
(2003) 07 CAL CK 0060
In the Calcutta High Court
Case No : F.M.A. No. 1956 of 2001

Sandha Ghosh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 302
Railways Act, 1989 — Section 123, 124A, 2(29), 55, 68

Citation : (2004) 1 CHN 696 : 108 CWN 50 : (2003) 2 ILR (Cal) 216

Hon'ble Judges : Samarash Banerjea, J;S.P. Talukdar, J

Bench : Division Bench

Advocate : Krishanu Banik, for the Appellant;Asit Kumar Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

S. P. Talukdar, J.—The instant appeal is directed against the judgment and order dated 16th July, 2001 passed by the learned Railway Claims Tribunal, Kolkata Bench in Case No. A/554/99.

2. Grievances of the present appellants may briefly be stated as follows.

3. On 5th of March, 1998, Ananda Ghosh, son of appellants No. 1 came home at about 4.30 p.m. and after changing his dress, left at about 6 p.m. and did not return home the same day. On 6th of March, 1988, a news was published in the daily newspaper that an unknown person was shot dead at Ichapur Railway Station on platform No. 3 by some miscreants. Non-return of her son coupled with such an information being published in the newspaper naturally made the appellant anxious who sent a person to probe into the matter. The said person went to Ichapur and came to know that the dead body was sent to Naihati GRPS. The said person went to Naihati GRPS and identified the dead body as that of said Ananda Ghosh. Over this, Naihati GRPS Case No. 11/98 u/s 302 of I.P.C. dated 5th March, 1998 was started. Appellants, as applicants before the learned Tribunal claimed that the victim had a valid railway ticket though it was not

available in his pocket. Appellants, as dependents, of the deceased victim filed an application claiming compensation to the tune of Rs. 4 lacs only. The father of the victim was also one of the parties before the learned Tribunal and his name was deleted as he subsequently expired.

4. The said claim application was contested by the Railway Administration. In the written statement filed before the learned Tribunal, all the material allegations made by the claimant were denied. It was specifically alleged that the victim was not a bona fide passenger but was a mere trespasser within the meaning of Section 55 of the Indian Railway Act. It was stated that on 5th of March, 1998 at about 19.00 hrs. an information was received that an unknown male, aged about 30 years, was shot dead at Ichapur Railway Station at platform No. 3 by some unknown miscreants. A case u/s 302 of I.P.C. was started. Inquest over the dead body was held and thereafter, the dead body was sent for post-mortem examination to NRS Hospital. Though initially not established, the dead body of the victim was subsequently identified as that of Dulal Ghosh. It was further stated that the victim was murdered in a sequel to gang rivalry and two persons were arrested in connection with the murder of the victim. Railway Administration specifically pleaded that in such circumstances it had no liability whatsoever.

5. The learned Tribunal framed as many as six issues upon the pleadings and by judgment and order dated 25th July, 2001 dismissed the claim application.

6. Being aggrieved by and dissatisfied with the said judgment and order of dismissal, announced on 25th July, 2001, applicants, as appellants, preferred the instant appeal.

7. Grievances of the appellants may be capsulated in a few sentences as follows.

8. The learned Tribunal was not justified in dismissing the claim application. Learned Tribunal failed to appreciate the facts and materials on record in proper perspective. The fact that the victim could not have had any access to the railway platform without having a ticket had not been appreciated by the learned Tribunal. Learned Tribunal was further wrong in holding that the victim was not a bona fide passenger within the scope and meaning of Indian Railways Act and as such, was not entitled to get any compensation whatsoever.

9. Mr. Krishanu Banik, learned Counsel appearing for the claimants/appellants at the very outset pointed out that there could be no justification for the learned Tribunal so as to hold that the victim was not a bona fide passenger. According to Mr. Banik, in absence of any evidence to the contrary, learned Tribunal had no scope to brush aside the evidence adduced on behalf of the claimants. Mr. Banik sought to derive support and strength from various decisions which, of course, include the case of *Joji C. John v. Union of India*, reported in 2002(2) TAG 192 (Ker) (DB); the case of *Raj Kumari and Another Vs. Union of India (UOI)*, ; the case of *Union of India v. Baburao Kodderkar and Anr.*, reported in 2003(1) ACC 130 (DB) (APHC) and the case of *Godisela Rajamma and Ors. v. Union of India*,

reported in 2002(3) TAG 183 (AP) (DB). It was emphatically asserted on behalf of the appellants/claimants that the burden is on the Railway Administration to prove that the victim is/was not a bona fide passenger. In the case of Raj Kumari and Anr. v. Union of India, it has been observed that "the scheme of the Act seen as a whole makes it evident that the entry into a railway carriage required of a person to obtain a ticket, pass or permission and in absence thereof, his action or omission is punishable with imprisonment or fine, including removal from the carriage." It has been opined that when a person is found dead as a result of accident in a railway carriage, in which he was travelling, a presumption may be drawn u/s 114 of the Evidence Act keeping in view of the prohibition u/s 68 of the Act against boarding a train without ticket that the deceased was a bona fide passenger. Referring to the said decision Mr. Banik argued that the relevant Act is a beneficial legislation and to shift onus of proof on the dependents would amount to denial of the benefit of such legislation to them for reasons beyond their control because onus is impossible to be discharged. It was further submitted that the burden is on the railways to prove that the deceased is not a bona fide passenger with a valid ticket and the nature of death falls within any of the exception to Section 124A of the Act.

10. Our attention was also drawn to the decision in the case of "Samar Krishna Dey and Ors. v. Union of India, decided by the learned Railway Claims Tribunal at Patna and the decision in the case of Habiba Bewa v. Union of India, as decided by the learned Railway Claims Tribunal, Kolkata, It had been submitted that in both the said cases the decision in the case of Raj Kumari and Anr. v. Union of India, had been relied upon. The focal point of Mr. Banik's argument seems to be that the burden does not lie on the dependents of the deceased to prove that the deceased was a bona fide passenger but it is on the Railway Administration to establish that the deceased was a ticketless traveller and was not a bona fide passenger. Following the views of the M. P. High Court, it has been observed in the case of Union of India v. Baburao Kodderkar and Anr., that the views of the M. P. High Court is prior to the amendment brought to Section 123 of the Railways Act and as a result of the amendment brought to Sections 123 and 124 of the Act, the burden is on the railways to prove that the deceased is not a bona fide passenger with a valid ticket and the nature of death falls within any of the exceptions to Section 124 of the Act.

11. Our attention had also been drawn to the decision in the case of Godisela Rajamma and Ors., v. Union of India but, significantly enough, the facts and circumstances of the said case are significantly different from those of the present case. There the deceased fell down from the running train and received injuries and died on the spot. In the said case the Hon"ble Court observed that it is proved beyond doubt that the deceased had purchased a valid ticket bearing No. 25674 for the journey from Chandrapur to Ramagundam and the said fact was established by cogent evidence.

12. In response to this, learned Counsel Mr. Asit Kurnar Banerjee, appearing for

the Railway Administration emphatically pointed out that in none of the cases as referred to on behalf of the appellants, the victim was a mere trespasser having entered into the railway platform area without any valid ticket in his possession. In fact, Mr. Banerjee clearly submitted that the facts and circumstances of all the said cases are significantly different from those of the present case. According to Mr. Banerjee, the victim herein was not a passenger and, as such, applicability of Section 124 of the Act itself is in doubt." It is further contended on behalf of the Railway Administration that the case built up in the claim application before the learned Railway Claims Tribunal is entirely different from the case as sought to have been made out by the claimants' witnesses. Referring to such clear disparity, it was submitted that there could be no justification for accepting evidence which were not in the pleadings. In this context, learned Counsel, Mr. Banerjee referred to the decision in the case of Prataprai N. Kothari Vs. John Braganza, wherein it had been clearly laid down that "it is settled law that in the absence of any plea, no evidence is admissible."

13. Mr. Banik, learned Counsel, appearing for the claimants/appellants in his reply submitted that having regard to the object and scope of such beneficial legislation i.e. The Railways Act, 1989, the strict rule of interpretation cannot have any application whatsoever.

14. There can be no dispute as to the fact that the provisions relating to compensation in the Indian Railways Act being in the nature of beneficial legislation do not deserve or demand rigid technical interpretation. It is not always necessary to do every "i" or cut every "t". At the same time it is for the Tribunal/Court to apply its mind as to the bona fide of the claim. According to learned Counsel for the appellant/claimant, it is impossible for the dependents of the deceased to establish that the deceased had a valid ticket. It was submitted by Mr. Banik, learned Counsel for the appellant that the failure on the part of the Railway Administration to establish with proper evidence that the deceased was not having any railway ticket must lead to adverse presumption u/s 114(g) of the Indian Evidence Act. To this, learned Counsel for the respondent/Railway Administration, Mr. Banerjee submitted that the thousands of railway stations in the vast country of India cannot reasonably be expected to function in a manner where entry into the railway platforms, by and large unguarded, if not the playfields of the undesirable underworld dons, will lead to adverse inference and the Court would hold that anyone in the railway platform will presumably be with a platform ticket.

15. Hear, of course, it is not the case of appellant/claimant that the deceased victim, had a platform ticket. It is nowhere pleaded in the application that the deceased victim was scheduled to accompany his relative in a railway journey. It is the specific case of the claimants that the deceased victim came home about 6 p.m., changed his dress and left home at about 6 p.m. without disclosing his whereabouts/destination. Such specific plea does not find any support or strength from the evidence adduced on behalf of the claimants before the

learned Tribunal.

16. Curiously enough, PW. 2 sought to build a new story and for reasons not far to seek. But such evidence of PW. 2 could really never act as cement in the gap as reflected in the pleadings as referred to earlier. From the materials on record, it transpires that the victim was also an accused person in a criminal case. It further appears that within a sort time of his murder police arrived at the spot and a case u/s 302 of I.P.C. was started. The deceased victim was not having any railway ticket in his possession. The stand of the Railway Administration relying upon the result of police investigation over such alleged murder of such deceased victim that he was a victim of gang rivalry cannot be lost sight of. It cannot be denied that Railway Administration while giving such compensation is dealing with public money and such tax payers' money is never intended to be distributed in a mindless manner.

17. It may be mentioned that our attention was drawn to a judgment of the Railway Claims Tribunal, Kolkata Bench in connection with Case No. A/591/ 2001 wherein the learned Tribunal observed that "It was impossible in the present state of circumstances for the applicant to trace out the journey ticket of the deceased and unless a contrary evidence is produced by the respondent railway that the deceased was travelling without ticket, a legitimate legal presumption can be drawn that the deceased was a bona fide passenger." In fact, learned Tribunal fortified its observation by relying upon the decision in the case of D. Srinivas v. Union of India, reported in 2000(3) TAC 762. In the said case, the deceased fell down from a running train and succumbed to his injuries. It is significant to mention in this connection that the cases sought to have been relied upon by the learned Counsel for the appellant/claimant deal with the victim who was in a running train and was reportedly a bona fide passenger. There is no doubt that there may be circumstances when it is difficult, if not impossible, to establish that a person was having a railway ticket. Even assuming that such a ticket was there, it could get lost for reasons more than one. The facts and circumstance of the present case are, however, significantly different from those of the cases as sought to have been relied upon by the learned Counsel for the appellant. Here, in the claim application it was never pleaded that the victim was a bona fide passenger. Such inherent lacuna or latent gap was attempted to be healed up by PW. 2 but her evidence in this regard also suffers from inherent hollowness. No doubt, while dealing with a claim application, the Tribunal is not required to proceed on the theory that there must be proof beyond reasonable doubt. But, the Tribunal cannot also be indifferent to the principle of preponderance of probability. In the present case the stand of the Railway Administration that the victim was not a bona fide passenger and was not having any sort of ticket and that he, with his criminal antecedent, was a victim of gang rivalry and was thus murdered, cannot be at all said to be improbable.

18. In the instant case there is no such material to the satisfaction of the judicial

conscience that the victim was a passenger within the meaning of Section 2(29) of the Indian Railways Act. In absence of such material, how could the present appellant, as dependant of the deceased victim, could be entitled to get compensation u/s 124A of the Indian Railways Act.

19. After careful consideration of all facts and materials we have no hesitation to hold that the learned Tribunal was perfectly justified in holding that the incident as referred to in the present application, was an "untoward incident" as defined u/s 123(c) of the Indian Railways Act and, we find no reason nor any rational justification to disagree with the finding of the learned Tribunal that the deceased victim was having no valid railway ticket whatsoever and he was a trespasser.

20. Considering all such facts and circumstances, we are unable to appreciate the grievances as ventilated on behalf of the appellant. The appeal accordingly stands dismissed. The judgment passed by the learned Tribunal in O.A. No. A/554/99, announced on 25.7.2001 stands affirmed.

21. In the nature background there is no order as to costs.

22. Xerox certified copy, if applied for, be given to the parties on payment of requisite fees.

Samaresh Banerjea, J.

23. I agree.