

(2020) 11 JH CK 0088
In the Jharkhand High Court
Case No : M.A. No. 243 Of 2013

Ajay Kumar Pandit & Ors

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-11-2020

Acts Referred:

Railways Act, 1989 — Section 123(c)(2)

Citation : (2020) 11 JH CK 0088

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Rajesh Kr. Jha, Ashok Kr. Singh, Vijay Kr. Sinha

Judgement

Heard, learned counsel, Mr. Rajesh Kr. Jha on the instruction of Learned counsel for the appellants, Mr. Ashok Kumar Singh.

Learned counsel for the appellants has submitted that the learned Tribunal has dismissed the claim application vide judgment dated 23.04.2013 passed

by Member/Technical, Railway Claims Tribunal, Ranchi Bench, Ranchi in Case No.TAU/RNC/2003/0032.

Learned counsel for the appellants has submitted that the learned Tribunal has wrongly considered the occurrence not to be a case of accidental

falling from any train and thus, wrongly considered that the incident is not covered under the provisions of Section 123(c)(2) of the Railways Act, 1989.

Learned counsel for the appellants has further submitted that the deceased-Bhaskar Pandit was a bona-fide passenger.

Learned counsel for the appellants has further submitted that the learned Tribunal has wrongly decided issue against the claimant with regard to the

deceased- Bhaskar Pandit by not considering him to be a bona-fide passenger and also that the case is not covered under Section 123(c)(2) of the Railways Act, 1989.

Learned counsel for the appellants while referring to the inquest report, which has been brought on record as Annexure-5 series at page 24 has

categorically stated that passenger fell down from running train No.407 UP, Sindri Dhanbad Passenger and the postmortem report, which has been

brought on record as Annexure-5 Series at page 25 shows that death was due to Hard Blunt force cranio cerebral injuries.

Learned counsel for the appellants has further submitted that so far the issue no.1 with regard to bona-fide passenger is concerned, learned Tribunal

has not considered the evidence filed by the witness A.W.1- Prabhawati Devi who at para 3 has stated that, my deceased son was travelling by the

aforesaid train along with friend, Ratan Jyoti Sinha and Ansu Srivastava (relative of Ratan Jyoti Sinha) from Sindri town station to Dhanbad after

having proper ticket. In the cross-examination nothing has been elucidated by the Railway from this witness.

Learned counsel for the appellants has further submitted that A.W.3 (Ratan Jyoti Sinha) has categorically submitted in para 2, that, I purchased three

tickets for us from booking-counter of Sindri Town Station for going to Dhanbad on 12.12.2001 in the evening and kept the same in my pocket and

further in para 8 that, journey ticket for the deceased which was in my possession was found misplaced now. This witness was cross-examined by the

Railway but nothing has been elucidated to disbelieve the same.

Learned counsel for the appellants in support of his submission has relied upon the case of Union of India vs. Rina Devi, reported in (2019) 3 SCC 572

at para 29, which is quoted hereunder:-

29. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will

be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be

decided on the facts shown or the attending circumstances.

Learned counsel for the appellants has further submitted that no contrary evidence has been brought on record by the Railway to disbelieve the same,

as such, finding recorded by the learned Tribunal with regard to the bona-fide

passenger is not in accordance with evidence and the judgment passed by the Hon'ble Apex Court.

Learned counsel for the appellants has further submitted that the learned Tribunal has also wrongly considered that occurrence is not an occurrence as defined under Section 123(c)(2) of the Railways Act.

Learned counsel for the appellants in support of his submission has relied upon the aforesaid judgment of Rina Devi (Supra) at para 25, which is quoted herein-below:-

25. We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988.

Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.

Learned counsel for the appellants has thus, submitted that consideration for compensation under the Motor Vehicle Act and the consideration for compensation under the Railway Act are different as under the Railways Act there is no contributory negligence even if a bonafide passenger on the Railway fell down because of any fault of his own.

Learned counsel for the appellants in support of his submission has further placed the case of Jameela and others v. Union of India, reported in (2010) 12 SCC 443 para 7 and has submitted that in this case even if the person died because of his negligence then also the compensation cannot be denied on the ground that it is a self-inflicted injury.

Learned counsel for the appellants has thus submitted that impugned judgment may be set aside and the claimant may be given compensation to the tune of Rs.4 lacs with the interest @ 7.5 % from the date of filing of the claim application i.e. 19.03.2002 or Rs.8 lacs whichever is higher.

Learned counsel for the respondent-Railway has referred the judgment of Rina Devi (Supra) in para 8 (iii), which is quoted hereunder:-

(iii) The concept of self-inflicted injury: whether attempt of getting into or getting down a moving train resulting in an accident was a case of 'self

inflicted injury' so as not to entitled to any compensation or such concept could not apply under the scheme of law which casts strict liability to pay

compensation by the Railway under Sections 124 and 124A. In this regard views of High Courts of Kerala in Joseph PT v. Union of India, High Court

of Bombay in Pushpa v. Union of India and High Court of Delhi in Shayam Narayan v. Union of India may appear to be against the decisions of this

Court in Union of India v. Prabhakaran Vijay Kumar and Jameela v. Union of India., but learned counsel for the railway requires some time to assist

this Court properly.

Considering the rival submission of the parties, put up this case on 07.12.2020.

It is made clear that no further adjournment shall be granted on any ground.