Union of India Vs. Ram Sevak

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Court : Delhi

Decided On : Feb-28-2014

Judge : Valmiki J. Mehta

Appellant : Union of India

Respondent : Ram Sevak

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO No.461/2012 28th February, 2014 % UNION OF INDIA Through: ..... Appellant Mr. Abhishek Yadav, Advocate. Versus RAM SEVAK ..... Respondent Through: None. 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 which has allowed the claim petition filed by the respondent/claimant, for the grievous injuries causing amputation of both his legs, suffered on 3.8.2009, while travelling from Shamli to Saharanpur in a passenger train.

2. Railway Claims Tribunal holds that the respondent was a bonafide passenger inasmuch as the ticket was placed on record as Ex.A2. The Tribunal has reckoned as minor the difference in timings of the train having started from Shamli at 6.00 P.M as claimed by respondent but ticket having been purchased at 7.40 PM and

which finding, in my opinion, is also justified because certain contradictions in the train timings cannot take away the factum that there was an untoward incident causing amputation of both legs of respondent/claimant especially because the so called admission in cross-examination of respondent stating the timing of 6.PM can also be an approx timing. The Railway Claims Tribunal has held that the DD entry which is filed on record in this case as Ex.AW1/3 shows that the applicant fell down from the train and therefore it cannot be held that the applicant was run over, when taken with the fact that no evidence was placed on record by the appellant herein to show that the respondent/applicant was run over while trespassing. Therefore, holding the respondent/claimant to be a bonafide passenger who has suffered grievous injuries in an untoward incident of falling from the train on 3.8.2009 resulting in amputation of both his legs, the statutory compensation of Rs.4 lacs was granted.

3. Before me, counsel for the appellant argued the following aspects:(i) The respondent/claimant in his cross-examination admitted that he in fact fell down at Shamli where he got injured but since in the claim petition it is pleaded that the respondent/applicant was injured at Saharanpur, this contradiction is sufficient for dismissing the petition. (ii) The train ticket in question is shown to have been purchased at 7.40 P.M. whereas the respondent/applicant claimed that he got up in the train at Shamli at 6.00 P.M. and therefore it is inconceivable that the ticket is issued later and the accident happened earlier. (iii) Since the respondent/claimant was trying to get into the train and he fell down because of his own negligence, the appellant would not have any liability because of the negligent action of the respondent/claimant. (iv) Railway Claims Tribunal had no territorial jurisdiction because the applicant was not living at Delhi.

4. The first argument raised appeared to have some substance at the first blush however on a deeper examination, this argument is without substance because at best the respondent who is a labourer would have got baffled during his cross-examination to state that he got injured at Shamli railway station whereas it is otherwise more than abundantly clear on record that the deceased was found lying in an injured condition of both his legs crushed at the Saharanpur railway station i.e not at Shamli railway station. This aspect is re-confirmed by referring to the

DRM report, copy of which has been handed over in the Court today, and which shows that the accident with respect to the respondent/applicant in fact happened at Saharanpur railway station. Surely, once there is the DD entry Ex.AW1/3 and DRM report of the appellant itself states that the accident happened at Saharanpur railway station, therefore merely because the respondent/applicant in his cross-examination by mistake seems to have stated that he got injured at Shamli railway station cannot mean that the entire case of the respondent/applicant should be disbelieved. At best, it will show that the respondent who is a labourer may have got overawed or confused during cross-examination, however, documentary evidence showing the accident of Saharanpur Railway Station will surely prevail over an oral statement made in cross-examination. I therefore reject the argument that the claim petition had to be dismissed on account of contradiction emerging of the accident having happened at Shamli as stated in the cross-examination and not at Saharanpur railway station as stated in the claim petition.

5. The second argument which is urged on behalf of the appellant by referring to the inconsistency in the timings of purchase of ticket at 7.40 P.M. but boarding the train at Shamli at 6.00 P.M. is once again an argument which has been rightly rejected by the Railway Claims Tribunal because mere change of timings cannot take away the factum of the DD entry that the accident to the respondent/claimant was indeed caused at Saharanpur. More importantly, the DRM report which has been taken by me in the Court today shows that the timing of the accident is about 11.50 PM at night at Saharanpur railway station i.e later than 7.40 P.M. when the ticket Ex.A2 was purchased.

6. The next argument which is urged on behalf of the appellant that the respondent is not entitled to the claim because the respondent was trying to get up in the train and therefore was guilty of negligence is also an argument without merits and is fully covered by the judgment of the Supreme Court in the case of Jameela & Ors. Vs. Union of India (2010) 12 SCC443 and which holds that standing at open doors of a compartment of a running train even if is a negligent or rash act, however, the same cannot be a criminal negligence for compensation to be denied under Sections 123(c) and 124-A of the Railways Act, 1989. In fact, I would also like to note that the Supreme Court in the judgment in the case of Union of India Vs.

Prabhakaran Vijaya Kumar and Ors. (2008) 9 SCC527has held that trying to get inside the train is also included in the expression falling from the train as found in Section 123(c) and Section 124-A of the Railways Act, 1989. I would also like to state that there is no evidence led on behalf of the appellant before the Railway Claims Tribunal of any eye witness that the respondent/claimant in fact was not pushed out from the train as pleaded by him but was in fact trying to get up in a running train.

7. The final argument raised on behalf of the appellant that the respondent/applicant was not living at Delhi is a technical argument inasmuch as Railway Claims Tribunal has found that the respondent/applicant in his cross-examination admitted that he was residing at Delhi, and consequently once respondent being a resident of Delhi, Courts at Delhi would have the territorial jurisdiction. Also no prejudice is pleaded as caused against the appellant on account of the trial of the case at Delhi. This argument is also therefore rejected.

8. 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. FEBRUARY28 2014 Ne FAO No.461/2012