(2013) 04 MP CK 0130

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 282 of 2011

Smt. Neki Bai and Others APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Citation : (2013) 5 MPHT 265 : (2014) 1 MPLJ 393

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Rajesh Soni, for the Appellant; Atul Choudhary, for the Respondent

Judgement

Sanjay Yadav, J.—With consent, the appeal is finally heard. This appeal u/s 23 of the Railways Claims Tribunals Act, 1987 is directed against the order dated 7-10-2010 passed by the Railways Claims Tribunal; whereby, the Claim Application filed by the appellant u/s 16 of the 1987 Act for compensation in lieu of the death of Shankar Sasane, husband of appellant No. 1 and the father of appellant Nos. 2 to 4, has been rejected.

2. The facts as borne out from the record are that on 16-5-2006 Shankar Sasane (the deceased) while travelling ex-Burhanpur to Khandwa by Train No. 1057 Dn. Dadar Amritsar Express died in an untoward incident when due to jerk he fell down from the running train and was run over. Station Master, Burhanpur informed GRP, Burhanpur, who took him to Nehru Government Hospital, Burhanpur where he was declared brought dead. After observing necessary formality, i.e., registering the case vide Merg No. 07/06, dated 16-5-2006, preparation of Panchayatnama and the post-mortem, the body was handed over to the appellants.

3. Appellant/claimants filed claim for compensation in lieu of death of Shankar Sasane which as per them was due to untoward incident. In support of the claim, appellants filed following documents, viz., (i) certified copy of MST No. 36242752 & I Card 25228 (A-1; A-2), (ii) certified copy of memo of Deputy SM Burhanpur

to GRP (A-3), (iii) certified copy of memo of Hospital, Burhanpur to GRP (A-4), (iv) certified copy of merge intimation (A-5), (v) certified copy of Naksha Panchayatnama (A-6), (vi) certified copy of post-mortem report (A-7), (vii) death certificate of deceased (A-8), and (viii) copy of ration card (A-9).

4. The claim was denied by the respondent-Railways on the ground that the deceased was not bonafide passenger and that death was not arising out of untoward incident.

5. On the basis of rival contentions, the Tribunal framed following five issues:--

(i) Whether the deceased-Shankar Sasane S/o. Shri Deep Chand Sasane on 16-5-2006 was a bonafide passenger of Train No. 1057 Dn. Dadar Amritsar Express?

(ii) Whether the death of the deceased-Shankar Sasane S/o. Shri Deep Chand Sasane was caused due to an untoward incident as defined under Sections 123(c)(2) and 124-A of the Railways Act, 1989?

(iii) Whether the respondent-Railways are protected under the exemption clause to Section 124-A of the Railways Act and are not liable to pay any compensation?

(iv) Whether the applicants are the sole dependents of the deceased Kalu Ram Yadav S/o. Shri Sukiya and no other dependent?

(v) Relief?

6. The Tribunal while answering the issues (i), (ii) and (iii) against the appellants/ rejected the claim application mainly on the finding that the appellants had failed to prove that the deceased was a bonafide passenger carrying valid travelling ticket along with him on the date of incident. The Tribunal observed that the Travelling Authority, i.e., Monthly Session Ticket was not recovered by the police from body of deceased at the time of occurrence of alleged incident and was later on filed by the claimants. The Tribunal also observed that the body was cut into two pieces and there were no other injuries and, therefore, raised a presumption that death was not by any fall from train.

7. Appellants while assailing the order passed by the Tribunal has criticised the same on the ground that Tribunal has unrealistically incident by falling from train. It is urged that in a running train when a person falls down from a running train, the body does not get thrown away from train but moves inwards because of centripetal force. It is further contended that Tribunal grossly erred in ignoring the fact that in Japti Panchayatnama, there is specific mention of MST being recovered from the body of the deceased. It is urged that said MST was handed over to the son-in-law of the deceased by the Police as find mention in Naksha Panchayatnama, which was produced. Naksha Panchayatnama, which has been brought on record and not denied by the respondent-Railways stipulates:--

8. Apparent it is from Naksha Panchayatnama that one MST was recovered from the person of deceased which was handed over to Raju S/o. Bhaskar (deceased''s

son-in-law).

9. In view whereof the Tribunal was not justified in holding that MST was not found in the person of the deceased. This having percolated in the order leads to perversity of finding. Furthermore, the presumption drawn by the Tribunal that the deceased since was cut in two half cannot be said to have died due to falling from train is also based on mere presumption and conjectures rather than on cogent evidence.

10. In view whereof of the order deserves to be and is hereby set aside.

11. Since the deceased died of accidental falling from train, which as per Section 123(c)(2) of the Railways Act, 1989, is defined as untoward incident and as per Section 124-A of 1989 Act, in case a passenger dies on account of untoward incident, the Railway Administration shall notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by death of a passenger.

12. Schedule appended with Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 provides for an amount of compensation in case of death Rs. 4,00,000/-.

13. In view whereof while setting aside the impugned order passed by Railways Claims Tribunal, the Claim filed by the appellants is allowed. The respondent-Railways are directed to pay the compensation to the tune of Rs. 4,00,000/- along with interest @ 7.5% from the date of filing of application u/s 16 of the Railways Claims Tribunals Act, 1987. The appeal is allowed to the extent above. Costs as incurred.