

(2020) 09 JH CK 0182
In the Jharkhand High Court
Case No : M.A. No. 401 Of 2015

Jitu Sahu And Ors

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 23-09-2020

Acts Referred:

Railways Act, 1989 — Section 123(c)(2)

Citation : (2020) 09 JH CK 0182

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : V. S. Jha, Manish Kumar, Vijoy Kr. Sinha

Final Decision : Allowed

Judgement

1. Heard, learned counsel for the parties.
2. The instant appeal has been preferred by the claimants against the judgment/order dated 16.07.2014 passed by learned Member/Technical, Railway Claims Tribunal, Ranchi Bench, Ranchi in TAU/RNC/2006/0021 (Old No.TTU-60021/06) wherein claim application has been dismissed by the Railway Claims Tribunal, Ranchi, on the ground that the deceased was not a bona-fide passenger and the incident was not an untoward incident.
3. Learned counsel, Mr. V. S. Jha assisted by learned counsel for the appellants, Mr. Manish Kumar has submitted that Ganesh Prasad Sahu (deceased) along with his brother, Satyanarayan Gupta purchased ticket on 17.12.2005 and boarded Train No.481 UP (Adra-Barkakana Passenger Train). The deceased was going to Ramgarh from Muri having second class ordinary ticket along with his brother, but because of massive crowd inside the compartment and jerk, deceased fell down near the East Cabin of Barlanga Railway Station and he was crushed and died.
4. Learned counsel for the appellants has further submitted that evidence of A.W.2 (Satyanaraya Gupta) is relevant to be relied in this case as the witness has

categorically stated in Paras-2, 3, 4 and 7 which are reproduced herein- below :-

"2- यह कि दिनांक 17.12.2005 को मैं एवं मेरा छोटा भाई मृतक गणेश प्रसाद साहु हमदोनों टेन संख्या 481 अप आद्रा-बरकाकाना सवारी गाड़ी से द्वितीय श्रेणी का यात्रा टिकट खरीदकर वैद्य यात्री के रूप में उपरोक्त गाड़ी के जेनरल बोगी में सवार होकर मुरी जं० से रामगढ़ साथ-साथ जा रहे थे। 3. यह कि मेरा भाई ने ही द्वितीय श्रेणी का दो टिकट मुरी से रामगढ़ के लिए खरीदा था। हमलोगों के पास एक बैग था उसी में कपड़े, करीब 600/- रूपया एवं हमलोगों का यात्रा टिकट था, पुरा थैला ही खो गया है। 4. यह कि यात्रा के क्रम में उपरोक्त गाड़ी में यात्रियों की काफी भीड़ थी, जिसके कारण हमदोनों को बोगी के अंदर घुसने का जगह नहीं मिला तो हमदोनों ने बाध्य होकर टेन के गेट पर ही खड़ा होकर यात्रा कर रहे थे। 7. यह कि मैंने जप्ती सूची को निर्गत करने हेतु जी०आर०पी०एस० मुरी में एक आवेदन दिया था, परन्तु जी०आर०पी०एस० मुरी ने उक्त आवेदन लेने से इंकार कर दिया है। "

5. Learned counsel for the appellants on the above grounds has submitted that in view of the judgment passed by the Hon'ble Apex Court in the case of Union of India vs. Rina Devi, reported in (2019) 3 SCC 572 para 29, the deceased was bonafide passenger, which is quoted hereunder:-

"29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly".

And has prayed that deceased may be considered to be a bona-fide passenger and in view of the judgment passed by the Hon'ble Apex Court in the case of Union of India vs. Prabhakaran Vijaya Kumar AIR 2008(2) T.A.C. 777(SC) equivalent 2008(9) SCC 527, at paras 14-17 and 22-24 it was an untoward incident as defined under Section 123(c)(2) of the Act, as such, appeal may be allowed by setting aside the impugned judgment.

6. Learned counsel for the respondent- Railways, Mr. Vijoy Kumar Sinha has opposed the same and has submitted that as per the final report the case is that deceased was crossing the railway track where there was no over bridge and he met with unfortunate incident, as such, Railway Claims Tribunal has rightly dismissed the claim application and this Court may not interfere with the same.

7. After hearing learned counsel for the parties and on perusal of the Lower Court Records which has been called for by the co-ordinate Bench of this Court vide order dated 16.11.2016 and also considered the counter-affidavit filed by the Railway. This Court has considered the entire material and considered the evidence of A.W.(2)- Satyanarayan Gupta as referred above and in view of the judgment passed by the Hon'ble Apex Court in the case of Rina Devi (Supra), the deceased- Ganesh Prasad Sahu was a bona-fide passenger and in view of the judgment passed by the Hon'ble Apex Court in the case of Prabhakaran Vijaya

Kumar (Supra) as referred above, the occurrence was covered under untoward incident as defined under Section 123(c)(2) of Railways Act.

8. Thus, this Court is inclined to allow this appeal by setting aside the impugned judgment passed by the learned Tribunal, which is accordingly hereby set aside.

9. Accordingly, the instant appeal stands allowed.

10. The respondent-railways is directed to pay compensation within a period of 90 days as per the prevalent rate at the time of filing of the claim application which was a sum of Rs.4 Lac along with interest @ 7.5% from the date of filing of claim application till the date of judgment or respondent-Railways may pay a sum of Rs.8 Lacs as amended by new Rule of the year 2016 whereby the claimants are entitled for a sum of Rs.8 Lacs, whichever is higher. However, the claimants shall not be entitled for any interest during the period when this Misc. Appeal was filed i.e. 24.08.2015 till today i.e. 23.09.2020 as there were several adjournments taken by the learned counsel for the appellants.