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Court : Jharkhand

Decided On : Feb-03-2015

Appellant : Gurudayal Singh and Anr

Respondent : Union of India Through the General Manager Eastern Railway

Judgement :

M.A. No. 101 of 2013 [Against the judgment and order dated 27.02.2013, passed by Member (Technical) of Railway Claim Tribunal, Ranchi Bench in Case No. OA (IIU)/ RNC/2010/0164] 1. Gurudayal Singh son of Late Jeet Singh.

2. Smt. Raj Kaur, wife of Sri Gurudayal Singh. Both are residents of village Punjabi Refugee Colony Lane No.2, Qr. No.7, P.O. Agrico, P.S. Golmuri, District East Singhbhum, Tata Nagar, JharkhandAppellants Versus Union of India through the General Manager, Eastern Railway, Kolkata at 3 Koilaghat, P.O. + P.S. Koilaghat, Kolkata-700001Respondent ----- Present: THE HONBLE MR JUSTICE P.P. BHATT ----- For the Appellants :M/s. Pramod Kr. Jha & Manish Kumar, Advocates For the Respondent : Mr. Ram Nivas Roy, Advocate ----- Per P.P. Bhatt, J.: With the consent of learned counsel for the parties, Rule is made returnable today. Learned counsel appearing for the respondent waives service of Rule. Matter is taken up for Final Hearing.

2. Present appeal has been filed under Section 23(1) of the Railway Claim Tribunal Act, 1987, being aggrieved and dissatisfied by the judgment and order dated 27.02.2013, passed by Member (Technical) of Railway Claim Tribunal, Ranchi Bench in Case No. OA (IIU)/ RNC/2010/0164, whereby the learned Tribunal has dismissed the claim of the applicants.

3. Brief facts, giving rise to the present appeal, are as under: That the son of the appellants, namely, Rabindra Singh alias Panna Singh with his aunt Rani Kaur were travelling by EMU local train (HWH-BWN Main Line) with a valid 2nd Class ordinary daily ticket Ex Bandel Jn. to Burdwan Jn. According to appellants, their son Rabindra Singh alias Panna Singh was a bona fide passenger and travelling with a valid 2nd Class ordinary daily ticket. It is the case of the appellants that on the date when this unfortunate accident has taken place, the said train was overcrowded and both of them anyhow managed to stand side by side near the exit/entrance door of the compartment and due to constant jostling and heavy pressure of the inside passenger of the compartment, all of a sudden jerk, their son Rabindra Singh alias Panna Singh could not keep his balance and slip his hand from the iron rod, as a result, he fell down from the running train in between Gangpur Railway Station and Burdwan Railway Station on 22.08.2009 and the said incident personally saw by his aunt Rani Kaur at her own eyes and after seeing the incident, she along with other passengers of the compartment shouted loudly to stop the train at the incident spot but the train did not stop before Burdwan Railway Station. Thereafter, aunt of the victim and other passengers get down at Burdwan Railway Station and returned back to the incident spot, where Rabindra Singh alias Panna Singh was found in dead condition on account of severe head injury. Thereafter, investigation was carried out vide Burdwan G.R.P.S. U/D Case No. 120/2009 dated 22.08.2009. During course of investigation, Rani Kaur identified the victim and put her signature in investigation report. Postmortem examination was done by Dr. P. Mukhopadhyay and thereafter the dead body of their son was handed over to the relatives.

4. Since appellants have lost their beloved son in such untoward incident, they have claimed compensation of Rs.4,00,000/- (Rupees Four Lakhs) from the Railway authorities.

5. Claim petition filed by the appellants has been dismissed by the Railway Claim Tribunal vide order dated 27.02.2013. Being aggrieved by the said judgment and order, present appeal has been preferred by the appellants.

6. Learned counsel for the appellants submitted that judgment and order dated 27.02.2013 is contrary to the facts as well as proposition of law. Learned Tribunal has not assigned any detailed reasons for dismissing the claim of compensation. It is also submitted that Tribunal has miserably failed in appreciating that the appellants have lost their son, who was the bread winner of the family, on account of such untoward incident. It is further submitted that the respondent-authority has admitted about the occurrence of such untoward incident, which has taken place on 22.08.2009, by EMU local train. However, the Tribunal has not taken into consideration the evidence adduced before it in its proper perspective. It is also submitted that oral evidence adduced on behalf of the appellants and especially, oral evidence given by the aunt, travelling with the deceased, who is eye-witness of the incident, has not been appreciated properly, though, during cross-examination, not a single contradictory fact has been pointed out. Documentary evidence, which was produced before the Tribunal along with list of documents i.e. investigation report of untoward incident case including investigation report under Section 174 of the Code of Criminal Procedure along with postmortem report have not been properly appreciated by the learned Tribunal. Though in the police report, it was reported as untoward incident, but the said fact has not been properly appreciated by the learned Tribunal.

7. Learned counsel appearing for the respondent-railway authority submitted that judgment and order passed by the learned Railway Claim Tribunal is in accordance with law and the learned Tribunal has not committed any error in appreciating the facts as well as law while dismissing the claim of the appellants. It is submitted that unfortunately incident took place on account of severe negligence of the son of the appellants, namely, Rabindra Singh alias Panna Singh as he leaned out from the running train. It is also submitted that deceased was not a bona fide passenger as valid ticket was not found and therefore, under no circumstance, railway authority can be saddled with any liability.

8. Considering the aforesaid rival submissions and having regard to the facts and circumstances of the present case, it appears that undoubtedly unfortunate incident has taken place on 22.08.2009, whereby appellants have lost their son in untoward incident as reported by the police. Documentary evidence along with list of documents on 23.11.2012 produced before the Tribunal clearly indicates that GRP, while submitting investigation report, has reported that this is a case of untoward incident. Postmortem report and other police papers were also produced before the learned Tribunal. Oral evidence produced before the learned Tribunal and especially, the evidence of Rani Kaur, aunt of the deceased, who is eye-witness, clearly indicates that while train was reaching near Burdwan Railway Station, they were getting prepared to get down at Burdwan Railway Station. But due to sudden jerk and pressure of inside passengers, her nephew fell down from the running train in between Gangpur and Burdwan Railway Station. Chain was pulled by some passengers but the train did not stop at the place of occurrence. Said witness has been cross-examined by the railway authorities but this eye-witness reiterated her version in the cross-examination and she did not make any contradictory version. Evidence adduced by her as eye-witness, appears to be more reliable and the learned Tribunal ought to have believed the said evidence. Thus, on perusal of the evidence on record, it appears that learned Tribunal has not properly appreciated documentary as well as oral evidence on record. As discussed hereinabove, the police authorities has reported it as untoward incident.

9. Therefore, in this context, provisions, as contained in Sections 123(2) and 124A of the Railways Act, 1989 is applicable to the instant case, which reads as under: 123.(c) untoward incident means- (1) (i)..... (ii)..... (iii)..... (2) the accidental falling of any passenger from a train carrying passengers. 124A. Compensation on account of untoward incident.- 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 dependant 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.

10. In view of the aforesaid provisions, this Court is of the view that the case of the appellants is falling within the provisions of Section 124A of the Railways Act, 1989, as the case has been reported as untoward incident by the railway police and therefore, appellants are entitled to get compensation of Rs.4,00,000/- (Rupees Four Lakhs) for such untoward incident of their son, namely, Rabindra Singh alias Panna Singh.

11. Learned counsel for the appellants has referred to and relied upon the following decisions: (i) Union of India vs. Prabhakaran Vijaya Kumar, reported in (2008) 9 SCC527 (ii) Jameela and others vs. Union of India, reported in (2010) 12 SCC443 (iii) Ranjan Roy vs. The Union of India in Miscellaneous Appeal No. 592 of 2010; (iv) Union of India vs. Gulam Mohammad, reported in 2011(4) T.A.C. 655 (All.) 12. Decision, cited by the learned counsel for the appellants, rendered in the case of Union of India vs. Prabhakaran Vijaya Kumar, reported in (2008) 9 SCC527 and subsequent judgment given in the case of Jameela and others vs. Union of India, reported in (2010) 12 SCC443 are applicable to the facts and circumstances of the present case. The said decisions have been followed by the Hon'ble Patna High Court in the case of Ranjan Roy vs. The Union of India in Miscellaneous Appeal No. 592 of 2010. Likewise, Allahabad High Court (Lucknow Bench) also followed the above-referred decisions of the Hon'ble Apex Court in the case of Union of India vs. Gulam Mohammad, reported in 2011(4) T.A.C. 655 (All.). In the said judgment, it has been observed that in such type of untoward incident, railway authorities has to take proper measures to check accidental falls. Since factum of incident is proved and nothing cogent and trustworthy evidence has been adduced on behalf of the railway authorities, claim of the appellants is required to be allowed. In the instant case also, railway authorities have not examined any witness, though sufficient opportunity was given, whereas on behalf

of the appellants, two witnesses were examined and out of which, aunt of the deceased was an eye-witness and her evidence has remain intact.

13. Under the circumstances, considering the documentary as well as oral evidence as also the proposition of law and in the light of Section 124A of the Railways Act, 1989 and above-referred cases, this Court is of the view/ opinion that judgment and order passed by the learned Tribunal is not in consonance with the principle enumerated in the aforesaid decisions. Therefore, the same deserves to be set aside and the appellants claim for Rs.4,00,000/- (Rupees Four Lakhs) needs to be allowed; hence, judgment and order dated 27.02.2013, passed by Member (Technical) of Railway Claim Tribunal, Ranchi Bench in Case No. OA (IIU)/ RNC/2010/0164 is hereby ordered to be set aside and the appellants be paid compensation of Rs.4,00,000/- (Rupees Four Lakhs) with interest at the rate of 6% from the date of application in view of the judgment of the Hon'ble Apex Court delivered in the case of Thazhathe Purayil Sarabi and others vs. Union of India and another, reported in (2009) 7 Supreme Court Cases 372 within a period of eight weeks from the date of receipt/production of a copy of the order, 14. With the aforesaid observations and directions, this appeal stands disposed of. (P.P. Bhatt, J.) Jharkhand High Court, Ranchi, Dated-03rd February, 2015 S.B./AFR

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