

Mrs Shanti Devi Vs. Union of India Through General Manager East Central Railway

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Court : Jharkhand

Decided On : Mar-09-2015

Appellant : Mrs Shanti Devi

Respondent : Union of India Through General Manager East Central Railway

Judgement :

1. IN THE HIGH COURT OF JHARKHAND, RANCHI --- M.A. No.257 of 2012 ___ Mrs. Shanti Devi, wife of Late Kishori Yadav, R/o-Village- Thekahi, P.O. & P.S. Tankuppa, Dist.-Gaya(Bihar) Applicant/ Appellant -- Versus -- Union of India, through General Manager, East Central Railway, P.O. and P.S. Hajipur, Dist.- Hajipur (Bihar)Respondent --- CORAM :- HON'BLE MR. JUSTICE P.P. BHATT --- For the Appellant :- Mrs.Chaitali Chatterjee Sinha, Advocate For the Respondent :- Mr. P.C. Sinha, Advocate --- 07/ 09.03.2015 The present appeal is preferred under Section 23(1) of the Railway Claims Tribunal Act being aggrieved and dissatisfied by the judgment and order dated 12.9.2012, passed by the learned Member/Technical, Railway Claims Tribunal, Ranchi Bench, in Case No.- OA(IIU) RNC/2007/0081 (Old No.OU-70081/07), filed under Section 16 of the Railway Claims Tribunal Act, 1987, wherein the learned Tribunal has dismissed the claim -application filed by the appellant seeking compensation of Rs.4 Lakhs along with interest from the date of filing of the application i.e. 07.12.2007, on account of accidental death of her husband.

2. Heard the learned counsel for the appellant Mrs. Chaitali Chatterjee Sinha as well as learned counsel for the respondent Mr. P.C. Sinha. Perused the Lower Court Records and other materials placed along with the appeal.

3. The brief facts, giving rise to the present appeal, is that : The deceased, on 30.05.2007, after purchasing a valid 2nd class ticket was travelling from Gaya Junction to Dhanbad. He was boarded Train No.3306 Dn. Gaya -Dhanbad Intercity Express at Gaya Junction. At the time of travelling there was heavy rush in the train and while the said train was running between Banjhinala and 2. Tankuppa (km-448/10-448/12), the deceased, Kishori Yadav accidentally fell down from the running train on account of heavy rush and jostling amongst the passengers and died as a result of accidentally falling down from the running train. The dead body of the deceased was recovered in between stations Banjhinala- Tankuppa(km 448/10-448/12).

4. According to the learned counsel for the appellant, the railway authority got the matter investigated through Railway police. In their inquest report and final report, it has been stated that the death of the deceased occurred as a result of accidentally falling down from the running train No.3306 Dn.-Gaya-Dhanbad Intercity Express. It is also submitted that the deceased was a bonafide passenger of train No.3306 Dn.-Gaya-Dhanbad Intercity Express and he had purchased valid ticket to travel from Gaya to Dhanbad on 30.05.2007. This fact has been stated by his father-in-law Sri Kishore Pd. Yadav, who has filed the affidavit before the Tribunal(Annexure-3). Learned counsel for the appellant further submits that in a catena of cases, the Hon'ble Apex Court has held that the liability lies on the Railway authority to prove that the deceased was not a bona fide passenger. In the instant case the respondent railway authorities failed to prove such contention. However, the learned Railway Claims Tribunal has not properly appreciated this proposition of law as held by the Hon'ble Apex Court in (2004) Supreme(Kar) 17539 and (2004) ACJ1761(Smt. Leelavathamma Vrs. Union of India). It is further submitted that there was heavy rush in the train and due to intense jostling among the co- passengers, the deceased could not manage his balance and accidentally fell down from the running train between Banjhinala- Tankuppa.

3. 5. Learned counsel for the appellant has also drawn the attention of this Court to the provision as contained in Section 123(c) of the Railways Act, 1989, which defines 'untoward incident' and Sec. 2(29) of the Railways Act, defines 'Passenger'. Section 2(29) and Section 123(c)(2) of the Railways Act provides as under : Section 2(29) Passenger- Meaning of - Passenger means a person travelling with a valid pass or ticket. Section 123(c)(2) the accidental falling of any passenger from a train carrying passengers.

6. By referring to the impugned judgment and order dt. 12.9.2012, it is submitted that the learned Tribunal has committed an error while appreciating the provision as contained in Section 124-A of the Railways Act, 1989. Section 124-A of the Railway Act, 1989, provides as under: Sec. 124-A 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.

7. It is further submitted that in view of the aforesaid provisions, the case of the deceased does not fall within the exception 4. of Section 124-A of the Railways Act, 1989. Learned counsel for the appellant further submitted that the documentary as well as oral evidences on record clearly indicates that there is a report of untoward incident vide R-15, the inquest report is also vide R-10, and it was reported as an untoward incident by the railway authorities as well as investigating agencies. The investigation report of accident is also produced vide

R-17 before the learned Railway Claims Tribunal and the wife of the deceased as well as the father -in-law of the deceased have filed the affidavit and they were also cross -examined by the railway authorities, but both of them remained consistent and no contradictory statement has been made by any of the witnesses. However, the learned Tribunal has failed to appreciate that it was an untoward incident and thereby rejected the claim made by the widow of the deceased. From the affidavit filed by Shanti Devi- widow of late Kishori Yadav, who has been examined as W-1 before the learned Railway Claims Tribunal, it appears that the deceased-husband died leaving behind two daughters and one son beside herself and all of them were dependent on the deceased-husband.

8. Learned counsel appearing for the respondent -Railway tried to justify the order passed by the learned Railway Claims Tribunal and submitted that the said order has been passed after careful consideration of the facts and circumstances as well as the legal proposition as set out in the Railway Act. It is submitted that it was a case of sheer negligence on the part of the deceased, and therefore, the learned Railway Claims Tribunal has rightly rejected the claim put forth by the applicant as the victim died due to his own negligence and the case does fall under the exception of Section 124-A of the Railway Act, 1989. Moreover, the deceased was not a bonafide passenger as 5. no ticket was found from the person of the deceased.

9. Having regard to the above submission and on perusal of the records and proceedings as well as other materials placed along with the appeal, it becomes amply clear that the deceased died on account of untoward incident as it reflects from the documentary as well as oral evidences adduced before the learned Tribunal. On perusal of the lower court records, especially, the documents as contained in R-1, R-2, R-3, R-6, R-10, R-13, R-14, R-15, R-16 and R-17, it becomes very clear that it was a case of untoward incident.

10. The affidavit filed by Sri Kishor Pd. Yadav father-in-law of the deceased and the affidavit filed by Shanti Devi, widow of late Kishori Yadav supports the contention of the appellant. The said two witnesses have been cross examined by the railway authorities, but, both the witnesses have fully supported the case and

no contradictory statement has been made. Moreover, as per the provision as contained in Section 2(29), Section 123(c)(2) read with Section 124-A of the Act. The accident in which appellant's husband died does not fall within the exception (a) to (c) of proviso to Sec.124-A of the Railway Act, 1989. In view of the documentary as well as oral evidence on record, the case of the appellant is clearly a case of untoward incident under Section 124-A of the Railways Act. Therefore, the appellant is entitled to get compensation of Rs.4 Lakhs (Rupees Four Lakhs) from the respondent railway authorities. Though the railway authorities have raised the contention that the deceased was not a bona fide passenger, the said contention has not been proved by the railway authorities by producing any cogent evidence as it reveals from the evidence on record. On the other hand, from the evidence on record, as discussed hereinabove, it becomes amply clear 6. that the deceased was a bona fide passenger and the case was investigated and reported as an untoward incident.

11. Under the circumstances, the view taken by the learned Tribunal is contrary to the proposition of law discussed hereinabove. The impugned judgment and order dt. 12.9.2012 passed by the learned Member, Railway Claims Tribunal, Ranchi, in Case No.OA(IIU) RNC20070081 (old no.OU-70081/07) is hereby set aside. The Respondent Railway authorities are directed to make the payment of compensation amount of Rs.4 Lakhs (Rupees Four Lakhs) within eight weeks, from the date of receipt of the order, alongwith the interest at the rate of six per cent per annum from the date of the filing of the claim -petition till the realization.

12. The appeal is allowed accordingly. (P.P. Bhatt, J.) SI/-

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