

(2023) 02 PAT CK 0036

In the Patna High Court

Case No : Miscellaneous Appeal No. 955 Of 2016

Prabha Devi

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 396, 397

Criminal Law Amendment Act, 1932 — Section 17

Railways Act, 1989 — Section 123, 123(b)(i), 123(c), 124A, 129

Citation : (2023) 02 PAT CK 0036

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Anant Kumar-1

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant. No one appears on behalf of the Railways.

2. This appeal has been preferred for setting aside the order dated 10.03.2016 passed in Claim Application No. M.A. (OA) 0089 of 2010 by the Learned Member (Judicial), Railway Claims Tribunal, Patna Bench (hereinafter referred to as the 'Tribunal') whereby and whereunder the claim application of the appellant has been dismissed by the Tribunal on erroneous grounds.

3. Learned counsel for the appellant submits that on 25.12.2008 her husband namely, Ganesh Prasad Singh who was posted as constable at rail Thana Jamalpur had boarded the Up Bhagalpur-Muzaffarpur Express Train at Jamalpur together with Sunil Kumar Singh, Dharmendra Kumar and Jainendra Kumar constables. Ganesh Prasad Singh and other three constables were having one rifle each. When the train reached and halted at Agampur, all the four Constables boarded in second bogie of the back side of S.L.R. bogie. After some time fifty to sixty miscreants aged about 15 to 25 and 20 to 25 ladies boarded in the same bogie. As soon as the train crossed Ghoghi Bariyarpur halt, the train was

suddenly stopped. At this stage some people amongst the 60 people who boarded at Agampur came near the escort party and threw Mirchi Gundi on the faces of all the four Constables and looted away their rifles and cartridges. In the said contest the criminals fired some shots aiming at Ganesh Prasad Singh as a result whereof he died on the spot. Another Police personnel Ramakant Choudhary and some other passengers also got injuries. After looting away all the rifles and cartridges those persons got down from the train and raised slogans in support of maoists. They also made firings while fleeing away. In this connection, Jamalpur Rail P.S. Case No. 37/2008 under Section 396/397 of the Indian Penal Code and Section 17 of the C.L.A. Act dated 25.12.2008 was registered. The inquest report was prepared on 25.12.2008 and thereafter post-mortem of the dead body of the deceased was conducted on 26.12.2008 at Sadar Hospital Munger. After investigation, the I.O. submitted a final report on 27.06.2009 in favour of this untoward incident.

4. Learned counsel for the appellant submits that Ganesh Prasad Singh was married and the appellant being his wife and dependent as defined under Section 123(b)(i) of the Railways Act, 1989 (hereafter referred to as the "Act of 1989") filed a claim case seeking compensation before the Tribunal, Patna Bench, Patna. It is his submission that in support of her claim the complainant produced herself as a witness (A.W.1) and sworn her evidence on affidavit. She filed 11 documents which are marked as Exhibit A-1 to A-11. It is submitted that all the documentary evidences coupled with the evidence of AW-1 were sufficient to take a view that an untoward incident had occurred on 25.03.2008 in which the husband of the claimant-appellant who was on duty in the said train was shot dead. It is submitted that despite these materials available on the record, the learned tribunal has dismissed the claim petition. It is submitted that the order of the learned tribunal suffers from non-consideration of the materials available on the record.

5. This Court has heard learned counsel for the appellant and perused the records as also the impugned order. The appellant has placed on record the copy of the exhibits. It is submitted that on perusal of A-5 which is the copy of the 'Kaman', it would appear that Ganesh Prasad Singh, Sunil Kumar Singh, Jainendra Kumar and Dharmendra Kumar had been given duty on the said train on 25.12.2008.

6. The alleged occurrence was reported by constable Jainendra Kumar. He has mentioned in his fardbeyan that on 25.12.2008 he along with constable 140 Ganesh Prasad Singh, Constable 250 Sunil Kumar Singh and Constable 275 Dharmendra Kumar had boarded the Train No. 3419 Up Bhagalpur- Muzaffarpur Jan Seva Express as escort guards. He has narrated the entire occurrence, the manner of occurrence and further stated that on protest raised by Sepoy 140 Ganesh Prasad Singh, he was assaulted on his head by a sharp cutting weapon and was shot at his temporal region. He has further stated that Ganesh Prasad Singh died as a result of the same in the bogie itself.

7. In the post-mortem report of the Sepoy 140 Ganesh Prasad Singh three injuries have been shown on the vital part of his body as a result of which he died. It further appears that after investigation of the case police found the occurrence true against the unnamed accused persons and submitted a charge-sheet against whom sufficient materials were found in course of investigation.

8. In the abovementioned background of the facts emerging from the materials available on the record, this Court would briefly refer the relevant provisions of the 'Act of 1989'. The Tribunal has, in its concluding paragraph taken a view that the claim preferred by the claimant in this case would not come within the scope and ambit of section 123(c) of the Act of 1989, therefore, no relief may be granted under Section 124-A of the said Act. Section 123 falls under Chapter XIII whereunder the provisions relating to liability of railway administration for death and injury to passengers due to accidents have been dealt with. Section 123 to Section 129 are contained in Chapter XIII of the Act of 1989. Section 123 is the definitions which are being reproduced hereunder:

"123. Definitions.- In this Chapter, unless the context otherwise requires, -

(a) "accident" means an accident of the nature described in section 124;

(b) "dependant" means any of the following relatives of a deceased passenger, namely:-

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grandparent wholly dependant on the deceased passenger;

2c[(c) "untoward incident" means -

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson,

by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

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

9. Section 124 provides for the extent of liability. It is quoted hereunder for a ready reference:

"124. Extent of liability. - when in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or any 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation. - For the purpose of this section "passenger" includes a railway servant on duty."

10. A reading of clause 123(c) which is the definition of the word "untoward incident" it would appear that making of a violent attack or the commission of robbery or dacoity by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of the railway station would come within the meaning of the word "untoward incident".

11. This Court is unable to understand as to on what reasoning the learned tribunal has concluded in one line that the present claim would not come within the scope and ambit of section 123(c) of the Act of 1989. It is evident from the impugned order that the Tribunal has not at all looked into the documentary evidences produced on behalf of the claimants, save and except to take note of the kind of document and marking the same as the exhibits. The Tribunal has not taken pain to go through the contents of those exhibits and no discussion at all has been made in the impugned order as to the contents of those documents and any judicious application of mind thereto by the tribunal. In identically vague manner the tribunal has observed that no relief may be granted under section 124A of the Act of 1989. There is no discussion as to why and what has prevailed in the mind of the tribunal so as to take this view.

12. This Court would remind itself that the relevance and reasons are the heart and soul of any adjudicatory process and the tribunal was obliged to follow this in it's terms and spirit. To say that the claimant has not produced any evidence that her case may be proved under section 123(c) of the Act of 1989 clearly depicts that it is a case of non-application of a judicious approach on the part of the tribunal. There are ample materials showing that the "untoward incident" as envisaged under section 123(c) of the Act of 1989 had taken place. The

impugned order itself shows that the railways (opposite parties) had not produced any evidence or document against the claim of the claimant. In such circumstance, it is all the more unreasonable on the part of the tribunal in rejecting the claim petition on abstract consideration.

13. This appeal, therefore, succeeds. The impugned order is hereby set-aside. The Railway Claims Tribunal, Patna Bench, Patna is directed to consider the claim of the claimant on merit in the light of the discussions made hereinabove. More than one decade has gone in this litigation, therefore the Tribunal shall make all endeavours to adjudicate this claim and pass an appropriate order within a period of six months from the date of receipt/communication of a copy of this order. The date of hearing shall be pre-notified to the parties.

14. This appeal is allowed.