
(2016) 07 JH CK 0026
In the Jharkhand High Court
Case No : M.A. No. 408 of 2013

Sri Muneshwar Tiwary

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Railways Act, 1989 — Section 123(c)(2), 124A

Citation : (2016) AAC 2526 : (2016) 4 ACC 159 : (2017) ACJ 1113 : (2016) 4 AIRJharR 136 : (2017) 1 JCR 186 : (2016) 3 TAC 625

Hon'ble Judges : Mr. Ravi Nath Verma, J.

Bench : Single Bench

Advocate : M/s. Basav Chatterjee, A.K. Singh, Rajiv R. Chakravorty, Advocates, for the Appellants; M/s. V.K. Sinha, ASC, Railway, S.K. Lala, Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Verma, J.—The claimants/appellants have preferred this appeal against the judgment dated 23.08.2013 passed by Railway Claims Tribunal, Ranchi in case no. OA(iiU)/RNC/2010/0104 old no OU-70028/07, whereby and where under the claim application filed by the claimants has been dismissed.

2. The brief facts, as it appears from the record is that Sunil Kumar (since deceased) son of the present claimants/appellants while boarding the train no. 9306, Sipra Express at Dhanbad fell down accidentally between the gap of platform and the train. His body was crushed under the wheels of the said train resulting in his instantaneous death. In connection with the said untoward incident, the G.R.P. Dhanbad registered U.D. Case no. 18 of 2006. Thereafter, Rail Thana P.S. Case no. 18 of 2006 dated 16.07.2006 was also instituted on the basis of the statement of one Rabindra Nath Dubey that he received telephonic call from the Dhanbad Railway Station in the mid-night on 15/16.07.2006 that his brother-in-law, Sunil Kumar died due to fall from train. Immediately, he rushed to Dhanbad railway station and received the dead-body of his brother-in-

law, who was aged about 22 years. It is also stated in the FIR that his brother-in-law had come to Dhanbad from Deoghar and during his boarding in Sipra Express he fell down and crushed under the wheels of the train. It further appears from report submitted by Assistant Sub-Inspector, Railway Police, Dhanbad dated 16.07.2006(R-5) that from the pocket of the deceased Sunil Kumar, one Identity Card and a ticket smeared with blood were recovered. It further appears from a report (R-2) submitted to DRM that the said untoward incident took place at Dhanbad Railway Station on 15.07.2006 where after an inquiry was conducted by the RPF. The report reveals that the alleged victim had fallen down at Dhanbad platform no.2 from 9306 UP Sipra Express while he was boarding the train. The victim died on the spot since he was run over. But in this report, recovery of any ticket particular has not been accepted. The said report was accepted by the DRM. Therefore, there is no dispute about the death of the deceased or untoward incident.

3. The respondent-Union of India, through General Manager East Central Railway, Hazipur in his written statement pleaded that no such accident took place on 15.07.2006 , which would appear from the station diary. Therefore, claimants have to put strict proof that the deceased was travelling with a valid ticket.

4. Learned Claims Tribunal after examining the pleading of both the parties and the documents available on record and considering the submissions of the counsels framed the following issues :

(I) Whether the deceased Sunil Kumar, S/o Muneshwar Tiwary was a bona fide passenger ?

(II) Whether any untoward incident as defined under Section 123)(c)(2) of the Railways Act, 1989 occurred to the Sunil Kumar, S/o Muneshwar Tiwary while travelling in trail no. 9306 UP Sipra Express on 15.07.2006 ?

(III) Whether the applicants are entitled for the compensation as claimed and other relief, if any ?

5. Learned court below after considering all the issues and documents on record held that this is not a case of untoward incident as defined under Section 123 of the Railways Act, 1989. Hence, the claimants will not be entitled for any compensation, and the claim application was dismissed as indicated above.

6. Learned counsel appearing for the claimants assailing the impugned judgment as bad in law and perverse, seriously contended that from the report submitted by the Assistant Sub-Inspector, Railway Police Station, Dhanbad, it is apparent that a mutilated blood stained ticket was recovered from the pocket of the deceased along with his identity card but the court below failed to consider the said report (R-5) in the right perspective. It was also submitted that the onus to prove that the deceased was travelling without ticket lies upon the respondent, but the court below has wrongly shifted the burden on the claimants. Since, the police had seized the ticket, it was the duty of the respondent to produce the

ticket. Merely because ticket could not be produced by the claimants, the Tribunal should not have concluded that deceased was not travelling with valid ticket. Learned counsel has drawn the attention of the court towards the report submitted by DCM dated 30.09.2008 (R-2), wherein the DCM has considered the said incident as "untoward incident" but the court below without appreciating the said report wrongly held that the claimants have failed to prove untoward incident.

7. Contrary to the above submission, learned counsel appearing for the respondent submitted that the claimants did not produce valid ticket to show that the deceased was valid passenger. It was also contended that on the particular date, the train left the Dhanbad station, but no untoward incident was either reported by the Guard or by the Station Master and from the inquiry report submitted by Railway police, it would appear that the deceased attempted to board the train from Dhanbad station but suddenly fell down and run over by the train. As such the fall was due to rash and negligent act of the deceased himself hence the incident does not attract the provision enabling payment of compensation for accidental falling. It was also contended that the injury sustained by the deceased will come within the purview of self inflicted injuries due to own negligence and therefore, respondent can not be fastened with the liability to pay compensation under section 124-A of the Railway Act, 1989.

8. Before I enter into the veils of submissions of the learned counsels, a reference of Section 123 (c)(2) is necessary for the proper adjudication of the issues involved in this case. Section 123(c) of the Railway Act defines untoward incident as follows :

"C-Untoward incident "means-

1.(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987 ; or

(ii) the making of a violent attack or the commission or robbery or dacoity ; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers. Here, I would like to refer Section 124-A of the Act also, which deals with the compensation. The said section provides as follows :

"124-A Compensation on account of untoward incident-When in the course of working a railway an untoward incident occurs,then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover

damages in respect thereof, 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 the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act ;
- (d) any act committed by him in a state of intoxication or insanity ;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation - For the purposes of this section, "passenger" includes-

- (i) a railway servant on duty ; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or valid platform ticket and becomes a victim of an untoward incident.

9. From perusal of the two aforesaid provisions, it would be clear that the accident in which the son of the claimants died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in clause (a) to (e) of the proviso to Section 124-A. The respondent- Railway has not brought any evidence on record to bring the accident within the four corners of the above clause (a) to (e) of the proviso. Similarly, Section 124-A lays down strict liability or no fault liability in case of railway accident. Hence, if a case comes within the purview of above provision, it is wholly irrelevant as to who was at fault. A report was submitted by the DCM (R-2) to DRM in which Railway Authorities have accepted that it was an untoward incident. But subsequently, relying upon the report of the duty Guard of the said train, the DCM concluded that the said Guard had no information about the untoward incident at Dhanbad station from any corner as well as en-route up to Gomo station. Admittedly, there is no eye witness in this case, therefore, there is no evidence to support the case of the respondent that the incident took place in the manner suggested by it.

10. Similar issue was considered by the Hon''ble Supreme Court in the case of Union of India v. Prabhakaran Vijayakumar, (2008)9 SCC 527 and while interpreting the term "accidental falling of a passenger from a train carrying passengers". the Hon''ble Supreme Court considering the situation where a person is trying to board the train and falls down from the train while trying to do so held as follows :

" In our opinion, if we adopt a restrictive meaning to the expression " accidental falling a passenger from a train carrying passengers" in Section 123(c) to the Railways Act, we will depriving a large number of railway passengers from getting compensation in railway accident. It is well known that in our country there are crores of people to travel by trains since every body cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (Particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression " accidental falling of a passenger from a train carrying passengers" includes accidents when bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into railway train and falls down during the process. In other words, a propulsive, and not literal interpretation should be given to the expression."

11. The further dispute relates to the finding recorded by the Tribunal that the deceased was not a valid passenger. The only ground, on which the contention is based, is that the train ticket was not produced in evidence but the claimants had a specific case pleaded that deceased was holding a valid ticket. From the report submitted by the railway police, Dhanbad, it would appear that a ticket was recovered from the pocket of the deceased, though it was soaked with blood. Onus was upon the Railway to prove that the deceased was not a bona fide passenger. Normally, presumption is that a passenger travelling in a train holds valid ticket. In a judgment reported in 2009 TAC-644 (Akhtari v. Union of India), a Division Bench of Allahabad High Court while deciding similar controversy considered the provisions contained in Section 123 and 124 of the Act and also considering various pronouncements of Hon"ble Supreme Court, held that in the event of death of a travelling passenger, there shall be a presumption that the person travelling in the train was having valid ticket, unless the presumption is rebutted by Railways through cogent and trustworthy evidence.

12. In claim case arising out of M.V. Act, the Hon"ble Supreme Court in the case of "Bimla Devi and others v. Himachal Road Transport Corporation and others": AIR 2009-SC-2819 observed that "It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants and the claimants were merely to establish their case on the touchstone of preponderance of probability. The Hon"ble Supreme Court further observed that the standard of proof beyond reasonable doubt could not be applied in the case of claim petitions.

13. In view of the discussions made above, I have no hesitation in holding that it is case of death coming within the purview of untoward incident as incorporated in Section 124-A of the Railway Act and claimants/appellants are entitled to get compensation as provided in the schedule to the Railway Accident and Untoward (Incident) Compensation Rules, 1990.

14. In the result, this Misc. Appeal is allowed and the impugned judgment dated 23.08.2013 passed by Railway Claims Tribunal, Ranchi in case no. OA(iiU)/

RNC/2010/0104 old no OU-70028/07 is hereby set aside. The Respondent-Railway is directed to pay compensation amount of Rs. 4,00,000/- (four lakhs) to the two claimants within 90 days from the date of this order, with simple interest at the rate of 9% per annum from the date of filing of claim application.