
(2015) 01 JH CK 0035

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 324 of 2013

Paramanand Vimal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Railways Act, 1989 — Section 123, 123(c)(2), 124A, 124-A

Citation : (2015) 01 JH CK 0035

Hon'ble Judges : P.P. Bhatt, J.

Bench : Single Bench

Advocate : Basav Chatterjee, for the Appellant; Ram Nivas Roy, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.P. Bhatt, J.

The present Appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987, being aggrieved by the judgment dated 21.8.2013, passed by the Member (Technical), Railway Claims Tribunal, Ranchi Bench, Ranchi, in Case No. O.A. (11U)/RNC/2011/0053. After preliminary hearing of this Appeal, by order dated 21.4.2014, the lower court records were called for and thereafter the matter was listed for hearing.

The brief facts, giving rise to the present Appeal, are as under:-

1. Malay Saurav, son of the appellant was travelling by Hatia-Patna Super Express Train No. 18627 from Bokaro Steel City to Gaya on 13.01.2011. The deceased fell down from running train in between Hazaribagh Road Station to Keshawari Halt at KM 346/7-9. The incident was a case of self-inflicted injury merely because the deceased had fallen from a running train suffered head injuries and died. After receiving such information the appellant reached at place of incident and identified the dead body of his son. The post mortem was

conducted on the dead body of late Malay Saurav and the information was given before the authority concerned as U.D. Case No. 7/2011. The appellant has filed copies of fardbyan, F.I.R., Final Report, Inquest Report, Post mortem Report and Journey ticket No. 84095275 from Bokaro Steel City to Gaya. The appellant filed a petition for grant of compensation for Rs. 4 Laks u/s. 124-A fo Railway Act r/w Rule 3 and 4 of the Railway Accidents and Untoward Incidents (compensation) Rules, 1990.

2. Contesting the claim, the Respondent East Central Railway filed written statement against the claim application and contended that death of late Malay Saurav does not come within the purview of untoward incident as defined in the Indian Railway Act. The death did not occur due to fault of railway. The respondent also stated that the head injury indicates that deceased fell down due to his negligence. The co-pilot in train No. 18624 on 13.01.2011 from Bokaro Steel City to Gaya states/d that during his duty he did not find any jerk or abnormality nor he got any information about any person accidentally falling from the said train causing death or injury.

3. On the basis of pleadings, the following issues were framed on 16.04.2012 by the Railway Claims Tribunal:-

(i). Whether the deceased Malay Saurav S/o. Sri Parmanand Vimal was a bona fide passenger?

(ii). Whether any untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 occurred to the deceased Malay Saurav S/o. Sri Parmanand Vimal while travelling in Tr. No. 18624 Hatia-Patna Super Express on 13.01.2011 between Hazaribag Road Station and Keshawari Halt?

(iii). Whether the applicants entitled for the compensation as claimed and for/ other relief, if any?

4. The learned counsel appearing for the appellant has submitted that there is no evidence on record to show that the said accident had occurred due to negligence of the deceased. The Respondent Railway authority has not produced any single witness in support of their statement. It is further submitted that since the plea was raised by the respondent Railway authority that the deceased passenger died due to his own negligence, burden lies on railway authority to prove the same but it has failed to establish or prove such contention. It is further submitted that the learned Tribunal has committed an error in holding that self inflicted injury of the deceased passenger cannot be covered under the definition of untoward incident, though no evidence was brought on record by the respondent to establish the negligence on the part of the deceased. It is further submitted that the learned Tribunal has completely erred in holding that the accident was a case of self inflicted injury merely because the deceased had fallen from the running train, suffered head injuries and died. Learned counsel for the appellant in this context has referred to Section 123(c)(2) of The Railways Act, 1989 and submitted that in view of the above referred provision, the

Tribunal ought to have held that the accident was a case of untoward incident as per Section 123(c)(2) of the Railways Act, 1989 considering the F.I.R., Inquest Report, Post-mortem Report and Final Report given by the Railway Police, Koderma. The learned counsel for the appellant has also referred to and relied upon the decision given by the Hon''ble Apex Court in case of Jameela and Others Vs. Union of India (UOI), .

5. Learned counsel for the appellant has also prayed for interest on the awarded amount and submitted that the appellant is eligible and entitled to get the compensation from the date of filing of claim application/petition. In support of his submission, learned counsel for the appellant has also referred to and relied upon the decision rendered in case of Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, .

6. Learned counsel appearing on behalf of the respondent-Railways authority has submitted that the learned Railway Claims Tribunal, after careful consideration of the facts and circumstances as also the evidence on record, has rightly rejected/dismissed the claim put forward by the petitioner and there is no substance in the present Appeal. It is contended that the deceased fell down due to his own negligence and for that purpose, the Railway authorities cannot be made liable or responsible in any manner. Learned counsel for the Railways, by referring the Written Statement filed before the Tribunal, has submitted that specific plea was taken before the Tribunal that the deceased fell down due to his negligence and considering the materials on record; the Tribunal had dismissed the claim put forward by the petitioner.

7. Considering the aforesaid rival submissions and having regard to the facts and circumstances involved in the present case, and the discussions made by the learned Railway Claims Tribunal in its judgment, it appears that the learned Railway Claims Tribunal while considering the issue No. 1 has decided this issue in favour of the applicant meaning thereby that the deceased - Malay Saurav, son of the appellant, was a bona fide ticket holder and the ticket was recovered from the deceased, likewise, while considering the issue No. 2, the learned Tribunal has reached to a positive finding that the train involved in the accident is 18626 and not 18624. It further appears that the Inquiry Report filed by the respondent at Ext. R-10, as per the Station Master, Hazaribagh's report (Ext. R-12) to Sr. DCM/Dhanbad, as per Station Diary, Key Man's Note bearing KM No. 346/07-09, Inquest Report, Ext. R-19, Post-mortem Report-Ext. R-21, were also considered by the learned Tribunal in its judgment, but the learned Tribunal has failed to appreciate the evidentiary value of the above mentioned documentary evidence as also the admitted position with regard to the aforesaid two findings recorded by the tribunal discussed herein above. It further appears that the findings recorded by the Tribunal in issue No. 1 and issue No. 2 have not been challenged by the railway authorities till date meaning thereby that the said findings have been accepted by the railway authorities. On evolution of the findings recorded in issue No. 1 and 2, the Railway Claims Tribunal ought to have considered the case

of the appellant, but, the Tribunal without assigning any reason whatsoever dismissed the claim put forward by the petitioner by holding that the deceased fell down from the running train due to his own negligence for which the railway authorities cannot be held liable. In the instant case, there was no eye witness. The father of the deceased, namely Parmanand Vimal given evidence before the learned Tribunal and has narrated the entire incident as also the relevant evidence which was before the Tribunal. There is no major contradiction during the cross examination. It is pertinent to note that on behalf of the Railway authorities, not a single witness was examined though burden of proof lies upon the respondent/Railway authority.

8. The decision cited by the learned counsel for the petitioner, in case of Jameela and Ors. (supra) is applicable to the facts and circumstances of the present case, and therefore, it is necessary to reproduce the relevant paragraphs of the aforesaid case, i.e. paragraph Nos. 5, 6, 7, 8 and 9, which are as under:

"5. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section 124-A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railways that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railways that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section 124-A of the Act.

6. Chapter XIII of the Railways Act, 1989 deals with the liability of Railway Administration for death and injury to passengers due to accidents. Section 123, the first section of the Chapter, has definition clauses. Clause (c) defines "untoward incident" which insofar as relevant for the present is as under:

"123.(c) "untoward incident" means-

(1)(i)-(iii) * * *

(2) the accidental falling of any passenger from a train carrying passengers."

Section 124-A of the Act provides as follows:

"124-A. Compensation on account of untoward incidents.-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 purposes 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."

7. It is not denied by the Railway that M. Hafeez fell down from the train and died while travelling on it on a valid ticket. He was, therefore, clearly a "passenger" for the purpose of section 124A as clarified by the Explanation. It is now to be seen, that under section 124A the liability to pay compensation is regardless of any wrongful act, neglect or default on the part of the railway administration. But the proviso to the section says that the railway administration would have no liability to pay any compensation in case death of the passenger or injury to him was caused due to any of the reasons enumerated in clauses (a) to (e).

8. Coming back to the case in hand, it is not the case of the Railway that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

9. The manner in which the accident is sought to be reconstructed by the Railway, the deceased was standing at the open door of the train compartment from where he fell down, is called by the railway itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to section 124A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.

9. In view of the aforesaid decision given by the Hon"ble Apex Court, the decision given by the learned Railway Claims Tribunal by holding that the incident is a self inflicted injury and thus will not cover under the definition of "untoward incident" as defined in Section 123(c)(2) of the Railway Act, deserves to be quashed and set aside and the appellant's claim in respect of death of his deceased son-Malay Saurav is required to be allowed. The amount of compensation is required to be decided in view of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 and the Rule-4 thereof, provides limit of compensation. Part-I of the Schedule under Rule-3, specifically provides that in a case of death, the applicant is entitled to get compensation to the tune of Rs. 4 Lakhs (Rupees Four Lakhs). The compensation payable under this Rule shall in no case exceed Rs. 4 Lakhs (Rupees Four Lakhs) in respect of any one person. In the instant case, it is admitted position that the son of the appellant has died in a Railway accident and as discussed herein above, in view of the decision given by the Hon"ble Apex Court, the claim of the present petitioner is a justifiable claim, which needs to be allowed.

10. On perusal of the entire record it appears that there is nothing to show that the deceased passenger Malay Saurav died due to his own negligence. The Railway/Respondent authority miserably failed to establish that the deceased passenger died owing to his own negligence. There is no evidence on record in this regard. Simply taking the plea in the written statement that the deceased died due to his own negligence is not sufficient. Negligence must be proved with cogent and un-rebuttable evidence, which is lacking behind in this case. On the contrary it is evident that the deceased passenger was a bona fide Ticket holder while he was travelling by Hatia-Patna Train from Bokaro Steel City to Gaya and fell down in between Hazaribagh Road Station and Keshawari Halt at KM No. 346/7-9. The claim of the claimant/petitioner/Appellant is bona fide and as such he is entitled to get compensation accordingly.

11. Considering all aspect and the discussion made above, the impugned order dated 21.08.2013 passed by the learned Railway Claims Tribunal, Ranchi Bench, Ranchi in Case No. - OA(IIV)/RNC/2011/0053 is hereby set aside and claim of the Petitioner/Claimant/Appellant is hereby allowed. The Respondent Railway is also directed to pay compensation to the Claimant/Appellant to a tune of Rs. 4 lakhs (Rs. Four Lakhs) along with interest @ 6% p.a. to be calculated from the date of filing of the claim application till the date of payment. The payment shall be made within eight weeks from the date of communication of this order.

Accordingly this appeal stands allowed.