice that it was filled up. When he had finished talking to his mate he turned round, stepped on to the foot-board, seized the handles of the compartment, (the door being open--it opened inwards) and attempted to get in. It was full and he did not succeed in getting in. In the meantime the train started. After the train had moved some half a dozen cubits, he was pushed--whether deliberately or not does not appear--by someone from inside. He fell, the train passed over him and he lost his leg as a result.

4. The learned Commissioner has rejected the workman's story about getting down at Uttarpara and seems to think that that is an afterthought on his part. But he comes to the conclusion that at some place on the journey the workman did attempt to board the train and that probably finding that the train was crowded, he stood on the footboard. Thereafter he fell.

5. The employers objected to the claim on the ground that the workman had been guilty of wilful disobedience of an order expressly given or a rule expressly framed for the purpose of securing the safety of workmen and that by reason of sec. 3 (i), proviso (b) (ii) of the Act the employer was not liable to pay compensation. The Commissioner has found that the rule which the employers invoked was "winked at." That rule was Traffic Working Order No. 369 which reads as follows:

Staff not to jump on the foot-boards of passenger carriages--Ticket Examiners and other members of the station staff, also licensed porters, are forbidden to jump on the steps of the foot-boards of carriages, or to run along side of trains entering station.

6. The Commissioner has held that that rule implied a prohibition against travelling on foot-boards. He also found that upon evidence and upon his own personal observation that the rule had been ignored and, consequently, he said that it was not of such a character that it prevented the workman recovering compensation.

7. It seems doubtful under the Indian Workmen's Compensation Act, whether the ignoring of an order expressly framed for the safety of workmen can prevent the proviso (6) (ii) to sec. 3 (1) of the Act from operating. In my view it is not necessary specifically to decide that, because Order No. 369, part of Which I have just read, is) not, in my view, an order expressly given or a rule expressly framed for the purpose of securing the safety of workmen. The whole rule contains what I have just read together with the following:

The Station Master on duty must see that the staff in attendance to receive trains, take up their proper positions on the platform and wait there until the train stops.

8. That rule seems to me to be one framed in the interests of the public as well as in the interests of particular servants of the company who are mentioned. The facts, as I have been able to gather from the judgment, the award, and from the evidence are these:

9. The workman was instructed to go from Konnagore to Bally by train to do certain work there on the railway and then return by train from Bally to Konnagore. He duly went to Bally, he duly did the work he was ordered to do, and whilst he was returning by train in the way that he had been instructed to do, this accident happened. I am not clear whether it happened at Uttar-para or whether it happened at Bally or at some other station. But the inference I draw from the evidence is that it did happen on the workman's return journey home and that it happened in this way: the workman attempted to board the train. He was not able to get into the compartment and whilst he was waiting on the foot-board, hoping to get in, the train started and proceeded a short distance--perhaps ten or a dozen feet; then through pressure from the inside of the compartment which followed, the workman lost his hold, fell, and was run over. It seems to me that the workman attempted to do what it was intended that he should do, namely to board the train on his return journey. As he was attempting to get into the compartment the train started and he found himself in a dangerous position. He did the best he could, but unfortunately he fell.

10. It has been said that by attempting to board the carriage that was full and travel on the foot-board he added additional peril to his occupation. If he had attempted or succeeded in getting on the foot-board of the train whilst it was moving, there might have been something in that argument. But upon the evidence it seems to me that the train began to move after he got on the foot-board. I cannot help feeling that the train ought not to have been started whilst the carriage door was open and someone was standing on the foot-board. Under the Traffic Working Orders of 1911, which we are told were operative at this time, a copy of which has been handed to us, General Rule No. 356 (b) provides as follows:

Closing door before train starts,--The doors of the carriages on the off side should, as a general rule, be locked on the double line. Guards are responsible for the

proper closing of all doors before a train starts from a station, but it is the duty of the station staff to do this work.

11. Rule 357 provides:

Position of station staff as a train starts from a station--All the available menial staff of the station, porters, Hindu waterman, bhistees, lampmen, sweepers, and signalman, must stand about three feet from the edge of the platform, facing the train, and remain there until the train has passed the platform; in the event of any door being open, or the handle not properly turned, the nearest man must at once close the door and turn the handle.

(a) Station Masters must see to this and watch the train as it leaves the station to make sure that their staff are attending to their duty.

(b) This does not relieve the train staff (Guards and Brakesmen) of their responsibility in respect of the closing of carriage doors.

12. If those working rules had been complied with in this particular occasion, this accident would not have happened. In my view it is because these rules were not complied with that the train started whilst the door was open and someone was on the foot-board, and this accident happened. The peril which was added to the man's occupation was not added, in my view, by himself, but by the servants of the railway administration whose duty it was to comply with rules 356 and 357 of 1911. It is clear that the accident arose in the course of the man's employment.

13. The only question is--did it arise out of his employment? I am unable to see where at any stage during the course of his duty the workman did something for his own purposes and not in the execution of the duty he owed to the railway company. I am, therefore, of the opinion that this accident arose not only during the course of his employment, but also out of his employment with the Appellants.

14. The consequence is that in my view the workman, the Respondent, is entitled to the award of compensation which has been made in his favour, and this appeal must be dismissed with costs--the hearing-fee being assessed at five gold mohurs.

Lort-Williams, J.

15. I agree. I desire to add the following.

16. Dr. Basak, on behalf of the Appellants, has relied upon Rule No. 369 of the Traffic Working Orders and No. 11 of the Bye-Laws of the East Indian Railway Company, as coming within the provision of sec. 3 (i), proviso (6) (ii) of the Act.

17. With regard to the first rule, in my opinion, it has no application to the act which, it is alleged, was committed by the Respondent. It does not relate to nor contain a provision against travelling on the foot-board of a passenger carriage. It is intended to prohibit ticket examiners and other members of the station staff and licensed

porters from jumping on the foot-boards of carriages or running alongside trains when entering stations. Presumably no one anticipated that any passenger would desire, of his own will, to travel upon the foot-board of the carriage and no traffic rule has been provided forbidding passengers from travelling upon the foot-boards of carriages.

18. As I understand the evidence in this case, no one suggests that the Respondent was deliberately trying to travel from one station to the next upon the foot-board of the carriage. He was there against his will owing to the circumstances which have already been described by My Lord.

19. With regard to Bye-Law No. 11, it reads as follows:

Any person, not duly authorised, riding on the engine or fender, or upon any vehicle or portion of a vehicle not intended for the carriage of passengers, is liable to a penalty of fifty rupees and to removal from the railway.

20. This again does not and is not intended to deal with the kind of act which has been alleged against this Respondent. It is not intended to prohibit a person, in the circumstances with which the Respondent was faced, from travelling upon the foot-board of a passenger carriage. Moreover it is not a rule expressly framed for the purpose of securing the safety of workmen, within the meaning of the section. For these reasons also I agree that the appeal must be dismissed.