

(2018) 01 GAU CK 0107
In the Gauhati High Court
Case No : 73 of 2009

SMT. ARATI BASUMATARY

APPELLANT

Vs

THE UNION OF INDIA and ORS

RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

[Railways Act, 1989](#), [Section 124A](#), [Section 123\(c\)](#) - Compensation on account of untoward incidents - Definitions
[Railway Claims Tribunal Act, 1987](#), [Section 23](#)

Citation : (2018) 01 GAU CK 0107

Hon'ble Judges : Kalyan Rai Surana

Bench : Single Bench

Advocate : M. JAIN, M D BURMAN, U. CHAKRABORTY, M CHAKRABORTY, Mahasweta Acharyya

Final Decision : Dismissed

Judgement

1. Heard Ms. M. Jain, the learned Counsel for the appellant and Ms. Mahasweta Acharyya, the learned Counsel for the respondent.

2. This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the judgment and order dated 23.01.2009, passed

by the Railway Claims Tribunal, Guwahati Bench, Guwahati, in Application No. 24/2007, thereby dismissing the claim petition filed by the

appellant seeking compensation on the alleged ground of death of one Rajen Basumatary in an untoward railway accident.

3. As per the claim petition, the said Late Rajen Basumatary, who was allegedly travelling by 613 Up BG Bongaigaon bound passenger train on

03.05.2006, accidentally fell down due to heavy rush of passengers and died. The respondent contested the claim petition by filing their written

statement, wherein it was stated that the said deceased was run over by 613 Up BG Passenger train starter at 1/No.2. The position of the starter

signal is at a distance ahead of train stopping area. No one can be cut there when the train is on movement. The railways doubted that the

deceased was a bona fide passenger as his ticket was defaced and did not contain ticket number or date of journey. The respondent had

submitted 4 documents, viz., (1) FIR, (2) Inquest Report, (3) Post Mortem Report, (4) Station Master's Report.

4. On the basis of pleadings, the following issues were framed:-

a. Whether the deceased was a bonafide passenger of the train in question on the date of the incident?

b. Whether the incident as alleged in the claim application took place and is covered within the definition of ontoward incident u/s. 123(c) of the

Railways Act?

c. Whether he is entitled to any compensation?

d. Relief, if any?

5. The claimant's side examined two witness. The appellant/ claimant was examined as AW-1 and one Sri Ananda Basumatary was examined as

AW-2. As the Appellant was stated to be illiterate, the AW-2 exhibited 6 documents, viz., GRP Report (Ext.A1), Postmortem Report ("PM

Report" for short) (Ext.A2), Death Certificate (Ext.A3), Next of Kin Certificate (Ext.A4), Income Certificate (Ext.A5), Rail journey ticket

(Ext.A6). The respondents did not examine any witness and did not exhibit any document.

6. After conclusion of argument, the order was reserved by the learned Tribunal. At that stage, the learned counsel for the appellant had prayed for

direction to produce final report of investigation by GRP, which was refused.

7. In respect of Issue No.1, the learned Tribunal held that as the appellant/ claimant i.e. AW-1 did not accompany her husband in train, her

evidence was of no help regarding her deceased husband being a bonafide passenger. The learned Tribunal had mentioned that although the AW-2

had marked 6 above referred exhibits, in his cross examination, he had stated that he did not know whether or not the deceased had purchased the

ticket. It was held that the rail ticket was defaced and did not bear ticket number and date. The learned Tribunal had discussed the evidence of

AW-2, wherein he had stated that the defaced ticket was found in the underwear of the deceased person while he was being taken for cremation and that the further deposition of the AW-2 was that the deceased was run over by severing the head from the body, his right and left arms were completely separated from the elbow and his left leg was completely separated from the knee joint, and in the said context, it was opined that under such circumstances, the ticket must have been smeared with blood, and it was held to be highly improbable that the said ticket had remained in his body till he was taken for cremation. Under the circumstances, it was held that the accident did not take place while boarding the train and that there was no evidence that the deceased was a bona fide passenger of 613 Up BG Bongaigaon bound passenger train. The issue was decided against the appellant/ claimant. In respect of Issue No.2, the evidence of AW-2 was discussed, where he had stated that while boarding the train, due to heavy crowd of passengers, the deceased had slipped and he was dragged for some time and his body was cut into pieces. However, as the said AW-2 did not inform the railway authorities, his evidence was not found trustworthy because though the said AW-2 accompanied the deceased in the platform, yet he took no steps to inform the authorities. It was held that there was no evidence that the deceased had accidentally fallen down from the train, and that there was nothing to hold that the case comes within the purview of Section 123(c) of the Railways Act, 1989. In respect of Issue No.3, it was held that the case was not covered by Section 124-A of Railways Act and hence, the appellant/ claimant was held to be not entitled to any compensation. In respect of Issue No.4, it was held that the case does not fall under ""untoward incident"" and it could not be proved that the deceased was travelling by train carrying passengers, as such, it was held that no compensation was payable. The claim case was, thus, dismissed. Hence, this appeal.

8. The learned Counsel for the appellant had strenuously read over the claim petition, written statement of the respondent, evidence- on- affidavit by AW-1 and AW- 2 and their respective cross examination, as well as the impugned judgment and order.

9. Based on some case citations, it was submitted by the learned counsel for the appellant as follows:-

a. By heavily relying on the case of Union of India Vs. Prabhakaran Vijaya Kumar & Ors., Civil Appeal No. 6898/2002 decided on 05.05.2008,

it was submitted that in the said case, the learned Tribunal had disbelieved the evidence of PW-2 on the ground that the PW-2 did not help the

Station Master in removing the dead body and because the police did not record his statement, which was held to be erroneous and in the said

case the Hon"ble Supreme Court had held that as the Railway Act was a beneficial legislation, its interpretation must be liberal. Moreover, the

argument that the deceased was guilty of contributory negligence was held by the Hon"ble Supreme Court to be based on total misconception and

hence, rejected.

b. By relying on the case of Jameela & Ors. Vs. Union of India, (2010) 12 SCC 443 : (2010) 0 Supreme(SC) 792, it was submitted that there

was no eye witness of the fall of the deceased from the train and that even if the passenger died due to his own negligence, it will have no effect on

the compensation payable.

c. By relying of the case of Paramanand Vimal Vs. Union of India, Misc. Appeal No. 324/2013, decided by Hon"ble Jharkhand High Court on

05.01.2015, (2015) 1 JLJR 764: (2015) 0 Supreme(Jhk) 199, it was submitted that the burden of disproving untoward incident was on the

railways.

d. By relying on the case of Tahazhathe Purayil Sarabi & Ors. Vs. Union of India & Anr., (2009) 7 SCC 372, it is submitted that interest was

required to be paid from the date of the application for claim.

10. It must be mentioned that the learned counsel arguing the matter had made a prayer for adjournment on the ground that the Standing Counsel

for the Railways was unable to attend the Court as she was indisposed. However, as this is a old pending appeal of the year 2009, on the refusal

of the prayer for adjournment, the learned Counsel had argued the matter. She had read the relevant pleadings, evidence of the AWs including

their cross examination and has also relied on case citation in support of her argument. This Court puts on record the appreciation for the

assistance rendered by Ms. Mahasweta Acharyya, the learned Counsel, who is the chamber Junior of the learned Standing Counsel.

11. Per contra, the learned Counsel for the respondent submits that the "starter

signal" is located at the end of the platform, and only when such signal is lowered, can a train move out, for which the signal is called ""starter signal"" and passengers cannot embark or disembark from the said point. Moreover, if a passenger falls from a crowded train in the station platform as stated by AW-2, there is no way that such an accident would not be immediately reported by any passenger either in the train by a bona fide passenger on the platform. But, there is no way that a body can be dragged at some distance upto the ""starter signal"" point, because firstly, a body falling on track cannot be dragged by a train, and secondly, it is not the case of the appellant/ claimant that the dead body had marks of being dragged by train, which would show at least some lacerated wounds.

The learned Counsel has place much reliance on the cross examination of AW-1, the wife of the deceased, who had stated that she had first seen the dead body only after post mortem on 05.05.2006 and that she had received information about the accident from the villagers. The AW-1 had stated that the ticket was recovered by a villager at the cremation ground. As per the statement made by the AW-2 in her cross examination, she had stated that she the ejahar/FIR was lodged by her after 11/2 months. She had heard from other person that dead body was found outside the station near the Cabin. By referring to the cross examination of AW-2, it is submitted that he claimed to be of same village as the deceased. He claimed to be in the platform when incident occurred. He did not know regarding purchase of ticket, and that he came to know about the ticket when the body was being taken for cremation. He had stated that the incident occurred on 03.05.2006 near East Cabin of Gossaigaon Railway Station. He had admitted that he did not travel by the Up BG Train on the date of the incident. He did not inform the Railway Authority and the train did not stop after the incident. He had described that the body was cut in pieces, i.e. neck, both hands and left leg. He had claimed that after half an hour of the incident, he went to the house of the deceased and informed the claimant about the incident.

12. It is submitted that there were some glaring contradiction in the evidence of the AWs, because in his evidence-on- affidavit, AW-2 claimed that the deceased had slipped and fell and he was dragged to some distance, but in the cross-examination, both AW-1 and AW-2 had stated that the

body was found near Cabin, which is not at all possible under any stretch of imagination. Moreover, if the train was crowded, as claimed by AW-

2, then the platform cannot be deserted that no one will see a person falling under the train from the platform and it would remain unreported.

While the AW-2 had stated that he had informed the appellant, the appellant i.e. AW-1 did not state that she was informed by AW-2. It is further

submitted that the ticket was defaced and it did not have date of journey and the ticket number. The learned counsel for the respondent had stated

that as the leg, both hands and neck of the deceased was cut, such a cut can only happen if the dead body was placed on rail track, and while no

passenger would store a rail ticket in his underwear and moreover, it is not possible for a ticket to remain undetected during post mortem

examination, when body is thoroughly examined. It is also submitted that assuming the ticket was kept in underwear, then as it was not soaked with

blood or any other liquid, there was chance for such a ticket to get mutilated so that only its date and number is lost. It is also stated that as GRP

did not get any opportunity to examine the said ticket, such a ticket, which is submitted for the first time with the claim petition, cannot be held to

be reliable. In support of her submissions, the learned Counsel for the respondent has relied on the case of Union of India Vs. Sunil Kumar Ghosh,

AIR 1984 SC 1737 .

13. Having heard the learned counsel for the parties, this Court has perused the materials on record. The only question which arises for

determination in this case is - Whether the issues framed for trial were correctly decided by the learned Railway Claims Tribunal on the basis of

evidence on record?

14. The AW-2 had proved GRP Report as Ext.A1. The contents of the said report is extracted in verbatim below:-

To whom it may concern.

This is to certify that one Miss Arati Basumatary, w/o Late Rajen Basumatary vill-Alokjhar PS Gossaigaon Dist. Kokrajhar

appeared at this GRP P.P. today on 15/6/06 and lodge a written report the her husband Rajen Basumatary age about 50 years he

had been travelling by 613 UP BG Passenger train for Kokrajhar to attend relative house on 3/5/06 at 4 p.m. When he was about

the mount the BG Passenger train at Gossaigaon Rly Station for Kokrajhar Unfortunate due to immense rush of Passenger at the

Railway Stn, his feet got shipped and he fell down on the Railway Line No.2 and both his feet went under the wheels of the said train

as a result Run over the train The deceased Rajen basumatary hold inquest over the body. The body was sent to Kokrajhar Civil

Hospital for P.M. Examination O/c Bongaigaon G.R.P.S. registered the U/D case No. 23/06 P.M. report received where concerning

DR opined that death was due to instant shock following run over by train which was antemortem is accidental in nature.

This reffer's vide gossaigaon G.R.P. P-P GDE No. 40 dt 3/5/06 and DGE No. 235 dt 15/6/06.

Sd/- (illegible)

Incharge

Gossaigaon G.R.P.P.

Dist. Kokrajhar (B.A.C.) Assam.

15/6/06

15. Thus, the case in the FIR lodged by the appellant is not that the deceased was dragged by the train for some distance and it is also not in the

police report that the body was dragged for some distance, rather it is the case of the appellant that the body came under the wheels of the train

after falling down. Thus, it is highly improbable that the body of a person falling while boarding a train would be found cut into pieces near the East

Cabin, with no injury on the dead body as a result of being dragged by a train on the railway track. Hence, there is no infirmity with the finding by

the learned Tribunal on Issue No.1 that the accident did not occur while boarding the train and there was no evidence to lead to conclusion that the

deceased was a bona fide passenger of 613 Up BG Bongaigaon bound passenger train.

16. In the case of Prabhakaran Vijaya Kumar (supra), there is a categorical finding that the deceased was a bona fide passenger travelling by train.

In the case of Jameela (supra), the deceased was travelling with a railway ticket bearing No. 35810970 dated 21.06.1997. In the case of

Paramanand Vimal (supra), it was held that the deceased was a bona fide passenger and, as such, even if he is killed due to his own negligence,

the Railways would still be liable for compensation, however, in the said case, the deceased was held to be a bona fide passenger and ticket was recovered from his possession, which is not the case in hand.

17. In the present case in hand, the railway ticket was not recovered from the possession of the deceased and did not form a part of police

investigation, but it was claimed that ticket was recovered after 2 days of the accident from the underwear of the deceased at the time of

cremation, which is highly improbable and on this count, there is no infirmity in the finding recorded in this regard in respect of Issue No.1. The

reading of the post-mortem report shows that there were multiple fracture of both sides of radius ulna, left tibia and fibula and therefore, there is

hardly any chance that the rail ticket would be found in the underwear of the deceased owing to the nature of injury reported in the post mortem.

Thus, the resultant finding in respect of Issues No.2, 3 and 4 cannot be faulted with in the absence of finding that the deceased was a bona fide

railway passenger. Assuming that the ticket was found in the underwear of the dead body at the cremation ground, it was the duty of the appellant

to bring the said fact to the notice of the police, which was not done, the result of which is the report of the police (Ext.A1), where the ticket

allegedly found with the dead body had not been recorded and, as such, in the absence of evidence by AW-2 that he saw the deceased

purchasing ticket, the learned Tribunal has not committed any infirmity in holding that the deceased was not a bona fide railway passenger. Hence,

there is no infirmity in the finding that the case did not come within the purview of Section 123(c) of railways Act, 1989 and that there was no

untoward incident"" under Section 124-A of the said Act, and that the appellant was not entitled to compensation under Railway Accidents and

Untoward Incidents (Compensation) Rules, 1990. The cases cited by the learned counsel for the appellant are not applicable in the facts in hand in

the present case.

18. In view of the discussions above, it is held that the issues were correctly decided by the learned Railway Claims Tribunal on the basis of

evidence on record, as such, this appeal fails and the same is dismissed. The parties are left to bear their own cost.

19. Return back the LCR.