

*Before Rajesh Bindal, J.*

**UNION OF INDIA AND ANOTHER—Appellants**

*versus*

**GURMIT KAUR—Respondent**

**FAO No. 4404 of 2012**

September 17, 2013

*Motor Vehicles Act, 1988 - S.2(28) - Railway Claims Tribunal Act, 1987 - S.124-A - 'Motor Vehicle' - Railway accident' - Respondent's son died in a railway accident on railway line - Claim petition filed before Motor Accident Claim Tribunal - Compensation*

*awarded to respondent by tribunal - Award challenged - Held, Petition for claiming compensation on account of railway accident not maintainable before Motor Accidents Claim Tribunal - Vehicle running on fixed rail is excluded from definition of 'motor vehicle' or 'vehicle' - Petition can be filed before Railway Claims Tribunal - MACT had no jurisdiction to entertain petition - Award set aside - Appeal allowed - Claim Petition returned for presentation before appropriate forum.*

*Held*, that from a perusal of the admitted facts on record and the provisions of Section 2(28) of the 1988 Act, Section 124A of the 1989 Act and Section 13(1A) of the 1987 Act, it is evident that a petition for claiming compensation on account of an accident involving Railway was not maintainable before the Tribunal, as a vehicle running on fixed rails is specifically excluded from the definition of "motor vehicle" or "vehicle", as provided for under the 1988 Act. As against that, an enabling provision has been provided for under the 1989 Act as well as 1987 Act for filing claim petition before the Railway Claims Tribunal by the persons, who are entitled to in terms of the provisions of the aforesaid two Acts involving accident with Railway.

(Para 9)

*Further held*, that considering the aforesaid facts, in my opinion, the Tribunal in the present case did not have the jurisdiction to entertain and decide the claim petition filed against the Railways alleging involvement of a train in an accident, which occurred on Railway Line near Railway Crossing Nangal Chowk, Ropar.

(Para 10)

*Further held*, that the contention of learned counsel for the respondent that the application with regard to jurisdiction before the Tribunal was not pressed is merely to be noticed and rejected. The question of jurisdiction in the present case goes to the root of the case. On a bare reading of the claim petition and the provisions of the 1988 Act, it is clear that the Tribunal did not have the jurisdiction to entertain the claim petition. Even on the basis of the facts pleaded by the respondent-claimant in the claim petition, no evidence was required to be led by the parties on that issue.

(Para 11)

*Further held*, that in view of my aforesaid discussions, the award dated 23.2.2012 is set aside. The claim petition filed by the respondent be returned to her for presentation before the appropriate forum in accordance with law, if so advised.

(Para 12)

G. S. Bal, Advocate, *for the appellants*.

Amit Bhanot, Advocate, *for the respondent*.

**RAJESH BINDAL J.**

(1) Challenge in the present appeal is to the award of the Motor Accident Claims Tribunal, Ropar (for short, 'the Tribunal') dated 23.2.2012, whereby on account of death of Avtar Singh @ Raju, compensation of Rs. 4,38,000/- has been awarded to the respondent.

(2) Learned counsel for the appellants submitted that the respondent filed claim petition before the Tribunal claiming compensation on account of death of her son on the intervening night of 6/7.7.2003, in a Railway accident on Railway Line near Railway Crossing Nangal Chowk, Ropar. The claim petition was filed on 12.5.2009 before the Tribunal. While referring to the provisions of Section 2 (28) of the Motor Vehicles Act, 1988 (for short, 'the 1988 Act'), he submitted that the claim petition could not be filed before the Tribunal as the vehicle involved was not a motor vehicle as defined under the aforesaid provisions as it excluded a vehicle running upon fixed rails. In fact, for claiming compensation in the accident involving Railways, the Railway Claims Tribunal under the Railway Claims Tribunal Act, 1987 (for short, 'the 1987 Act') has been constituted, where F.A.O No. 4404 of 2012 [2] such a petition could be filed by the claimant. The award of the Tribunal is without jurisdiction, hence, deserves to be set aside.

(3) On the other hand, learned counsel for the respondent submitted that though the application was filed by the appellants with regard to jurisdiction of the Tribunal, however, the same was not pressed. Hence, the award cannot be said to be without jurisdiction.

(4) Heard learned counsel for the parties and perused the paper book.

(5) Section 2(28) of the 1988 Act defines a motor vehicle. The same is extracted below:

“Motor Vehicle” or “Vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters.”

(6) Section 124A of the Railways Act, 1989 (for short, ‘the 1989 Act’), which is extracted below, provides for compensation on account of untoward incident in the course of working of Railways:

“124A. **Compensation on account of untoward incident.**- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this Section by the railway administration if the passenger dies or suffers injury due to —

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

*Explanation.*— For the purposes of this section, “passenger” includes—

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

(7) As the aforesaid provision was added w.e.f. 1.8.1994, corresponding amendment was made in the 1987 Act by adding sub-section (1A) in Section 13 thereof providing for jurisdiction, power and authority of the Railway Claims Tribunal. (8) The case set up by the respondent-claimant herein before the Tribunal has been summed up, in brief, by the Tribunal in its award dated 23.2.2012. Paragraph 2 thereof is extracted below: “2. The case of the claimants, in brief, is that on the intervening night of 6/7.7.2003, deceased was found dead, who died in a Railway accident on Railway Line near Railway Crossing Nangal Chowk, Ropar and received grievous head injuries and his body was badly mutilated as is evident from the Post Mortem report got conducted by Ajaib Singh Incharge Railway Police, Ropar who initiated proceedings under Section 174 Cr.P.C. and found the cause of death as Railway Accident. The accident took place due to rash and negligent driving of respondent train. Thus, the respondents are jointly and severally liable to pay compensation to the tune of Rs. 10 lacs along with interest @ 18% per annum. Hence, the claim petition.” (9) From a perusal of the admitted facts on record and the provisions of Section 2(28) of the 1988 Act, Section 124A of the 1989 Act and Section 13(1A) of the 1987 Act, it is evident that a petition for claiming compensation on account of an accident involving Railway was not maintainable before the Tribunal, as a vehicle running on fixed rails is specifically excluded from the definition of “motor vehicle” or “vehicle”, as provided for under the 1988 Act. As against that, an enabling provision has been provided for under the 1989 Act as well as 1987 Act for filing claim petition before the Railway Claims Tribunal by the persons, who are entitled to in terms of the provisions of the aforesaid two Acts involving accident with Railway.

(10) Considering the aforesaid facts, in my opinion, the Tribunal in the present case did not have the jurisdiction to entertain and decide the claim petition filed against the Railways alleging involvement of a train in an accident, which occurred on Railway Line near Railway Crossing Nangal Chowk, Ropar.

(Hemant Gupta, J.)

(11) The contention of learned counsel for the respondent that the application with regard to jurisdiction before the Tribunal was not pressed is merely to be noticed and rejected. The question of jurisdiction in the present case goes to the root of the case. On a bare reading of the claim petition and the provisions of the 1988 Act, it is clear that the Tribunal did not have the jurisdiction to entertain the claim petition. Even on the basis of the facts pleaded by the respondent-claimant in the claim petition, no evidence was required to be led by the parties on that issue.

(12) In view of my aforesaid discussions, the award dated 23.2.2012 is set aside. The claim petition filed by the respondent be returned to her for presentation before the appropriate forum in accordance with law, if so advised.

The appeal stands disposed of..

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***J.S. Mehndratta***