
(2010) 11 DEL CK 0154
In the Delhi High Court
Case No : FAO. No. 292 of 2009

Union of India (UOI)

APPELLANT

Vs

Tabassum Parveen and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 106
Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123, 124, 153, 154

Citation : (2010) 11 DEL CK 0154

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Kumar Rajesh Singh, for the Appellant; S.M. Sulfiqar Alam, for the Respondent

Judgement

Mool Chand Garg, J.

1. This appeal has been filed by the Union of India u/s 23 of the Railways Claims Tribunal Act, 1987 against the impugned judgment dated 5.6.2009 in the claim case bearing No. 169/2007 passed by the Railway Claims Tribunal, Principal Bench, New Delhi, whereby the learned Tribunal has awarded a sum of Rs. 4 lakhs as compensation together with interest thereupon @ 9% p.a. from the date of the order till actual payment and has bifurcated the payment to be made as under:

1. Smt. Tabussam Parveen (wife of the deceased) Rs. 1,50,000/-

2. Miss. Chaman Ara Rs. 1,50,000/-

3. Smt. Bibi Ajmun Nisha (widowed mother of the deceased) Rs. 1,00,000/-

2. According to the Appellant, the deceased was not a bona fide passenger and, therefore, the claim has been wrongly allowed by the Tribunal. It has been submitted by the Appellant that the present appeal raised the following questions

of law:

(i) Whether Respondent can take the advantage of the rash and negligent act on his part endangered his life and own criminal act as per Section 153 and 154 of the Railways Act 1989?

(ii) Whether Respondent can raise the claim contrary to the provisions of Section 153 and 154 of the Railways Act 1989 read with sections (C) of Section 124-A of the Railway Act 1989?

(iii) Whether findings of Ld. Tribunal is sustainable in the eye of law which is contrary to the settled principle of law laid down by the Hon'ble Supreme Court in the case of Union of India v. Sunil Kumar Ghosh?

(iv) Whether Hon'ble Tribunal can be held to be justified in directing the Appellant herein to pay the Respondent herein a sum of one Shri Noor Alam together with interest thereon on 9% per annum for the date of the impugned order till the actual payment?

3. In the claim petition filed before the Tribunal, the Respondents had alleged that after getting complete treatment in Delhi, the deceased Noor Alam boarded train No. 02204 from New Delhi to Saharasa Junction at about 10 AM for his journey to his home. There was a great rush on account of Holi festival. When the deceased was trying to enter into the train, due to a sudden jerk he fell down on the line and died on the spot after being hit by a EMU.

4. On the other hand, it was the case of the Appellant that the deceased died due to self inflicted injury. As per the DRM investigation report deceased Noor Alam was suffering from a disease, as a result of which he jumped before the EMU train and died and as such he died due to injury self inflicted by him and under these circumstances, compensation toward claim of Railway administration does not rise at all.

5. The Respondents also stated that that the accident in question occurred with Garib Rath Train bearing No. 02207 whereas in the police report and report of the Divisional Railway Manager, it is averred that deceased was hit by the EMU train and therefore, the police report as well as finding recorded by the DRM in his report is appearing to be trustworthy and reliable one.

6. However, it is an admitted case of the Respondent that deceased was travelling with the ticket of 3 AC which is fully reserved and as per extant rule, Railway Administration usually issues not more than certain numbers of the tickets for the reservation compartment of 3rd AC.

7. Reliance was placed upon Sections 153 and 154 of the Railways Act, 1989 and it was alleged that it was the deceased who got himself endangered by jumping before an EMU Train and not by trying to enter into the Garib Rath. It is, however, noted that nothing is brought on record, neither any eye-witness who had seen the deceased jump before the EMU train nor any medical practitioner

has been examined by the Respondent to depose about the mental condition of the deceased.

8. It may be observed here that the Tribunal on the basis of the pleadings of the parties framed various issues. As far as this Court is concerned, the findings returned by the Tribunal on issue No. 2 are relevant. The observations made by the Tribunal as to what are the facts of the case and how the liability of the Railway has been affixed are reproduced hereunder:

Apart from the specific assertion made in the claim application, AW-1 has stated on affidavit that her deceased husband was boarding the train No. 02204 from New Delhi to Saharasa Junction with ticket No. 30199322 in class 3 AC on 4.3.2007. In order to substantiate the same, the applicants have placed on record a copy of the railway ticket as per Ex.AW-1/3, which has been proved through AW-1. There is no cross-examination disputing the validity or otherwise of Ex.AW-1/3, nor the Respondent has adduced any evidence to show that it was a fake ticket. If it had been a fake ticket, the Respondent could have easily established the same on the basis of the records kept by them. As the Respondent could not discharge that burden, it can be safely be concluded, on the strength of Ex.AW-1/3, that the deceased had been a passenger with a valid ticket. Besides AW-1, A Ws-2,3&4 have also stated that the deceased was boarding the train with a valid ticket. To be more precise, AW-2 has stated that on 4.3.2007, at around 10 AM when he along with the deceased were trying to enter the train No. 02204 from New Delhi to Saharasa Junction with ticket No. 30199322 in class 3 AC on 4.3.2007, the mishap took place. AW-3 and AW-4 have also stated on affidavit that when the deceased was boarding the train No. 02204 from New Delhi to Saharasa junction with ticket No. 30199322 in class 3 AC on 4.3.2007, the mishap took place. There has been no effective cross-examination on this point to any of the above said witnesses, examined on behalf of the applicants. Therefore, the fact that the deceased had been a passenger with a valid ticket, spoken to by the above said witnesses in their evidence, filed by way of affidavit, has remained unchallenged. Thus, the unchallenged evidence of A Ws1 to 4 together with the copy of the railway ticket, Ex.AW-1/3, would prima facie indicate that the deceased had been a passenger with a valid ticket at the relevant time of the incident. Even the report of the Sr. DSC/RPF, New Delhi found along with the DRM's Report, Ex.R-1 & which forms part of it, would clearly disclose that the deceased had arrived at the platform in order to travel by train as a passenger from New Delhi to Saharasa with valid ticket bearing No. PNR Nos. 233-6949353. Therefore, in the totality of the circumstances, I have no hesitation in holding that the deceased had been a passenger with a valid ticket at the relevant time of the incident. Hence, I record my finding on issue No. 2 in the affirmative and in favour of the applicants.

9. The Tribunal has also taken note of the statement of AW-2, who is the brother of the deceased and was travelling with the deceased and had brought the deceased to Delhi for medical treatment and after he was alright they both were

going back on 4.3.2007 having ticket of AC III. Thus, this witness is an eye-witness of this incident. In his affidavit, he has deposed that:

That during boarding the train at around 10 AM for their journey to their house, there was a rush on the platform and the deceased was trying to enter the train, and, there was a sudden jerk due to connecting the engine with the train and as a result of which the deceased fell down on the line and died on the spot. He has stated that his deceased brother fell down from the train due to heavy rush on the platform & sudden jerk of the train, and, as a result of the injuries sustained by him, he had died. Under the cross-examination, he has stated that he was travelling with the deceased & they were travelling by Garib Rath from Delhi to Saharasa, and, he had arrived along with his deceased brother at about 10 AM on platform No. 2 of New Delhi railway station on 4.3.2007 and their ticket was for AC sleeper and that while boarding the train, there was a sudden jerk, as a result the deceased fell down between the platform and the track, and after that there was a lot of noise of the passengers and the police came and took away the dead body. He has further stated in his cross-examination that he had received the dead body of the deceased along with Mr. Dawood & Sh. Abdullah, who had accompanied them to help them to board the train. He has also stated that the police had recorded his statement as well as the statement of Abdullah and Dawood. The Respondent has got marked the statement of AW-2 recorded by the police in his cross-examination as per Ex.AW-2/X.

10. The Tribunal further observed that:

...Respondent itself has elicited in the cross-examination of AW-2 that he had received the dead body along with Mr. Dawood and Mr. Abdullah (A Ws-3&4), who had accompanied them to help them to board the train. Further, the Respondent did not challenge the fact that the AW-2 had arrived along with his deceased brother to the railway station in order to travel by train from New Delhi to Saharasa junction. Therefore, the fact that AW-2 was travelling along with the deceased and that A Ws-3 & 4 had come to the railway station along with the deceased and AW-2 to make them to board the train appears to be not in serious dispute. That being so, they are the most natural & probable witnesses to the incident. Now I shall refer to the evidence of A Ws-3&4. Both A Ws-3&4 have clearly stated in their evidence by way of affidavit that during the boarding of the train by the deceased at around 10 AM for his journey to his home, there was a great rush of holi and the deceased was trying to enter the train, and, there was a sudden jerk with the train and due to the said jerk and heartrending rush due to holi, the deceased fell down on the line and died on the spot. Under the cross-examination, both A Ws-3&4 have stated that the incident in question did not occur on account of the EMU train but due to the involvement of the train called Garib Rath train. They have clearly denied the suggestion that they have deposed falsely in favour of the applicants since they happened to be the relatives of the deceased.

11. Admittedly, the statements of AW-2, 3 and 4 stated to have been recorded u/

s 161 Code of Criminal Procedure was not put to them in the cross-examination and, therefore, the Tribunal rightly observed that:

Once their previous statements, made before the police in the course of investigation, are kept out of the purview of the Tribunal on the ground that they cannot be treated as substantive evidence, what remains on record is the testimony made by A Ws-2 to 4 before the Tribunal.

12. Coming to the evidence which was relied upon by the Respondent on the report of the DRM Ex.R-1, wherein it was stated that the deceased was suffering from a disease as a result of which, he jumped before the EMU Train. As pointed out earlier and also noticed by the Tribunal, there is no material to show that the deceased jumped before the EMU train on account of his illness. No evidence is adduced to support such a conclusion drawn by the DMR, which has rightly not been accepted by the Tribunal.

13. The Appellants have emphasized that in this case the deceased on account of mental illness jumped before the EMU Train. This was his own negligence and the Railways cannot be held responsible and secondly, this was not an untoward incident. However, both these points taken by the Appellant are not acceptable in the light of the judgment delivered by the Apex Court in the case of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, , wherein it has been held:

10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In either case it amounted to any "accidental falling of a passenger from a train carrying passengers". Hence, it was an "untoward incident" as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression "accidental falling of a passenger from a train carrying passengers", the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the above-mentioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred. Beneficial or welfare statutes should be given a liberal and not a literal or strict interpretation.

In this case the Appellant had a valid ticket and there is an evidence that he fell down from the train on account of rush of the passengers.

14. As far as the second submission is concerned, the Railways have not placed on record any cogent evidence to show that the deceased was suffering from any illness which prevailed him to jump from the running train. They have neither

examined any doctor nor have cross-examined the witnesses to suggest that the deceased fell down from the train on account of his illness or mental condition.

15. In this regard, it would be appropriate to take note of a judgment of the Kolkata High Court in the case bearing No. FMAT 291/2008 titled as Bandana Mondal v. UOI Thru General Manager, decided on 23.09.2009, wherein it has been held that:

10. We are quite conscious of the position of law that as provided in Section 106 of the Evidence Act, if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in illustration (b) of that section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But such principle is not applicable to a case of a dead person whose dead body was found on the railway track and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the claimants to prove that he was a bona fide passenger having a valid ticket. In this case, as no person on behalf of the Railway has given any such evidence nor has any person come forward to disclose what articles were found with the victim, we conclude that the initial burden of proving such fact had not been discharged. We cannot lose sight of the fact that one is not entitled to enter even the platform of a railway station without having a valid platform ticket and one takes the risk of criminal prosecution by boarding a train without ticket. In such circumstances, in the absence of any evidence of the Railway Authority asserting absence of a valid ticket, we are of the opinion, there is no just reason for totally discarding the evidence of the PW-1, the mother of the victim, who deposed and asserted that it was she who purchased the ticket for her son, handed over the same to him and saw him off at the railway station. We have already mentioned that in cross-examination, no suggestion was even given to her denying those assertions.

16. Similarly, the Andhra Pradesh High Court in another case The General Manager, South Central Railway Vs. K. Narayana Rao, , where there was accidental fall of passenger from train and the deceased was travelling with a valid ticket, held that it was an "untoward incident". It was also held that no material was placed on record by the Railways to prove that there was negligence on the part of the deceased and that the injury was self inflicted.

17. In the light of the aforesaid observations, once the evidence has come on record that the deceased was a bona fide passenger and as per the statement made by AW-2 he fell down from a running train on which he had boarded after taking a proper ticket, the Appellants having failed to bring on record any cogent evidence to prove their defence, they are not entitled to say that the dependants of the deceased are not entitled to compensation. Consequently, the appeal is dismissed.

CM No. 13486/2009

Interim order, if any, stands vacated.

Application stands disposed of.

CM No. 13420//2010

The compensation amount, if any, deposited by the Appellant be released in favour of the Respondents as per the bifurcation given in impugned judgment.

Application stands disposed.