
(2013) 10 AHC CK 0039
In the Allahabad High Court
Case No : F.A.F.O. No. 997 of 2008

Union of India

APPELLANT

Vs

Arun Kumar Singh

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2014) 1 AWC 565

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Advocate : Anil Srivastava and S.P. Maurya, for the Appellant; K.C. Nigam, for the Respondent

Final Decision : Dismissed

Judgement

Ritu Raj Awasthi, J.—Heard learned counsel for the appellant Mr. S.P. Maurya as well as Mr. Shobhit Nigam, advocate holding brief of Mr. K.C. Nigam, learned counsel for the respondent-claimant and perused the record. This first appeal from order u/s 23 of Railway Claims Tribunal Act, 1987 has been filed against the judgment and award dated 1.7.2008 passed by the Railway Claims Tribunal. Lucknow in Claim Case No. O.A. 0300027 whereby compensation to the tune of Rs. 4,00,000 alongwith interest @ 6% from the date of institution of the claim petition till the date of actual payment has been awarded in favour of respondent-claimant and against the appellant.

2. Learned counsel for the appellant submits that the learned Tribunal has failed to appreciate that the alleged accident had occurred due to the negligence of the respondent-claimant himself as he had tried to catch the running train and due to his negligence he had fallen from the running train and sustained injuries.

3. It is further submitted that the Assistant Station Master in his statement had informed that the claimant had fallen from the train when he had tried to catch the train while it had started moving. A person is not supposed to catch the train while it has started moving and in case, the claimant had sustained injuries while

catching a running train he himself is responsible for the accident and the appellant cannot be held liable to pay compensation.

4. In support of his submission, learned counsel for the appellant relies on the judgment of this Court in the case of Union of India v. Smt. Jameela and others, 2004 (22) LCD 986, wherein the Court has set aside the judgment of the trial court holding that the deceased had fallen down from a train due to his own negligence, therefore, he is not covered under the definition of Sections 123 and 124A read with Section, 154 of Railways Act, 1989 for the purpose of grant of compensation.

5. Mr. Nigam, learned counsel for the respondent, on the other hand submitted that the respondent-claimant was a bona fide passenger of the train. He had sustained injuries by falling down from the train while coming from Kanpur to Lucknow near Amausi Railway Station in which his both legs have been amputated. It is submitted that the burden to prove negligence of the respondent-claimant was on the appellant before the Tribunal. The appellant has failed to prove that the alleged accident had taken place due to the negligence of respondent-claimant, as no concrete evidence was produced in this regard.

6. It is also submitted that so far as statement of Assistant Station Master is concerned, it is solely based on hearsay, no eye-witness was produced or examined in this regard by the appellant, as such, the learned Tribunal has rightly come to conclusion that respondent-claimant is covered u/s 123(c)(2) read with Section 124A of Railways Act, 1989.

7. I have considered the submissions advanced by learned counsels for the parties and perused the record.

8. The learned Tribunal while deciding the claim petition has framed certain issues which on reproduction read as under:

1. Whether the injured Arun Kumar Singh s/o Brij Raj Singh, was a bona fide passenger of the 2 L.K.M. train on 29.11.2002, in question?

2. Whether the incident of sustaining injuries by the injured falls under untoward incident as defined u/s 123(c)(2) read with Section 124A of the Railways Act, 1989?

3. What are the injuries sustained by the applicant?

4. To what Relief?

9. It has been held by the learned Tribunal while deciding issue No. 1 that the respondent-claimant was having monthly train pass to travel on Kanpur-Lucknow local passenger train to L.K.M. at the time of occurrence of accident.

10. It has also been held by the Tribunal while deciding issue No. 2 that the respondent-claimant had suffered injuries due to falling from the running train while traveling from Kanpur to Lucknow near Amausi Railway Station.

11. While deciding issue No. 3, the learned Tribunal has held that in the said accident the respondent-claimant has suffered injuries due to which his both legs have been amputated.

12. The short question for consideration before this Court is whether in the said accident the respondent-claimant had suffered injuries due to his own negligence and as such not covered u/s 124A of Railways Act for the purpose of grant of compensation.

13. The burden to prove the negligence was on the part of the appellant, in case it was pleaded by it that the claimant had fallen from the running train due to his own negligence. The railway authorities have solely relied on the statement of the Assistant Station Master for this purpose.

14. The said statement is based on hearsay evidence which cannot be said to be authentic. As per the said statement the said Assistant Station Master had got information that the respondent-claimant had tried to catch the train while it had speeded up and he had fallen from the train while trying to catch the train which was in speed. However, it is to be noted that no specific details have been given as to who had given such information to the Assistant Station Master and no person was produced as an eye-witness before the Tribunal. The learned Tribunal, as such, in absence of any concrete evidence on record had come to the conclusion that the respondent-claimant is fully covered u/s 123(c)(2) read with Section 124A of the Railways Act, 1989 for the purpose of grant of compensation. I do not find any infirmity or illegality in the finding recorded by the Tribunal in this regard.

15. So far as the judgment of this Court in the case of Union of India v. Smt. Jameela and others (supra) is concerned, the Court while considering the provisions of Sections 123 and 124A of Railways Act, had come to the conclusion that the victim was to be blamed for the incident being negligent and therefore, his case is not covered by the definition of untoward incident.

16. In the present case, the appellant has failed to prove before the Tribunal as well as before this Court that the said accident had taken place due to the negligence on the part of respondent-claimant and he was himself responsible to sustain such injuries.

17. As such, I am of the view that the aforesaid judgment is of no help to the appellant.

18. In view of above the appeal having no force, is dismissed. The impugned judgment and award passed by the Railway Claims Tribunal is hereby affirmed. The respondent-claimant is entitled to get the amount of compensation alongwith complete interest up to date as awarded by the Tribunal. The appellant shall comply the judgment and pay the amount of compensation in accordance with law within a period of six weeks. The amount already received by the respondent-claimant, if any, in this regard shall be adjusted.