
(2008) 09 OHC CK 0093
In the Orissa High Court
Case No : FAO No. 350 of 2007

Gobinda Pradhan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 121A, 123C, 124A

Citation : (2008) 09 OHC CK 0093

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Bidyadhar Mansingh, for the Appellant; A.K. Mishra, S.K. Ojha, N.R. Pandit, H.M. Das, A.K. Sahoo, B.K. Jena and S.K. Ray, for the Respondent

Judgement

Sanju Panda, J.—This is an application u/s 23 of the Railway Claims Tribunal Act, 1987 filed by the claimant-Appellant challenging the order dated 9th August, 2007 passed by the Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar in O.A. No. 128 of 1997 dismissing the claim application of the claimant.

2. The facts of the case as narrated in the record are as follows:

Appellant as claimant filed an application before the Tribunal claiming compensation of Rs. 4 lakhs for the death of Apasara Bewa, the mother of the Appellant, due to train accident. In the said claim application, it was stated that the deceased while travelling as a bona fide passenger with valid ticket bearing No. 76327 dated 13.9.1997 in train No. 8403 Express (Puri-Ahamadabad) from Khurda road to Balugaon, the accident took place at Gangadharpur Railway Station. Soon after the accident, she was taken in the same train to Balugaon and on the same day she was admitted in the hospital by the Station Superintendent of Balugaon Station vide memo dated 19.9.1997, vide Annexure-2. On the same day, she died in Balugaon Hospital. The injury-cum-death certificate was marked as Annexure-3. He further stated that while the

train was running in a high speed from Puri to Ahamadabad due to sudden jerk, the deceased fell down from the train and succumbed to the injuries. Respondent-Railway after receipt of the notice filed its written statement in usual manner denying the facts alleged by the claimant. In support of their respective pleas, the claimant examined himself as P.W. 1 and a co-passenger as P.W.2 and the Railway authority examined the Station Superintendent, Gangadharpur as R.W.I.

The Tribunal framed as many as three issues to determine the claim application which are as follows:

a) Did the applicant's mother die in an untoward incident as defined in Section 123C or 124A of the Railways Act, 1989 ?

(b) Was the deceased a passenger?

(c) Amount of compensation, if any?

On the above three issues, the Tribunal came to the conclusion that the deceased was not a passenger with valid ticket and was not travelling in the train. The deceased was run over at Gangadharpur Railway Station. She was not having a ticket as stated by the Guard but a ticket was procured subsequently from the Ticket Collection Office to support the application for compensation. Therefore, No. compensation was admissible in run over cases either u/s 123C or u/s 121A of the Railways Act, 1989. On the aforesaid findings, the application of the claimant was dismissed on 21 st April, 1998.

Against the said order, the claimant filed M.A No. 388 of 1998 before this Court and this Court by order dated 17.8.2005 allowed the appeal by setting aside the order dated 21.4.1998 passed by the Railway Claims Tribunal, Bhubaneswar Bench in OA No. 128 of 1997 and remanded the matter to the Tribunal for de novo disposal with a liberty to the parties to adduce further evidence, if so advised. This Court further directed the Tribunal to dispose of the application within three months and the parties were directed to appear before the Tribunal on 5th Sept., 2005.

On remand, the matter was heard by the Tribunal. The claimant filed a set of papers on 28.8.2006 as the original file of O.A. No. 128 of 1997 was misplaced and the Respondents were directed to file their documents within ten days. On 1.2.2007, the counsel for the Respondents submitted that they want to examine the driver of the train No. 8403 but the Respondents failed to bring the driver before the Tribunal for evidence. Thereafter, the matter was heard on 17.5.2007. The Tribunal could not dispose of the matter on account of non-availability of evidence of witness of the claimant, i.e., Ramesh Mangaraj, whose evidence recorded earlier was vital for disposal of the case. The counsel for the claimant filed the evidence of the witness Ramesh Mangaraj on 23.7.2007.

The Tribunal while disposing of the claim application on 9th August, 2007 observed that this Court directed the Tribunal to reconsider the documents, namely, memo issued by the Station Master to the Medical Officer, doctor's

report and the seizure list. In the impugned order dated 9th August, 2007, the Tribunal further observed that neither the doctor's report nor the seizure list was part of the original application earlier though the doctor's report was called for later on during the hearing. There was No. seizure list as wrongly submitted by the claimant before the High Court erroneously. The deceased was admitted in the hospital on 19.9.1997 around 11.00 A.M. who expired within 15 minutes. As regards the memo of the Station Superintendent of Balugaon Station dated 19.9.1997, it did not mention about the deceased falling from 8403 Express Train. But in the earlier order of the Tribunal, it was mentioned that the station diary entry was made on the basis of the memo issued by the guard of the train that a woman was run over by the train. The Station Superintendent corroborated the fact when he appeared before the Tribunal. The Tribunal observed that considering that the Guard of the train who was on the spot of the incident, more weight should be attached to the memo of the guard than the memo issued by the Station Superintendent. Therefore, the Tribunal observed that earlier such memo of the Station Superintendent was considered. The Tribunal analyzed the evidence of the claimant regarding whether the deceased had a ticket or not as the claimant's witness Ramesh Mangaraj categorically stated that the ticket of the victim was collected by the Station Master of Gangadharpur Railway Station. Therefore, the plea of the said witness that the victim had No. ticket tied to the pallu of her sari when she was admitted in the hospital. There was a contradiction to the statement of the claimant that after the death of the deceased he found the ticket tied up in the saree of the deceased. The Tribunal came to the conclusion that the claimant led a false evidence. It disbelieved the statement of the co-passenger as he stated that the deceased purchased the train ticket because the passenger train left Khurda earlier on that date which was not correct. The Tribunal also observed that the doctor's report should be read with regard to the injuries and treatment and medicine and No. importance could be assigned to the subject reference of the report in which the ticket had been mentioned. As the doctor mentioned the ticket number in the said report, the Tribunal came to the conclusion that the said ticket was not recovered by the claimant from the saree of the deceased and was procured later on to show the doctor. The Tribunal also disbelieved the plea that there was No. reason for the deceased to board the Puri Ahmedabad Express when she was a daily labourer and harvesting crops. The story of the co-passenger that the deceased gave him a sum of Rs. 100/- to purchase a ticket and he returned Rs. 77/- to her was disbelieved. On such analysis, the Tribunal concluded that the claimant led false evidence and misled it. Even though the statute is a beneficial nature of legislation, the claimant was not entitled to any compensation. On such finding the Tribunal dismissed the application of the claimant.

3. The learned Counsel appearing for the Appellant-claimant submitted that the finding of the Tribunal that the deceased was not a bona fide passenger was not based on proper appreciation of the materials on record and the conclusion that

it was a case of run over is perverse. Rather, the deceased was a passenger with ticket and died due to untoward incident as defined u/s 123 and 124A of the Railways Act. Though the driver of the train was the most important witness with regard to the accident in question, he was not examined in the case by the railway authority. The conclusion of the Tribunal that the deceased was not a bona fide passenger having valid ticket is not sustainable. On remand of the claim application from this Court for de novo trial, the Tribunal did not consider the case in its proper perspective and rejected the claim again with the same finding that the claimant led false evidence. Therefore, interference with the impugned order is warranted.

4. The learned Counsel appearing for the Respondent-railway authority submitted that the Tribunal rightly rejected the claim application of the claimant as the claimant did not properly substantiate the plea that the deceased was a passenger having a valid ticket and died in an untoward incident. In view of the Full Bench decision of the Andhra Pradesh High Court in the case of Union of India (UOI), South Central Railways Vs. Kurukundu Balakrishnaiah and Others, , since the deceased succumbed to the injury as the train ran over her, the claimant was not entitled to any compensation and the Tribunal rightly rejected the claim application of the claimant.

5. Learned Counsel for the Appellant-claimant in support of his contention cited a decision of this Court in the case of Parikhita Behera and Another Vs. The Divisional Railway Manager, South Eastern Railway and Others, , wherein the Division Bench of this Court has held that if the statutory authority is found to have committed deliberate act of negligence, it would not be prudent for the High Court to refuse to exercise jurisdiction under Article 226 of the Constitution of India. In an appropriate case, the Court discharging constitution duties can pass an order for payment of money in the nature of compensation consequential upon the deprivation of a fundamental right to life and liberty of a Petitioner. But the said decision was not applicable to the facts of the present case as the claimant filed the application under the Railways Claims Tribunal Act. However, since the Railways Act is a beneficial statute, the Tribunal should have taken a liberal attitude.

In the case of Union of India (UOI), Secunderabad Vs. B. Koddekar and Another, the Andhra Pradesh High Court held that the burden does not lie on the dependants 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. In other words, the burden is on the railways to prove that the deceased was not a bona fide passenger with a valid ticket and the nature of death falls within any of the Exceptions to Section 124A of the Act. Though the said case was referred to a Full Bench of Andhra Pradesh High Court, the said decision was not reversed by the Full Bench.

6. Therefore, this Court remands the matter to the Tribunal to decide whether

the deceased was a bona fide passenger with a valid ticket. It is open to both the parties to adduce their further evidence.

The Appeal is accordingly disposed of. No. costs.