

(2004) 12 PAT CK 0066
In the Patna High Court
Case No : M.A. No. 18 of 2000

Union of India (UOI)

APPELLANT

Vs

Malti Kunwar

RESPONDENT

Date of Decision : 09-12-2004

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3

Railways Act, 1989 — Section 123, 124A, 2(28), 2(29)

Citation : (2005) ACJ 1883

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : J.P. Karan, for the Appellant; S.D. Sinha and Sunil Kumar Mandal, for the Respondent

Judgement

S.K. Katriar, J.—The Indian Railways have preferred this appeal u/s 23 of the Railway Claims Tribunal Act, 1987 and is directed against the judgment dated 11.10.1999, passed by the learned Member (Technical), Railway Claims Tribunal, Ahmedabad (Sic.) Bench at Patna, in Claim Application No. O.A. 9700208 Malti Kunwar v. Union of India, in terms of Section 124A of Railways Act, 1989 (hereinafter to be referred to as "1989 Act") whereby a sum of Rs. 2,00,000 have been awarded to the claimant with interest in the manner indicated in the order.

2. We shall go by the description of the parties occurring in the claim case. Subhash Prasad (since deceased), the husband of the applicant (the respondent herein), was a G.R.P. constable at Raxaul Station. While in discharge of the duty, he was escorting 375 Up Darbhanga-Narkatiagunj Passenger Train, he accidentally fell down from the running train on 11.5.1997 and died on the spot. He was a part of the escort party for the protection of the passengers and their properties. This led to an application by his widow Malti Kunwar which was filed on 28.8.1997, claiming compensation of Rs. 2,00,000 from the railway administration. The claimant examined herself in support of her claim and also

brought on record a number of documents. Respondent railway administration did not lead any evidence at all. On consideration of the materials on record, the learned Tribunal was pleased to allow the compensation of Rs. 2,00,000 with interest detailed in the judgment. Hence this appeal at the instance of the railway administration.

3. While assailing the validity of the impugned judgment learned counsel for the respondent (appellant herein) submits that in order to be a bona fide person on duty, the claimant must establish that the deceased was travelling in discharge of his duty and he was in possession of a valid ticket or its equivalent, being pass or duty certificate.

4. The learned counsel for the claimant (respondent herein) has supported the impugned judgment.

5. I have considered the entire materials on record including the lower court records and considered the submissions advanced by the learned counsel on behalf of the parties. It appears from a perusal of document dated 11.5.1997, which forms part of the lower court records, issued under the signature of Raj an Kumar Srivastava, A.S.M. Raxaul, that the deceased was a constable of the escort party as per the requisite records. He was aged about 32 years, and had died while on duty in 357 Up Darbhanga-Narkatiagunj Passenger Train, as per the Raxaul G.R.P. S.U.D. Case No. 000/797, dated 11.5.1997. It further appears from another document of the lower court, namely, kaman-patra, that it was issued in favour of the three members of the escort party including the deceased. It is thus manifest that the deceased was a member of the escort party and was travelling in 357 Up Darbhanga-Narkatiagunj Passenger Train in discharge of his duties assigned to him as a member of the escort party and was travelling on the strength of kaman-patra.

6. This takes me on to the question as to whether such a passenger is entitled to compensation in law. Section 2(28) of the 1989 Act defines "pass" which means an authority given by the Central Government or a railway administration to a person allowing him to travel as a passenger, but does not include a ticket. Section 2(29) of 1989 Act defines "passenger" which means a person travelling with a valid pass or ticket. Section 123(c) of 1989 Act defines an "untoward incident" which, inter alia, includes the accidental falling of any passenger from a train carrying passengers. Section 124A of 1989 Act provides for compensation on account of untoward incident and, inter alia, provides that when in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, the injured person or the deceased shall be entitled to damages from the railway administration. The Explanation to Section 124A reads as follows:

"For the purpose of this Section, "passenger" includes-

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

It is thus manifest that the deceased, on duty, was travelling on the strength of a valid authorisation issued by the appropriate authority, and was involved in an untoward incident. Therefore, the heirs of the deceased are entitled to compensation in accordance with law.

7. This takes me on to the question of quantification of compensation. It appears from the Schedule of Rule 3 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, read with the Schedule thereto, as it stood on the date of the occurrence that heirs of the deceased are entitled to the amount of compensation of Rs. 2,00,000 from the Indian Railways. The learned Tribunal is, therefore, right in granting compensation of Rs. 2,00,000 as per statutory provision. However, payment of interest granted by the learned Tribunal needs consideration. In spite of repeated queries learned counsel for the respondent is unable to point out any statutory provision with respect to grant of interest. He, therefore, concedes that part of the order with respect to interest may be deleted.

8. This appeal is accordingly allowed in part. The claimants are entitled to the compensation amount of Rs. 2,00,000. However, no interest shall be payable. Let the compensation amount be paid forthwith, if not already paid.