
(2021) 01 JH CK 0111

In the Jharkhand High Court

Case No : Writ Petition(C) No. 8027 Of 2012 In I.A No.7261 Of 2013

Dr. Kamala Kant Bardhan

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-01-2021

Acts Referred:

Santhal Parganas Tenancy Act, 1949 — Section 57

Citation : (2021) 01 JH CK 0111

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : S.N. Das, Manoj Kumar

Final Decision : Dismissed

Judgement

Heard, learned counsel, Mr. Shubham Mishra on the instruction of learned counsel for the appellant, Mr. Kishore Kumar Mishra.

Learned counsel for the appellant has submitted that this is second round of litigation by the appellant whose compensation has been dismissed by the

learned Railway Claims Tribunal, Ranchi Bench.

Learned counsel for the appellant has submitted that earlier Tribunal has dismissed the claim application of the claimant in terms of order dated

20.08.2013 passed by learned Railway Claims Tribunal, Ranchi Bench in Case No. OA(IIU)/RNC/2010/0023 filed on 27.01.2010 holding that

deceased did not fall in the route from Chopan to Ramna Station. Against the aforesaid judgment, the appellant has moved before this Court in M.A.

No. 410/2013, which was dismissed as withdrawn in terms of order dated 12.08.2015. However, liberty was given to the appellant to file a fresh claim

application before the learned Tribunal.

Learned counsel for the appellant has submitted that deceased was a bonafide passenger having journey ticket no. B-99786679, which has been

brought on record as Exhibit. A-6 and even then, the learned Tribunal has rejected the claim application of the applicant considering it not to be an

untoward incident as defined under Section 123 (c) (2) of the Railways Act read with Section 124-A of the Railways Act, 1989.

Learned counsel for the appellant has placed reliance upon the judgment passed by the Apex Court in the case of Jameela & Others Vs. Union of

India reported in (2010) 12 SCC 443. Para-6 to 12 of the aforesaid judgment are profitably quoted hereunder:

6. Before the High Court, reliance was placed on behalf of the Railways on the proviso to Section 124-A of the Act which provides that no

compensation will be payable under that section by the Railway Administration if the passenger died or suffered injury due to (a) suicide or attempted

suicide by him, (b) self-inflicted injury, or (c) his own criminal act. A reference was also made to Section 154 of the Act which provides that if any

person does any act in a rash and negligent manner, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the

safety of any person travelling or being upon any Railway, he shall be punishable with imprisonment for a term which may extend to one year, or with

fine, or with both. It was further contended on behalf of the Railways that the deceased M. Hafeez who was travelling in a negligent manner was

standing at the door from where he fell down near Magarwara Railway Station, where the train does not stop. (It needs to be pointed out that this

contention could only be based on speculation, as admittedly there was no eyewitness to the accident.) The High Court accepted the contentions

raised on behalf of the Railways and allowed the appeal observing as follows:

""On the basis of the law and facts indicated by the learned counsel for

the parties, we find that in the present case the victim is to be blamed for the incident being negligent and therefore this case is not covered by the

definition of untoward incident. However, so far as the compensation is concerned the case of the claimant is covered by the provision of Section 124-

A as because of his own negligence the deceased had fallen down from the train which caused his death. Further, in the light of the fact that the

deceased acted in a negligent manner without any precaution of safety by station (sic) going at the open door of the running train which resulted into

his death.

(emphasis added)

7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section

124-A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railways that

the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on

speculation. There is admittedly no eyewitness to the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the

case of the Railways that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from

the train to his death due to his own negligence it will not have any effect on the compensation payable under Section 124-A of the Act.

8. Chapter XIII of the Railways Act, 1989 deals with the liability of Railway Administration for death and injury to passengers due to accidents.

Section 123, the first section of the Chapter, has definition clauses. Clause (c) defines "'untoward incident'" which insofar as relevant for the present

case is as under: "'123. (c) 'untoward incident' means--

(1)(i)-(iii)*** (2) the accidental falling of any passenger from a train carrying passengers.

9. Section 124-A of the Act provides as follows:

124-A. Compensation on account of untoward incidents.--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 dependant 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 a valid platform ticket and becomes a victim of an untoward incident.

(emphasis added)

10. It is not denied by the Railways that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly

a "passenger" for the purpose of Section 124-A as clarified by the Explanation. It is now to be seen, that under Section 124-A the liability to pay

compensation is regardless of any wrongful act, neglect or default on the part of the Railway Administration. But the proviso to the section says that

the Railway Administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of

the reasons enumerated in clauses (a) to (e).

11. Coming back to the case in hand, it is not the case of the Railways that the death of M. Hafeez was a case of suicide or a result of self-inflicted

injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural

cause or disease. His falling down from the train was, thus, clearly accidental.

12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train

compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon on

Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124- A. A criminal act envisaged under clause (c)

must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour.

Learned counsel for the appellant has submitted that a person having a valid ticket cannot commit suicide and learned Tribunal has wrongly considered the word fallen while rejecting the claim application of the claimant, as such, the impugned order may be set aside and the claimant may be given compensation.

Learned counsel for the Respondent-Railway, Mr. Vijay Kumar Sinha has submitted that though the deceased has purchased a ticket, which has been brought on record as Exhibit. A-6, but there is no evidence that the deceased boarded which train for going from Chopan to Ramna. Initial claim application has been filed on the ground that deceased has boarded train no.624 DN at Chopan Railway Station on 20.08.2009 at 17.35 hours, which departed at 17.50 hours. The earlier claim application has been dismissed on the ground that said train never goes towards the Ramna Railway Station. Against the aforesaid judgment, the appellant has moved before this Court in M.A. No. 410/2013, which was dismissed as withdrawn in terms of order dated 12.08.2015. However, liberty was given to the appellant to file a fresh claim application before the learned Tribunal. Thereafter, another claim application vide Case No. OA(IIU)/ RNC/2010/0023 was filed, which was also dismissed by the learned Tribunal in terms of judgment dated 04.01.2017 on the ground, which has been discussed at paragraph-10 of the impugned judgment while dealing Issue Nos.1 and 2, which has been referred before this Court as hereunder:

10. Issues No.1 and 2:-

The journey ticket No.99786679 is available on record (Ext.A6). One Sri Lal Chand Ram has appeared as witness AW-2 to depose that ticket was purchased by the deceased on 20.8.2009 for going to Ramna by Chopan-Gomoh Passenger leaving Chopan at 6.53 AM on 20.8.2009. However, there is no evidence available on record to show that the deceased boarded the train and he had an accidental fall from the train. The fresh claim petition itself shows that the deceased did not reach the station to board the train. On the

other hand Sri Lal Chand Ram, a vendor at the station has deposed that he found the deceased lying in a dead condition near Mallgodown at the end of platform in the morning of 20.8.2009. Evidence is also available on record that the dead body of Bibhuti Kumar Pathak (deceased) was lying at the end of platform No.1 near Mallgodown; that the Inquest Report (Ext.A3) was prepared there and other legal formalities were completed there. There is no evidence on record to prove the essential ingredient of untoward incident. There is also no evidence that the deceased boarded the train or fell down from the train. The burden of proof rests entirely upon the applicants to prove the untoward incident, within the meaning of section 123 (c) read with section 124-A of the Railways Act. In this connection, a reference may be made to a decision of Hon'ble Delhi High Court titled as Jamirul Nisha and another Vs Union of India, 2009 ACJ 1393, wherein it is held in Para No.34 & 35 of the Judgment as under;

34. From the perusal of section 123 (c)(2) & 124 A, it is clear that ""sine qua non"" for claiming compensation, on account of death or injury sustained in a train accident is that the victim of a train accident, or his dependents as the case may be, must first establish that the victim or the deceased had accidentally fallen from the train.

35. In the instant case, applicants have failed to establish that the deceased had accidentally fallen from the train, therefore, the question of the proof by the Railways that the death of the deceased was not the result of untoward incident does not arise.

The decision of Supreme Court in Union of India-vs-Prabhakaran Vijaya Kumar and others (supra) and Supreme Court in Jameela and others-vs-Union of India (supra) are not applicable to the instant case being distinguishable in facts since none of the cases dealt with a situation of the victim had an accidental fall and died.

In the above circumstances, I hold that the deceased was not a victim of an untoward railway incident.

Learned counsel for the Respondent - Railway has further placed reliance upon the previous judgment passed by learned Tribunal while deciding the issues particularly internal page no. 3 running page-36 of the present brief, where a map of railway track has been prepared, which shows that for going from Chunar, Chopan, Ramna and Barwadih are in the one track whereas

place Malgodam is on different railway track, as such, if a person has not been found fallen on the track of the route and his dead body was found on a different route then it is upon the claimant to explain that under what circumstances the deceased went to such place on different track.

Learned counsel for the Respondent-Railway has further submitted that it is not the case of the claimant that deceased wrongly boarded different train and in haste and fallen down and died because of the railway accident, as no evidence with regard to the same has been brought on record by the claimant nor such pleading has been made by the claimant, as such, this Court may not grant compensation without having proper ingredient of bonafide passenger and untoward incident, as the claimant fails to explain how the deceased was found on different railway track.

Learned counsel for the Railway has further submitted that map prepared by the learned Tribunal in the previous order may also be considered, which is being depicted herein:-

Chunar Place of occurrence Malgodam Chopan Ramna Barwadih Learned counsel for the Respondent-Railway has thus submitted that since no illegality or irregularity is apparent on the record, as such, the appeal may be dismissed.

Learned counsel for the appellant, Mr. Shubham Mishra even after given opportunity to explain the map with regard to the railway track and the place of occurrence, could not be able to reply satisfactorily.

After hearing learned counsel for the parties and on the basis of the material brought on record, though deceased has purchased a ticket, which has been brought on record as Exhibit. A-6, but to have compensation, two things are relevant (i) person must be a bonafide passenger and (ii) that occurrence must be an untoward incident as defined under Section 123 of the Railways Act.

Considering the fact of the case, since the appellant has failed to establish that how dead body was found at a place far from the route from Chopan to Ramna, the learned Tribunal has rightly rejected the claim application as by purchasing a ticket by the deceased, the claimant cannot be made entitled to have compensation unless and until the second part that is untoward incident is proved properly in accordance with law. The judgment placed by the learned counsel for the appellant with regard to Jameela & Others

(Supra) is not applicable in present fact and circumstances of the case as dead body of the deceased was never found on the same track nor the same has been explained by the appellant that how the dead body was found in a different track, which goes towards the Malgodam but not towards the passenger track.

Considering such submissions, this Court is not inclined to interfere with the same, accordingly, the appeal is hereby dismissed.