

(2011) 01 AHC CK 0052
In the Allahabad High Court
Case No : F.A.F.O. No. 1157 of 2007

Union of India (UOI)

APPELLANT

Vs

Ram Swaroop Sharma and Others

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Evidence Act, 1872 — Section 114

Railway Claims Tribunal Act, 1987 — Section 23

Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3, 3(2)

Railways Act, 1989 — Section 124A

Citation : (2012) ACJ 1876 : (2011) 2 AWC 2104

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh and S.C. Chaurasia, JJ.—Heard Shri Anil Srivastava, learned Counsel for the Petitioner, Shri Rajendra Jaiswal, learned Counsel for the Respondent and perused the record.

2. The present appeal u/s 23 of the Railway Claims Tribunal Act, 1987, has been preferred against the impugned award dated 13.9.2007, passed by Railway Claims Tribunal, Lucknow in Claim Case No. O.A. 0200123.

3. Brief facts of the case are that deceased Yogendra Kumar Sharma, while travelling by train in 8 LKM passenger from Fatehgarh to Lucknow, with second class ticket dated 19.4.2002, issued by Military Hospital, Fatehgarh, accidentally fell down from the train, due to sudden push by rush of passengers at Harauni Railway Station, Lucknow and in consequence thereof, sustained serious injuries which resulted into his death on spot. Inquest report was prepared and post-mortem of dead body was done at Medical College, Lucknow. After his death, the parent of the deceased approached the Tribunal for payment of compensation. Parties have led their evidences before the Tribunal and after framing of the

issues with regard to accidental death and considering the evidence led by the parties, the Tribunal awarded compensation of Rs. 4 lacs. The Tribunal arrived at the conclusion that the accident in question is an untoward incident and claimants are entitled for payment of compensation.

4. While assailing impugned award, submission of Appellants' counsel is that the deceased was not a bona fide passenger and injury caused was self inflicted injuries.

5. On the other hand, learned Counsel for the Respondent pointed out that the finding recorded by the Tribunal reveals that it was untoward incident and presumption u/s 114 of the Evidence Act is available to the claimants that deceased was a bona fide passenger, since he was possessing a ticket. It appears that no evidence was led by Respondent to establish the exception provided u/s 124A of the Railways Act. Burden was on the Appellant/Respondent to establish that the case in hand is covered by exception provided under the Act. Appellant has failed to discharge the obligation under the Act. Hence, the evidence led by the claimant-Respondent seems to make out a case of bona fide passenger and so far as the self inflicted injuries are concerned, it appears that no evidence was produced, which may reveal that the deceased has suffered self inflicted injuries. Deceased fell down from the train because of the over-crowded compartment and open door.

6. Repeatedly, we are recommending Railways to provide an automatic mechanized door closer in the compartment to check such incident but it appears that no decision has been yet taken. In case manual or mechanized provision would have been made to close the door, such incident would not have occurred. It is statutory as well as constitutional obligation of Railway to ensure that the door of the moving train is open whenever it reached to platform and at the time of leaving it is closed automatically, so that safety and security of passengers are secured.

7. In the present case, deceased had accidentally fallen down from the train in question due to sudden push by rush of the passengers. All these aspects of the matter have been considered by a Division Bench of this Court in F.A.F.O. No. 350 of 2009, Union of India v. Gulam, Mohammad ,2011 (29) LCD 50, dated 20.11.2010 and the judgment has been forwarded to the Railway Board. On one hand Railways seems to be careless in discharge of its duty to provide safety and security to passengers travelling in train by providing mechanized or manual door closer or by regulating entry of the passengers in the compartment of the train and on the other hand, appeals are filed in a routine manner against the compensation awarded by the Tribunal.

8. The maximum amount of Rs. four lacs provided under the statute is too meagre, when the price index is very high and life has become costly, though the compensation awarded by the Tribunal is not final and the claimants may approach the other forum for payment of more compensation but the things as it

stand, reveal that the members of deceased family are indulged in litigation for years to come for the meagre amount of Rs. 4 lacs, leaving no room to knock the other door for higher compensation. In such a situation, it is appropriate for the Union of India to amend the statutory provision and make a provision that the compensation provided in the schedule of Rs. 4 lacs should be enhanced. For convenience, relevant portion from the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 is reproduced as under;

3. Amount of Compensation.: (1) The amount of compensation payable in respect of death or injuries, shall be as specified in the Schedule.

(2) The amount of compensation payable for an injury not specified in Part II or Part III of the Schedule but which, in the opinion of the Claims Tribunal, is such as to deprive a person of all capacity to do any work, shall be rupees four lacs.

(3) The amount of compensation payable in respect of any injury (other than an injury specified in the Schedule or referred to in Sub-rule (2) resulting in pain and suffering, shall be such as the Claims Tribunal may, after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable:

Provided that if more than one injury is caused by the same incident, compensation shall be payable in respect of each such injury:

Provided further that the total compensation in respect of all such injuries shall not exceed rupees eighty thousand.

(4) Where compensation has been paid for any injury which is less than the amount which would have been payable as compensation if the injured person had died and the person subsequently dies as a result of the injury, a further compensation equal to the difference between the amount payable for death and that already paid shall become payable.

(5) Compensation for loss, destruction or deterioration of goods or animals shall be paid to such extent as the Claims Tribunal may, in all the circumstances of the case, determine to be reasonable.

4. Limit of Compensation.: Notwithstanding anything contained in Rule 3, the total compensation payable under that rule shall in no case exceed rupees four lacs in respect of any one person.

9. Attention has been invited to the Apex Court's judgment with regard to motor accident claim in *Laxmi Devi and Ors. v. Mohammad Tabbar and Anr.* 2008 (2) TAC 394: 2008 (3) AWC 2346 (SC), where their Lordships of Hon'ble Supreme Court held that multiplier and compensation provided under Second Schedule in Motor Accident Claims Tribunal is outlived and requires amendment. With same analogy the Schedule of Railway Claims Tribunal Act requires amendment. Union of India should consider for amendment of the Schedule and also consider our earlier observation with regard to mechanized or manual provision of closer of

door in the compartments. The expenditure of Rs. 40,000 crores as referred in earlier case is not too much in this country, keeping the present scenario, Government should take steps in the interest of safety and security of passengers and also to amend the statutory provision for payment of higher compensation, may be up to Rs. 10 lacs.

10. With the aforesaid observations, we do not find any reason to interfere in the impugned award passed by the Railway Claims Tribunal. Appeal is devoid of merit. It is dismissed accordingly.

11. Let the entire amount deposited in the Court be remitted to Tribunal to proceed in term of award.

12. Let a copy of this judgment be sent to the Chairman, Railway Board as well as Secretary, Railways to consider the observation made by this Court as aforesaid.

13. Before parting with the case, we would like to observe that in case compensation is not enhanced by the Appellant, by amending the Act and Rules, this Court may proceed to compensate the members of deceased family by awarding cost, in the appeals filed by the Railway Board.