
(2013) 07 BOM CK 0110
In the Bombay High Court
Case No : First Appeal No. 659 of 2012

The Union of India

APPELLANT

Vs

Kamal, Balaji and Hanuman

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

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

Citation : (2014) ACJ 1579 : (2013) 5 ALLMR 583 : (2014) 1 MhLj 794

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : N.R. Mankar and Mr. N.P. Lambat, for the Appellant; S.V. Solwankar, Advocate for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The present appeal is directed against an award passed in Claim Application No. 53/OA-II/RCT/NPG/2009, dated 11/07/2011 by Railway Claims Tribunal, Nagpur, whereby the amount of Rs. 4,00,000/- along with interest at the rate of 6% per annum was awarded from the date of claim till the date of order. Learned Tribunal was also pleased to direct the appellant to pay Rs. 2,00,000/- to claimant No. 1 out of which Rs. 1,00,000/- to be paid by a crossed cheque or by depositing in her bank account and the remaining amount of Rs. 1,00,000/- to be invested in fixed deposit in a nationalized or scheduled bank for a period of three years. The Tribunal further directed the appellant to pay Rs. 1,00,000/- to each claimant Nos. 2 and 3 out of which Rs. 50,000/- to be paid by a crossed cheque or by depositing in their bank account and the remaining amount of Rs. 50,000/- be invested in fixed deposit in a nationalized or scheduled bank for a period of three years. The appellant was also granted two months time to pay compensation, failing which, interest was ordered at the rate of 6% per annum from the date of the order till realization in full. Facts briefly stated are as under -

One Rambhau Sadashiv Damodhar, aged about 45 years, resident of Wani Galli,

Pingali, Tahsil and District Parbhani travelling as bona fide passenger of Train No. 562 - Manmad-Secunderabad passenger, who alleged to have been met with an untoward accident due to fall from train, while he was travelling in the same. The dead body of said Rambhau was found at about 14.20 hours at Pingali Railway Station Platform No. 1 on 23/11/2008. A railway ticket was also found during the inquest panchnama bearing No. 6545815 purchased on 23/11/2008 at about 12.30 noon for Rs. 2/- for Parbhani to Pingali, which was recovered from the shirt of the dead body of the deceased Rambhau. Thus, the accident was reported and P.S.I. Nanded Police Station had drawn spot panchnama at Pingali Railway Station on Platform No. 1, who made observations in respect of the dead body of deceased Rambhau. The dead body was referred for post mortem examination in the course of enquiry, after the accident report was prepared. The death was due to hemorrhagic shock, as a result of the accident. According to claimant Kamal, widow of Rambhau Damodhar, she was informed by her elder son about the accident of deceased Rambhau, which occurred due to fall from train while travelling by Manmad-Secunderabad passenger on 23/11/2008. Thus, claim was made on behalf of the claimants for compensation as dependents of the deceased Rambhau Damodhar.

2. The learned Tribunal after recording evidence and hearing the parties at length, held that deceased Rambhau Damodhar was the bona fide passenger of train No. 562 Manmad-Secunderabad passenger with valid journey ticket for Rs. 2/- on 23/11/2008 and died as a result of untoward incident. Thus, the claim was granted in the sum of Rs. 4,00,000/- plus interest at the rate of 6% per annum.

3. On behalf of appellant, it is contended that deceased Rambhau was negligent in boarding the train instead of boarding from platform, he had boarded it by offside and, therefore, Railway is not answerable for the alleged untoward incident. The fact that deceased had railway ticket in the sum of Rs. 2/-, recovered from his shirt is not disputed. According to learned Advocate for appellant, alleged fall of the deceased Rambhau from the train is not sufficiently established by evidence on record. Appellant has also denied that deceased had traveled as bona fide passenger by train No. 562 Manmad-Secunderabad passenger on 23/11/2008. Thus, appellant had disputed their liability to pay compensation.

4. On behalf of the respondents, it is submitted that in the inquest panchnama itself a passenger ticket issued by Railway on the same day was recovered from the shirt of deceased Rambhau, which lead to only inference that he was bona fide passenger travelling in the train and how he fell from the train is a question of fact which ought to have been established by Railway Administration. It is submitted on behalf of the respondents that appellant Railways cannot avoid its liability to pay compensation in the facts and circumstances of the case. Learned Advocate invited my attention to the inquest panchnama as also railway ticket and affidavits on record to substantiate the claim that deceased Rambhau was bona fide passenger of Manmad-Secunderabad passenger and died as a result of

untoward incident.

5. Section 123(c) of the Indian Railways Act, 1989 (hereinafter referred to as "Act of 1989") defines untoward incident, which includes the accidental falling of any passenger from the train carrying passengers. u/s 124A of the Act of 1989, why the compensation for the untoward incident becomes payable when passenger die as a result of untoward incident. Explanation to Section 124A of the Act of 1989 made it clear that a person, who has purchased a valid train ticket travelling by the train carrying passengers on the date of accident or a valid platform ticket holder, who becomes a victim of an untoward incident, such person is covered within the meaning of the term "passenger". Dependent of such person, therefore, becomes entitled to claim compensation payable u/s 123(c)(2) read with Section 124A of the Act of 1989.

6. Looking to the evidence adduced in the present case, learned Advocate for the appellant relied upon report of Inspector, Railway Protection Force to the effect that -

This report prima facie appears unbelievable, as passengers would not shout in chorus to utter such statement. Assuming for the sake of argument that people on the platform had shouted in chorus accordingly, Railway Administration ought to have examined Enquiry Officer's to why he did not record statement of any such person, who could have deposed relevant facts before Tribunal. But in the absence of any evidence by the Railway Administration, which can be accepted so as to exonerate Railway Administration from its liability to pay compensation the order of grant of compensation by the Tribunal cannot be faulted. Under these circumstances, statutory compensation awarded in the sum of Rs. 4,00,000/- along with interest at the rate of 6% per annum from the date of application till realization was logical outcome of the enquiry in the present case by the Tribunal upon the evidence led before the Tribunal. No fault is found with the reasons recorded by the learned Railway Tribunal.

7. Hence, appeal is without merit and the same is dismissed with no order as to costs. The amount invested, pursuant to interim order of this Court, inclusive of interest accrued thereon, is allowed to be withdrawn by the claimants as per their shares. Order accordingly.