
(2011) 09 DEL CK 0346
In the Delhi High Court
Case No : FAO No. 308 of 2009

Union of India (UOI)

APPELLANT

Vs

Shri Pappu and Another

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23

Citation : (2011) 09 DEL CK 0346

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.S. Dateer, for the Appellant; Arun Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this First Appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment of the Railway Claims Tribunal dated 29.5.2009 by which the claim of the parents of the deceased for compensation on account of the death of their son Khem Chand, a student aged 19 years was allowed.

2. The facts of the case are that Sh. Khem Chand, son of the Respondents was travelling from New Delhi to Tundla by Brahmaputra Express train No. 4056, and he died on account of an untoward incident on account of falling from the train. The deceased was going to Tundla in order to attend the engagement ceremony of his friend. The basic case of the Respondents/claimants was that on account of heavy rush in the compartment of the Brahmaputra Express train No. 4056, and on account of the jerk/jolt, along with the push and pull of the passengers, the deceased fell down from the moving train at the old Delhi Railway Station and died on the spot.

3. The Appellant/railways contested the Claim Petition on the ground that the deceased was not a bonafide passenger on the train and therefore the railways were not liable.

4. The Railway Claims Tribunal held that merely because the train ticket is not recovered from the body of the deceased, would not mean that in all cases the deceased would not be a bonafide passenger, inasmuch as, it depends on the facts of each case as to whether the deceased had purchased a ticket or not because in many cases tickets do get lost when there is death by an untoward incident. The relevant observations of the Railway Claims Tribunal through its Chairman B. Padmaraj reads as under:

The non-production of the ticket is not in dispute. That does not, however, tantamount to saying that the deceased was a ticketless traveler. The applicants have clearly and unequivocally stated in their claim application that the second-class general train ticket was lost, against Column No. 7. Therefore, just because the train ticket has not been produced, could not necessarily lead to the conclusion that the deceased had boarded the train unauthorizedly or was travelling without a ticket or was a trespasser. The fact that the deceased had fallen off the train and his body was recovered from the track in an injured condition after the incident and transported to the railway station, and thereafter subjected to postmortem, clearly shows that the dead body of the deceased was handled at various stages by different agencies. The loss of the train ticket in the course of the recovery of the dead body of the deceased from the site of the incident, transportation and postmortem and other procedures can well be explained and understood. In this connection a reference may be made to a decision of the Rajasthan High Court in the case of Union of India (UOI) Vs. Hari Narayan Gupta and Another, wherein it is observed as under:

During the course of travelling and especially after he meets with an accident, the body of the deceased is transported and is transferred on various occasions. During the period of alleged incident and the discovery of the body, many things may transpire and the ticket may be lost, but unknown to others. Therefore, in case, the ticket is lost, it would be almost impossible for the claimants, who are the members of the bereaved family, to establish that the deceased was travelling with a valid ticket.

It has been further observed therein as under:

Considering the fact that Section 124 and Section 124-A of the Act are social beneficial piece of legislation, by placing the burden of proof on the claimants, the benefit of these two beneficiary provisions would be denied to the claimants. An interpretation of the law, which dilutes the very purpose of a provision, should be shunned. Therefore, examined from any angle, it is clear that the burden of proving the fact that the deceased was a bonafide passenger or not, lies on the Railway Administration and not on the claimants.

The above observations made by the Rajasthan High Court are equally applicable to the facts and circumstances of this case. Moreover, apart from the specific assertion made in the claim application, AW1 has stated on affidavit that on 17.4.2008, his son, deceased Khem Chand, aged about 19 years, after

purchasing and having a valid second-class train ticket, was travelling by the train bearing No. 4056 called Brahmaputra Express, for his journey from Delhi Junction to Tundla railway station. There is no cross-examination to AW1 on this point.

(Underlining added).

5. The Railway Claims Tribunal has also rightly noted that there is no cross-examination of the witness AW-1 on the point that the deceased Sh.Khem Chand after purchasing a valid second-class train ticket was travelling from Delhi Junction to Tundla by Brahmaputra Express.

6. I may note that there was no evidence led in rebuttal on behalf of the Appellant/railways and therefore, once there is no evidence, ordinarily the evidence in the affirmative has to be believed. In fact, the only document which was relied upon by the Appellant/railways was a DRM's report, Ex.R-1 showing that a beggar like person has died. The Railway Claims Tribunal has rightly disbelieved this document inasmuch as whereas the report was with respect to a person who was found to be aged of 55-60 years and for an incident which occurred on platform No. 12, the untoward incident which is the subject matter of the present Claim Petition was with respect to the deceased, Sh. Khem Chand aged 19 years on platform numbers 3 or 5. Therefore, both with respect to the age of the deceased in DRM's report and with respect to the platform number 12 on which the incident took place which is the subject matter of the DRM's report the Tribunal did not believe the evidence as led on behalf of the Appellant/railways. The relevant observations of the Railway Claims Tribunal in this regard read as under:

It is no doubt true that in the instant case, the Respondent Railway Administration has filed the DRM's report, as per Ex.R-1, wherein it is stated that the deceased was not a bonafide passenger, and he was a beggar (looking) like person, who died on Platform No. 1 of Delhi Junction. However, by going through the DRM's report along with its enclosures, I find that it has no relevance to the facts and circumstances of this case. Except that the author of the DRM's report has inserted the name of the deceased in offering his remarks, the incident referred to therein has nothing to do with the incident in question. On its careful perusal, I find that it is in respect of an incident, which occurred on Platform No. 12 on 17.4.08 in relation to a person, who was aged about 55-60 years. Admittedly, in the instant case, we are not concerned with any incident, which took place on Platform No. 12, nor concerned with any person, who was aged about 55-60 year. The incident here, even as per the Memo of the railway employee, took place on Platform No. 3 or 5 on 18.4.08 involving a passenger train No. 4056. Further the victim of the incident in question is a boy, aged about 19 years. Therefore, the DRM's report, ex.R-1, filed by the Respondent Railway Administration has absolutely no relevance to the case on hand, and hence no undue importance can be given to the said report.

(Underlining added)

7. In view of the above, I am of the opinion that the Railway Claims Tribunal has rightly held the deceased to be a bonafide passenger who died on account of an untoward incident and therefore compensation was payable. The appeal therefore being without merit is accordingly dismissed.

8. Before concluding, I would like to mention that I am receiving many cases where the railway authorities have chosen to lead no evidence to rebut a Claim Petition in the Railway Claims Tribunal. I find that there is complete negligence in conducting many cases on behalf of the railways. The negligence may be of the officers who may not be furnishing the Advocates with the necessary information or bringing the witnesses or there may be other forms of negligence. It is therefore necessary that the competent authorities in railways take note of this situation and issue appropriate guidelines within a period of 4 weeks from today so that there is appropriate conduct of the cases on behalf of the railways before the Railway Claims Tribunal. Let the counsel for the Appellant furnish a copy of this judgment to appropriate authorities in the Railways. Let the necessary affidavit be filed before the Chairman of the Railway Claims Tribunal within 4 weeks from today of the necessary circular having been issued for directing the appropriate conduct of the cases before the Railway Claims Tribunal, and let a copy of this order be also sent to the Chairman of the Railway Claims Tribunal to ensure that the necessary follow-up is done by the railways. With the aforesaid observations, the appeal is dismissed. Dasti to the counsel for the Appellant.