

(2012) 07 PAT CK 0078

In the Patna High Court

Case No : Miscellaneous Appeal No. 673 of 2008

Awadhesh Kumar and Others

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Railways Act, 1989 — Section 123

Citation : (2012) 07 PAT CK 0078

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Pravin Kumar Gupta, for the Appellant; Anil Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, J.—This miscellaneous appeal has been filed against the order dated 14.8.2008 passed by the Railway Claims Tribunal, Patna Bench, Patna in Claim Application No. O. A. 9700264 filed on 19.11.1997. By virtue of the said order the claim application of the appellants stands rejected primarily on the ground that factum of death of Hari Mohan Sah, who happens to be the father of the present appellants, did not happen in the train accident as a bona fide passenger, which disentitles the claimants from grant of compensation prayed for in the claim case. The claim application was filed on 19.11.1997 on behalf of the claimants for payment of Rs. 2 Lacs as compensation due to death of Hari Mohan Sah, which is supposed to have taken place on 20th of November, 1996. One thing which is significant is that the claim application has been moved one day short of one year of the date of the incidence and what took the claimants so long to decide to move the railway authorities for compensation and wait till the fag end of the period of limitation prescribed, may not be required to be looked into but one thing can be safely deducted by the Court that a lot of deliberations and planning of things have been gone behind the institution of the claim.

2. As per the claim case the deceased was traveling by 501 Up Passenger from Mansi to Begusarai on 20th of November, 1996. He was holder of a bona fide second class ticket No. 16801 which was a proof of the deceased being a bona fide passenger on the date of the incidence. The assertion is that since there was a big rush leading to pushing and pulling to get into the bogie, the deceased got pushed out of the train within 100 yards of Mansi Station and suffered extensive injury. Help was rushed to the deceased by common people as well as the police, who was taken to the Primary Health Centre at Mansi but looking at the level of the injury, it is said that he was referred to Begusarai and thereafter to Patna. Unfortunately, he did not survive. Certain documentation in support of the claim was annexed. Oral evidence primarily of the son namely, Awadhesh Kumar was also led during the course of adjudication. A so-called independent witness was also examined but unfortunately for the claimants, the Claims Tribunal came to a considered opinion that there are too many gaping holes in regard to the incidence. The assertion made in the complaint does not tally with the evidence which makes the entire thing suspicious and therefore, it could not be established and proved that death of Hari Mohan Sah was due to an accident related to a train while he was traveling as a bona fide passenger.

3. Counsel representing the appellants submits that it is not the duty of the tribunal to find petty faults and reject the application on minor variations for after all, Special Act has been enacted for the benefit of people, much less who may lose their life and limb and have a family and responsibility to take care of. No proper enquiry was done by the enquiry officer of the railways. The contradictions talked about are not major contradictions which could disentitle the claimants from grant of compensation. The evidence led by the claimants should have been accepted by the Claims Tribunal and not brushed aside in a casual fashion which has been done in the present case, which is a serious infirmity in the order of appeal against.

4. The Tribunal has formulated three issues for a decision. The issues are (i) whether the deceased Hari Mohan Sah was a bona fide passenger traveling on 20th of November, 1996 by Train No. 501 Up as alleged, (ii) whether the incidence or the accident comes within the definition of Section 123 of the Indian Railways Act and (iii) whether the claimants are entitled to compensation in the present case?

5. Issue Nos. (i) and (ii) have been gone into in quite a detail and the evidence, the narration of the event has been judged on the basis of the material produced by either side and a very detailed discussions thereof have been made in the impugned order. Discussion originates from para 9 and concludes in para 22 with a clear and categorical finding that the appellants' claim for compensation for the death of late Hari Mohan Sah was not a bona fide claim as he was not a bona fide passenger traveling on the date of incidence.

6. Some of the salient features which have been taken note of by the tribunal in its decision is that there is variation in the manner in which incidence is supposed

to have happened, the person who supposed to have been traveling on the date of the incidence, the factum and the place of the incidence, the fact that there are no records to reflect that such an incidence actually happened at Mansi Station as there are no records supporting or reporting such an incidence, there are clear findings emerging with regard to the authenticity of the so-called second class ticket purchased by the deceased or purchased by one of the claimants and handed over to the deceased because findings have come that no ticket of that serial number had been sold within ten days of the incidence. In addition to that, it has also emerged that the U.D. case which was supposed to have been registered at Mansi was instituted not by the police on its own but on a written complaint by the son of the deceased two days after the incidence. There is a clear evidence available on record in this regard. If the incidence had happened as narrated in the claim case then a natural corollary would have been that U.D. case would have been registered by Mansi police on the date of incidence and not galvanized to take action at the filing of a complaint by the son of the deceased, two days after the incidence.

7. Another aspect which has emerged is that U.D. case was also registered in Khagaria Rail Police Station as 15/1996. The inquest report has been prepared with regard to the deceased at Khagaria Rail P S some time at 5 O'clock in the evening of 20th November, 1996 and not at Mansi.

8. During the course of hearing of the matter when the claimants were confronted with regard to the absence of bona fide and authenticity of the ticket, an effort was made to explain it that the number of the ticket has been wrongly recorded as 16801, both in the inquest report as well as the claim case. The ticket was part of the recovery from the body of the deceased and the actual number, in fact, was 16307. The tribunal took note of this submission and came to a conclusion that a deliberate effort was made to improve upon the case by producing yet another ticket which was also suspicious because there was overwriting and manipulation in the said ticket and some of the endorsement and the print therein was not legible.

9. This aspect of the matter was sought to be explained away by the counsel representing the claimants saying that it was a typing mistake made by the counsel who drafted the claim application and strict view should not have been taken on a small issue like this.

10. The Court has gone through the original records as well as the claim. The consistency of the material has always been available on this aspect of the matter. It is only during the course of hearing of the matter when this factual aspect was highlighted, then a quick turn around and a petition of amendment was filed, may be to improve upon the case. The Court could have given the benefit of doubt to the claimants if this was the only aberration but then many other aspects have also been dealt with by the tribunal to show the absence of bona fide of the incidence or the death of the deceased in the so-called incidence as per the claim petition or the evidence relied therein at Mansi Station.

11. The Court after having perused the order, having considered the submissions and contentions as well as the evidence by looking into the original record comes to a conclusion that the claim lacks bona fide. It is one of those cases where death is being sought to be fostered upon the railway authorities to obtain claim in one manner or the other and the aberration which was found and discussed in the order by the tribunal cannot be wished away on the contention being made at the bar that such aberrations are too minor and which ought not to be given weightage by the tribunal in its decision. The Court is of the considered opinion that the decision rendered by the Claims Tribunal does not suffer from any legal vice either on facts or on law.

12. This appeal has no merit. It is dismissed. Let the original record of the claim case No. O.A. 9700264 be returned to the Railway Claims Tribunal, Patna Bench, Patna forthwith.