
(2012) 12 MP CK 0078

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 4 of 2011

Baldev Raikwar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123(c)(ii)

Citation : (2013) 2 MPHT 62 : (2013) 1 MPLJ 542

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : M. Shafiqullah, for the Appellant; Govind Patel, for the Respondent

Judgement

A.K. Shrivastava, J.—This appeal u/s 23 of Railway Claims Tribunal Act, 1987 has been filed by the claimant against the judgment dated 30-9-2010 passed by learned Railway Claims Tribunal, Bhopal in Case No. OA-47/2007 whereby the claim application of the appellant has been rejected. In brief the case of claimant/appellant is that his son Bhagwandas Raikwar (hereinafter referred to as "deceased") was murdered in a violent attack by some anti-social elements while travelling in the train as bonafide passenger. The deceased was going from Bina to Ganjbasoda by Train No. 1590 up on 6-11-2006 holding a valid Second Class General Ticket, which was lost in the incident. During the journey some anti-social elements assaulted him by weapons as a result of which deceased succumbed to the injuries, Hence, an application for awarding compensation has been filed before the learned Railway Claims Tribunal.

2. The written-statement was filed by the Railway Administration denying the alleged incident and by pleading further that said incident would not come within the ambit and sweep of Section 123(c)(ii) of the Railways Act, 1989 (in short "Act of 1989"). It is also denied that deceased was a bonafide passenger in the Train.

3. Learned Tribunal framed necessary issues and after recording evidence of the

parties, came to hold that the deceased was a bonafide passenger, this fact was not proved and eventually dismissed the claim application. In this manner, this appeal has been filed by the appellant.

4. By inviting my attention to the provisions of Section 123(c)(ii) of the Act of 1989, it has been put-forth by learned Counsel for appellant that since the anti-social elements by taking law in their own hands, violently attacked upon the deceased as a result of which he had died, therefore, the appellant is entitled for compensation. Learned Counsel further submits that during the scuffle the journey ticket might have lost and in that case, if the journey ticket was not submitted or it was not found during the course of post-mortem, it cannot be said that deceased was not a bonafide passenger. In support of his argument, learned Counsel has placed heavy reliance on the decision of this Court in *Shyamlal Sahu Vs. Union of India (UOI)*,

5. On the other hand, Shri Patel, learned Counsel for respondent argued in support of the impugned judgment and submitted that this appeal has no force and it be dismissed.

6. Having heard learned Counsel for the parties, I am of the view that this appeal deserves to be allowed.

7. The question, which hinges for consideration is as to whether deceased was a bonafide passenger or not. Learned Tribunal has held that because no journey ticket was found during the course of post-mortem and on searching the dead body of deceased, therefore, it cannot be said that he was a bonafide passenger. Indeed the factum of death by violent attack in the train has been found to be proved before the Tribunal. It is a matter of common parlance that deceased must have struggled for existence of his life and, therefore, during the course of scuffle etc. there were reasonable chances that ticket might have fallen in the railway compartment and, therefore, it cannot be said that he was not holding a valid ticket. There is specific evidence of the claimant that deceased purchased the requisite journey ticket, but there is no evidence in rebuttal. Hence, I am of the view that learned Tribunal has erred in holding that the deceased was not a bonafide passenger. My view is supported by the decision of Division Bench of this Court in *Raj Kumari and Another Vs. Union of India (UOI)*, in which it has been held by the Division Bench that burden was on Railway Administration to prove that deceased was not a bonafide passenger. Since the heavy burden has not been discharged by the Railway Administration and looking to the unimpeachable testimony of claimant, I am of the view that it is proved that deceased was a bonafide passenger. On this point, I may profitably place reliance on the decision of this Court *Shyamlal Sahu (supra)*. Since, I have already held hereinabove that deceased was a bonafide passenger and his case would come within the ambit and sweep of Section 123(c)(ii) of Act of 1989, therefore, Railway Administration is liable to pay compensation. The claim application filed by appellant is hereby allowed and the Railway Administration is hereby directed to pay Rs. 4 lacs to appellant on or before 31-1-2013 failing which it shall carry

interest @ 9% per annum from the date of claim application which is 6-2-2007. Appellant shall also be entitled for cost. Counsel fee Rs. 2000/- if pre-certified.