

(2009) 04 AHC CK 0768

In the Allahabad High Court

Case No : First Appeal From Order No. 705 of 2003

Sudha Singh & Ors.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

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

Citation : (2009) 04 AHC CK 0768

Hon'ble Judges : Devi Prasad Singh, J and V.D.Chaturvedi, J

Final Decision : Allowed

Judgement

1. Heard Shri Jaspreet Singh and P.K. Singh learned Counsel appearing for the appellants and Mr. Asit Chaturvedi learned Counsel for the Union of India.

2. Present appeal has been preferred under Section 23 of the Railway Claims Tribunal Act, 1987 against the impugned award dated 12th September, 2002, passed by the Railway Claims Tribunal, Lucknow Bench, Lucknow dismissing the claim petition filed by the appellants for payment of compensation on account of death of the deceased in a railway accident.

3. Brief facts, borne out from the argument of the learned Counsel for the parties is that the deceased Shiv Shankar Singh, husband of the appellant No. 1 and father of the appellants 2 and 3 was an army personnel and in the fateful night of 25th/26th April, 1996 was travelling in Lucknow Mail from Lucknow to Delhi. When the train reached near Kama station of District Hardoi, on account of sudden jerk, he fell down from the train and sustained serious injuries. He was hospitalised in District hospital, Hardoi where expired. Inquest report as well post mortem reports were prepared. The wife of the deceased Smt. Sudha Singh and sons Master Shivanshu Singh and Master Divanshu Singh had filed the claim petition with the Railway Claims Tribunal, Lucknow for payment of compensation to the tune of Rs. 4 lacs.

4. It has not been disputed that the deceased was travelling in Lucknow Mail and

going from Lucknow to Delhi. Before the Tribunal, one Mr. Prem Kant Dubey who was stated to have gone with the deceased to see him off had filed an affidavit averring therein that on 25th April, 1996, the deceased Shiv Shanker Singh came to him. He wanted to go to Delhi. Since there was much luggage, Shri Prem Kant Dubey had accompanied with the deceased to the Railway Station, Lucknow. He looked after the luggage of the deceased and the deceased went to purchase the ticket. However, the statement of Prem Kant Dubey has not been believed by the Tribunal, mainly for two reasons. Firstly, the ticket was not recovered and secondly, the deceased should have travelled on a military warrant issued by the Military Department after requisite entry in the M.C.O., Lucknow. No record of M.C.O. was produced. No evidence has been led before the Tribunal that the deceased was going to resume his duty at Jammu via Delhi. The statement of the witness who has given a Company to the deceased has been further disbelieved on the ground that in case the deceased was going to resume duty at Jammu, then under Army Rules, he was entitled to possess a military warrant or concessional ticket issued by the M.C.O. but as mentioned above, the facility was not availed.

5. It has been submitted by the appellants Counsel that the military warrant is issued to the army personnel only in case they move from the shortest route. Why the deceased was going through Delhi is not ascertainable. Naturally, the military warrant might have been issued by the army only in case the deceased would have been travelling straight way from Lucknow to Jammu by train which was undoubtedly available on account of connectivity between Lucknow and Jammu. For what reason, the deceased was going Jammu via Delhi is a fact, which may not have been known to the dependents of the deceased. During cross examination, Shri Prem Kant Dubey, the prosecution witness was produced on behalf of the claimants who stated that he did not know anything about the military warrant. Possession of the ticket has been disbelieved also on the ground that there is no explanation on record as to why the deceased was going to Jammu by Lucknow Mail via Delhi.

6. The finding recorded by the Tribunal seems to be incorrect appreciation of facts. Once a statement has been made by eye witness that the deceased was possessing a ticket and Shri Prem Kant Dubey, the eyewitness was alongwith the deceased up to Railway Station, then ordinarily, the said statement should have been believed by the Tribunal unless it is proved that the witness had not given a Company up to Railway Station. The reason as why the deceased had not chosen to board on a train straight away from Lucknow to Jammu seems to be irrelevant ground to disbelieve the statement of fact with regard to possession of ticket. There may be so many reasons which might have compelled the deceased to go Jammu via Delhi; rather going to Jammu directly from Lucknow by boarding a train. The deceased must have got some work at Delhi and that is why, he had chosen to go to Jammu via Delhi. Needless to say that it was not possible for the deceased to have military warrant, to travel from a longer route, i.e. from Lucknow to Jammu via Delhi.

7. Section 124A provides compensation on account of untoward incident. It provides that when in the course of travelling in train, an untoward incident occurs, then whether or not, there has been any wrongful act, negligent or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, 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. The proviso to Section 124A provides that in the event of suicide or attempt to suicide, self inflicted injury or own criminal act or any other act committed by the passenger in a state of intoxication or insanity or any natural cause of disease or medical or surgical treatment. Railway shall not be liable for compensation. Present case does not fall within the explanation/exception provided in Section 124A of the Act.

8. While deciding identical controversy in a case reported in 2009 (27) LCD 240, Smt. Akhtari v. Union of India, a Division Bench of this Court of which one of us (Hon''ble Devi Prasad Singh, J.) was a member, the provisions contained in Sections 123 and 124A were considered by this Court. After considering various pronouncements of the Hon''ble Supreme Court, it has been 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.

9. Solitary submission of the railways is that since the deceased was not traveling on military warrant or since the ticket was not recovered or the deceased chose to go Jammu via Delhi and not straight way by boarding a train going towards Jammu, the claimants are not entitled for any compensation does not seem to make out a case to disbelieve the version of the claimants. Option was of the deceased to reach Jammu having military warrant, or via Delhi from his own expense.

10. In view of above, we are of the opinion that the Railway has been failed to establish that the deceased was not a bona fide passenger.

11. From the evidence on record, it appears that the deceased was found seriously injured; rather in an unconscious state on the railway track. According to the appellants Counsel, during the course of Panchayatnama, only the identity card, cloth and some photographs were found but no cash or any other valuable item was recovered from the possession of the deceased. It cannot be ruled out that in such circumstance, the ticket and valuable items must have been misplaced or taken away by some unsocial elements alongwith cash. In view of above, the Railway Claims Tribunal seems to have failed to exercise jurisdiction vested in it. The impugned award is not sustainable. The claim petitions filed by the appellants should have been allowed by the Tribunal.

12. Accordingly, we allow the appeal and set aside the impugned award dated 12th September, 2003 passed by the Railway Claims Tribunal, Lucknow. The appellants shall be entitled for payment of compensation to the tune of Rs. 4 lacs which the respondent is directed to pay within a period of four months alongwith interest at the rate of 10% from the date of submission of application before the Tribunal.

Subject to above, the F.A.F.O. is allowed. Costs easy. Appeal allowed.