

Mamchand and Anr Vs. Union of India

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Court : Delhi

Decided On : Nov-21-2014

Judge : A. K. Pathak

Appellant : Mamchand and Anr

Respondent : Union of India

Judgement :

\$~26 * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO3732014 Decided on 21st November, 2014 MAMCHAND & ANR Through Appellants :Mr. Yogesh Saroop and Mr. B.K. Roy, Advs. versus UNION OF INDIA Through Respondent : None CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.(ORAL) CM Appl. No.19191/2014 (for condonation of delay) 28 days delay in re-filing is condoned. Application is disposed of. CM Appl. No.19190/2014 (for condonation of delay) 182 days delay in filing is condoned. Application is disposed of. FAO No.373/2014 1. Appellants filed a claim application under Section 16 of the Railway Claims Tribunal Act, 1987 before the Railway Claims Tribunal, Principal Bench, Delhi (Tribunal) seeking compensation of `8,00,000/- on account of death of late Shri Kaushal in an untoward incident, which allegedly took place on 8th January, 2012 near Container Depot of Tugalakabad, relating to a train. After trial, Tribunal has dismissed the claim application.

2. That is how appellants are before this Court by this appeal.

3. Appellants have alleged that on 8th January, 2012 deceased along with his friend Shri Amit Kumar had come to Hazarat Nizamuddin railway station, Delhi for receiving some contract labourers, who were expected to arrive from Jhansi, U.P. Unfortunately, contract labourers did not arrive on that day. Accordingly, he decided to return to his native village in Gurgaon, (Haryana) He boarded Mahakaushal Express train from Hazarat Nizamuddin railway station to go to Ballabgarh, after purchasing a journey ticket, in presence of Shri Amit Kumar. There was a heavy rush in the compartment, thus, deceased was standing near the gate of compartment. When train reached at Km. Pole No.1520/19 near Container Depot Tugalakabad, deceased fell down from the running train due to sudden jerk and thrust from the fellow passengers and died on the spot. It was alleged that journey ticket was lost in the incident.

4. Respondent disputed the above claim in its reply. It was alleged that respondent was not liable to pay compensation to appellants under Section 124-A of the Railways Act, 1989 (the Act, for short) since deceased was neither a bonafide passenger of the said train nor had died on account of injuries sustained in an accidental fall from the train amounting to untoward incident, within the meaning of Section 123(C).

5. Appellant No.1 stepped in the witness box as AW1. Shri Amit Kumar was produced as AW2. Certain documents were exhibited as Ex. AW1/2 to Ex. AW1/13 and Ex. AW2/2. Respondent did not lead any oral evidence, however, placed reliance on DRMs report Ex. R-1 and CMIs report Ex. R-2. Tribunal has concluded that appellants had failed to prove allegations as contained in the claim petition. They had failed to prove that deceased was a bonafide passenger of Mahakaushal Express train and died due to accidental fall from the said train. Testimony of AW2 was not found trustworthy and reliable. AW-1 and AW-2 were not eye witness to the incident. Statement of AW1 that deceased was standing near the gate of compartment and fell down was not based on his personal knowledge.

6. Tribunal also held that appellants had failed to prove that deceased fell down from the compartment of Mahakaushal Express train near Container Depot of

Tuglakabad railway station, due to sudden jerk of the train.

7. I have heard learned counsel for the appellants and perused the material placed on record. I do not find the conclusion arrived at by the Tribunal to be perverse or suffering from any illegality. Admittedly AW-1 and AW-2 had not witnessed the incident. AW2 was produced to show that deceased boarded the train after purchasing a ticket, in his presence. However, his testimony on this point is not trustworthy and reliable. His presence at the station with the deceased, as claimed by him is doubtful and suspicious. He claims that deceased had boarded Mahakaushal Express train at Hazarat Nizamuddin railway station in his presence at 3 PM. He has deposed that deceased met him at the station at about 2:30 PM and had boarded the train at about 3 PM. However, his this testimony stands impeached since Mahakaushal Express train bearing No.12190 left Hazarat Nizamuddin railway station at about 16:10 hours and not at 3 PM, that is, 15:00 hours. Train reached Tuglakabad railway station at about 16:23 hours.

8. It is trite law that non-recovery of ticket by itself is not sufficient to conclude that deceased and/or injured is not a bonafide passenger as there are chances of ticket getting lost in serious accidents. However, no straightjacket formula can be adopted. Each case has to be viewed in its own facts. However, in this case non-recovery of ticket from the person of deceased assumes importance in view of the doubtful testimony of AW-2. Above all, in view of the fact that mobile phone, purse, ATM card, journey tickets from Varanasi to Lucknow and some bus tickets were recovered from the deceased. It is not the case that nothing was recovered from the deceased. It is highly improbable that only the ticket in question would have been misplaced while all other articles including valuable article, like mobile phone remained intact. Recovery of old tickets also makes the version of AW2 that deceased had kept the journey ticket in his bag, highly suspicious. When deceased had retained old bus and railway tickets in his pocket, there is no reason as to why he would have kept the journey ticket in his bag. Non-recovery of journey ticket makes the story as propounded by the appellants that deceased had boarded Mahakaushal Express train from Hazarat Nizamuddin railway station for going to Balabgarh, highly suspicious.

9. Section 123(1)(c) of the Act defines untoward incident. This provision envisages that falling of a passenger from a running train amounts to untoward incident. Section 124-A of the Act envisages the grant of compensation to a passenger, who sustains injuries and to the dependents of the deceased in case passenger dies, in an untoward incident. In this case, appellants have failed to prove that deceased died in an untoward incident.

10. It appears that deceased was run over by some train while crossing the railway tracks. Ex. R-1 shows that dead body was found lying between the rails on the up main line and was cut into pieces. Ex. R-2 CMI's report indicates that driver of train No. 64902 had informed the concerned Station Master that a dead body was lying on the track. This information was given by him at about 5:20 PM. This suggests that deceased died while crossing the railway tracks unauthorizedly. Thus, appellants have rightly been held by the Tribunal not to be entitled to any compensation.

11. For the foregoing reasons, appeal is dismissed. A.K. PATHAK, J.

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