

Kanti Devi Vs. Union of India

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Court : Delhi

Decided On : Feb-11-2014

Judge : Valmiki J. Mehta

Appellant : Kanti Devi

Respondent : Union of India

Advocate for Def. : Mr. Joydeep Mazumdar, Mr. Debojyoti Bhattacharya

Advocate for Pet/Ap. : Mr. S.K.Vashistha

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % KANTI DEVI FAO No.174/2012 Through:

11. h February, 2014Appellant Mr. S.K.Vashistha, Advocate VERSUS UNION OF INDIA Through: Respondent Mr. Joydeep Mazumdar and Mr. Debojyoti Bhattacharya, Advocates. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This first appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 impugning the judgment of the Tribunal dated 31.10.2011 by which the claim petition filed by the appellant was dismissed.

2. The facts of the case are that appellant is a widow of deceased Sh. Ram Sewak who is said to have died in an untoward incident of falling from the train on 30.10.2008 when deceased Ram Sewak was travelling from Sahibabad to Aligarh Jn. by a train No.GNP-3 on the basis of a journey ticket No.80144904. The case as pleaded by the appellant is that since there was a heavy rush in the compartment, the deceased fell down from the train when the train started with jerk/jolt and the thrust from the passengers, and this resulted in his death, 3. The Railway Claims Tribunal has dismissed the claim petition by giving a finding/conclusion that the incident was not of falling from a train but was an incident of the deceased being run over while crossing the tracks. Before I reproduce the relevant observations of the Tribunal, I must note that it is conceded before me on behalf of the appellant that the deceased was a resident of Sahibabad and the incident in question admittedly happened at Sahibabad Railway Station premises. The relevant observations of the Tribunal for dismissing the claim petition read as under:

The above mentioned issues are taken up for consideration simultaneously for the sake of convenience. In support of the above mentioned issues, Ld. Counsel for the applicants reiterated all the points mentioned in the claim application. In support of the claim application, the applicants examined Smt. Kanti Devi & Smt. Bimlesh Kumari as AW1 and AW2 respectively & relied upon the documents AW1/2 to AW1/8 & mark-A alongwith the documents C1 & C2 in evidence. Ld. Counsel for the applicants further submitted that Sh. Ram Sewak was travelling from Sahibabad to Aligarh Jn. In train no.GNP-3 on 30/10/2008, on the strength of valid railway journey ticket no.80144904 & there was heavy rush in the train compartment & so, he could not get the seat. It is further emphasized that as the train started with a jerk/jolt, Sh. Ram Sewak fell down from the moving train, due to that jerk/jolt as well as thrust from the passengers, resulting in his death. Post mortem examination of the deceased was conducted in Govt. Hospital Ghaziabad vide PMR No.1682/08 & the deceased left behind the compensation to the dependants of the deceased. On the other hand, Ld. Counsel for the respondent controverted all the facts of the claim application & submitted that the alleged incident was not an untoward incident because the deceased was neither a bonafide passenger nor any untoward incident occurred from the train in question,

on the relevant date as the ticket placed on record was a procured one only to get false compensation & the alleged incident was a case of run over & the story put forth by the applicants, is a mere concoction & now a days, it is a simple tendency of some people by adopting other means by referring that the injured/deceased was travelling, on the strength of valid railway journey ticket. Railway Administration is protected under the exceptional clause of Section 124-A of the Railway Act & so, the respondent is not liable to pay any compensation to the dependants of the deceased. In support of this version, the respondent placed on record the DRM report R1, total containing 21 pages alongwith the evidence of Sh. Anil Kumar Jain, S.S.Sahibabad as RW1 alongwith the documents RW1/1 & RW1/2. Hence, the claim application deserves dismissal with exemplary costs. After perusal of record, I observe that the documents i.e AW1/2 to AW1/8 placed on record by the applicants, were prepared during the course of investigation & it was nowhere mentioned that Sh. Ram Sewak (since deceased), received injuries after falling from the train no.GNP-3. The respondent through their agency RPF, before the Tribunal on 22.07.2011 who in his affidavit RW1/1 stated that the deceased was run over by train No.2056 at 10.50 hrs. on 30.10.2008 at Sahibabad railway station as reported by the driver of the train no.2056 & no incident occurred from train No.GNP-3, on the basis of documents RW1/1 & RW1/2 & so the story put forth by the applicants is not convincing. The burden of proof rests entirely upon the applicants to prove the untoward incident as it has been held in Jamirul Nisha and another Vs. Union of India, 2009 ACJ1393 wherein it is held para No.34 & 35 of the decision as under:

34 From the perusal of the Sec. 123(c) (2) & 124A, it is clear that sine qua non for claiming compensation on account of death or injury sustained in a train accident is that the victim of a train accident, or his dependants as the case may be, must first establish that the victim or the deceased had accidentally fallen from the train.

35 In the instant case, applicants have failed to establish that the deceased had accidentally fallen from the train, therefore, the question of proof by the Railways that the death of the deceased was not the result of untoward incident does not arise.

On the basis of authority titled (supra) it is clear that the applicants miserably failed to prove the untoward incident & so, the deceased was neither a bonafide passenger nor fell down from a train in question at the time of alleged incident. The DRM report R1 (total containing 21 pages) speaks volumes as Sh. Ram Sewak was crossing the railway line unauthorizedly & during this process, he was struck with the train & injured seriously. Sh. Ram Sewak died due to his own mistake & carelessness & hence, Railway Administration is not responsible in this case.

Copy of the DRM report R1, was given to the applicants through Counsel, but no plausible rebuttal was given by the applicants in this regard. So adverse inference goes against the applicants as the above mentioned documents were prepared in the ordinary course of duties by the Govt. officials & the genuineness & the veracity of the said documents cannot be doubted. I find momentum of force, when the Ld. Counsel for the respondent states that the story put forth by the applicants, is a mere concoction only to get false compensation and now a days, it is a simple tendency of some people by adopting other means by referring that the injured/deceased was travelling, on the strength of valid railway journey ticket & the ticket placed on record is a procured one. There is no modicum of merit in the submissions of Ld. Counsel for the applicants. It is pertinent to mention that when there is a conflict between the oral & documentary evidence, in that circumstances, the documentary evidence will prevail. Hence, I record my findings on Issue no.1 & 2 against the applicants & in the favour of respondent.

(underlining added) 4. A reading of the aforesaid paras shows that the incident in question is not an incident of falling down from a train because if the deceased had fallen down at the station from the train then surely, there would be if not few eye witnesses, at least one eye witness, who would have made a statement before the railway authorities; including the railway police, of the deceased having been fallen down from the train. Besides the fact that there is no such statement of any eye witnesses, on the contrary, the respondent/Railways led evidence of its two employees as RW-1 and RW-2, alongwith the train register and which showed that the driver of train No.2056 had informed that a person had got run over by a train. There is no reason why independent/neutral railway officials will have a

reason to state a lie that the deceased got run over by the train and not by falling down from the train. This aspect is to be taken alongwith the fact that there is no eye witness of the alleged fall of the deceased from the train and which was bound to otherwise be because the incident is stated to have happened at the Sahibabad Railway Station. Accordingly, I do not find any fault in the conclusion of the Tribunal that though the deceased was found to have been carrying a ticket, really death took place while the deceased was trying to cross the tracks at the Sahibabad Railway Station.

5. Learned counsel for the appellant argued that it would be impossible for the appellant in a case like this to give exact details of the incident, and to which I agree, and I have also held in various cases that in many cases it is not possible to exactly re-create an incident by the dependants of the deceased who are not travelling with the deceased, however, that cannot take away the aspect of the appellant/applicant discharging the initial onus of proof by some reasonable evidence, and which in this case is not discharged not only because it is unusual that there would be no eye witness of a fall from a train in a railway station, and on the contrary, there is a report by the driver of a train No.2056 of a person coming under the train while crossing the tracks. Therefore, it is perfectly possible, that after purchase of the ticket, the deceased was crossing the tracks and consequently, got hit by the train No.2056, and which is also reported by the driver of the said train. In terms of Section 114 of the Evidence Act,1872, I would like to take on record that there is no reason that official acts would not be properly performed and the official act in this case is report of the train driver of the train No.2056 that in fact the deceased was run over by a train while crossing the tracks.

6. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs. FEBRUARY11 2014 ib FAO1742012