
(2021) 01 JH CK 0112

In the Jharkhand High Court

Case No : Miscellaneous Application No. 115 Of 2014

Union Of India

APPELLANT

Vs

Khandu Ram Polai And Ors

RESPONDENT

Date of Decision : 11-01-2021

Acts Referred:

Citation : (2021) 01 JH CK 0112

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Mahesh Tewari, Krishna Mohan Murari

Final Decision : Dismissed

Judgement

1. Heard, learned counsel for the parties.

2. Appellant- Union of India has preferred an appeal against the award dated 22.11.2013 passed by learned Member (Technical), Railway Claims

Tribunal, Ranchi Bench, Ranchi in TAU/RNC/2005/0021 whereby the claimants have been awarded compensation to the tune of Rs.4,00,000/-

against South Eastern Railway. The amount shall be paid to claimants, Sujata Dolai (daughter aged 19 years), Suchitra Dolai (daughter aged 16 years)

and Somnath Dolai (son-aged 14 years), who lost their father- Sahdev Dolai. Khandu Ram Polai, Grandfather and Guardian will get the entire interest

due on Rs.4,00,000/- @ 6% per annum from 12.09.2005 (date of application) till the date of this order and interest @ 9% per annum from the date of

providing bank particulars of all the applicants to the respondent till date of actual payment. The interest part is given to A-1 for maintenance of 2

minor children A-3 (Suchitra Dolai) and A-4 (Somnath Dolai) being their guardian. The payment shall be made through ECS in the respective bank

accounts of all the applicants. A sum of Rs.4,00,000/- shall be paid by the respondent, South Eastern Railway to the applicants in the following proportion.

Khandu Ram Polai Grandfather (Guardian) A-1 entire interest on Rs.4 lakhs
Sujata Dolai (Daughter aged 19 years) A-2 Rs.1,33,334/- Suchitra Dolai

(Daughter aged 16 years) A-3 Rs.1,33,333/- Somnath Dolai (Son- aged 14 years) A-4 Rs.1,33,333/-

3. The Branch Manager of the concerned bank shall invest the said amount of A-3 and A-4 in term deposits in their favour till A-3 and A-4 attains 18

years of age. A-1 will be entitled to quarterly interest earned from the F.D. of A-3 and A-4 for the maintenance of the minor children.

4. Learned counsel for the appellant, Mr. Mahesh Tewari has submitted that Khandu Ram Polai cannot be dependent upon the deceased and he is not entitled for any compensation from the Railway.

5. Learned counsel for the appellant has further submitted that the learned Tribunal has wrongly considered the evidence brought on record by A-1

(Khandu Ram Polai) in paras 4 and 8 which reads as follows:-

4. That on 26.09.2004, the deceased Sahdev Dolai who happens to be son-in-law of the present deponent boarded Hatia- Hawrah express train at

Chakulia railway station on a proper and valid train journey ticket Ex- Chakulia to Kharakpur.

8. That Kalipado Dolai has identified the deceased as his full brother Sahdev Dolai S/o Late Nitai Chandra Dola. In this regard, he submitted a written

report upon which an U.D. Case bearing No.78/04 has been lodged with Chakulia (Tatanagar) GRPS on 27.09.2004 and the concerned GRP, after

due inquiry at length as well as recording the statement of various persons including family members of the deceased, have submitted final report

stating therein that it is case of accidental death due to fall from the train.

6. Learned counsel for the appellant has further submitted that considering the evidence brought on record, the applicant no.1 (Khandu Ram Polai) is

not a dependent and cannot be granted any compensation and evidence brought on record at para 4 of A-1 does not disclose that there was any eye-

witness to the occurrence or any eye-witness to the purchase of ticket by the deceased (Sahdev Dolai), as such, the learned Tribunal has erroneously

granted compensation to the claimants/dependent contrary to the Act.

7. Learned counsel for the respondents Mr. K.M. Murari has submitted that applicant no.1 (Khandu Ram Polai) has not been granted any compensation rather the interest part has been granted to him as he is the guardian and who is maintaining the children of the deceased (Sahdev Dolai).

8. Learned counsel for the respondents has further submitted that evidence of A-1 at paras 4 and 8 completely shift the liability upon the Railway as the initial burden has been proved by the applicant in view of the judgment passed by the Hon'ble Apex Court in the case of Union of India vs. Rina Devi, reported in (2019) 3 SCC 572 at para 29, which is quoted hereunder:-

29. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances.

9. Considering the same, learned counsel for the respondents has submitted that no perversity or illegality has been committed by the learned Tribunal, as such, this Court may not interfere with the award.

10. After hearing, learned counsel for the parties and on the basis of materials brought on record including the evidence of A-1, it appears that the initial burden has been discharged by the claimants/applicants 1. Khandu Ram Polai, 2. Sujata Dolai, 3. Suchitra Dolai and 4. Somnath Dolai by bringing on record the evidence of A-1 (Khandu Ram Polai). From evidence on record, it appears that the initial burden has been proved by the claimants in paras 4 and 8 of evidence of A-1 (Khandu Ram Polai) which reads as follows:-

4. That on 26.09.2004, the deceased Sahdev Dolai who happens to be son-in-law of the present deponent boarded Hatia- Hawrah express train at Chakulia railway station on a proper and valid train journey ticket Ex- Chakulia to Kharakpur.

8. That Kalipado Dolai has identified the deceased as his full brother Sahdev Dolai S/o Late Nitai Chandra Dola. In this regard, he submitted a written report upon which an U.D. Case bearing No.78/04 has been lodged with Chakulia (Tatanagar) GRPS on 27.09.2004 and the concerned GRP, after due inquiry at length as well as recording the statement of various persons

including family members of the deceased, have submitted final report stating therein that it is case of accidental death due to fall from the train.

11. So far untoward incident is concerned, that has already been discussed by the learned Tribunal in para 5 of the impugned order relying upon the

judgment of Hon'ble Apex Court in the case of Union of India vs. Prabhakaran Vijaya Kumar, reported in 2008(9) SCC 527 ,as such, it appears that

on merits no interference is required by this Court as the respondent/claimant no.1 (Khandu Ram Polai) has not been granted any compensation and

Rs.4,00,000/- has only been granted to the claimants, Sujata Dolai (daughter aged 19 years) Rs.1,33,334/-, Suichitra Dolai (Daughter aged 16 years)

Rs.1,33,333/- and Somnath Dolari (Son- aged 14 years) Rs.1,33,333/- and only interest part has been granted to the guardian, who is rearing these

children during their those days when they lost their father till the decision of the claim application.

12. Accordingly, this Court finds that the impugned order does not require any interference.

13. Accordingly, the instant Miscellaneous Appeal is dismissed.

14. The Railway is expected to comply the order passed by the learned Tribunal within a period of 90 days from today as the occurrence is of dated

26.09.2004 for which claim application has been filed on 12.09.2005 which was registered on 13.09.2005 and decided on 22.11.2013 and the matter

remains pending before this Court till today for approximately 17 years.

15. I.A. No.2188 of 2014 filed for stay of the proceeding in the court below is accordingly dismissed.