
(2016) 04 JH CK 0228
In the Jharkhand High Court
Case No : M.A. No. 145 of 2014

Mithun Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Citation : (2016) AAC 1909 : (2017) 2 ACC 697 : (2017) ACJ 756 : (2017) 169 AIC 413 : (2016) 3 AIRJharR 324 : (2016) 4 JCR 38 : (2017) 2 JLJR 424

Hon'ble Judges : Mr. Amitav K. Gupta, J.

Bench : Single Bench

Advocate : Mr. Rajesh Kumar Jha, Advocate, for the Appellant; Mr. Vijoy Kumar Sinha, A.S.C. (Railway), for the Respondent

Final Decision : Allowed

Judgement

Mr. Amitav K. Gupta, J.—The present appeal has been preferred against the order dated 12.08.2013 in case no. O.A. (IIU)/RNC/2009/0076 passed by learned Railway Claims Tribunal, Ranchi, rejecting the appellant's claim for compensation.

2. Learned counsel for the appellant has submitted that in the claim application it is averred that Satyendra Dusadh (since deceased) was working as U.G. Loader in Madhaipur Colliery of M/s Eastern Coal Fields Ltd., Pandeshwar Area in West Bengal. That on 09.03.2009, he boarded the train at Raniganj for Dhanbad from where he had to board Ganga Sutlaj Express Train no. 3307 to go to his native place at Dehri-On-Sone, Bihar. That he was travelling on a general IInd Class railway ticket. That on account of Holi festival, due to jostle and rush of passengers, he slipped and fell down from the train. Due to the fall he came under the wheels of the Train and sustained multiple injuries resulting in his death. The dead body of Satyendra Dusadh was found lying between Pole no. 344/12-344/14 near Hazaribagh Road Railway Station.

It is argued by the learned counsel that the learned tribunal has not appreciated

the fact that a U.D. case was registered by G.R.P.S., Gomoh on 10.03.2009, bearing case no. 03/09 on the fardbeyan of one Jhalwa, the keyman of Hazaribagh Railway station, who found the dead body of the deceased at 6 A.M. in the early morning of 10.03.2009, as per Ext. A-1, i.e., the F.I.R. and the statement of Jhawla, the Keyman, have been marked as Ext. A-2.

It is urged by the learned counsel that the learned tribunal has disbelieved the statement of the appellant on surmises and conjectures, despite the fact that the appellant-A.W.-1 was examined and his statement has remained uncontroverted in cross-examination by the Respondent/Railway. It is argued by the counsel that the tribunal has committed an error by observing that the deceased was not a bona fide passenger because the ticket was not found on the body of the deceased.

To substantiate the contention learned counsel has relied on the decisions reported in (1993) ACJ 846 of the Madhya Pradesh High Court in Rajkumari and Another v. Union of India which has also been relied upon by the learned Judge on Madhya Pradesh High Court in the judgment dated 24.07.2012 in the case of Mrs. Shanti and Others v. Union of India.

It is contended that the impugned order is fit to be set aside and the appellant/claimant is entitled to be paid the compensation under Section 124-A of the Railway Claims Tribunal Act with interest from the date of the application.

3. Per contra, learned counsel for the respondent-railway has contended that the impugned order requires no interference as the learned Tribunal had framed three issues namely, "whether Satyendra Dusadh, S/o late Surajdeo Dusadh was a bona fide passenger as alleged?; "whether any untoward incident as defined in Section 123 of the Railways Act, 1989 occurred to Satyendra Dusadh, while travelling in local train on 12.03.2009 at Pole no. 344/12-14?;" and "whether the applicant is entitled for the compensation as claimed by him?". It is submitted that after considering the documents and evidences on record the learned Tribunal has decided the issues against the appellant, hence, the appellant/claimant is not entitled to any compensation.

It is canvassed that the learned Tribunal has considered the fact that the claimant has asserted on 09.03.2009 that the deceased was travelling on the Train from Raniganj to Dhanbad and from Dhanbad he had to board Ganga-Sutluj Express, Train no. 3307 to proceed to his native place at Dehri-On-Sone. The learned Tribunal has held that neither any ticket was produced by the appellant nor any evidence was adduced to prove that the ticket was purchased by the deceased moreover the inquest report filed by the appellant was not certified and the date and time of preparation was noted as 10.03.2009 at 12:45 Hours, but, no ticket was found. Therefore, the learned Tribunal has rightly held that the deceased was not a bona fide passenger in terms of Section 2(29) of the Railways Act.

It is contended that with regard to issue no. 2, the learned tribunal has held that

there is no explanation as to why the claimant A.W.-1 Mithun Kumar did not try to contact or locate the whereabouts of his father, i.e., the deceased who did not reach his native place on 10.03.2009. In fact, the family of the deceased went to the police station, Gomoh only on 12.03.2009, i.e., after three days of the incident. The learned Tribunal has also observed that the said appellant-Mithun Kumar did not lodge any F.I.R., regarding loss of his father's mobile. It is urged that the learned Tribunal has observed that the sequence of facts as narrated in the claim does not corroborate the manner of occurrence and has based its finding on the basis of the evidence on record that no such incident was recorded in the station diary of Station Superintendent, Hazaribagh Road Railway station. Moreover, the appellant had failed to disclose as to how he got the details of his father's journey by different modes of transport from his place of work to go to Dhanbad and to Dehri-On-Sone on 09.03.2009.

It is argued that in fact, from the nature of the injuries, it appears that the deceased was leaning out of the door due to which he must have been hit by the electric pole and the injury is self-inflicted on account of negligence and carelessness of the deceased which is covered by the exception clauses (a) to (e) of the proviso to Section 124 A, hence, the appellant is not entitled to any compensation.

4. Learned counsel has also relied upon the decision in the case of Smt. Archana Verma v. Union of India through General Manager, South Eastern Railway reported in (2015) 4 JLJR 134 and submitted that in the aforesaid case the Bench of this court has observed and held that non-finding of the ticket on the body of the deceased shows that the deceased was not a bona fide passenger, accordingly, the compensation was refused.

5. Heard. For better appreciation it is pertinent to refer to the provisions of section 124 A, which reads as follows:-

"124A. Compensation on account of untoward incident.- 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 purpose 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."

6. It is settled proposition that Section 124(A) is based on the principle of strict liability and the railway-authorities are bound to pay the compensation regardless of the neglect or default or any wrongful act of the railway administration, in case a passenger has sustained injury or had died on account of an untoward incident. The liability to pay compensation can be denied when the death of the passenger or injury sustained by the passenger, is of the nature which is covered by the exceptions provided in clauses (a) to (e) of the provisions of Section 124A. To escape the statutory liability, the burden lies heavily on the Railway administration to prove that the injury or death of a passenger is covered under clauses enumerated in the proviso of Section 124A of the Act. The terms "untoward incident" has been defined in section 123(c) of the Act and includes "accidental falling of any passenger from a train carrying passengers".

7. In the case of Union of India v. Prabhakaran Vijaya Kumar reported in (2008) 9 SCC 527, the Supreme Court has held that the provision for compensation in the Railways Act is a beneficial piece of legislation, and it should receive a liberal and wider interpretation and not a narrow and technical one. Accordingly, the interpretation which advances the object and serves the purpose should be preferred. This has also been observed in the case of Kunal Singh v. Union of India reported in (2003) 4 SCC 524.

8. In view of the settled proposition of law and on analysis of the facts and evidence of the instant case it has to be considered whether the deceased was a bona fide passenger. The question arises that just because the ticket was not discovered on the body of the deceased, can it be presumed that he was not a bona fide passenger. It is not disputed that Jhawla, the keymen of Railway Station found the body of the deceased lying on the railways track near Hazaribagh Road Railway Station on 10.03.2009 in the early morning at 6 A.M., in a highly mutilated condition with multiple injuries, hand and legs broken, eye and teeth missing. This has been noticed by the learned Tribunal while deciding issue no. 2. Admittedly, U.D. case (Ext. A-2), was registered on 10.03.2009. It is amply clear that the Tribunal discarded the inquest report dated 10.03.2009 as it was not certified. The inquest report is available in the lower court record. The said inquest report was prepared by the police and it is stated therein that no

clothes were found on the body. The body was removed from the Railway tracks and the post-mortem was conducted on 12.03.2009. In the postmortem report it is mentioned that no belongings of the deceased were produced. The non-finding of the ticket on the person of deceased can be well explained and understood from the fact that the dead body was in an uncared state after finding of the body at 6. A.M. as per report of the Keyman as the inquest report was prepared at 12:45.PM. It is evidenced from the inquest report that no clothes were found on the body which explains that clothes must have been removed by somebody. The police had investigated the case and submitted the final form stating that the deceased died on account of being run over by a train. It is no one's case that the deceased had committed suicide or he was done to death elsewhere and his body was thrown on the railway tracks or it was criminal act.

The respondents have not disputed the statement that the deceased was an employee of Madhaipur Colliery of M/s Eastern Coal Fields Ltd., within Pandeshwar area in West Bengal and he was a native of village Ararua Kala near Dehari-On-Sone, as mentioned in the identity card issued by Eastern Coal Fields Ltd., annexed with the claim application. The appellant/claimant has categorically stated that he had come to see off his father who boarded the train at Raniganj and had purchased a ticket for Dehri-On-Sone. It is also not denied that train no. 3307, i.e., Ganga-Sutluj Express runs on the route Dhanbad to Dehri-On-Sone via Hazaribagh Road Station. Thus, the finding of the dead body of the deceased on the railway track at Hazaribagh Road, can only lead to the inference that he was travelling on the said train to go to his native home to Dehri-On-Sone, as stated by the appellant, A.W-1 which has not been controverted in cross-examination by the respondent.

9. The duty is cast on the railway authorities to ensure that unauthorized persons do not board and travel on the train and if such person is found without a ticket he is to be dealt with and penalised under provisions of Sections 137, 138, 139 and 179 of the Railways Act. From the evidence available on record, the railway authorities have not been able to establish that the deceased was travelling without a ticket or had sustained injuries on account of any criminal act, or the injury was self-inflicted or suicidal. The finding that there was no entry of the incident in station diary by the Station Superintendent, Hazaribagh, is rather misplaced and non-appreciation of the fact that such report was made because as per Ext. R2, Jhalwa, the keyman had informed the Station Manager, Hazaribagh on 10.03.2009 that during the errand of his duty, when he reached near pole no. 344/12-14, he found the dead body lying there in a mutilated condition. The information given by the keyman was relayed by Station Manager, Hazaribagh Road to PA/GMO for GRP/Gomoh for proper disposal of the dead body at 10:02 hours on 10.03.2009, through the railway authority of Dhanbad which also leads to the inference that the deceased had fallen from the train while traveling on the train enroute from Dhanbad. In the first information report lodged by Jhalwa, the keyman, it has been categorically mentioned that the deceased-Satyendra Dusadh, died on account of fall from a train, whereupon a

U.D. case was registered which was investigated by the police and as discussed above the final form was submitted by the police that the deceased died on being run over by the train. From the evidence on record it is admitted that the deceased was employed in the colliery of Pandeshwar Area, West Bengal thus he would not have possibly reached Hazaribagh Railway Road Station on foot. On the contrary the preponderance of probability is that he must have been travelling on the train and had fallen down from the train.

10. The facts of the decision relied upon by the learned counsel for the respondent are not applicable to the facts of the present case. Each case has to be decided on fulcrum of the facts involved in a particular case. Thus, in view of the discussions made above and the evidences on record, it is apparent that the statement of the applicant/claimant has remained intact and unrebutted by the respondent. The respondent has not examined any witness to controvert the evidence neither has it been able to prove that the deceased had died due to his own negligence or criminal act or committed suicide or was run over by the train while trying to cross the rail tracks or the injuries were self-inflicted and the injuries sustained resulting in the death of the deceased come within the clauses (a) to (e) of the exceptions of the proviso to section 124A of the Railways Act. Therefore, in the absence of any evidence to the contrary it is held that the deceased died due to accidental fall while travelling on the passenger carrying train and it was an untoward incident as defined under Section 123(C)(2) of the Act, hence, the Railway Administration is liable to pay the compensation under Section 124 (A) of the Act.

11. In view of the discussion made above, the respondent-railway authorities are directed to pay compensation of Rs. 4,00,000/- with interest @ 9% per annum from the date of filing of the claim application till payment of the amount to appellant. The appellant shall distribute the said amount amongst the dependents in equal shares. The aforesaid amount shall be paid within 90 days from the receipt of this order.

12. In the result this appeal stands allowed.