

**Bhagmati Devi Vs. the Union of India**

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**Court :** Patna

**Decided On :** May-01-2014

**Judge :** Amaresh Kumar Lal

**Appeal No. :** Miscellaneous Appeal No. 740 of 2008

**Appellant :** Bhagmati Devi

**Respondent :** The Union of India

**Judgement :**

The appellant has preferred this appeal against the order dated 26.9.2008 passed by the learned Railway Claims Tribunal, Patna in Claim Case No. O A 00111/2004 by which the claim petition has been rejected.

The case of the claimant, in brief, is that Gauri Shankar Raut, the husband of the claimant purchased a second class passenger ticket from Motihari Court to Raxaul on 27.8.2003 and boarded in Train No. 525 UP at Motihari Court Station. The train was overcrowded, anyhow the deceased could get inside the train but due to heavy rush and jostling of passengers, the deceased fell down from the train between Motihari Court Railway Gate No. 159 and 159(A) on 27.8.2003 and received grievous injury due to accident and died on the spot.

The appellant filed claim case for getting compensation due to accidental death of her husband. The railway-respondent appeared in the claim case and contested the case. It was pleaded by the railway that the deceased was not a bona fide

passenger because no travelling ticket was recovered from the possession of the deceased. During inquest the identity of the deceased was also not disclosed in the memo of ASM, Motihari, as such the claim of the appellant comes under the purview of Section 124 A (b) and (c) of the Railway Claims Tribunal Act, 1987 instead of Section 123 (c). In support of the claim, the appellant adduced documentary evidence as well as oral evidence. No evidence was adduced on behalf of the railway.

After hearing both the parties, the learned Tribunal held that the claimant has not been able to substantiate her case and the claim petition was dismissed. During the appeal the claimant died and she has been substituted by her daughter Bhagmati Devi.

Learned counsel for the appellant has submitted that the Tribunal has not considered the evidence adduced on behalf of the claimant in right perspective. It was the duty of the railway to prove that the deceased was not a bona fide passenger. The railway has made objection but has not produced any evidence. Definitely the claimant was not travelling with the deceased, as such the documentary evidence filed by the claimant should have been considered by the Tribunal. The Government Railway Police has investigated the case and has clearly stated in its report that the deceased died due to falling from the train. The post-mortem report also supports the case of the claimant. In support of his contention he has relied upon the decision in the case of Union of India vs. Hari Narayan Gupta and Anr. , reported in AIR 2007(Raj) 38.

He has further stated that the place of occurrence is the same i.e. between Rail Gate No. 159 and 159 (A) and Pole No. 164(7) of the railway. The only difference is that the claimant has identified the place by rail gate number, whereas, rail police has identified the place as railway pole number 164/7.

Learned counsel for respondent-railway has submitted that the claimant has not been able to substantiate its case. The statement of witnesses is contradictory and does not inspire confidence, as such the Tribunal has rightly dismissed the claim petition and no interference is required by this Court.

After hearing learned counsel for both the parties and on perusal of record it appears that the case of the claimant is that after purchasing a second class passenger ticket from Motihari Court to Raxaul the deceased, Gauri Shankar Raut boarded in 525 up Train at Motihari Court Station. Due to heavy rush and jostling of passengers, the deceased fell down from the train, received grievous injury and died on the spot. The railway has claimed that the deceased was not a bona fide passenger as no ticket was recovered from his possession.

The claimant has adduced documentary as well as oral evidence in support of her case. It is settled principle of law that the deposition of a witness has to be read as a whole and not in part. A.W. 1 Chandrawati Devi who is the claimant herself has stated that on the date of occurrence her husband boarded in the train after purchasing ticket at Motihari Court station and fell down from the train near the station gate. She has clearly stated that she has not seen the occurrence.

From the evidence of A. W. 2 Bhanu Patel it appears that the deceased after purchasing a ticket boarded in the train at Motihari Court station and due to heavy rush and jostling of passengers he fell down from the train. The occurrence was reported to the railway police and Motihari P. S. Case No. 9 of 2003 dated 27.8.2003 was instituted at the instance of ASM, Motihari vide his memo No. 61/8/03. The inquest report (Ext. A/3) also shows that a person died due to falling from the train. After investigation the police submitted final form stating therein that during investigation queries were made from several persons and it was reported that the deceased died after falling from the train. No evidence has been adduced by the railway to contradict the finding of the Investigating Officer of Government Rail Police.

It is settled principle of law that burden of proof on the person, who desires any Court to give judgment as to any legal right or liability dependent on the existence of the facts, which he asserts. The railway has alleged that the deceased was not a bona fide passenger; as such the railway had to prove that the deceased was not a bona fide passenger. Since the passenger is presumed to be innocent, a legal presumption can be drawn that he had followed the law and that he had, indeed, purchased a valid ticket prior to boarding the train. There is an equal

presumption in favour of Railway that the railway officer would have discharged his duties of checking the ticket, in a bona fide manner, it can be presumed that the Ticket Collector would have examined whether the deceased possesses a valid ticket or not. The railway has a means through which they can easily prove that the deceased was not a bona fide passenger. The burden of proof lies on the railway administration to lead evidence and to prove that the deceased was not a bona fide passenger. Section 124 A of Railways Act, 1989 imposes a liability on the railway in case of untoward incidents as under:-

œ124 A. Compensation on account of untoward incidents- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this Section by the railway administration if the passenger dies or suffers injury due to “

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation “ For the purposes of this section, œpassenger? includes-

- (i) a railway servant on duty; and

ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.?

Thus, in case a passenger met with any untoward incident, the railway is liable to compensate the claimant whether or not there has been any wrongful Act, neglect or default on the part of the railway administration.

In this view of the matter, it appears that the case falls under the definition of untoward incident as contained in Section 123 (c)(2) of the Act.

Considering the facts and circumstances stated above, in my opinion, the impugned order is not fit to be sustained. It is set aside.

The claimant-appellant is entitled to get Rs.4,00,000/- from the Railway due to death of Gauri Shankar Raut with interest @ 6 % per annum from the date of filing of the claim petition i.e. 27.8.2004. The respondent is directed to pay the aforesaid amount of compensation to the claimant-appellant within a period of two months.

In the result, this appeal is allowed.

Parties will bear their own costs.

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