
(2014) 01 PAT CK 0003
In the Patna High Court
Case No : Misc. Appeal No. 584 of 2012

Shanti Kunwar

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 16
Railways Act, 1989 — Section 125

Citation : (2014) 2 PLJR 313

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

Bench : Single Bench

Advocate : Krishna Mohan Murari, Advocate for the Appellant; Bijoy Kumar Sinha, Advocate for the Respondent

Final Decision : Allowed

Judgement

Amaresh Kumar Lal, J.—The claimant-appellant has preferred this appeal against the judgment/order dated 1.6.2012 passed by the Railway Claims Tribunal, Patna Bench, Patna in O.A./T.A. No. 167/2002 by which the claim application has been dismissed. The claim application has been filed by Smt. Shanti Kunwar, wife of the deceased Srinivash Chaudhary in the tribunal u/s 125 of the Railways Act, 1989 read with Section 16 of R.C.T. Act, 1987 claiming compensation of Rs. 4 lakhs for the death of her husband in an untoward incident on 7.9.2006.

2. The case of the appellant-claimant, in brief, is that on 6.9.1999 her husband Srinivash Chaudhary (deceased) after purchasing a II class Railway ticket No. 28285 from Sasaram to Ludhiana Junction boarded Sialdah-Jammu Tawi (3151 UP) Express train at Sasaram Railway Station. During the journey, he accidentally fell down from the said train at Bira Pahi near Varanasi due to jostling of passengers, sustained grievous injury and succumbed to his injury while taking him to the hospital. It has been claimed that the appellant alongwith other dependents of the deceased is entitled to receive compensation from the railway for the death of her husband in an untoward incident.

3. The respondent Railway filed written statement pleading that the claim application is not maintainable in law as well as in facts. As per the respondent, the deceased did not accidentally fall from the train and therefore, it was not a case of untoward incident as defined in the Railways Act.

4. After leading the evidence and hearing both the parties, the impugned judgment/order has been passed.

5. The learned counsel for the appellant has submitted that the deceased was going to Ludhiana after purchasing a ticket at Sasaram Station boarded there. The deceased was a bona fide passenger of the train. He fell down from the running train and got injuries. The accident finds support from the police report (Ext.-A-3), Inquest report (Ext.-A-4) and Post mortem report (Ext.-A-5). The ticket of the passenger has also been brought on record as Ext.-A-6. The time of arrival of the train at Sasaram is 22.58 hours which is apparent from Ext.-A-8. The learned Tribunal has not considered the material on the record carefully and has wrongly held that the deceased was not a bona fide passenger of the train.

6. He has further submitted that the learned Tribunal has held that the police reports (Ext.-A-3 and A-4) and the Post mortem Report (Ext.-A-5) do confirm the death of an unidentified passenger travelling by train No. 3159 Jammu Tawi Express near Varanasi, but none of these documents even suggest that this unidentified passenger was late Srinivash. It has also been denied that the witness AW-2 has fabricated his evidence and the ticket has been procured clandestinely.

7. He has further submitted that merely non-mentioning of railway ticket from the person of the deceased in the inquest report was not sufficient ground to deny the claim of the appellant. In support of his contention, he has relied upon decisions in the case of Kanti Singh and Others Vs. The Union of India, and in the case of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, .

8. The learned counsel for the respondent has submitted that from perusal of the report of the G.R.P. Varanasi, no article was found from the deceased but the claimant claims that ticket was recovered and given to the relative of the deceased. He has also submitted that the ticket alleged to have been recovered from the possession of the deceased is a procured ticket which was not sold on 6.9.1999 but the learned counsel for the respondent has not been able to substantiate his submission as there is no evidence that the ticket was sold on 7.9.1999.

9. From perusal of the ticket (Ext. A-6), it appears that the date of sale of the ticket is 6.9.1999. It is settled principle of law. that only averment is not sufficient. In support of the contention, the evidence has to be led by a party. The Railway has not led any evidence that the ticket was not purchased/sold on 6.9.1999. From perusal of the police report, it appears that an unidentified passenger fell down from the aforesaid train.

10. It appears from the evidence of A.W. 1, the claimant that her husband Srinivash Chaudhary was travelling in the train as a bona fide passenger after purchasing the ticket from Sasaram Railway Station to Ludhiana Junction. After the accident, the post mortem was held and the dead body was cremated by the G.R.P. itself. During search of the deceased, G.R.P. Varanasi gave one purse containing Rs. 300/- in cash and the ticket. The articles recovered from the G.R.P. were identified by AW-2 Rajbans Chaudhary, uncle of the deceased on 24.10.1999. A.W.-2 Rajbans Chaudhary aged about 70 years has also supported the case of the claimant. He has stated that the Deputy Station Superintendent on duty at Varanasi Junction issued a memo on 7.9.1999 mentioning therein that one unknown passenger has fallen down from the running train No. 3151 UP and on that basis, the G.R.P.S., Varanasi Cant have lodged a case giving rise to P.M. Report No. 1295 of 1999. During search, wearing cloths of the unknown deceased by the concerned G.R.P., one train journey ticket as stated above and one money purse containing Rs. 300/- in cash were recovered and were kept for identification and the same were identified by A.W.-2, uncle of the deceased on 24.10.1999. From those articles it was identified that the deceased was none else but Srinivash Chaudhary, the husband of the claimant. In his cross-examination, he has admitted that he was not travelling with the deceased but he came to know from the G.R.P. Staff that the deceased fell down from the train and succumbed to the injuries.

11. Considering the facts and circumstances as stated above, it appears that the claimant has been able to prove that the deceased was a bona fide passenger of the train and he died due to the aforesaid accident.

12. For the reasons aforesaid, in my opinion, the impugned judgment/order is not fit to be sustained. It is set aside. The claimant is entitled to get Rs. 4,00,000/- from the respondent-Railway with interest @ 6% per annum from the date of filing of the claim application i.e. on 12.6.2002 to the date of this order and at the rate of 9% per annum till the date of realization in view of the decision in the case of Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, . The respondent is directed to make payment of the aforesaid amount to the claimant-appellant at an early date.

13. In this result, this appeal is allowed. The parties will bear their own costs.