
(2012) 12 OHC CK 0006
In the Orissa High Court
Case No : FAO No. 260 of 2006

Ghanashyam Patra and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2012) 12 OHC CK 0006

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Advocate : R.P. Mohapatra, Deepali Mohapatra and Sandip Parida, M/s. R.K. Patnaik and S.P. Swain, for the Appellant; A.K. Mishra, H.M. Das and A.K. Sahoo, for the Respondent

Judgement

B.K. Patel, J.—This appeal u/s 23 of the Railway Claims Tribunal Act, 1987 (for short, "the Act") is directed against the order passed by the Railway Claims Tribunal, Bhubaneswar Bench (for short "the Tribunal") dismissing the Case No. OA/67/2003. Appellants who were applicants before the Tribunal are deceased's parents, wife and minor daughter. Applicants before the Tribunal filed application for compensation on account of death of Padma Charan Patra in a railway accident. Applicants' case before the Tribunal was that on 20.9.2002 at about 10.30 A.M. deceased boarded local train No. DA-2 Ambarnath to Dadar in platform no. 6 of Thane Railway Station to return to his mess situated at Kurla road, Mumbai. The compartment was overcrowded. Due to push and pull of the co-passengers deceased fell down from the train in platform no. 6 of Thane Railway Station itself and sustained injuries. He was shifted for treatment to Civil Hospital, Thane where he expired on 21.9.2002. A criminal case was registered in connection with the accident. Thus applicants claimed that death of the deceased having occurred as a result of an untoward incident as defined u/s 123(c) of the Act, respondents-Railway is liable to pay compensation.

2. Respondents-Railway filed written reply resisting the claim. It was pleaded

that neither the deceased was bona fide passenger in any train nor death of the deceased occurred as a result of untoward incident as defined under the Act. It was pleaded that the deceased did not fall down from any train. On the contrary, death of the deceased occurred due to knocking down by DA-2 local train at Thane Railway Station platform no. 6.

3. On the basis of rival pleadings, the Tribunal framed the following issues for adjudication:

(i) Whether the applicants prove that the deceased accidentally fell down from the local train on 20.9.2002 at Thane and succumbed to the injuries?

(ii) Whether the respondents prove that the alleged incident does not come within the provision of Section 123 as an untoward incident?

(iii) Whether the respondents prove that the deceased was not a bona fide passenger?

(iv) What reliefs?"

4. In order to substantiate their case applicants filed affidavit evidence of two witnesses including applicant no. 3 who is wife of the deceased. Other witness happens to be deceased's uncle. Applicants also relied upon documents including police report, inquest report, post mortem report, etc. Respondents who represent the Railway filed affidavit evidence of the Motorman, i.e., the driver and the Guard of the local train which was involved with the incident.

5. It appears that as there was difference of opinion between the Member (Judicial) of the Tribunal on the one hand who held the applicants to be entitled to compensation and the Member (Technical) of the Tribunal on the other who accepted the defense of the Railway that death of the deceased did not occur due to any untoward incident, the matter was referred for decision to the Chairman of the Tribunal who agreed with the view taken by the Member (Technical). Consequently, application for compensation was dismissed.

6. In assailing the impugned order it was submitted by the learned counsel for the appellants that on the basis of materials on record Member (Judicial) of the Tribunal categorically came to conclusion that death of the deceased occurred due to untoward incident as defined under the Act which view cannot be held to be perverse, or even unreasonable. It was argued that deceased belongs to the State of Orissa and was residing in Mumbai. The untoward incident occurred when he was travelling alone in a local train. In such circumstance, it is not expected that the applicants would be able to adduce evidence regarding exact manner and circumstances under which the incident took place. Nonetheless, materials on record disclosed that deceased died in an accident involving the local train. Evidence of two witnesses on which reliance was placed by the Chairman and Member (Technical) of the Tribunal is inconsistent and discrepant for which no reliance can be placed on the same to conclude that deceased was knocked down at a distance of about 100 meters from platform no. 6 of Thane

Railway Station. In such circumstances, the Tribunal was not justified in dismissing the claim application. In support of the contentions learned counsel for the appellants placed reliance on the decisions of the Andhra Pradesh High Court in Union of India (UOI), Secunderabad Vs. B. Koddekar and Another, and Union of India (UOI), South Central Railways Vs. Kurukundu Balakrishnaiah and Others,

7. In Union of India -vrs.- B. Koddekar and others (supra) placing reliance on the decision of the Madhya Pradesh High Court in Raj Kumari and Another Vs. Union of India (UOI), it was held that burden does not lie on the dependents of the deceased to prove that the deceased was a bona fide passenger and the burden is on the railway administration to prove that the deceased was a ticketless traveler or was not a bona fide passenger.

8. In Union of India, South Central Railways -vrs.- Kurukundu Balakrishnaiah and others (supra) upon reference to number of judicial pronouncements it was held that burden lies on the Railways to prove the plea that legal representative of the victims of untoward incident are not entitled to compensation on any of the defences available to Railway in the statute so as to disentitle the claimants to claim compensation.

9. In reply it was submitted by the learned counsel for the respondents that appellants failed to adduce any evidence with regard to the manner and circumstance under which the deceased sustained injuries which led to his death. Motorman and Guard of the concerned train having positively stated in their affidavits evidence that the deceased was knocked down by the running train while he was walking between railway tracks of platform no. 6, it was rightly held by the Tribunal that death of the deceased did not occur due to any untoward incident.

10. I have heard learned counsel for the parties and also perused materials on record as well as all the three separate judgments passed by the Chairman and the two Members of the Tribunal.

11. In appreciating the case it is to be borne in mind that the deceased who is a resident of State of Orissa was victim of a railway accident in Mumbai. Therefore, it is not expected from the claimants that they would be able to adduce any eyewitness account of the circumstance under which the accident took place. It is not disputed by the respondents that the deceased died of injuries sustained in an accident involving local train no. DA-2 in platform no. 6 of Thane Railway Station. Case of the claimants is that the deceased fell down from the crowded compartment due to push by co-passengers. Case of the Railway is that the deceased was not a passenger of the said train and he did not fall down from the train. Rather, the train knocked down the deceased when he was walking between the railway tracks at a distance of 100 meters from platform no. 6. On perusal of affidavit evidence of the concerned Motorman on whom much reliance has been placed by the Chairman and Member (Technical) of the Tribunal it is

found that it has been averred therein that when the local train was about to enter platform no. 6 the Motorman found the deceased walking between the tracks of platform no. 6. In spite of blowing horn the deceased did not respond. When the Motorman applied emergency brake to stop the train the deceased tried to escape by jumping. However, he was hit by the side of the train, knocked down and thrown out of the track. According to him, the Station Master who was present at platform no. 6 immediately came to him and told to restart the train. During that time the deceased having sustained injuries was lying on the left side of the track of platform no. 6 and the station staff of the railway station were rendering first aid to him. In his cross-examination, the Motorman deposed that the incident occurred 100 meters before platform no. 6 which fact he has not mentioned in the affidavit. Thus, it has been rightly observed by the Member (Judicial) that affidavit evidence of the Motorman to the effect that the deceased was walking between the tracks of platform no. 6 when the local train entered platform no. 6 is not consistent with the evidence in course of cross-examination that the deceased was knocked down by the train at a distance of 100 meters of platform no. 6 of Thane Railway Station. It is also in the evidence of Motorman that staff of the railway station immediately attended to the deceased. This circumstance also is not consistent with the assertion that the accident took place at a distance from platform no. 6. None of the documentary materials on record is inconsistent with the case of the applicants that the deceased fell down from the running train and sustained injuries. Injuries found on the deceased are in no manner inconsistent with the circumstance that deceased sustained injuries due to fall from the train. In such circumstances, no intrinsic value can be attached to the evidence of the Motorman for rejecting the claim made by the legal representatives of the deceased. Railway administration is found to have failed to discharge burden to lead cogent evidence to establish that claimants are not entitled to compensation as death of the deceased did not occur due to untoward incident. Therefore, the orders passed by the Chairman and Member (Technical) of the Tribunal are liable to be set aside and the order passed by the Member (Judicial) is entitled to acceptance. Accordingly, the appeal is allowed. The impugned orders passed by the Chairman and that of Member (Technical) of the Tribunal are set aside. Respondents-Railways administration is held to be liable to pay compensation of Rs. 4,00,000/- (Rupees four lakhs only) along with interest at the rate of 6 per cent to the appellants-claimants from the date of filing of the claim application till payment. Compensation amount along with interest shall be deposited with the Tribunal within a period of two months from today upon which the Tribunal shall apportion the compensation amount among the applicants and also direct deposit of part of amount payable to each of the applicants in fixed deposit on such proportions as deemed proper.