

(2009) 03 CAL CK 0098

In the Calcutta High Court

Case No : F.M.A.T. No. 616 of 2008 and C.A.N. 4715 of 2008

Asharani Das

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Evidence Act, 1872 — Section 106
Railway Claims Tribunal Act, 1987 — Section 16
Railways Act, 1989 — Section 124A

Citation : AIR 2009 Cal 205 : (2009) 2 CALLT 467

Hon'ble Judges : Tapan Kumar Dutt, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Parimal Kr. Dwari and Kazi M. Rahaman, for the Appellant;
Soumendra Nath Das, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This first appeal is at the instance of a claimant in a proceeding u/s 16 of the Railway Claims Tribunal Act, 1987, and is directed against an award dated 29th April, 2008, passed by the Railway Claims Tribunal, Kolkata Bench, thereby dismissing the said application on the ground that the claimant failed to prove the bona fide as well as accidental fall and the resultant death of her husband from the running train. According to the Tribunal, the applicant also failed to produce any eyewitness to prove the accidental fall causing death of her husband.

2. Being dissatisfied, the claimant has come up with the present first appeal.

3. The appellant before us lodged a claim u/s 16 of the Railway Claims Tribunal Act, 1987 thereby praying for compensation of Rs. 4 lakh for the death of her husband on the allegation that on 4th March, 2005 while he was travelling from Sainthia to Bolpur by Down Ganodevta Express with a valid second class ticket, he accidentally fell down from the running train between Sainthia and Bataspur and consequently, died.

4. The application was opposed by the railway authority by filing written statement and its defence may be summed up thus:

a) The claim-application was not maintainable as the applicant had no personal knowledge and the statements made in the claim-application appeared to be hearsay. It was denied that the victim was a passenger of the said train. As per claim-application, the deceased was a hawker, but according to the rules of the Railway, a vendor is neither a passenger nor a railway employee so as to attract the definition of "passenger" within the meaning of the Railways Act.

b) It was denied that the deceased was travelling from Sainthia to Bolpur by Ganadevta Express with a valid second class ticket on 4th March, 2005, and that during the course of travelling, he accidentally fell down from the train.

c) According to the Station Manager's report, there was no record of such incident at Bataspur on 4th March, 2005 and the post-mortem report was merely a routine-record and did not prove any untoward incident. At the time of hearing, the claimant herself and one Bikash Das, an eyewitness of the incident, gave evidence in support of the claim, while none appeared on behalf of the Railway authority to controvert the evidence given by those two witnesses.

5. Bikash Das, the PW-2, the alleged eyewitness of the incident, stated in his evidence that the deceased was known to him as he was also a fellow-hawker and on 4th March 2005, he along with the deceased boarded the Ganadevta Express for the journey from Sainthia to Bolpur. According to him, there was heavy rush inside the train and Tapan Das, the deceased, was the last person among them who boarded the train in that compartment. According to the said witness, after the train left Sainthia and came near Pariharpur Village, Tapan fell down from the train owing to the impact of the huge crowd inside the compartment. After he had fallen, the witness requested the other passengers to pull the chain but they did not. It was not possible for him to pull the chain as he was standing near the gate. The said witness further stated that he got down at Ahmedpur station and reported the incident to Station Master, Ahmedpur. Thereafter, he came to the spot by availing of a bus. On reaching the spot, he did not find the victim and came to know that he was carried away by some GRP personnel. Thereafter, he went to Sainthia railway station by walking along the railway track. In Sainthia, he found that the dead body of the victim was lying with GRPS/Sainthia and the dead body was handed over after the post-mortem. He denied the suggestion given to him that he was not with the victim and that the incident narrated by him was a false one.

6. The learned Trial Judge by the award impugned herein came to the conclusion that it was not established that the deceased was travelling with a valid ticket. The Tribunal further held that it appeared from the first information report that information was given to the Railway Police at 22.55 hours on 4th March, 2005 that a dead body was lying at the Railway track. The same timing has been mentioned in the final report prepared by the police. In the investigation report,

it was stated that police reached the spot at 23.05 hours and the investigation was closed at 1.45 hours on 5th March, 2005 and thereafter, the body was sent for post-mortem. By relying upon the aforesaid materials, the Tribunal was of the opinion that the statement of Bikash Das, the so-called eyewitness, that the dead body was removed before he reached the accident-spot in the afternoon and that he did not find the dead body are all false and, thus, the learned Tribunal decided to discard the evidence of the said witness in its entirety.

7. Being dissatisfied, the claimant has come up with the present appeal. After hearing the learned Advocates for the parties and after going through the materials on record, it appears that the fact that the victim was found dead on the Railway track at the relevant place described by the PW-2 has been proved. The PW-2 has narrated the entire incidents right from purchasing the tickets till the victim had fallen down. According to the witness, the Ganadevta Express reached Sainthia Station at 5-20 p.m. and soon after boarding the train, the accident occurred. He got down at the next railway station where the train stopped viz. Ahmedpur and complained to the station master about the accident and thereafter by bus, came to the accident-spot where he did not find the dead body and thus, went to back to Sainthia Station by following the railway track on foot and found the dead body at the G.R.P.S., Sainthia. The only reason for disbelieving the said witness by the Tribunal below is that he, in cross-examination, stated that when he came to the spot from Ahmedpur by bus and did not find the dead body, he could not notice the time of his arrival because he had no watch, however, it was "afternoon". According to the Tribunal, the FIR was lodged at 22-55 hrs. and thereafter, the dead body was removed and thus, the statement of the PW-2 that he reached the spot in the "afternoon" after coming by bus from Ahmedpur was an absurd statement.

8. The question that falls for consideration before us is if a witness makes a particular wrong statement in course of his deposition, whether his entire statements should be disbelieved in a situation when his other relevant statements are corroborated by the documentary and circumstantial evidence on record believed by the Tribunal itself and those very documentary evidences were treated as trustworthy. In other words, because a particular statement of the witness did not match with those documentary evidences whether the Tribunal below was justified in branding the witness as unworthy of credence and at the same time, in discarding those documentary evidences supporting the case of the claimant.

9. In the case before us, it appears from the formal FIR exhibited on behalf of the claimant that in such FIR, although in the original written memo which was treated as FIR (contents of the same was quoted in the formal FIR) the victim was initially described as an "unknown person" by one Chand Yadav who detected the dead body, it has been noted therein that he was "later identified as Tapan Das son of late Nirmal Das" with full address. From the investigation report u/s 174 of the Cr.P.C., it appears that the investigation started at 23-05

hrs. and concluded at 1-45 hrs. on the next day and in such report, the victim was not shown as unidentified person but his full description was given. From such fact, it is established that one Chand Yadav gave the information to the police about the fact that a dead body was lying at the Railway track but even at the time of drawing the formal FIR and the investigation, the identity of the victim was known and for that reason his full particulars were mentioned therein. Such fact discloses that immediately after the first information was given by Chand Yadav, he was identified by persons known to him who had already arrived at the police station. The investigation report, post-mortem report and the final report given by the Railway Police in no uncertain terms have described the incident as death due to falling from train and recorded that the authors thereof did not suspect any foul play. When such fact emerges from the reports of the Railway Police itself, it was the duty of the Railway to lead evidence asserting that the death did not occur due to fall from the train as appearing in those documents. Even such fact was not pleaded in the written statement. The written statement contained evasive denial and by the same it called upon the claimant to prove the allegation contained in the claim-petition. If any such specific plea was taken in the written statement that the death did not occur due to fall from the train but somebody had thrown the dead body on the railway track and that the statement and the opinion appearing in the records of the Railway Police were incorrect, the claimant could bring other available witnesses for proving the involvement of the deceased in the accident. Therefore, the learned Tribunal erred in law drawing adverse inference against the claimant for non-production of the Chand Yadav as a witness. Rather, in order to prove that PW-2 did not accompany the deceased in the journey, it was the duty of the Railway to produce the then Station Master of the Ahmedpur Station in the witness-box to emphasize that the said PW-2 did not make any complaint before him on March 4, 2005 regarding the accident in the Ganadevata Express and to face cross-examination by the claimant and for his non-examination, adverse inference should be drawn against the Railway Authority. When the Tribunal proposed to disbelieve the PW-2 on the sole ground that one of his statements was in conflict with the FIR and other investigation-report of the Railway Police and the postmortem report, there is no reason why the other statement made in those documents that the death of the victim caused due to fall from the train and that there was no foul play in the matter should not be believed. The learned Tribunal in this case, in one hand disbelieved PW-2 as part of his statements was not in tune with those documentary evidences and at the same time, did not place reliance on the contents of those documents which established the case of death by falling from train. In the case of S. Sudershan Reddy and Others Vs. State of Andhra Pradesh, , while considering a case of conviction on the charge of murder, a Division Bench of the Apex Court made the following observations:

It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence of some of the witnesses has been found to be deficient.

Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar.

10. Therefore, in this case, the learned Tribunal below ought to have believed those documentary evidences and the other parts of the evidence given by the PW-2 except his statement that he reached at the accident-spot at a time when it was afternoon as his other parts of the evidence are corroborated by the abovementioned documentary evidences maintained by the Railway Police Authority.

11. The learned Advocate appearing on behalf of the Railway as a last resort vehemently contended that the victim had no valid ticket and as such even if such accident occurred, the claimant would not be entitled to get any compensation.

12. As the accident occurred within the premises of the Railway Authority, it was the first and foremost duty of the Railway Authority to produce evidence before the Tribunal indicating the materials those were found with the body of the victim at the time of accident. No person from the side of Railway came forward to disclose such facts. In a Railway accident when the Railway Police admittedly took custody of the dead body of the victim, it is the duty of the Railway to come forward with the specific plea that at the time of accident, the victim had no ticket found with him and the person making such statements must take the responsibility of such allegation. The person who actually made inventory of the articles found with the dead body should come forward to face cross-examination by the claimant. It appears that in paragraph 7 of the claim application, the claimant specifically pleaded purchase of ticket by the victim but in paragraph 7 of the Written Statements the following averments were made:

That in reply to para 7, 8, 9 and 10 and 11 of the application are required to be proved by the applicant producing valid evidence and documents." In our opinion, according to the law of non-traverse of pleadings, the aforesaid statement does not tantamount to the denial of the allegations in the claim-application.

13. We are quite conscious of the position of law that as provided in Section 106 of the Evidence Act, if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in illustration (b) of that section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But such principle is not applicable to a case of a dead person who was proved to have died in course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the claimants to prove that he was a bona fide passenger having a valid ticket. In this case, as no person on behalf of the Railway has given any such evidence nor

has any person come forward to disclose what articles were found with the victim, we conclude that the initial burden of proving such fact had not been discharged. We cannot lose sight of the fact that one is not entitled to enter even the platform of a railway station without having a valid platform ticket and one takes the risk of criminal prosecution by boarding a train without ticket. In such circumstances, in the absence of any evidence of the Railway Authority asserting absence of a valid ticket, we are of the opinion, there is no just reason for totally discarding the evidence of the PW-2 simply because his statement that when he reached the accident-spot it was afternoon was found to be not possible having regard to the fact that on March 4 of a year the train left Sainthia at 5-20 p.m and after reaching the next station and complaining at the said station about the accident, he could not come back to the accident-spot by availing a bus before the sunset.

14. The point taken in the written statement that a hawker is neither a railway employee nor a passenger is irrelevant in this case because the claimant never claimed that the victim was a licensed railway hawker and the Railway Authority has also not led any evidence to that effect. It is the case of the claimant that the victim was a hawker by occupation and it is her definite case that by purchasing a second class railway ticket he boarded the train and such fact has been proved by the oral evidence of the PW-2.

15. We, therefore, hold that in this case, it has been proved from the investigation of the Railway Police itself that the victim died of the accident due to fall from the running train and in view of existence of FIR, Investigation Report by the Railway Police, the Post-Mortem report and the Final Report submitted by the Railway Police Authority, all in one voice concluding the case as an accidental death without any foul play, the learned Tribunal below erred in law in dismissing the claim-application on the basis of an apparent wrong statement of PW-2 that he came to the spot in the afternoon. By such wrong statement of the PW-2, those opinions expressed in the documents issued in official capacity by the respectable government officials have not become "non-existent" or mere "routine report" as alleged in the written statement nor can those documents be described as ones containing wrong statements. At least, no evidence has been adduced by the Railway Authority to falsify those statements contained in those documents. In this case, no evidence has also been adduced to show that the case comes within any of the instances specified in the proviso to Section 124A of the Railways Act, 1989.

16. Once we find that it is a case of death and comes within the purview of untoward incident within the meaning of Section 124A of the Railways Act, the claimant is entitled to get Rs. 4 lakh as provided in the Schedule to the Railway Accidents and Untoward (Incidents) Compensation Rules, 1990 and accordingly, we direct the Railway Authority to pay a sum of Rs. 4 lakh to the Appellant within two months from today with interest at the rate of 8% per annum from the date of filing such application till actual payment. In the fact and circumstances, there

will be, however, no order as to costs.