
(2016) 02 JH CK 0147
In the Jharkhand High Court
Case No : M.A. No. 117 of 2014.

Sukni Devi

APPELLANT

Vs

Union of India through General Manager, East Central Railway

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

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

Citation : (2016) AAC 1913 : (2016) 165 AIC 311 : (2016) 3 AIRJharR 256 :
(2016) 2 JBCJ 624 : (2016) 3 JCR 153 : (2016) 2 JLJR 309

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

Bench : Single Bench

Advocate : Chaitali C. Sinha, Advocate, for the Appellant; Vijoy Kumar Sinha, ASC (Rly) S.K. Lala, J.C. to ASC, Rly, for the Respondent

Final Decision : Allowed

Judgement

Amitav K. Gupta, J. - This appeal is directed against the judgment/order dated 23.8.2013 passed by the Railway Claims Tribunal, Ranchi Bench, in Case No. OA (IIU)/RNC/2011/0070 (Check List No. 2911110003).

2. Learned counsel for the appellant has submitted that it is the specific case of the claimant that the deceased- Nagendra Urao had boarded Train No. 3348 Palamau Express, at Patna to go to Nagar Untari. He had a valid ticket. That at Gaya, he alighted from the train and after purchasing some eatables and drinking water, he again boarded the train but due to heavy rush of passengers, he was unable to reach to his seat and had to stand near the gate of the compartment. Due to the rush and jostling of the passengers, he accidentally fell down from the running train between Ismailpur and Guraru Station between K.M. 195/17 and 195/19, consequent thereto, he sustained injuries, resulting in his death at the spot.

3. It is argued that it is evident that deceased Nagendra Urao met with the accident while travelling in the train and this is supported by the Memo dated

23.7.2011 (Annexure-2), prepared by the Railway Authority which is the basis of U.D. Case No. 54/2011 registered with the Rail P.S. Gaya on 23.7.2011. The inquest report was prepared and enquiry was conducted. The enquiry report contains the statement of independent witnesses and establishes that the deceased died on account of accidental fall from the running train.

On information, the family members reached Gaya and lodged the written report with the police. The police investigated the case and submitted the final report corroborating the manner of occurrence. The postmortem report also supports the same. It is urged by the counsel that the Tribunal denied the claimed compensation on surmises that the injuries sustained were self inflicted, hence the claimant is not entitled to compensation as the death was not due to any "untoward incident" as defined under Section 123(c) (2) of the Railways Act, 1989.

It is argued that the finding of the learned Tribunal is not tenable as no evidence whatsoever has been adduced by the Railway authorities to prove that the incident was covered within the exceptions as stipulated under Section 124-A (a to e) of the Act.

4. Learned counsel for the appellant has relied upon the decision reported in (2004) 0 Supreme (Kar) 17539 (Smt. Leelavathamma v. Union of India) and submitted in similar circumstances the Hon'ble High Court of Karnataka held that the onus to prove that a passenger was travelling without a valid ticket lies on the railway authority so challenging the same. It was observed in the aforesaid case that after the body was recovered from the track, the body was transported to the Railway Station and thereafter subjected to postmortem accordingly it was found that there are various stages in which the body is handled, hence the loss of train ticket in course of such process is well explained and understood. Learned counsel has also relied on the decision reported in (2009) 0 Supreme (Kar) 22262 (Union of India, Rep. By General Manager, Southern Railway v. Leelamma) in support of her argument.

Learned counsel has contended that in view of the evidence on record and the decisions, the impugned order/judgment is fit to be set aside and the claimant is entitled to the compensation in terms of Section 124-A of the Railways Act.

5. Per contra, the learned counsel appearing for the respondent railway has contended the term "passenger" is defined, in Section 2(29) of the Railways Act, as "passenger means a person travelling with a valid pass or ticket: It is contended that no valid ticket or pass was found in possession of the deceased and the burden lies on the applicant/claimant to prove that the deceased was a bona fide passenger travelling in the passenger train with a valid pass or ticket. It is canvassed that as per the enquiry report Ext.-R-2 and the letter dated 14.1.2012 to Thana Incharge Gaya (Ext.-R-10) it is stated that "falling from unknown train is suspected". That the learned Tribunal has weighed and analysed the evidence and rightly held that the deceased must have sustained the injuries on the head while leaning out of the door and must have been hit by

the pole, thus, the injuries were sustained due to negligence of the deceased accordingly it was not an untoward incident in terms of the provisions of 123(c) (2) of the Railways Act, hence the impugned judgment/award does not warrant any interference by this Court.

6. Heard. Perused the impugned judgment/order. For better appreciation, it would be necessary to extract Section 123(c)(2) of the Railways Act, wherein "untoward incident" has been defined as "accidental falling of any passenger from a train carrying passengers".

It is the specific case of the claimant that the deceased boarded the train at Patna (Train No. 3348-Palamau Express) and was going to Nagar Untari. The deceased had alighted from the train at Gaya for purchasing some eatables and thereafter he boarded the train but due to throng and melee of passengers, he had to stand near the gate of the compartment of the train. In the jostle of the passengers, he accidentally slipped and fell down from the train between K.M. 195/17 and 195/19.

Learned Tribunal has taken note of the postmortem report (Ext.-R4 5) wherein, the injury has been noted as "lacerated wound 4"x2" on right temporal bone and hemorrhage" but surprisingly the Tribunal has held that the injuries must have been sustained on account of being hit by the pole when the deceased was leaning out of the door. The Tribunal has agreed to the fact that the deceased was travelling in a train. The Tribunal has not considered the letter dated 23.7.2011 of Chunda Besra (Annex-2) addressed to Thana Incharge, Gaya, wherein, it has been stated about death of a person on account of injuries sustained due to fall from a train. The plea that the deceased was travelling without a valid ticket or pass and he was not a bona fide passenger is rather misplaced because the duty is cast on the railway authorities to ensure that the persons do not saunter on the platform without platform ticket and board the train without a valid ticket and if passengers are found travelling without ticket, they should be prosecuted under the provisions of the Act. In the circumstances, I am in agreement with the argument advanced by the learned counsel for the appellant, that after the accident and removing the body to the postmortem house, there are various stages in which the dead body is handled and in such situation, the explanation can be understood that the ticket must have been lost in course of such handling, hence the non-production of the ticket does not prove that the deceased was not a bona fide passenger. The Railway Authorities have not led any evidence to establish the fact that the deceased was travelling without a ticket or had inflicted injuries on himself or the injuries had been sustained due to criminal negligence.

7. It is well settled proposition of law that the provisions of Section 124-A have been incorporated as beneficial legislation and in such circumstances, the claimant cannot be denied the compensation since the burden lies on the Railway Authorities to rebut the plea of the claimant by leading cogent evidence . Therefore, in view of the evidence on record and discussions made herein above,

it is held that the deceased was a passenger travelling in Train No. 3348 (Palamau Express) and he died on account of injuries sustained due to fall from the running train, which is supported by the documents, the postmortem report and the final report of the police. Therefore, it is held that the deceased died due to an "untoward incident" as defined under Section 123(c)(2) of the Railways Act, 1989 and the claimant is entitled to the compensation in terms of Section 124-A of the Railways Act, 1989. The Respondent-Railway is bound to pay the statutory liability of Rs. 4,00,000/- (four lakhs) in terms of Schedule of Rule 4 of the Railway Accident and Untoward Incidents (Compensation) Rules, 1990.

8. The respondent-Railways are directed to pay the compensation amount of Rs.4,00,000/- (four lakhs) with interest at the rate of 9% per annum from the date of the filing of the application till the date of actual payment, within three months from the date of the receipt of a copy of this order. It is made clear that if the said amount is not paid within the stipulated period, the Railway will be liable to pay interest @ 12% from the date of this order, on the amount so accrued with interest of 9% from the date of filing till actual payment.

9. In the result, the appeal stands allowed and the impugned order is, hereby, set aside.