
(2008) 03 DEL CK 0063
In the Delhi High Court
Case No : FAO No. 4 of 2007

Jamirul Nisha and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Citation : (2009) ACJ 1393

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Pratima N. Chauhan, for the Appellant; S.R. Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Present appeal lays a challenge to the order dated 20.11.2006 passed by the Railway Claims Tribunal, Principal Bench, Delhi dismissing the claim application of the appellants.

2. Appellants had filed a claim application u/s 124A of the Railways Act, 1989 claiming compensation in sum of Rs. 6 lakhs on account of the death of Late Sh. Sarfaraj Khan (hereinafter referred to as the deceased) alleged to have been caused when he had accidentally fallen from a train.

3. In the claim application it was averred that on 10.05.2003 the deceased had boarded EMU passenger train GDM 1 from Nizamuddin station for a journey from Nizamuddin to New Delhi Railway Station. That since the train was overcrowded the deceased got a place near the door of a compartment of the train. That at around 8.45 AM when the train was approaching Tilak Bridge Railway Station there was a sudden jerk due to which the deceased fell down from the train and died of injuries received as a result thereof. That the deceased was a bona fide passenger and that the death of the deceased was a result of an "untoward incident" which happened when he was traveling in EMU passenger train GDM 1. That the deceased was self-employed and earning his livelihood by working as a

painter. That the appellants are the widowed mother and sister of the deceased and were dependent upon the earnings of the deceased.

4. The railways defended the claim by pleading that the appellants are not entitled to any compensation as injuries which resulted in the death of the deceased were not accidental but self-inflicted injuries. That the deceased was not a bona fide passenger in the train. That the accident in question occurred when while trying to cross the railway track the deceased came into contact with the moving train. (Meaning thereby was run over while crossing the railway track)

5. In support of the claim appellants examined appellant No. 1 Jamirul Nisha mother of the deceased as AW-1 and one Mr. Manik Mian as AW-2 who claimed to have witnessed the said untoward incident.

6. In her testimony appellant No. 1 deposed on the lines of the claim application. She further deposed that on the unfaithful day i.e. 10.05.03 the deceased left his residence situated at Sarai Kale Khan, Delhi at about 8.15 in the morning. That the deceased told her that he is going to New Delhi for taking payment from some contractor. She also deposed how her son died.

7. Sh. Manik Mian AW-2 stated that the deceased was traveling under a valid ticket and that the death of the deceased was a result of an untoward incident. He deposed that on 10.05.2003 at about 8.15 AM he met the deceased near the booking counter of the Nizamuddin Station. That he purchased two tickets for a journey from Nizamuddin Station to the New Delhi Railway Station and gave one ticket to the deceased. That thereafter they boarded the EMU passenger train GDM1. That since the train was overcrowded they both got a place near the door of the compartment. That when the train was approaching Tilak Bridge railway station there was a sudden jerk due to which the deceased fell down from the train. That after the deceased fell down from the train he cried and requested other passengers to pull the alarm chain but the train did not stop. That thereafter he got down at the Tilak Bridge station and while going out of the platform he informed one railway official regarding the said incident.

8. It is relevant to note that in cross-examination AW-2 gave reason why he and the deceased were co-passengers. He stated as under: "Mandawali is near Mother Dairy, Patparganj, Delhi. I was accompanying the deceased as I was to take him to Mandawali along with me. He had met at the station itself. I had not taken any money from the deceased for purchasing the ticket nor I received it after I had given the ticket to him. I was taking him to Mandawali for white washing my house. I had pulled the chain after the deceased had fallen from the train, but the train did not stop. The deceased had fallen at a short distance from the Tilak Bridge station. I did not report the matter to the police. I had informed one of the passengers about this incident and left. I got down at ITO and did not go back to the spot to enquire as to what had happened to the deceased. It is incorrect to suggest that I was not accompanying the deceased or that I am deposing falsely".

9. On behalf of the appellants following 17 documents were filed:

(i) AW1/2.... True copy of the DD entry No. 9A dated 10.05.03 which was recorded after the occurrence of the accident.

(ii) AW1/3 and AW1/4.... True copies of the medical records of LNJP hospital where the deceased was admitted.

(iii) AW1/5.... True copy of the DD entry No. 20A dated 14.05.03 which was recorded after the death of the deceased.

(iv) AW1/6.... True copy of the death report of the deceased.

(v) AW1/7.... True copy of the post-mortem report of the deceased.

(vi) AW1/8.... True copy of the inquest report.

(vii) AW1/9, AW1/10, AW1/11, AW1/12, AW1/13, AW1/14 and AW1/15.... True copies of the statements of SI Jagdish Singh, Krishan Mohan Singh, Vinod Kumar, Head Constable Yashpal Singh, Jamirul Nisha and Nasim Khan recorded before the police.

(viii) AW1/16.... True copy of the final report made by the police.

(ix) AW1/17.... True copy of the ration card.

(x) AW1/18.... True copy of the guard's memo.

10. AW1/2 records the wireless information received regarding the happening of the said accident. Wireless information stated to be received is that one person had fallen from a train.

11. AW1/3 and AW1/4 records the injuries suffered by the deceased.

12. AW1/5 records that the deceased died on 14.05.03.

13. AW1/9 is the statement of SI Jagdish Singh. It has been recorded that on 10.05.03 the deceased was crushed by a train. How the deceased came into contact with the train has not been recorded.

14. AW1/10 is the statement of one Mr. Krishan Mohan Rai who was running a food cart at the Tilak Bridge railway station. It has been recorded that on 10.05.03 he found that the deceased has been lying near the railway line in an injured condition.

15. AW1/11 is the statement of one Mr. Vinod Kumar who was working as a Keyman at the Tilak Bridge railway station. It has been recorded that on 10.05.03 he found that the deceased has been lying near the railway line in an injured condition.

16. AW1/12 is the statement of Head Constable Yashpal Singh. It has been recorded that on 10.05.03 the deceased was crushed by a train. How the deceased came into contact with the train has not been recorded.

17. AW1/13 and AW1/14 are the statements of the mother and brother of the deceased respectively. Said statements pertain as to how they received the information regarding the death of the deceased.

18. On behalf of the railways Head Constable Yashpal Singh and one Mr. Vinod Kumar were examined as RW-1 and RW-2 respectively.

19. Head Constable Yashpal Singh RW-1 deposed that on receiving the information regarding the occurrence of the said accident he went to the Tilak Bridge railway station where he was informed that a person met with an accident under the over-bridge between the two platforms and had already been removed to the hospital.

20. Vinod Kumar, RW-2, who was working as a Keyman at the Tilak Bridge railway station deposed that on 10.05.03 when he was conducting a routine inspection of the line near the platform at the Tilak Bridge railway station he found that an injured person lying on the railway track under the over-bridge between the platforms.

21. After noting the respective stand of the parties and the evidence led the learned Railway Claims Tribunal has held that the deceased was neither a bonafide passenger nor had died of injuries alleged to have been sustained by him after accidentally falling from a train and thus dismissed the claim application of the appellants. The tribunal has opined as under: "Since decision of both these issues mainly depends upon the evidence of AW-2, we have taken these issues together. From the body of the deceased ticket has not been recovered. It is not unusual that when a passenger falls down from the train his ticket may be lost but in the present case we find that except for the statement of AW-2, there is no other evidence to prove that the deceased was allegedly traveling in the train or he had purchased any ticket. In his affidavit AW-2 has stated that on 10th May 2003, the deceased met him near the booking counter of Nizamuddin railway station and he purchased two tickets for one himself and one for the deceased for going to New Delhi. The witness was allegedly taking the deceased to his house for the purposes of white wash whereas AW-1 namely applicant No. 1 in her affidavit has stated that the deceased as going to New Delhi for getting payment from some contractor. The evidence of AW-2 does not inspire confidence in as much as while it is stated by him that when the train was approaching Tilak Bridge railway station, the deceased fell down from the moving train due to sudden jerk given by the train and in his statement before the Tribunal also he states that the deceased had fallen at a short distance from Tilak Bridge railway station, the body of the deceased was found at the station itself between the two platforms. Though the witness was allegedly traveling with the deceased and was taking him to his house for white washing, he neither informed the police about the same nor informed any railway official. He also did not go back to the spot, where the deceased had allegedly fallen, to enquire as to what had happened to him. This evidence is clearly contrary to the evidence produced by the railways. Head Constable Yas Pal Singh, who had visited the

spot and investigated the matter has stated that when he reached Tilak Bridge railway station, he was informed that a person had met with an accident under the over bridge between two platforms and had already been removed to the hospital. Vinod Kumar Singh, who was posted as Key Man at Tilak Bridge railway station has in his statement stated that while he was on routine inspection of the line, he found an injured person lying on the railway track under the over bridge between the two platforms. The statement of the witness produced by the railways clearly show that the body was recovered at the railway station itself between the two platforms under the over bridge which connects the two platforms. The fact fact the body was recovered between the two platforms at the railway station, in our view clearly shows that the deceased had not fallen from the train as has been stated by RW-2. In our opinion AW-2 was not traveling with the deceased and is a procured witness. We are thus clearly of the opinion that the deceased was neither a bonafide passenger nor had died of injuries alleged to have been sustained by him after falling from the train. Both these issues are accordingly decided against the applicants."

22. Learned Counsel for the appellants challenges the impugned order on following two counts:

I. Learned Tribunal failed to take note of the DD Entry No. 9A dated 10.05.03 Ex.AW1/2 which according to her clearly establishes that the deceased had fallen from the train.

II. Learned Tribunal has acted contrary to the settled law that the burden of proving that the death of a victim of a train accident is not the result of an "untoward incident" is upon the railways. That in the instant case railways failed to discharge the burden that the death of the deceased was not the result of an "untoward incident". Reliance has been placed upon the judgments reported as 3 (2002) AC 431 Union of India v. B. Koddekar and Ors. and Raj Kumari and Another Vs. Union of India (UOI), in support of this contention.

23. No doubt DD Entry 9A dated 10.05.03 Ex.AW1/2 records that a information has been received that a person had fallen from a train. It is quite possible that after seeing the deceased lying in an injured condition on the railway track some person might have presumed that the deceased had fallen from the train and informed the police on that basis. After the accident was investigated by the police there has been no evidence or even traces of the fact that the deceased had fallen from the train. All that is established is that the deceased was crushed by a train and that he was lying on the railway track under the over-bridge between the two platforms.

24. The learned tribunal has rightly disbelieved the testimony of AW-2. In my opinion, AW-2 was a planted witness.

25. If testimony of AW-2 is believed, he was not obviously a fortuitous co-passenger with the deceased. As per his testimony AW-2 was taking the deceased to his house for purpose of getting his house white-washed by the

deceased. In his examination-in-chief he has deposed that he cried after seeing the deceased falling from the train. In his cross-examination he has deposed that after the deceased fell off from the train he got down at the Tilak Bridge railway station and did not go back to the spot where the deceased had allegedly fallen to enquire as to what had happened to him. If AW-2 was so distressed that on seeing the deceased falling from the train, he cried, he would have definitely gone to the spot where the deceased had allegedly fallen to enquire as to what had happened to him. Even otherwise, it was expected of him that after getting down at the Tilak Bridge railway station he would have gone to the spot where the deceased had allegedly fallen to enquire as to what had happened to him. The conduct of AW-2 in getting down at the railway station and just walking, without enquiring about the deceased, is unnatural human conduct if indeed he had witnessed the accident.

26. Testimony of AW-2 suffers from two contradictions.

27. AW-2 in his examination in chief has deposed that on seeing deceased falling from the train he requested other passengers to pull the alarm chain while in his cross examination he has deposed that he had himself pulled the chain.

28. AW-2 in his examination in chief has deposed that after getting down at the Tilak Bridge Railway Station he informed one railway official regarding the said incident while in his cross examination he has deposed that he informed one of the passengers about the said incident.

29. Learned Tribunal has rightly opined that the positioning of the body of the deceased also belies the testimony of AW-2.

30. Additionally I note that had the deceased would have fallen from the train when it was approaching Tilak Bridge Railway Station as stated by AW-2 the deceased would not have suffered such grievous injuries for the reason train in question was an E.M.U Passenger Train which travel at a very less speed and the speed of E.M.U Train further slows down when the train is approaching the station.

31. Testimony of AW-1 as to the manner in which the deceased died is of no consequence for the reason she was not an eye-witness to the said accident. In her cross-examination she has categorically deposed that she has no personal knowledge about the said incident. 32. Second contention advanced by the learned Counsel for the appellants is predicated upon the assumption that the death of the deceased was a result of an "untoward incident".

33. Section 123(c)(2) of the Railways Act, 1989 provides that the accidental falling of any passenger from a train carrying passengers is an "untoward incident". Section 124A provides that when a persons suffers injury or dies due to an untoward incident it is incumbent upon the Railways to pay compensation to the injured or to the dependents of the deceased as the case may be provided the injury or death does not fall within any of the five exceptions indicated in the

Section.

34. From a perusal of the Sections 123(c)(2) and 124A 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 a train.

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

36. In view of above discussion I find no merits in the instant appeal.

37. Impugned order dated 20.11.2006 is affirmed.

38. The appeal is dismissed.

39. No costs.