
(2016) 05 JH CK 0063
In the Jharkhand High Court
Case No : M.A. No. 186 of 2012

Suhawani Burah

APPELLANT

Vs

Union of India, Kolkata

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Citation : (2016) AAC 2475 : (2016) 167 AIC 360 : (2016) 4 AIRJharR 97 :
(2016) 3 JCR 451

Hon'ble Judges : Mr. Amitav K. Gupta, J.

Bench : Single Bench

Advocate : M/s. Rajesh Kumar Jha, Advocate, for the Appellant; Mr. Vijoy Kumar Sinha, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Amitav K. Gupta, J.—The present appeal has been preferred against the judgment dated 10.05.2012 passed in Case no.TAU/RNC/2002/0016 by the learned Member(Technical), Railway Claims Tribunal, Ranchi Bench (hereinafter referred as Tribunal) whereby claim of the appellants, i.e. wife and sons of the deceased-Nelson Burah, was rejected.

2. Learned counsel for the appellants has submitted that learned Tribunal has disbelieved the claim that the deceased was a bona fide passenger travelling on a valid ticket because A.W.2, B.B. Lugun could not say what was the fare from Tatanagar to Rourkella despite his assertion that he had seen the deceased purchasing the ticket and no railway ticket was recovered from the body of the deceased during preparation of the inquest report. It is submitted that the memo of Sr. Divisional Medical Officer, Chakradharpur (Annexure-1), F.I.R(Annexure-2) and inquest report (Annexure-3) were filed with the claim application and there is evidence on record that shows that the deceased had accidental fall from the train. It is argued that the learned Tribunal has rejected the claim on the basis of the memos and statement of the railway authorities that the deceased was leaning out of the door of the compartment due to which he sustained injury on

the head on being hit by the over head electric pole where after the injured/deceased was brought to South Eastern Railway Hospital, Chakradharpur for treatment where he died on 25.06.2001.

3. It is argued that just because the ticket was not found on the body of the deceased, it cannot be inferred that he was not a bona fide passenger. It is submitted that even if the statement of the railway authorities has been relied upon by the Tribunal it supports the fact that the deceased was travelling on the train and he fell down from the train which comes within the purview of "untoward incident" as defined under Section 123(c)(2) of the Railway Act. It is contended that the Tribunal has erred in holding that the manner of occurrence comes within the exceptions (a) to (e) as contemplated in the proviso of Section 124-A and the Railways are not liable to pay compensation.

It is contended that the impugned judgment has been passed against the provisions of law and is fit to be set aside and the Railway is liable to pay the compensation.

4. Per contra, learned counsel for the respondents has contended that the claimants have not produced any evidence that the deceased was a bona fide passenger neither any ticket was recovered from the person of the deceased. The witness, namely, A.W.2 has made contradictory statement as he could not disclose the fare between Tatanagar Station to Rourkela Jn. despite the fact that he had seen the deceased purchasing the ticket, therefore, the learned Tribunal has rightly disbelieved the evidence of A.W.2. It is argued that the Tribunal considered Ext.-R-2E, i.e. the report sent by the Sr.Divisional Medical Officer,Chakradharpur to the Officer-in-charge of Government Railway Police that the deceased had sustained head injury and the Government Railway Police registered the case based on the memo of Sr. Divisional Medical Officer. As per Ext. R-2A, the R.P.F Officer has mentioned that the deceased sustained head injury on being hit by the over head electric pole which is supported by the report of Investigating Officer that the deceased sustained injuries on being struck by the overhead electric pole because he was leaning out of the door of the compartment. It is contended that the evidence brought on record by the respondent/Railway authority leads to the inference that the injury was self-inflicted since it was sustained by the deceased due to his own negligence accordingly it is covered under Exceptions (b) and (c) of the proviso of Section 124-A of the Act.

Learned counsel, while relying on the decisions of this High Court in the case of Smt. Archana Verma v. Union of India, reported in 2015(4) JLJR 134 has contended that in similar circumstances the compensation was denied by the High Court because no ticket was found on the body of the deceased to prove that he was a bona fide passenger.

It is argued that the impugned judgment/award requires no interference and the claimants are not entitled to any compensation as the accident cannot be called

an untoward incident as defined under Section 123(c) of the Railways Act.

5. Heard. Section 124-A of the Railways Act provides for strict liability and the Railways can escape the liability to pay the compensation when the death of a passenger is covered under Exceptions (a) to (e) of the proviso of Section 124-A of the Act i.e. when the death of a passenger is on account of :-

(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."

6. In the instant case, finding of the Tribunal is based on the report of Divisional Railway Manager(R-2) and the report of the Officer-in-charge, Government Railway Police. It is evident that no witnesses have been examined to prove that they had seen the deceased leaning out of the door of the compartment due to which the over head electric pole hit the injured/deceased on the head. It is settled principle that the provision of Section 124-A is based on the principle of strict liability or no fault liability. It is a beneficial legislation and to escape the liability to pay the compensation the onus is on the railways to bring the case within the exception of (a) to (e) of the proviso of Section 124-A of the Railways Act. The report of the Railway authorities that the deceased fell down from the train as he was leaning out of the door of the compartment and was hit by a over head electric pole is based on speculation. It is not disputed that he fell down while travelling in the train and he was brought to South Eastern Railway hospital for treatment where he died in course of treatment. At this juncture, even if the argument of the respondent/Railway administration is presumed to be true then also such negligence of the deceased cannot be qualified as a criminal act or the injury as being self-inflicted injury. To reiterate, it is evident that no evidence has been brought on record by the Railway authorities to substantiate the counter claim that it was a case of self-inflicted injury or the death was due to criminal act or the deceased died due to an act committed by him in a state of intoxication or insanity in terms of exceptions (a) to (e) of the proviso of Section 124-A.

Non finding of the ticket on the person of the deceased can well be explained and understood from the fact that after the fall the injured was taken to South Eastern Railway hospital by another train where he succumbed to the injuries. Evidently the injured/deceased was handled at various stages and during such handling the ticket might have been misplaced. The burden is on the Railways to prove that the deceased was travelling without ticket. It is relevant to take note that Section 137 empowers the Railway authority to remove a person who does

not have a valid ticket or pass. There are penal provisions for prosecuting a person who is travelling on a passenger train without a valid ticket and duty is cast on the railway administration to ensure that unauthorised person or a person not having a valid ticket does not board the train and to prosecute such ticket less passenger under the provisions of law. Therefore once a person has boarded the train and he has not been prosecuted or penalised for travelling without a valid ticket, the inference can be drawn that such a person was a bona fide passenger in terms of Section 2(29) of the Railways Act.

The falling of the passenger while travelling on the passenger train is an "untoward incident" as defined under Section 123(c) (2) and the dependents are entitled to compensation under the provisions of Railway Accidents and Untoward Incident(Compensation) Rules, rule 3 read with the Schedule.

Therefore, in the backdrop of the discussions made above and the evidence on record the Railway Administration is directed to pay Rs. 4 lacs, i.e. the statutory liability of the Railways under Railway Accidents and Untoward Incidents(Compensation) Rules, 1997 rule 4 read with the Schedule on account of accidental fall of Nelson Burah(since deceased), as compensation to the appellants with interest @ 9% from the date of the claim application within 90 days from the date of receipt of this order.

7. In the result, the impugned judgment is set aside and this appeal is allowed.