

(2000) 06 OHC CK 0015
In the Orissa High Court
Case No : Misc. Appeal No. 418 of 1998

Union of India (UOI)

APPELLANT

Vs

Smt. Jshna Kanhar

RESPONDENT

Date of Decision : 26-06-2000

Acts Referred:

Railways Act, 1989 — Section 124A

Citation : (2001) 1 ACC 77 : (2001) ACJ 871 : AIR 2000 Ori 147

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : B. Pal, A.K. Mishra, S.K. Ojha and P. Das, for the Appellant; B.P. Roy, S. Pujhari, P.K. Patnaik, S.K. Nanda and P.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The Union of India has filed this appeal u/s 23 of the Railway Claims Tribunal Act, 1987, challenging the decision of the Railway Claims Tribunal Bhubaneswar Bench, direction payment of Rs. 2,00,000/- as compensation to the claimant-respondent.

2. The husband of the claimant-respondent was a defence personnel belonging to Bihar Regiment. The deceased while travelling on 1-4-1995 by Jammu Tavi Sialdah Express fell down from the train at a place between Andal and Bhakat Nagar Railway station and died. The claim application was filed before the Railway Claims Tribunal at Calcutta. Subsequently, the same was transferred to the Railway Claims Tribunal, Bhubaneswar Bench.

3. The present appellant in its written statement without taking any specific stand called upon the claimant to prove that the deceased was a bona fide passenger and the claimant was the widow of the deceased.

4. The Railway Claims Tribunal found that the deceased was a bona fide passenger and had lost his life in an "untoward incident" and as such compensation was payable to the claimant who is the widow of the deceased.

5. In this appeal, the learned counsel appearing for the appellant submitted that the onus was on the claimant to prove that the deceased was a bona fide passenger and in the absence of any material on record discharging such onus, compensation could not have been paid.

6. There cannot be any dispute that a claimant has to prove that the deceased was a bona fide passenger in the train. In the present case, there is no dispute that the deceased was a military personnel and being a member of the disciplined force, it can be inferred that in normal circumstances, a military personnel would not travel in a train without ticket or valid authority. Moreover, it is apparent that the deceased had already travelled a considerable distance from the station of origin. If he would have been a ticketless traveller, one would have expected the railway authorities to have detected such ticketless travelling. When a person dies in an accident by falling from the train and that too at a distant place, it is not possible for the legal representatives to produce the ticket or other authority to travel in the train. Depending upon the facts and circumstances of a given case, the Tribunal on the appellate Court can infer about the deceased being a bona fide passenger. In the present case the peculiar facts and circumstances noted above, prima facie indicate that the deceased was a bona fide passenger and in the absence of any other material to indicate that, in fact, the deceased was a ticketless traveller, the conclusion of the Claims Tribunal that the deceased was a bona fide passenger cannot be said to be improper so as to warrant interference in this appeal.

7. The learned counsel for the appellant contended that the claimant had merely filed her own affidavit and no oral evidence has been adduced. The materials on record do not indicate that the present appellant wanted to cross-examine the deponent. Moreover, the circumstances under which the accident occurred are more or less admitted. Therefore, the appellant cannot take any advantage by raising a technical plea that opportunity of cross-examination had not been given and oral evidence had not been adduced. If the appellant so wanted, it could have adduced any oral evidence rebutting the affidavit and other materials produced on behalf of the claimant.

8. The learned counsel for the appellant contended that the materials on record indicate that the deceased while leaning out from the train fell down possibly being struck by a pole near the railway track and as such it should be construed that the deceased had committed a criminal act. The Tribunal has rightly observed that leaning out from the compartment may amount to a negligent act, but cannot be construed as a criminal act. In the facts and circumstances of the case, it can be said that an "untoward incident" had occurred. The appellant has not established that the deceased was committing suicide, nor it has been established that the deceased had committed any criminal act. Therefore, the liability has been rightly fastened by the Tribunal on the present appellant.

9. For the aforesaid reasons, I do not find any merit in this appeal, which is accordingly dismissed. There will, however, be no order as to costs.