
(1997) 09 PAT CK 0050

In the Patna High Court

Case No : A.F.O.O. No"s. 64 and 67 of 1991

Prabhu Chand Ram

APPELLANT

Vs

Union of India(UOI)

RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:

Railways Act, 1989 — Section 123, 125

Citation : (1998) ACJ 1096 : (1997) 2 PLJR 801

Hon'ble Judges : G.S. Sharma, J

Bench : Single Bench

Advocate : P.N. Singhand Markandey Singh, for the Appellant; Gautam Bose, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sharma, J.—On 16.4.1990, one bogie of 383 Up Mokama-Danapur passenger train was set ablaze between Gulzarbagh and Patna Junction railway stations as a result of which, the wife and minor daughter, namely, Sona Devi (32 years) and Indu Kumari (13 years), of the claimant, Prabhu Chand Ram of village Bakhtiyarpur, District Patna, who were travelling therein as bona fide passengers from Barh to Patna Junction lost their lives.

2. On 17.8.1990, u/s 82A of the Indian Railways Act, 1890, the said Prabhu Chand Ram filed two separate applications for compensation for the accident in question before the Railway Claims Tribunal (hereinafter referred to as "the Tribunal") Patna Bench. Those were registered as Application Nos. 46/D.A. II/D/1990 and 47/D.A. II/D/1990.

3. In the meantime the Indian Railways Act, 1890, was repealed by the Railways Act, 1989, which came into force on 1.7.1990.

4. By the impugned orders dated 13.12.1990 and 31.1.1991 respectively the aforesaid two claim applications were rejected by the Tribunal on the ground that the claimant being not dependent on the earnings of the two deceased, was not

entitled to any compensation.

5. Mr. P.N. Singh, counsel for the claimant-appellant in both the appeals, submitted that u/s 125 read with Section 123(b) of the 1989 Act, husband and/or father of the victim could file and maintain a claim application regardless of his dependence or otherwise on the earnings of the deceased wife and/or unmarried daughter. It was further submitted that even though the accident had occurred on 16.4.1990, when the 1890 Act was in force, the claim applications were filed on 18.8.1990, i.e, after coming into force of the 1989 Act on 1.7.1990, and as such applications for compensation should have been decided in terms of the provisions of the 1989 Act, because it came into force before the claim applications were filed and decided by the Tribunal.

6. In the present cases, the cause of action, right and liability, if any, accrued to the claimant on 16.4.1990, the date on which the accident took place and on that date 1890 Act was in force.

7. The counsel for the appellant placed reliance on a decision of this Court in *Laldeo Singh v. Union of India* 1996 (2) PLJR 514 : 1997 (1) BLJ 1168, wherein it was held that since the 1989 Act, enacted by Parliament, was published in Gazette of India (Extraordinary) dated 5.6.1989, the said Act was already introduced before the date (16.4.1990) on which the accident in question took place and so the claim applications relating thereto were to be examined and disposed of according to Section 125(1)(d) read with 123(b) of the 1989 Act.

8. On the other hand Mr. Gautam Bose, counsel for the Eastern Railway cited another decision of this Court in *Hanjabam Gopinath Sharma v. General Manager, Eastern Railway, Calcutta* 1997 (1) PLJR 476, wherein it was held that in respect of the claims relating to accidents occurring during the period, the 1890 Act was in force, the 1989 Act coming into force thereafter shall not have any effect on the rights and liabilities accrued to parties on the date of the accident.

9. In my opinion, the material date for entertaining the claim was the date of the accrual of the cause of action for the claim arising out of the accident in question and in general it would be the date of the accident (16.4.1990) and, therefore, the same was to be determined on the basis of the provisions of the 1890 Act, which was admittedly in force on the said date. I don't therefore, find any substance in the contention of the counsel for the appellant that the provisions of the 1989 Act in this regard should have been followed in the present case.

10. A perusal of the records of the Tribunal of the two claim applications reveals that the claimant nowhere stated that his 13-year-old deceased daughter, Indu Kumari, had any earnings. She was merely a student in local school. However, in respect of the claim application relating to the death of his wife Sona Devi, in the accident in question it was stated that she was helping her husband in preparation of sweets, etc., which the claimant-husband used to sell in his shop.

11. I further find that in the claim application the deceased Sona Devi was

described as a housewife and even in the affidavit dated 4.5.1990 the claimant-husband failed to state that she had any earnings.

12. In my view the statement of the claimant-husband in his cross-examination that his deceased wife was helping him in preparation of sweets to be sold by him, by itself does not make out that deceased had earnings and the husband was partly or wholly dependent on the earnings of his wife.

13. The Tribunal, in my opinion, had rightly found that the claimant-appellant, in the facts and circumstances of the case and on the law applicable at the time of the accident in question, was not entitled to any compensation and dismissed both the claim applications and the impugned orders do not require any interference by this Court.

14. In the result, both the appeals (Misc. Appeal Nos. 64 and 67 of 1991) fail and are accordingly dismissed, but without costs.