

(2021) 02 JH CK 0007

In the Jharkhand High Court

Case No : Miscellaneous Application No. 237 Of 2019

Union of India

APPELLANT

Vs

Chameli Devi And Ors

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

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

Citation : (2021) 02 JH CK 0007

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Gautam Rakesh, Chaitali C. Sinha

Final Decision : Dismissed

Judgement

Heard, learned counsel for the parties.

Learned counsel for the appellant has submitted that there is delay of 201 days in preferring the instant Misc. Appeal and the reason has been

mentioned at Para 3 of I.A. No.2027 of 2020.

Learned counsel for the respondents/claimants, Ms. Chaitali C. Sinha has submitted that the aforesaid delay has not been categorically replied in day to day manner.

After hearing learned counsel for the parties and on the basis of material brought on record, the delay of 201 days in preferring the instant Misc.

Appeal is hereby condoned, as no counter-affidavit has been filed by the respondents/claimants.

The aforesaid I.A. stands disposed of.

M.A. No. 237 of 2019 Learned counsel for the appellant has submitted that the appellant-Union of India through General Manager, Eastern Railway,

has preferred this Misc. Appeal against the award dated 26.07.2018 passed by learned Member/Technical, Railway Claims Tribunal, Ranchi Bench,

whereby the claim application has been allowed in favour of the claimants and awarded a compensation to the tune of Rs.8 Lacs within a period of 90

days with interest @ 6% from the date of filing of claim application i.e. 12.10.2017 till the date of judgment and, if the amount is not paid within 90

days, interest, thereafter, shall be paid simple interest @ 9% per annum till the date of actual payment.

Learned counsel for the appellant has further submitted that though the deceased was a bonafide passenger having journey ticket No.45396980 dated

25.05.2017 from Raniganj to Durgapur, but he died because of his own negligence as deceased (Ravi Shankar Agrawal), who was Bank Manager in

the State Bank of India in Bengal, was trying to board the running train and fell down and after sustaining grievous injuries, he died on the spot.

Learned counsel for the appellant has further submitted that dead body of the deceased was found inside the railway track, as such, case filed by the

claimants is not acceptable because, if a person fell down while boarding a train, his deadbody will fall outside the Railway track on the platform, but

not inside the Railway track, as such, the accident has not occurred as defined under Section 123(c)(2) of the Railways Act, 1989, i.e. untoward

incident rather it is a case of suicide by the deceased and comes under the proviso of 124-A of the Railways Act.

Learned counsel for the appellant has further submitted that interest has been granted @ 9% per annum which is excessive, it ought to have been @

7.5% per annum, as such, that may be reduced.

Learned counsel for the appellant has further submitted that the person was not vigilant while boarding the train, as such, the Railway cannot be held

liable for the same. Accordingly, the impugned order which has been passed against the Railway being bad in law, may be set aside by this Hon'ble

Court.

Learned counsel for the respondents/claimants has submitted that the deceased died because of the negligence on the part of the Railways and the

case of the claimants/respondents is squarely covered by the judgment rendered in the case of Union of India vs. Prabhakaran Vijaya Kumar, 2008(9)

SCC 527, as such, this Court may not interfere with the same.

Learned counsel for the respondents/claimants has further submitted that interest has been granted simple interest @ 6% from the date of filing of claim application i.e. 12.10.2017 till the date of judgment and, if the amount is not paid within 90 days, interest, thereafter, shall be paid with simple interest @ 9% per annum till the date of actual payment, but it ought to have been granted simple interest @ 7.5% from the date of filing of the claim application till its realization.

After hearing the learned counsel for the parties, it appears that deceased (Ravi Shankar Agrawal), a Bank Manager, posted in Bengal being a

bonafide passenger, purchased a journey ticket No.45396980 dated 25.05.2017 from Raniganj to Durgapur and tried to board Ranchi-Howrah

Shatabdi Express at Platform No.3 at 19.22 Hours.

The learned Tribunal has framed altogether four issues which are as follows :-

- 1) Whether the deceased was a bonafide passenger as alleged?
- 2) Whether the deceased had died due to alleged untoward incident?
- 3) Whether the applicant or other dependents of the deceased are entitled to get compensation?
- 4) Reliefs.

The issues and the findings regarding the same, reproduced hereunder:-

Issue No.1:-

The Applicants have stated in the claim petition that journey ticket bearing No. 45396980 dated 25.05.2017 from Raniganj to Durgapur seized by

Investigating Officer and kept for official record.

The respondent in the DRM's report admitted that the above said journey ticket was recovered from the possession of the deceased Ravi Shankar

Agrawal. Therefore, I hold that the deceased Ravi Shankar Agrawal was a bonafide passenger of the train on the date of incident.

Issue no.1 is decided in favour of the applicants.

Issue No.2:-

The brief facts of the case are that the deceased Ravi Shankar Agrawal was a Bank Manager in State Bank in Bengal.

During thorough enquiry it has come to the notice that on 25.05.2017 at 19.30 hrs., on duty Inspector-9079 J. B. Sham at platform informed that one

person tried to board a running Ranchi-Howrah Shatabdi Express at Platform No.3 at 19.22 hrs. In that process he could not board the train and fell

down and after sustaining grievous injuries he died.

On getting information from RPF/Post/Raniganj, Officers and staff and also Nishar Kanti Mukherjee, SI/GRPS/Raniganj reached the place of

occurrence at KM No.194/04-05 DN main line and found the matter true. The available passengers at platform stated that as soon as Shatabdi

Express started from the platform the deceased came down the ladder as fast as he can and tried to board a running train but could not board the

train, fell down and died after sustaining grievous injuries.

In this connection Station Manager/Raniganj at 19.30 hrs issued a memo, on the basis Andal/GRPS registered a UD Case No.23/17 dated: 25.5.2017.

In the case of Union of India-vs-Rina Devi 4945 of 2018 Hon'ble Supreme Court has held that :-

Section 124 and Section 124-A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the

railway administration in the case of an accident or in the case of an 'untoward incident'. Only exceptions are those provided under proviso to Section

124A. In Prabhakaran Vijaya Kumar 15 (2008) 9 SCC 527 it was held that Section 124A lays down strict liability or no fault liability in case of

Railway accidents. Where principle of strict liability applies, proof of negligence is not required.

Thus, in view of the above facts, circumstances and evidence on record, I hold the victim, Ravi Shankar Agrawal died due to an accident fall from a

running train carrying passengers and, consequently, his death can be termed as ""untoward incident"" under Section 123(c) of the Railways Act, 1989.

The issue is decided in favour of the applicants.

Issue No.3 & 4:-

The applicants have claimed compensation for themselves as dependents of deceased- Ravi Shankar Agrawal.

Affidavit filed by Chameli Devi states that his deceased son was unmarried.

Under Section 123(b)(i) of the Railways Act 1989, parents are considered as dependents of the unmarried deceased son.

Therefore, having regard to the facts that the Applicants have preferred claim which have not been repudiated by the Respondent by adducing any

contrary evidence, this Tribunal has no other alternative but to accept and hold that the above persons are the dependents of deceased Ravi Shankar

Agrawal.

Schedule to Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 prescribes compensation payable in case of death or injury in

accidents or untoward incidents.

The applicants have claimed compensation of Rs.8,00,000/- for the death of Ravi Shankar Agrawal in the railway untoward incident.

Ministry of Railways (Railway Board) vide their Notification dtd:22.12.2016 under G.S.R. 1165(E) has amended the amount of compensation payable

in respect of death in Railway Untoward Incident to Rs.8,00,000/- which has come into force on 1st day of January-2017. As such, as per provisions

of Railway Accidents and Untoward Incidents (compensation) Amendment Rules, 2016 and in view of the Principle laid down by the Hon'ble Apex

Court in *Rathi Menon Vs. Union of India* 2001 SC 664, the applicants are entitled to the enhanced compensation of Rs.8,00,000/-

In case of death, compensation payable is Rs.8 lakhs. Therefore, it is held that the Applicants will be entitled to compensation of Rs.8 lakhs.

Resultantly, the issues are answered in favour of the Applicants.

As such, the grounds taken by the appellant that the incident was not an untoward incident is not acceptable to this Court in view of the findings

recorded by the learned Tribunal and also that duty Inspector-9079 J.B. Sham at platform informed that one person tried to board a running Ranchi-

Howrah Shatabdi Express at Platform No.3 at 19.22 hrs. and in that process he could not board the train and fell down and after sustaining grievous

injuries, died. The learned Tribunal has also taken note of the judgment passed by the Apex Court in the case of *Prabhakaran Vijaya Kumar (supra)*,

as such, in that view of the matter, this Court is not inclined to interfere with the findings recorded by the learned Tribunal.

So far the interest is concerned, it is true that interest ought to have been awarded @ 7.5 % per annum from the date of filing of the claim application

[i.e. 12.10.2017 till the date of indemnifying the award, but in the present case, the learned Tribunal has ordered that within a period of 90 days with

interest @ 6% from the date of filing of claim application i.e. 12.10.2017 till the date of judgment and, if the amount is not paid within 90 days, interest,

thereafter, shall be paid with simple interest @ 9% per annum till the date of actual payment. As such, considering the quantum of change which may occur because of interest @ 7.5% from the date of filing of the claim application, this Court is not inclined to interfere with the same.

Accordingly, the instant Misc. Appeal is dismissed.