

(2014) 07 MP CK 0260
In the Madhya Pradesh High Court
Case No : M. A. No. 464/2013

Sumitra Pandit

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123(2), 123(c), 124A, 124A

Citation : (2014) 07 MP CK 0260

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Rajesh Jain, learned counsel, Advocate for the Appellant; Govind Patel, learned standing counsel, Advocate for the Respondent

Judgement

Sanjay Yadav, J.—With consent the appeal is finally heard.

2. Appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is directed against the order dated 31.12.2012 passed in O.A.No./IInd /507/2008 by the Railways Claims Tribunal Bhopal Bench; whereby Claim preferred by the Appellants for compensation in lieu of the death of Shiv Kumar, husband of appellant No.1 and father of appellant No.2.

3. Appellants went to Railway Claims Tribunal with the plea that Shiv Kumar died in an untoward incident on 7.3.2008 while travelling from Ex. Habibganj to Khandwa by 2534 Up Pushpak Express when he accidentally fell down at Itarsi.

4. In support of the claim appellants filed certified copies of (i). memo of Station Master to GRP/Itarsi, journey Ticket (A-1); (ii). Memo to GRP Itarsi/Itarsi informing death of Shivkumar (A-2); (iii). Medical Treatment Papers (A-3); (iv). Merg intimation (A-4); (v). Naksha Panchayatnama (A- 5); (vi) Shinakhati Panchnama (A-5-I); (vii). Post Mortem Report (A-6); (viii). Photocopy of death certificate (A-7); (ix). Photocopy of Family Card).

5. Respondent Railway though did not dispute that the death was due to run over

by train and that the deceased was found having ticket; however denied being due to untoward incident. It was stated that since travelling ticket was upto Itarsi and the deceased was travelling to Khandwa there was thus no valid travelling ticket as would make him a bonafide passenger and died due to untoward incident.

6. Tribunal framed following issues:

1) Whether the deceased Shivkumar on 7.3.2008 was a bonafide passenger of Train No.2534 UP ?

2) Whether the death Shivkumar was caused due to falling down from a train in an untoward incident as defined in Sec. 123(c) r/w Sec. 124A of the Railways Act 1989?

3) Whether the respondent Railway is protected under the exemption clause of Sec. 124A of the Railways Act and is not liable to pay any compensation.

4) Whether the applicants are the sole dependants of Shivkumar and names of all the dependants are impleaded in the claim application?

5) Relief?

7. On a finding that the deceased was holding a ticket from Habibganj to Itarsi only, a Station where the train did not have a schedule halt, he was not a bonafide passenger of train No.2534 Pushpak Express and therefore not a victim of Untoward Incident and the Railways were not liable to compensate by exempted as per proviso (b) and (c) of Section 124A.

8. Appellants/claimant submit that the Tribunal grossly erred in misconstruing the evidence on record. It is urged that since it was established that Shivkumar died after being run over by the train and the respondent Railway having failed to establish that the death was due to any other reason than by falling from train and being run over either by the train in which he was travelling or any other train , the Tribunal is not justified in holding that because the ticket were from Habibganj to Itarsi, he was not bonafide passenger. It is urged that there being a provision for getting the extension of ticket enroute the Tribunal is not justified in holding him to be irregular passenger.

9. Reliance is placed on the decision in Sanjulata Chaudhary Vs. Union of India, to substantiate the claim.

10. The respondents on their turn support the order rejecting the claim.

11. Section 123(2) of the Act of 1989 stipulates-

123- Definition- In this Chapter the context otherwise requires-

(c)- ?.....

(i)- ?.....

(ii)- ?.....

(2)- the accidental falling of any passenger from a train carrying passengers.

12. Section 124-A of the Act of 1989 stipulates-

124 A- Compensation on account of untoward incidents- 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 or 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;

13. 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 said untoward incident.

14. Evidence on record reveals that and establishes that the death of Shivkumar was due to accident being run over by the train. And though true it is that the deceased was carrying the ticket from Habibganj to Itarsi and that the Pushpak Express does not halt at Itarsi, it is also not denied by the respondent Railways that there exists a provision under Indian Railway Establishment Code and the Circulars issued by the Railway Board making provision regarding extension of tickets enroute and charging EFT's (Extra Fair for tickets). An irregular passenger is not an unauthorized passenger as rule permits to regularize the journey.

15. The Tribunal thus, fell into an error holding that the victim was not bonafide passenger because he was irregular passenger.

16. In this context reference can also be had of the decision in Sanjulata (supra) wherein while relying on the judgment in Union of India (UOI) Vs. Sanjay Paswan @ Tribhuwan Paswan, and Parisa Anjali and Others Vs. Union of India (UOI), it has been held-

"8- On bare perusal of the Section 124A of the Railways Act and also paying heed to the explanation where the term of passenger has been explained is clear that a person who had purchased a valid ticket for travelling by a train carrying

passengers on any date or a valid platform ticket and becomes a victim of an untoward accident, I am of the opinion that merely because deceased was carrying a ticket from Itarsi to Mhow via Khandwa and instead of Boarding train of that route if he had boarded different train, it cannot be said claimant is not entitled for compensation. Although the respondents in the written statement has denied the factum of death as has been pleaded by the appellant the application for compensation, but no witness has been examined by the Railway Administration in that regard in rebuttal to the evidence of the claimant. Hence according to me the evidence of claimant stands unchallenged."

17. In view whereof, this Court is of the considered opinion that Shivkumar was a bonafide passenger and his death was within the purview of untoward incident within the meaning of Section 124-A of the Railways Act, the claimant is therefore, entitled to get Rupees Four Lacs towards compensation in lieu whereof, as provided in the Schedule to the Railway Accidents and Untoward (Incidents) Compensation Rules, 1990. The claimants are also entitled for an interest @ 7.5% from the date of filing of claim application till actual payment.

18. The appeal is allowed to the extent above. No costs.