(2011) 04 DEL CK 0145

In the Delhi High Court

Case No : FAO No. 175 of 2009

Smt. Rani and Others APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123, 124A

Citation : (2011) 04 DEL CK 0145

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : M.K. Gupta, for the Appellant; A.S. Dateer, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The present first appeal u/s 23 of the Railway Claims Tribunal Act, 1987 challenges the impugned judgment dated 23.2.2009 passed by the Railway Claims Tribunal, dismissing the claim of the Appellants/ dependants of the deceased one Sh. Hukum Singh. It was not disputed by the Railways before Railway Claims Tribunal on account of death report proved as Ex.AW1/5, that death of the deceased took place on account of a fall from the train and hence there was an ''untoward incident'' within the meaning of the said expression as found in Sections 123(c) and 124A of the Railway Act, 1989. The claim was dismissed as the deceased was held not to be a bonafide passenger as the Appellants failed to file/prove the original ticket for the date of travel on 10.4.2007.

2. The case which was set up by the Appellants/dependants was that the deceased on 9.4.2007 had purchased railway ticket to and fro from his place of residence in Ballabhgarh for travelling to Delhi. It was the further case of the Appellants that on account of delay caused in purchase of stationary etc., for which the deceased had come to Delhi, he did not return from Delhi on the same day and stayed overnight at the residence of the relative Sh. Vijender. The

deceased returned on the next date i.e. 10.4.2007, and on which date he died on account of fall from the train.

3. The Railway Claims Tribunal has basically given the following reasons for rejecting the claim of the Appellant/dependants:

(i) No valid ticket was filed/proved for travel on 10.4.2007, although, the original to and fro tickets from Ballabhgarh; Ex.AW1/2 and Ex.AW1/3; were placed on record which related to the previous date i.e. 9.4.2007. Since the original ticket for travel on 10.4.2007 was not produced by the Appellants, the Railway Claims Tribunal held that the deceased was not a bonafide passenger.

(ii) The testimonies of the widow AW-1 Smt. Rani and the relative AW-2 Sh. Vijender were disbelieved. The testimonies were disbelieved because though it was stated that one gents purse containing 200 rupees was lost however no proof was filed as to what happened to this purse and the contents of Rs. 200/-. It was also held that the testimony of AW-2 that the ticket was purchased in his presence for travel on date of accident should not be believed as he was a relative and an ''interested''/''obliging'' witness. The case of the Appellants that the train ticket for travel on 10.4.2007 was lost during the course of incident was disbelieved including for reason that the stationary which the deceased had gone to purchase was not found along with the body at the spot of the accident.

4. The admitted facts which appear in this case are that the deceased did fall from a train and died in the accident. There is no dispute that this is an ''untoward incident'' as per Sections 123(c) and Section 124-A. The only aspect to be considered is that whether the deceased was a valid passenger or not. In my opinion, once, the valid train tickets both for to and fro travel of the previous date 9.4.2007 were in fact filed and proved by the Appellants, it is quite clear that the deceased was normally a valid passenger and did not ordinarily travel without tickets and thus it should be held that he was a bonafide passenger even for 10.4.2007 because AW-2 Sh. Vijender had deposed that the ticket for travel on 10.4.2007 was purchased by the deceased in his presence. Merely because the original train ticket could not be produced for the date when the incident took place, would not mean that the deceased was not a valid passenger because it is not unknown that when such untoward incidents causing death takes place, the original ticket can indeed get lost and which did happen in the present case. Consequently, the Railway Claims Tribunal is wholly unjustified in holding the deceased not to be a lawful passenger. I must at the cost of repetition reiterate that the deceased had purchased tickets of the previous day not only from travel from Ballabhgarh to Delhi but he had also purchased the return ticket from Delhi to Ballabhgarh showing his bonafides. Thus, it was not that he was not a bonafide passenger, but only that, his ticket could not be traced. The Railway Claims Tribunal ought to have believed the Appellants that the original ticket, which ordinarily is always with the passenger, had got lost/misplaced when death took place of such deceased passenger by falling from the train, especially in the facts of this case where no one else was travelling with the deceased, and who

would have taken care of the belongings of the deceased when the accident happened. Reasoning of the Tribunal that stationary was not found at the site of the accident and which ought to have been as the deceased had purchased stationary or that PW-2 was a relative and hence should be disbelieved are hardly good enough reasons for dismissing a claim such as the present when there is already a huge blow to the dependents by the head/earning member having died and who otherwise was shown to have ordinarily purchased both travel and return travel journey tickets. Besides a host of other reasons, it Is not unnatural that the packet containing stationary may well have been left in the train from which the deceased had fallen, and, a relative in these cases with whom the deceased had stayed overnight can surely depose in favour of the Appellants and there is nothing so as to hold that the testimony of such witness is only a testimony of an ''obliging''/''interested witness''. A civil case is decided on balance of probabilities and the balance of probabilities is that the ticket of the date of the accident got lost in the accident which caused the death of the deceased.

5. It is no longer res integra in view of the decision of the Supreme Court in the case of Jameela and Others Vs. Union of India (UOI), that an accidental fall from a train is included in the principle of strict liability as imposed on the Railways u/s 124(c) and 124-A of the Railways Act, 1989.

6. I, therefore, hold that the deceased Sh. Hukum Singh was a bonafide passenger who did in fact have a valid train ticket for travelling on the date 10.4.2007 when he died as a result of fall from the train but which ticket had been lost in the unfortunate event of death caused by the accident.

7. In terms of the Railways Accident and Untoward Incidents (Compensation) Rules 1990, in case of death of a person for an untoward incident, compensation is fixed at a sum of Rs. 4 lacs and which amount I award in favour of the Appellants/dependants. The Supreme Court in the case of Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, has held that courts are entitled to grant interest either from the date of accident or from the date of filing of the petition before the Railway Claims Tribunal. In the facts and circumstances of the case, I deem it fit that interest also be granted at 9% simple from the date of filing of the petition till payment to the Appellants by the Respondent. An amount of Rs. 2 lacs with accrued interest be paid to the widow-Appellant No. 1. An amount of Rs. 50,000/- with accrued interest be kept in a fixed deposit so as to earn maximum interest in a Nationalised Bank in the names of each of the minors-Appellants 2 to 5 and which fixed deposit will be paid to each of the Appellants 2 to 5 on their attaining the age of majority. The interest accrued on the fixed deposit can however be used by the Appellant No. 1 towards the expenses for taking care of the Appellants No. 2 to 5 till they attain the ages of majority. Accordingly, the appeal is allowed and disposed of in terms of the above observations. No costs.