
(2004) 04 AHC CK 0129

In the Allahabad High Court

Case No : First Appeal From Order No.470 of 1999

Union of India

APPELLANT

Vs

Meera Kumari and Others

RESPONDENT

Date of Decision : 20-04-2004

Acts Referred:

Railways Act, 1989 — Section 124A

Citation : (2004) 04 AHC CK 0129

Hon'ble Judges : Jagdish Bhalla, J and Kamal Kishore, J

Final Decision : Disposed Of

Judgement

Jagdish Bhalla, J.—This appeal is directed against the judgment and award dated 10.8.1999, passed by the Railway Claims Tribunal, Lucknow Bench, Lucknow in Accident Case No.OA9800145, whereby the Tribunal awarded compensation to the tune of Rs.4,00,000/ to the respondent No.1 widow of late Sudhir Kumar Gupta and her children.

2. Learned counsel for the appellant has contended that the Tribunal has erred in awarding the compensation to the respondentsclaimants overlooking the fact that the deceased was not a bonafide passenger and the unfortunate happening took place when the deceased was trying to board a speedy train at Maitha Railway Station, he could not board the said train and fell down as a result of which he sustained injury and succumbed to death. According to him, as a matter of fact that by trying to board a speedy train he committed criminal offence as defined under Section 153 and 154 of the Railway Act. Learned Counsel for the appellant further contended that the Tribunal has committed an error in holding that there is material to say that the case falls under the definition of an untoward incident.

3. Relying upon the decision in the case of Union of India and others v. Sunil Kumar Ghosh, AIR 1984 SC 1737 and a decision of this Court in F.A.F.O. No.277 of 1999, Union of India v. Smt. Jameela, learned counsel for the appellant contended that it is incorrect to say that the case falls within category of

untoward incident and thereby the Tribunal committed an error in awarding compensation. In Sunil Kumar Ghosh (supra) it has been held that an event or occurrence, the happening of which is ordinarily expected in the normal course by almost every one undertaking a rail journey cannot be called an accident.

4. Learned counsel appearing for the respondentsclaimants, on the contrary, submitted that the judgment and award dated 10.8.1999, passed by the Tribunal is based on material on record and after scrutinizing the same in its correct prospective, the grounds taken by the appellant were rejected. The Tribunal held that the deceased was a bonafide passenger and there is lot of material on record to indicate that the case falls under the definition of an untoward incident. The Tribunal has awarded the compensation on the basis of proposition laid down by the Hon''ble Supreme Court in G.M. K.S.R.T. Corporation v. Susamma Thomas; AIR 1994 SC 1631. Learned counsel for the respondents next submitted that the deceased Sudhir Kumar gupta died leaving behind his wife and four minor children. All these were dependants on the deceased and after the death; there was no bread earner in the family.

5. Placing, reliance on AIR 2002 SC 1834, N. Parameswaran Pillai v. Union of India and another, 2002(2) TAC 26 (MP), Union of India v. Smt. Kulko Bai, 2003(2) TAC 302 (AP), Union of India v. B. Koddekar and others, 2001(2) TAC 501 (AP), Union of India v. Uggina Srinivasa Rao, 2003 (2) TAC 65 (Gau), Union of India v. Hemlata Mudoi, 2003 (2) TAC 68 (Delhi), Prabodh Chand Tyagi and another v. Delhi Trasport Corporation and another, 1993 ACJ 846, Raj Kumari and another v. Union of India, the learned counsel for the respondents contended that the award given by the Tribunal is perfectly justified and the award was passed after considering the material on record. The deceased was having a Monthly Season ticket and the original was filed before the tribunal as such the contention of the appellant that the deceased was not a bonafide passenger is incorrect. Learned counsel for the respondents further submitted that in the cases, aforesaid, the Apex Court as also the High Court has held that the word ? passenger? occurring under Section 124A means a railway servant on duty and also a person who has purchased a valid ticket for travelling, by a train carrying passengers. Further 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 except the categories of suicide or attempted suicide, selfinflicted injury, own criminal act, any act committed in a state of intoxication or insanity, any natural cause of disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

6. In N. Parmeshwaran Pillai (supra) the deceased was travelling in train N.6334 on a valid ticket issued by the Southern railways. The deceased was accidentally thrown out of the train on account of over crowding. The deceased got injuries all over his body and ultimately died. Railway Claims Tribunal awarded a

compensation of Rs. 2 lacs for the untoward incident. The Kerala High Court affirmed the decision of the Tribunal. Against the amount of compensation, Parmeshwaran filed an appeal before the Supreme Court and the Hon'ble Supreme Court allowed the appeal and directed the Railway Administration to pay a sum of Rs. 4 lacs as compensation to the appellant.

7. In *Raj Kumari v. Union of India* (supra) the question before Hon'ble the Supreme Court was whether the Commissioner was right in denying payment of compensation to the dependent of deceased on the ground that they failed to prove that the deceased was a bona fide passenger. The Supreme Court held that it is for the railway administration to prove that the deceased was ticketless traveller as it has special means of knowledge to verify whether any ticket was issued to that deceased or whether at any point, before or at end of journey, he was checked and detected by the staff of railway as unauthorized person, without ticket, pass or permission. The Hon'ble Supreme Court further held that Section 82A of the Act is a beneficial piece of legislature to compensate monetarily as a fixed sum to each victim involved in railway accident. To place onus of proof on the dependent amounts to denial of benefit of such legislation to them for reasons beyond their control because such onus is impossible to be discharged.

8. Similar view was taken by Madhya Pradesh High Court in *Smt. Mulko Bai* (supra) and Andhra Pradesh High Court in *Koddekar's case* (supra).

9. We may mention here that the claimants are entitled to sue for breach of common law duty or statutory duty. Needless to mention that the railway carries a dangerous activity of running express train and have to use certain caution, skill and care in starting, running and halting, the liability of the Railway is based on perilous nature of the operation. In the case at hand, the appellant before the Tribunal took the plea that the deceased was not a bonafide passenger and the deceased got down at Maitha Station to purchase Pan Masala and then while he was trying to board the speedy train, he fell down and therefore the case is not covered under the definition of untoward incident.

10. In the present case, on the facts and circumstances pleaded, it is proved beyond doubt that the deceased was having a valid IInd class monthly season ticket and he fell down from train No.1SK Passenger train at Maitha Station and as such it is incorrect to say that the deceased was not a bonafide passenger. It is settled position that the Railway Administration shall not be liable to pay compensation on account of death if the passenger dies or suffers injury due to suicide or attempted suicide by him; self inflicted injury; own criminal act; any act committed by him in a state of intoxication or insanity or any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Therefore, the Railway can escape liability of payment of compensation, only if the aforesaid circumstances are proved by them. Incidences mentioned in proviso to Section 124A of the Railway Act, 1989 being exception to the general rule for payment of compensation for the death, the burden lies on the railways to prove any of

these circumstances, which may fall within the exceptions. In the absence of any proof by the Railway Administration, it shall be presumed that the accident occurred on account of untoward incident. The Tribunal in its judgment has observed that no evidence was lead by the appellant to prove its version that the case does not fall within the definition of untoward incident. Further in view of the subsequent pronouncement of Hon''ble Supreme Court in the case of N. Parmeshwaran Pillai (supra) and Raj Kumari the cases relied upon by the learned counsel for the appellant are not applicable in this case.

11. It is significant to mention that the railway has not led any evidence to bring the case within the proviso to Section 124A of the Act, 1989. Once it is found that the death occurred on account of untoward incident, the direction for payment of compensation by the Railway Claims Tribunal is in accordance with law. The judgment of the Railway claims Tribunal is well founded and is based on the materials placed on record. We do not find any reason to interfere with.

12. The appeal is accordingly dismissed. The claimantsrespondent shall be entitled for the amount as directed by the Tribunal.

(Appeal dismissed)