
(2011) 09 DEL CK 0213
In the Delhi High Court
Case No : FAO No. 438 of 2010

Sh. Mahipal Jagid and Another APPELLANT
Vs
Union of India (UOI) RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2011) 09 DEL CK 0213

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Manoj Ranjan Sinha, S.N. Parasar and Vivekanand Rana, for the Appellant; Ravi Prakash and Avni Singh, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

CM No. 21427/2010(delay) in FAO No. 438/2010

For the reasons stated in the application delay of 63 days in filing the appeal is condoned and the application stands disposed of.

FAO No. 438/2010

1. The challenge by means of this first appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment dated 9.6.2010 of the Railway Claims Tribunal, and by which judgment the claim petition of the Appellant was dismissed. The claim petition was filed for the statutory compensation of Rs. 4 lacs on account of death of the son of the Appellant Sh. Ravi Jagid, who is alleged to have died on account of a fall from the train on 28.8.2009.

2. The facts as alleged by the Appellants are that their son Sh. Ravi Jagid, a student of Class 9 in a Government School, died as a result of an untoward incident of a fall from a train on 28.8.2009, the train being a local EMU train in which he was travelling from Shahdara to Delhi Junction. It was the case of the

Appellants that due to heavy rush and sudden jerk, Sh. Ravi Jagid fell from the train between Pole Km.4/12 and 4/24, Kanti Nagar and died on the spot.

3. The Railways contested the case and argued that the deceased was neither a bonafide passenger of the train nor did he fall from the train.

4. The Railway Claims Tribunal has on a conspectus of all the facts and circumstances found that the deceased was not a bonafide passenger including inter alia, for the reasons that firstly no train ticket was recovered and also secondly that the body was badly cut up and which generally happens only in a run over case and not because of falling from a train.

5. No doubt in certain cases of death which is caused on account of falling from a train, it is not necessary that a train ticket should be filed and proved to show that a person is a bonafide passenger, and therefore, this aspect of their not having filed a ticket is not conclusive that the deceased was not a bonafide passenger, however, the issue still remains as to whether at all the deceased was travelling by a train or was only run over by a train. The relevant observations in this regard of the Railway Claims Tribunal read as under:

These issues are clubbed together for the sake of convenience and because they are inter-related. According to the applicants, the railway journey ticket of Sh. Ravi Jagid was lost after the accident. However, the applicants have adduced the evidence to Sh. Ashok who in his affidavit has stated that he and Sh. Ravi Jagid had purchased railway journey tickets and travelled from Shahdara to Delhi on the fateful day. He claims to have seen Sh. Ravi Jagid fall from the train. However, the witness's testimony cannot be relied upon on account of certain contradictory statements that he made during his cross examination. When asked about his ticket, he stated that he had torn it up after reaching the station. He has also admitted that he has given no statement to the police. But later on he has mentioned that he had given information to the police. In the absence of any documentary proof of his having travelled on that day or given any statement to the police and also in view of the contradictory remarks in his cross examination, his testimony cannot be relied upon. Going by the police records filed by the applicants, it is seen that in none of the reports of the police, is there any hint of the fact that Sh. Ravi Jagid had died due to an untoward incident or fall from a train. As a matter of fact DD No. 9 (AW1/4) merely mentions the fact that one person has been cut by the train. In DD No. 12(AW1/6), there is mention of the fact that the body has been badly cut which can only happen in a run over case. The report mentioned "train accident" but nowhere is it stated that the accident was due to fall from a train as alleged by the applicants. The applicants have been unable to produce any witness to prove that Sh. Ravi Jagid was the victim of an untoward incident. There are also serious doubts whether the deceased has a valid ticket on the day in question. In this connection it is relevant to cite Case No. 2009 of ACJ 1393 of the High Court of Delhi in which it was clearly adjudged that in order to get compensation the victim of a train accident or his dependants as the case may be must first establish that the victim or deceased had actually

fallen from a train. In this case the applicants have failed to establish that the deceased had fallen from a train. As such the case merits dismissal.

(underlining added)

6. I completely agree with the findings and conclusions of the Railway Claims Tribunal and to which findings and conclusions, I would like to add the following:

(i) The case which was set up by the Appellants was that the deceased was a student and after giving his exams in the school, he was travelling from Shahdara where his school is situated, to Delhi Junction for purchasing household goods from Chandni Chowk. The timing of the accident is stated to be around 10.50 AM. In fact, the time of the accident would therefore have been earlier because the DD Entry is of 10.50 AM. How a school boy who is studying in Class-9 would be out of his school at around 10.00 AM, has not been explained on behalf of the Appellants. The date of the accident is 28.8.2009 and on 28.8.2009, it could not be said that there were half yearly exams or the final exams or other exams. No witness from the school was summoned to prove either of the holding of the exams or with respect to the students becoming free to go away at around 10.00 AM in the morning. As already stated, the deceased would have left the school in the earlier part of the morning because the actual accident has taken place around 10.50 AM. Once the Appellants chose not to lead evidence with respect to the fact that the deceased had left the school after his exams, it would show that there is lack of credibility in the case set up by the Appellants.

(ii) On the balance of probabilities, it cannot be ruled out that the deceased died as he was run over by the train inasmuch as, the place of incident is not very far away from Shahdara where the school of the deceased was situated. The postmortem report shows that the body was badly cut up and totally crushed, and which happens only in a case where a person is run over by a train. If a person falls from a train, then ordinarily, falling would be a few feet away from the train unless proved otherwise. However, such a case is not set up by the Appellants because the case of the Appellants is that the deceased fell down from the train because of a jerk in the train and due to rush in the train.

(iii) One Sh. Ashok (AW-2), aged 49 years has deposed being an eye witness to the incident. Admittedly, this person Sh. Ashok had no relationship or acquaintance with either the deceased or the Appellants. In the affidavit filed by this witness, it is not at all mentioned as to what was the occupation of this person Sh. Ashok and why and how he was travelling on the same train from which the deceased is alleged to have fallen down. Also, the deposition of this witness lacks credibility because although he says that the deceased fell down from the moving train, no attempt was made by this person Sh. Ashok either to pull the chain or to raise hue and cry to stop the train. Further, nothing at all except a self serving statement has been made that this person Sh. Ashok was also a passenger on the train because admittedly ticket of travel in the train from

which the deceased is alleged to have fallen down and died has not been filed or proved.

7. A civil case before the Railway Claims Tribunal is decided on balance of probabilities. Strict rules of evidence do not apply. The Tribunal, after considering various facts and circumstances, takes a view as per the respective strengths and weaknesses of the cases of the parties. In the facts of the present case, I find that there is no illegality or perversity in the findings of the Railway Claims Tribunal for this Court to interfere in an appeal. The Railway Claims Tribunal has taken one plausible view and there is no reason to interfere with the findings of the Railway Claims Tribunal in the facts of the present case.

8. In view of the above, I do not find any merit in the appeal which is accordingly dismissed leaving the parties to bear their own costs.