

(2019) 07 PAT CK 0163

In the Patna High Court

Case No : Miscellaneous Appeal No. 664 Of 2014

Baliram Sah

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Railways Act, 1989 — Section 123(c), 124(A)

Citation : (2019) 07 PAT CK 0163

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Krishna Mohan Murari, Ashok Kumar Keshari

Final Decision : Allowed

Judgement

1. Heard both the parties.
2. This miscellaneous appeal has been filed on behalf of claimant/appellant for setting aside the order dated 21.08.2014 passed in O.A. 00243/2003 by Railway Claims Tribunal, Patna Bench Patna by which claim for grant of compensation of claimant has been rejected.
3. Initially the claim petition was filed by Dhanbanti Devi and her sons and after death of Dhanbanti Devi her name was expunged. Appellant Baliram Sah is son of deceased.
4. Briefly stated that the facts as disclosed in claim petition is that on 21.01.2003 father of claimant Yadunath Sah was scheduled to travel from Sikaria to Bihiya for which he purchased railway Ticket no. 22588 from railway counter and after purchasing the journey ticket he was moving from up platform to down platform as there was no railway foot over bridge at Sikaria railway station and while he was crossing the Railway track to board train no. 514 Dn. (passenger train), train no. 2303 Up Poorwa Express arrived at the same time on up line and he was run over by the speeding train.

5. Written statement was filed on behalf of respondent/railways in which they have stated that claimants are not entitled for any compensation as he was crossing railway line illegally and as such he was not a bonafide passenger and was not entitled for any compensation as same does not come within the purview and definition of untoward incident.

6. In support of claim case, claimant has adduced 11 documentary evidences which has been marked as Exhibits A1 to A11. Exhibit-1 is certified copy of petition given to G.R.P. Ara, Bhojpur, on basis of which FIR was registered.

Exhibit-A4 is the report in which it has been stated that from train no. 2303 Up (Purwa Exp.) deceased died as he was crushed by the speeding train. Exhibit- A5 is the final report in which it has been stated that due to intense cold and foggy weather, deceased while crossing the railway line was run over by train No. 2303 Up. (Purwa Exp.) and died. Exhibit-A6 is the original train ticket, Exhibit-A7 is post mortem report, Exhibit-A9 is the genealogical table, Exhibit-A10 is the death certificate.

7. It has been submitted on behalf of railways that section 123(c) of Railway Act has been defined and when it is read with Section 124 (A) of the Railway Act the accident does not come within the purview and definition of untoward incident giving any cause of action or reasons to claim any compensation by the claimant.

8. Section 123(c) and Section 124 (A) of the Act is quoted below:

Section 123(c) in The Railways Act, 1989

(c) untoward incident means-

(1) (i) x x x x

(ii) x x x x x

(iii) x x x x

(2) the accidental falling of any passenger from a train carrying passengers."

Section 124-A in The Railways Act, 1989

"124-A. 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 dependent 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 valid platform ticket and becomes a victim of an untoward incident."

9. The counsel for the claimant has relied upon different judgments passed by Delhi High Court as well as Punjab and Haryana High Court and Orissa High Court in which the ambit and scope of Section 123 (c) of the Railway Act has been widened and enlarged and it has been held that the accident other than falling from the train also comes within the purview of definition of Section 123 (c) of the Act read with Section 124 (A). In similar circumstances, case of Punjab and Haryana High Court since reported in 2012 ACJ 2794 it has been held in cases as referred above that illustrations given under Section 123 (c) is only illustrative and not exhaustive and railways cannot deny the compensation if it does not come within the exceptions as carved out under Section 124A of the Act.

10. Mr. Ashok Kumar Keshari appearing on behalf of the Railways has supported the judgment and order passed by claims Tribunal which warrants no interference by this Court.

11. From the materials placed on record and attending circumstances, it is established that there was no foot over bridge to go to platform to board down running train. Ticket booking office was situated at up platform and passengers had to go to down platform by crossing the railway track. There was no announcement or any warning that train no. 2303 Up (Purwa Exp.) is passing through up line by station master or any staff on duty. Weather was intense cold, foggy and visibility was poor. Deceased was a bona fide passenger as train ticket was recovered from his possession as such, it cannot be a case of run over rather it is a case of an untoward incident as incident does not come within the exception carved out under Section 124 (A) of the Railway Act, as such, appellant/claimant is entitled for grant of compensation.

12. Accordingly, the judgment and order passed by the claims tribunal is set aside and the respondent/railways are directed to pay the claim amount with interest @ 6 % per annum from the date of accident till its payment.

13. Miscellaneous appeal is allowed.

14. Let the L.C.R. be returned forthwith to the court below.