

(2016) 11 JH CK 0136
In the Jharkhand High Court
Case No : M.A. No. 5 of 2015

Rajwinder Kaor

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:

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

Citation : (2017) 2 AIRJharR 811 : (2017) 1 JBCJ 219 : (2017) 2 JCR 557 :
(2017) 1 JLJR 633

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

Bench : Single Bench

Advocate : Mr. Rajesh Kumar Jha, Advocate, for the Petitioners; Mr. Vijoy Kumar Sinha, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Amitav K. Gupta, J. - This Miscellaneous Appeal is directed against the judgment dated 6.11.2014 passed by Member (Technical), Railway Claims Tribunal, Ranchi Bench, in Case No.OA(IIU)/RNC/2011/0031 dismissing the application of the appellants.

2. The case of the appellants is that late Balbinder Singh, husband of appellant no.1 and father of appellant nos. 2 & 3, had gone to Thaparnagar Railway Station for boarding a train to Dhanbad on 9.6.2010 and he purchased a ticket and was crossing the railway track to board the train which was to arrive at another platform across but in course of crossing the said railway track, he was run over by Down Sealdah Express Train No.3152 DN at about 12.45 pm near Pole No.242/08 about 500 Gaj Western side to Thaparnagar Railway Station and succumbed to the injuries sustained due to the accident.

3. The respondent-Railway, in their written statements, have stated that the deceased was not a bona fide passenger and he did not die due to any untoward incident on account of accidental fall from the passenger train.

4. On the pleadings of the respondent, the Tribunal has framed four issues and with respect to issue no.1 "whether Balbinder Singh was a bona fide passenger on 9.6.2010", it was held that the applicant-appellants have not been able to rebut letter No.555 dated 15.9.2014 issued by OC/GRP/Dhanbad wherein it was stated that no type of ticket has been recovered from the body of the deceased at the time of accident. It negated the claim on the ground that the applicant-appellants have failed to produce the original journey ticket.

5. The above finding of the Tribunal is not tenable as it has failed to appreciate that the onus lay on the respondent-railway to establish the fact that ticket no.71779 which was found in the right pocket of the full pant of the deceased and handed over to the attending police-constable, as per the noting in the postmortem report, was not issued by the railway or was a forged and manufactured ticket.

6. In this context, it would be relevant to refer to the provisions of section 124 and 124A of the Railways Act, 1989, which read under:-

"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 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 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 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 which accident."

124A. Compensation on account of untoward incident. - When in the course of working 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 dependent of the 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 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."

7. The Tribunal has lost sight of the object of the legislation which is beneficial in nature and it is well settled that a purposive and liberal interpretation of the provision, which serves the object and purpose of the legislation, should be preferred.

8. Learned counsel for the appellants has relied upon a decision rendered in *Union of India v. Prabhakaran Vijaya Kumar & Ors.* [(2008) 9 SCC 527], in which it has been held in para 11 that " Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the above-mentioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh v. Union of India* [(2003) 4 SCC 524].....".

9. At this point, it is relevant to take note that Section 123(c) of the Railways Act, 1989 defines an untoward incident and as per Explanation (ii) to section 124A, even a person who has a valid platform ticket and becomes a victim of an untoward incident is entitled to compensation if there is negligence on the part of the railways.

The claim can be denied only on the grounds as stipulated under proviso to section 124A under clause (a) to (e).

10. It is pertinent to note that while the Tribunal has disbelieved the recital in the Final Report and the postmortem report, that ticket no.71779 was recovered from the pant of the deceased but at the same time it has believed and relied on the police report that the deceased was run over by a train while crossing the track. It is amply clear that the Tribunal has adopted double standard by discarding a part of the finding in the police report while relying on another part of the same. The Tribunal has held that the railways were negligent, as there was no footbridge for a passenger to cross over from one platform to the other for boarding the train coming on either of the platforms. Since there was no foot-bridge, it was natural for the deceased to cross the railway track for boarding the train which was to arrive on the platform situated on the other side. It was due to the negligence of the railways that the deceased was constrained to cross the

railway track for boarding the said train.

11. At this juncture, learned counsel for the railways, has submitted that Down Sealdah Express, Train No.3152 DN, does not have a scheduled stoppage at Thaparnagar Railway Station, hence there is no question of issuance of railway ticket to a passenger for boarding the said train for going to Dhanbad or for onward journey.

12. The contention of the learned counsel for the respondent-railway is not acceptable because as discussed in the foregoing paragraphs, onus lies on the respondent-railway to establish the fact that the said ticket was a forged and fabricated one or was never issued from the ticket-counter at Thaparnagar Railway Station. The plea is also not tenable in the absence of any averment made by the respondent-railways before the Tribunal. Moreover, no evidence has been brought forth by the respondent-railways to substantiate the proposition propounded by the respondent-railways.

13. As per the postmortem report, ticket no.71779 was found on the person of the deceased which was handed over to the police-constable accompanying the dead body which stands corroborated by the finding in the final report submitted by the police. This establishes the pleading that the deceased was a bona fide passenger in terms of section 2(29) and died on account of an untoward incident as defined under section 123(c) of the Act within the premises of the railways. No evidence has been adduced to establish that the deceased was in a state of intoxication or an insane or the injuries were self-inflicted or it was an act of suicide so as to exonerate the respondent-railways in terms of proviso (a) to (e) of section 124 of the Act.

14. Thus, in view of the discussions made above and the evidence on record, it is held that the appellants are entitled to the statutory compensation of Rs.4,00,000/- (Rs.four lacs only) with interest at the rate of 9% from the date of filing of the application till the payment of the amount. The respondents are directed to pay the said compensation amount within three months from the date of receipt of this order, failing which they shall be liable to pay interest @ 12% from the date of the order.

15. The impugned judgment is hereby set aside and the appeal is hereby allowed.