

Union of India Vs. Deva Singh and ors.

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Court : Delhi

Decided On : Jan-15-2014

Judge : Valmiki J. Mehta

Appellant : Union of India

Respondent : Deva Singh and ors.

Judgement :

39 * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO No.291/2012 15th January, 2014 % UNION OF INDIA Through:Appellant Ms. Shilpa Singh, Advocate. VERSUS DEVA SINGH AND ORS. Through: Respondents Mr. S.S. Sisodia, Advocate CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) CM118552012 (for condonation of delay) For the reasons stated in the application, delay of 36 days in filing the appeal is condoned CM stands disposed of. FAO No.291/2012 1. Challenge by means of this first appeal under Section 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment dated 28.2.2012 which has allowed the claim petition filed by the respondentappellant who is the dependent of the deceased Sh. Ajay. Sh. Ajay died in an untoward incident stated to have occurred on 15.3.2010. The deceased left behind his parents, his two minor daughters and a minor son. The wife of the deceased had already expired on 25.5.2008. The deceased Sh. Ajay, at that time, was running a Kirana shop at Gurgaon. The Railway Claims Tribunal has held that

the deceased was a bona fide passenger in the train. The Railway Claims Tribunal further relied upon the evidence of cousin brother of the deceased one Sh. Amit who was also traveling in the same passenger train called TR train. Sh. Amit had deposed that he and deceased Ajay climbed on different compartments of the said train, however, the deceased Ajay fell down from the train.

2. The Tribunal has given the following findings while allowing the claim petition:

After perusal of record, I observe that identification & factum of fall of Sh. Ajay (deceased) has been established by the document AW1/6 i.e. brief fact report of the police. I observe that in the DRM report R1, it is clearly mentioned that Sh. Ajay (since deceased) fell down from the train, while he was trying to board the running train & for that Railway Administration is not responsible as the incident occurred due to the mistake & carelessness of the deceased himself. But no reliable & other plausible evidence was adduced in this regard on behalf of the respondent in order to prove the negligence on the part of deceased. The evidence of RW1 Sh. Phool Kuwar, Guard is also contrary to the DRM report. So, the balance of convenience goes in favour of the applicants. Hence, it is clear that the respondent failed to establish the contra by adducing any reliable evidence, which is accepted in the eye of law. The legal position of law is very much clear as it has been held in Union of India, South Central Railway Vs. Kuru Kundu Bala Krishnaiah, 2004 ACJ529(A.P.) as under:

accidental falling, would include a passenger trying to alight a train, board a train or any other like action, and hence they would be covered by untoward incident as specified in Section 123 of the Act.

The document R1, placed on record by the respondent also to some extent speaks volumes regarding the untoward incident & so, the authority titled (supra) is applicable in this case. I observe that the compensation claims, normally are the relief granted by the welfare legislation for the purpose of safeguarding the interest of either the injured or the deceased persons and the dependant family members. While appreciating the overall evidence, the Tribunal is expected to appreciate the evidence in proper perspective & such appreciation should, in my opinion, be based on common sense & realities. The provisions contained U/s 124A of the

Railways Act, are beneficial legislations and strict proof of the matter is not required. From the side of the respondent, there is no evidence to show that Sh. Ajay (deceased) had either committed suicide or died as a result of self inflicted injury. The respondent failed to establish the contra by adducing any reliable evidence, which is accepted in the eye of law. The contents of the documents mentioned (supra) and the evidence of the witness with regard to the accident in question fully prove the case of the applicants, on the basis of maxim Res ipsa loquitor which means the things speak for itself. In my opinion, the present case falls under the definition of Section 123(c) (2) of the Railways Act & the applicants are entitled to get compensation U/s 124A of the Railways Act, on the ground that the proviso (a) to (e) of Section 124A are not applicable in the present case. Hence, I record my opinion on the issue mentioned (supra) in the affirmative and in favour of the applicants. Issue No.2: Regarding issue No.3 the applicants have placed on record the affidavit of Sh. Deva Singh as AW1/1. Sh. Deva Singh, in his examination in chief as well as in the Claim Application stated that Sh. Ajay (deceased) was his son, who was married, Smt. Gyano Devi, mother of the deceased, is alive & Smt. Rekha, wife of his son Sh. Ajay has expired two years back. It is also submitted that Sh. Ajay (deceased) has three children namely, Kajal, aged 15 years, daughter, Komal aged 10 yrs. Daughter and Rohit, aged 8 years so and all the three children of Sh. Ajay (deceased) reside with applicant No.1 and so, the applicants are the legal heirs of the deceased. The respondent did not seriously dispute the relationship of the applicants/dependants with the deceased, because no questions or suggestions were put to the witness that the applicants are not the dependants of the deceased. Hence, the inference goes against the respondent. Accordingly to Section 123 (b)(i) of the Railway Act, 1989, all the applicants fall under the definition of dependent. So, I hold that all the persons mentioned (supra) are dependants of Sh. Ajay (deceased). Hence, this issue is decided accordingly.

3. Learned counsel for the appellant very strenuously contended that the Railway Claims Tribunal has erroneously failed to consider the relevant evidence being the affidavit which is filed as RW-1/1 and which showed that the deceased in fact committed suicide in front of the goods train.

4. I am not agreeable with the argument urged on behalf of the appellant inasmuch as nothing has been placed on record by the appellant as to why a person who is running a business, and has three minor children besides parents, would want to commit suicide. Also the court below has in fact considered the affidavit filed by RW-1 Sh. Phool Kuwar and observed that the statement of the Guard of suicide by the deceased under a goods train cannot be believed because the DRM in the present case has given a report dated 9.02.2011 that the deceased died by trying to get into a running train. Therefore, it is not even the case of the DRM of the Railways that the deceased Ajay committed suicide before a goods train. Thus, on one hand, the stand of the appellant-respondent was that the deceased died on account of fall from the over-crowded train, on the other hand the report of the DRM shows that he was trying to get into a running train i.e it is not as if that as per the DRM, the deceased tried to commit suicide in front of goods train.

5. In view of the above, I do not find any illegality in the impugned judgment which awards compensation. I may note that the liability as per Sections 123(c) and 124A of the Railways Act, 1989 is a strict liability and even if there is negligence on behalf of the deceased, yet compensation is awarded in view of the judgments of the Supreme Court in the cases of Union of India Vs. Prabhakaran Vijaya Kumar & Ors. (2008) 9 SCC527 and Jameela and Ors. Vs. Union of India (2010) 12 SCC443. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. JANUARY 15 2014 godara FAO No.291/2012

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