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Court : Patna

Decided On : Jan-16-2014

Judge : Amaresh Kr. Lal

Appeal No. : Misc Appeal No. 54 of 2009

Appellant : Sarowari Devi

Respondent : Union of India

Judgement :

Amaresh Kr. Lal, J.“

1. This appeal has been preferred against the judgment and order dated 23.10.2008 passed by the Railway Claims Tribunal, Patna Bench in Claim Application No. 0A9800102 by which the claim application filed under Section 125 of the Railways Act, 1989 read with Section 16 of the Railway Claims Tribunal Act, 1987 has been dismissed on the ground that the appellant could not prove the death of her husband Jamun Sada as a bona fide passenger of the train.

2. The appellant filed an application for compensation on the ground of death of her husband Jamun Sada due to train accident while he was travelling from Madhubani to Rajendra Pul Station as a bonafide passenger to attend Murna of his nephew at Gangaghat but he fell down from Train No. 134 down (Dhuliyani) at Simaria Railway station on 11.2.1998 due to jostling by heavy rush of passenger. Soon thereafter the deceased was rushed to Sadar Hospital Begusarai where the

doctor declared him dead and he was brought back to Simaria railway station where the inquest report was prepared by Barauni railway police station. Dead body challan was prepared by Barauni Rail police and the dead body was sent to Sadar Hospital, Begusarai along with Constable Manoj Kumar, Afjal Ansari, and Bijli Sada informant of G.R.P.S. UD Case No. 2 of 1998 dated 11.2.1998, where the post-mortem was held.

3. The respondent filed written statement and additional written statement stating therein that the claim petition is not maintainable and it does not come within the purview of Section 123 C of Railways Act. The Railway has not made any negligence. The deceased was not a bona fide passenger and no ticket was produced by the appellant. The appellant has not been able to prove that she is the wife of the deceased. Somewhere, it is mentioned that the occurrence has taken place at Simariya Station and somewhere it has been mentioned that the occurrence has taken place at Rajendra Pul Station.

4. On the basis of the pleadings of the parties following issues have been framed:

(i) Whether this case comes within the purview of Section 123 C of Railways Act, 1989 '

(ii) Whether the Railway Administration has made any negligence '

(iii) Whether the deceased was a bonafide passenger '

(iv) To what relief '

5. Learned counsel for the appellant has submitted that number of train and the date of occurrence were amended in the main petition. The train number was mentioned as 330 Down and date of occurrence as 10.2.1998 by amendment correct train number was given as 134 down and the date of occurrence was 11.2.1998 and the amendment petition was allowed but due to laches on the part of counsel for the claimant the claim petition was not corrected. Accordingly, learned Tribunal has taken note that since the amendment was not made in the claim petition, the amendment would not be treated to be allowed. On this point learned counsel for the appellant has drawn my attention to Section 18 of the

Railway Claims Tribunal Act, 1987 which provides that the claim tribunal was not bound by the procedure laid down by the Code of Civil Procedure but shall be guided by principle of natural justice and subject to other provisions of this Act and of the Rules. The claim tribunal will decide every application on perusal of document, written representation and affidavits and after hearing such oral argument as may be advanced as such the decision reported in AIR 1984 Patna 251 is not helpful to the respondent.

6. It has also to be noted that during pendency of this case the number of train has been changed as 210. The claimant Sarowari Devi has been examined as A. W. 1. She has supported the case of the claimant, although she was not the eye witness to the occurrence. The ticket has also been produced by the claimant from Madhubani to Rajendra Pul Station. Domu Sada is the eye witness to the occurrence. He has been examined as A. W. 2. He has stated that he was travelling with the deceased from Madhubani to Dharbhanga by metre gauge train. At Darbhanga they boarded in Dhuriyan Train (Train No. 134). While train was to reach at Simariya station the deceased fell down from running train pushed by heavy rush of the passengers and became senseless. He along with co-villagers took him to the hospital by rickshaw where the doctor declared him dead. In his cross-examination, he has stated that Bijali Sada and Jamun Sada were also travelling with him. Bijali Sada had purchased four tickets. The deceased Jamun Sada fell down at Simaria Railway Station. Affidavit of Lakhiya Devi, wife of Bijali Sada (informant) has been filed. She has supported the case of the claimant. She has also stated that due to heavy rush of the passengers on the occasion of Maghi Purnia on 11.2.1998, the deceased Jamun Sada fell down from running train at Simariya railway station. After halting of train she and others went to see the deceased who was badly injured. The deceased was being taken to the doctor but he died. Although she has not been cross-examined. But her statement is fit to be considered in view of the provision 18(2) of Railway Claims Tribunal Act.

7. The respondent-railway has examined Raushan Ali as R. W. 1 who has stated in his affidavit that there is no mention of the occurrence in the station diary at Rajendra Pul or Simariya Railway Station, but during cross-examination he has stated that occurrence took place in between Simariya and Rajendra Pul Station.

8. Learned counsel for the appellant has further submitted that the claim has been denied to the appellant by the Tribunal. It has been held that she has not been able to prove that she is the heir of the deceased Jamun Sada. It has been stated in the claim petition itself as well as in the affidavit and also at cross-examination that she is the wife of late Jamun Sada. If the respondent has any doubt that could have been inquired into by going to the village of the claimant and to deny the claim the railway was required to prove that she is not legal heir of the deceased. R. W. 1 was Inquiry Officer who in his cross-examination has stated that he did not go to the village of the deceased. Bijali Sada, the brother-in-law of the deceased and informant of the occurrence died during the pendency of the proceeding before the Claims Tribunal, as such, he could not be examined.

9. It has further been submitted that there are minor contradictions in the statement of witnesses which do not affect the merit of the case and those contradictions are fit to be ignored. In support of his contentions he has relied upon the following decisions; Asharani Das v. Union of India and another, reported in 2009 (3) T.A.C. 349 (Cal.), Union of India v. Prabhakaran Vijaya Kumar and Ors., reported in 2008 (4) PLJR 40 (SC), Smt. Akhtari Begum v. Union of India, reported in 2008 (1) PLJR 627, and Smt. Kaushalaya Devi and Ors. v. Union of India, reported in 2008(3) PLJR 711.

10. Learned counsel for the respondent has submitted that admittedly Bijali Sada was co-passenger and brother-in-law of the deceased but he has not been examined while he was alive. The manner of occurrence and the place of occurrence are contradictory. The appellant has not proved that she is the wife of Jamun Sada, as such the claim petition has rightly been rejected.

11. It appears from the pleading of the parties as well as from the evidence adduced on behalf of the claimant- appellant that the deceased along with others started for Muran ceremony of his nephew(Bhagina) on 10.2.1998. They got into the train No. 134 Down known as Dhuliyar at Darbhanga Station. The train reached Simaria Station on 11.2.1998 at about 7 a.m.. Due to heavy rush and jostling the deceased got pushed and fell down from the running train. He was taken to Sadar Hospital Begusarai by rickshaw by the informant Bijali Sada and

Domu Sada (A.W. 2) and the doctor declared him dead. The deceased was taken back to Simariya Railway platform. It also appears from the fardbeyan of the co-passenger Bijali Sada that Dhuliyan passenger train reached Simariya Station at 7 a.m. on 11.2.1998. There was heavy rush in the train as it was Purnima Day and due to rush and jostling the deceased fell down from the running train. He got injury and became senseless and he was taken to the hospital. The railway ticket from Madhubani to Rajendra Pul has already been filed by the appellant.

12. It is relevant to see the provision under Section 18 of Railway Claims Tribunal Act, 1987 that the Claims Tribunal shall not be bound by the procedure laid down by the code of Civil Procedure but shall be guided by principle of natural justice and subject to other provisions of this Act and of any Rules. The Claims Tribunal shall decide every application on perusal of documents, written representations and affidavits and after hearing such oral arguments as may be advanced. The Claims Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as vested in a Civil Court under the code of Civil Procedure, while trying a suit in respect of summoning and enforcing the attendance of any person and examining him on oath requiring the discovery and production of documents, receiving evidence on affidavits. From the provisions mentioned in Section 18 of the Act, it appears that Tribunal is also empowered to accept the affidavit produced by the witness or any person.

13. The claimant has been examined as A. W. 1, she has clearly stated in her statement on oath that the deceased started from Madhubani to Simaria by purchasing train ticket to attend Murna of his nephew on 10.2.1998. There was heavy rush in the train due to Maghi Purnima. Her husband fell down from the train due to jostling. Domu Sada (A.W. 2) and Bijali Sada informant took him to Begusarai hospital, where the doctor declared him dead. The deceased was brought back to Simaria Station where the GRP, Barauni did the formalities and sent the dead body to Begusarai hospital for postmortem. Thereafter, the deceased was cremated at Simaria. The deceased died leaving behind his wife Sarowari Devi, the claimant, a son and four daughters. Admittedly, the claimant (A.W. 1) was not travelling with the deceased and she has gathered information from co-passenger of her husband, the deceased. Domu Sada was also travelling

with the deceased and he has been examined as A. W. 2. He has stated that after purchasing ticket the deceased and others boarded in the train at Madhubani and came to Dharbhanga where they boarded in Dhuliyan train. He has also supported the case of the claimant. He has stated that when the train was reaching Simariya Station Jamun Sada (deceased) was pushed by rush of passengers and he fell down and became senseless. He and others took him to the hospital by rickshaw where the doctor declared him dead. He was taken back to Simariya station. He has also stated the date as 10.2.1998 and also stated that on that date it was Maghi Purnima. He has also been cross-examined but the respondent has failed to demolish his evidence. The only discrepancy is the date but at the same time it is clearly stated that the date was Maghi Purnima.

14. The Barauni Rail Police Station has also enquired into the matter and after investigation submitted final form (vide Ext. A 2 at page 42 of LCR dated 11.2.1998) in Barauni Junction Rail Police Station U. D. Case No. 2 of 1998 mentioning therein that on 11.2.1998 Jamun Sada while travelling in the train, fell down from the train which caused his death. During investigation, it was found that the deceased Jamun Sada was travelling in the train after purchasing ticket from Madhubani to Rajendrapul; while Dhuliyan passenger train was moving at Simaria Station on 11.2.1998, the deceased fell down from it got injury causing his death. The deceased was taken to the hospital for post-mortem vide Challan Ext. A-4 and the Inquest Report has been prepared which has been marked as Ext. A-5. Post-mortem report is Ext. A-6.

15. It further appears that R. W. 1 Md. Raushan Ali Claim Tracer of the North Eastern Railway has been examined on behalf of the respondent. In his cross-examination, he has stated that in the Final Report two Tickets number were given. Tickets were of the same date which was noted on those tickets. He cannot say as to whether the date of occurrence was the date of Ganga Snan. The occurrence took place in between Simariya to Rajendrapul Station. He did not go to the village of the deceased. This witness had to enquire into the matter but he has not enquired as to whether the claimant-appellant is the heir of the deceased or not. No evidence has been led by the Railway Authority to falsify the statement of the appellant that she is the wife and heir of the deceased.

16. It appears that the learned Claim Tribunal by the impugned award herein came to the conclusion that it was not established that the deceased was travelling with a valid ticket and there is discrepancy in the date of the occurrence. The deceased was not a bona fide passenger and the claimant has failed to prove that she is the heir of the deceased. These findings are not correct.

17. From the evidence discussed above it appears that the finding of learned tribunal is not correct. Therefore, I hold that it has been proved from the investigation of the Govt. Rail police itself that the victim died of the accident due to fall from running train and in view of the existence of FIR, Investigation Report by the Barauni Rail Police, the post-mortem report and the final report submitted by the Govt. Rail police authority all in one voice concluding the case as an accidental death without any foul play. The learned Tribunal has erred in dismissing the claim application. At least no evidence has been adduced by the Railway Authority to falsify those statements contained in those documents. In this case no evidence has been adduced to show that the case comes within any of the instances specified in proviso to Section 124 A of the Railway Act, 1989.

18. Considering the facts and circumstances, I find that the appellant has been able to prove that the deceased died while he was a bonafide passenger and comes within the purview of untoward incident within the meaning of Section 124-A of the Railways Act and the claimant is entitled to get 4,00,000/- as provided in the Schedule to the Railway Accidents and Untoward (Incidents) Compensation Rules, 1990. This view finds support from the decision in the case of Union of India v. Prabhakaran Vijaya Kumar and Ors., reported in 2008 (4) PLJR 40 (SC) and Asharani Das v. Union of India and Another, reported in 2009 (3) T.A.C. 349 (Cal.).

19. The appellant is also entitled to get the amount of compensation with interest as held by the Hon'ble Supreme Court in the case of Thazhathe Purayil Sarabi and Ors. v. Union of India and another, reported in (2009) 7 SCC 372.

20. In the result, the impugned order is not fit to be sustained, it is set aside. The Railway Authority is directed to pay a sum of 4,00,000/- to the appellant-claimant within a period of two months from today with interest @ 6 percent per annum

from the date of filing of the claim application i.e. from 11.8.1998 to this order and, thereafter, at the rate of 9 % per annum till the date of actual payment of the aforesaid sum of 4,00,000/- (Four Lakhs).

21. In the result, this appeal is allowed. The parties will bear their own costs.

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