

Umadevi and Others Vs. Union of India, through the General Manager

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Court : Mumbai Nagpur

Decided On : Jan-28-2016

Judge : R.K. Deshpande

Appeal No. : First Appeal No. 441 of 2014

Appellant : Umadevi and Others

Respondent : Union of India, through the General Manager

Judgement :

Oral Judgment:

1. Admit.

The learned counsel for the respondent waives service of notice.

Heard the matter finally by consent of the learned counsels appearing for the parties.

2. The Railway Claims Tribunal Bench at Nagpur has dismissed the Claim Application No. OA (Ilu)/NGP/2010/0149 for compensation of Rs. 4,00,000/- on account of death of one Kiran s/o Somaiya Yennam, who alleged to have died in an untoward incident. The claimants who are the dependents of the deceased filed Claim Petition under Section 16 of the Railway Claims Tribunal Act, 1989 (hereinafter referred to as "the said Act), which was dismissed on 14.11.2013,

against which this appeal under Section 23 of the said Act, has been preferred.

3. Before the Tribunal, the following issues were framed as under:

[1] Whether the applicants prove that they are the dependents of deceased Kiran s/o Somaiya Yennam?

[2] Whether the respondent railway proves that deceased Kiran s/o Somaiya Yennam was not a bona fide passenger on 04.03.2010 of the train, with valid journey ticket?

[3] Whether the applicants prove that deceased died in an untoward incident in terms of Section 123(c) of Railways Act, 1989, on 04.03.2010?

[4] What relief? What order?

4. On Issue No. 1, the finding is that the claimants have proved that they are the dependents of the deceased. On issue No. 2, the finding is recorded that the Railway Administration has established that deceased Kiran was not a bona fide passenger travelling in a special train from Badnera to Surat on 04.03.2010, and on Issue No.3, the finding is recorded that the claimants have failed to establish that the deceased died in an untoward incident, as defined under Section 123 (c) of the Railways Act, 1989.

5. In the background of the facts and circumstances of the case and the contentions raised, the following points fall for determination by this Court.

[I] Whether the Tribunal was right in holding that the claimants have failed to establish that the deceased died in an untoward incident in terms of Section 123(c) of the Railways Act on 04.03.2010; and

[II] Whether the Tribunal has committed an error in holding that the Railway Administration has established that the deceased was not a bona fide passenger in a special train travelling from Badnera to Surat by Hawrah-CSTM train?

6. The claimants have produced on record the original railway ticket (Exh.AW1/7), dated 04.03.2010 for the travel from Badnera to Surat for Rs.126/-. Perusal of the

said ticket does not indicate the name of the passenger, but that may not be of much significance against the claimants. The significant fact is that there is absolutely no evidence to show the source from which the claimants have obtained the said ticket. It is the statement of AW-1 Umadevi, widow of the deceased, in her cross-examination that the police had handed over her cash, cheque and the journey ticket. But the fact remains that the receipt dated 06.03.2010 at Exh.A/6 in respect of items found on the person of the deceased handed over by Police Inspector, Shegaon, to the father of the deceased does not include the ticket at Exh. A1/7. The Railway Tribunal took into consideration the documents i.e. spot and inquest panchnama, dead body receipt and the statement given to the Police by the widow of the deceased, to hold that the claimants have planted the ticket which was procured subsequently.

7. Section 123 (c) of the Railways Act, 1989, defines untoward incident as under;

"123. Definitions In this chapter, unless the context otherwise requires, -

(a) .

(b)...

(c) "untoward incident" mean

(1) (i) the commission of a terrorist act within the meaning of subsection (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, or

(ii) the making of a violent attack or the commission of robbery or decoity, or

(iii) the indulging in rioting, shootout or arson;

by any person in or on train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station, or

(2) the accidental falling of any passenger from a train carrying passengers.

The claimants have come forward with a case covered by sub-clause (2) of clause (c) under Section 123 of the Railways Act, regarding the accidental falling of the deceased from a train carrying passengers. The burden of proof to establish this fact is upon the claimants. In order to establish an "untoward incident" under sub-clause (2), what is essential to prove as a matter of fact and to discharge the burden is that the deceased has actually boarded the train in question at a particular destination and was the occupant of such a train. If this fact is proved, then only the question as to whether the deceased fell from a such train carrying passenger, can be considered.

8. The claimants have come forward with the case in the claim petition that at fateful day of 04.03.2010, the deceased was travelling from Badnera to Surat by train "HWH-CSTM Special" as a bona fide passenger with valid travel ticket of II Superfast class bearing No. H-16099801, worth Rs. 126/-. Undisputedly, the native place of the deceased was village Fedmupparam, District Varangal in Andhra Pradesh. It is the case of the claimants that the deceased was coming back at Surat via Khammam by train after performing some religious function at his native place and he came upto Badnera and then he purchased a travel ticket from Badnera to Surat at Badnera Railway Station and started his journey by special train. The case of the claimants is that the deceased fell down from the said train near Pole No. 543 at about 16.30 hours at a distance of 4 Kms from Shegaon Railway Station.

9. In the statement of the claimants, including that of the widow Umadevi, recorded by the Police Authority, it is the consistent stand taken that the deceased left Fedmupparam on 04.03.2010. AW-1 Umadevi has stated in her affidavit filed before the Tribunal in lieu of evidence that the deceased husband left Fedmupparam on 03.03.2010 for coming to Surat. Thus, there is inconsistency in the statements of AW-1 Umadevi on the question of the date on which the deceased left Fedmupparam. In her cross examination, she has stated that, "I am not aware whether Kiran (deceased) has boarded in Howarah-CSTM Special train". Though a cell phone was handed over by the Police in the receipt dated 06.03.2010 at Exh. A/6 and the widow Umadevi has stated that she received a call from her husband that he was coming to Surat, there is no record of such call

produced before the Court. There is no other witness examined. There is no eye witness to the incident of deceased falling from the train in question.

10. The Tribunal has relied upon the evidence of witness Mohan K. Deshpande, RW-1, Deputy Station Superintendent at Shegaon, who was on duty on 04.03.2010 and has deposed that no incident of falling of any passenger was noticed/reported to him during his duty hours. There was no case of alarm chain pulling or sudden jerk of the train. It is thus apparent that there is absolutely no evidence of the fact that the deceased boarded the train at Badnera on 04.03.2010. Consequently, the question of the deceased accidentally falling from the train in question also does not arise and the claimants have failed to establish a case of an "untoward incident". The points for determination are, therefore, answered accordingly.

11. In the result, the first appeal is dismissed. No order as to costs.

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