
(2012) 09 MP CK 0088
In the Madhya Pradesh High Court
Case No : M.A. No. 4562 of 2010

Sanjulata Chaudhary

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 16, 23
Railways Act, 1989 — Section 123(c), 124A

Citation : (2013) 1 MPHT 21 : (2012) 4 MPLJ 424

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : M. Shafiullah, for the Appellant; N.S. Ruprah, for the Respondent

Judgement

A.K. Shrivastava, J.—This appeal u/s 23 of the Railway Claims Tribunal Act, 1987 (in short Claims Tribunal Act) has been filed by the claimant against the judgment dated 19-10-2010 passed by the learned Member (Judicial) of Railway Claims Tribunal in OA No. 278/05 whereby her application for award of compensation has been dismissed. No exhaustive statement of facts are required to be narrated for the disposal of this appeal, since they lie in a narrow compass. Application u/s 16 of the Railway Claims Tribunal has been filed by the appellant stating therein that widow of Surendra Kumar Choudhary (since deceased) was travelling on 9-7-2005 from Itarsi to Mhow by Khusinagar Express and was holding a valid second class journey ticket No. 7144740 Ex Itarsi junction to Mhow station. On account of the heavy crowd and due to heavy jerk in the train, deceased lost his balance and fell down from the compartment in between Itarsi and Pawarkheda station near 746 of pole No. 32/34. The deceased sustained umpteen and vital injuries and died at the spot on the said date. Hence the compensation has been claimed.

2. The written statement has been filed and the factum of death in the accident has been denied. It has been further averred by the respondent that it was not an accident as defined in section 123(c) read with section 124-A of the Railways

Act, 1989 (in short Railways Act). The other averments made in the application have also been denied.

3. The learned Claims Tribunal after framing necessary issues and recording the evidence dismissed the claim application by the impugned order. In this manner, this appeal has been filed by the claimant.

4. The contention of Shri Shafiullah learned counsel for the appellant is that the claim application has been rejected by the Claims Tribunal simply on the ground that as per the claim application, deceased was travelling in Khusinagar Express having a ticket Ex Itarsi to Mhow via Khandwa but in the statement the claimant has stated that the deceased was travelling in Kamaini Express in between Itarsi and Powerkheda railway station therefore, the claimant/appellant is not entitled for compensation. Learned counsel submits that the impugned judgment is wholly contrary to law. In this regard, my attention has been invited to section 124-A of the Railways Act and in support of his contention, he has placed heavy reliance on the decision of the Andhra Pradesh High Court Parisa Anjali and Others Vs. Union of India (UOI), wherein it has been laid down by the Lordships of Andhra Pradesh High Court that if the ticket which the deceased was carrying was not valid for concerned train, he would nevertheless be termed as bona fide passenger and the legal heirs of deceased are entitled to claim compensation. By placing reliance on the Division Bench of Allahabad High Court Union of India through the General Manager, Northern Railways vs. Sanja Paswan, 2005 ACJ 823 it has been submitted that in the present case railway administration has not adduced any evidence in rebuttal therefore, the testimony of the claimant should be relied upon and the defence which has been set-forth in the written statement should not be taken into consideration since it has not been proved. By placing reliance on the decision of the Supreme Court Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, it has been submitted that the Railways Act is a beneficial legislation and therefore, the compensation application filed by the appellant should not have been rejected on technical ground.

5. On the other hand, Mrs. Amrit Ruprah, learned counsel appearing for respondent has argued in support of the impugned judgment and submitted that on going through record it is borne out from the statement of appellant that deceased was having a ticket Ex Itarsi to Mhow via Khandwa but instead of boarding correct train he was travelling in altogether different train going from different route and fell down from the compartment in between Itarsi junction and Powerkheda railway station and therefore, rightly application has been dismissed by the Tribunal.

6. Having heard counsel for the parties and on going through the record, I am of the opinion that this appeal deserves to be allowed.

7. On bare perusal of the section 124-A of the Railways Act and also by paying heed to the explanation where the term a passenger has been explained it is clear that a person who had 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 untowards accident, I am of the opinion that merely because deceased was carrying a ticket from Itarsi to Mhow via Khandwa and instead of boarding a train of that route if he had boarded a different train, it cannot be said that claimant is not entitled for compensation. Although the respondent in the written statement has denied the factum of death as has been pleaded by the appellant in the application for compensation, but no witness has been examined by the railway administration in that regard in rebuttal to the evidence of the claimant. Hence according to me the evidence of claimant stands unchallenged.

8. On bare perusal of the impugned judgment it is gathered that several documents have been placed on record and they are proved by the claimant which indicates that claimant's husband has died in the railway accident. The decision of the Andhra Pradesh High Court Smt. Parisa Anjali (supra) is squarely applicable in the present case. The defence which has been taken by the railway administration in the written statement has not at all been proved by examining the witnesses or by producing the document to rebut the claim. Thus, the decision of Allahabad High Court Union of India through the General Manager Northern Railways (supra) is also squarely applicable in the present case. Resultantly, this appeal succeeds and is hereby allowed with costs. The judgment passed by the learned Railway Claims Tribunal is hereby set aside and the application filed by the claimant/appellant is hereby allowed and it is hereby directed that respondent shall pay a sum of Rs. . 4,00,000/- Rs. . Four lacs) towards compensation to the appellant according to Schedule Part-I of the Railway Accidents and Untowards Incidents (Compensation) Rules 1990 along with the interest at the rate of 9% per annum, from the date of filing of the claim application as has been held by the Apex Court Mohamadi and Others Vs. Union of India (UOI), . Let the necessary payment be made within a period of 4 months from today, failing which the amount shall further carry interest at the rate of 12% per annum. Counsel fee Rs. . 2000/-, if pre-certified.