

Mahendra Prasad and Anr Vs. Union of India Rep. by G.M. Ea

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Court : Jharkhand

Decided On : Mar-10-2015

Appellant : Mahendra Prasad and Anr

Respondent : Union of India Rep. by G.M. Ea

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI M.A. No. 90 of 2010 1. Mahendra Prasad, son of Late Kishun Lal 2. Rani Devi, wife of Mahendra Prasad Both residents of Yadubansh Nagar, Chas, PO and PS Chas, District- Bokaro, JharkhandAppellants Versus Union of India, represented by General Manager, Eastern Railway, 17, Netaji Subhas Road, PO & PS Hare Street, Kolkata ...Respondent ----- Coram: THE HONBLE MR JUSTICE P.P. BHATT ----- For the Appellants : Mr. Basav Chatterjee, Advocate For the Respondent : Mr. Ram Nivas Roy, Advocate 17/10.03.2015: Present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 being aggrieved by the judgment dated 14.09.2009 passed in Case No. OA-70040/07 by Member Judicial, Railway Claims Tribunal, Ranchi Bench, whereby the learned Railway Claims Tribunal dismissed the claim petition as not maintainable as the railway administration has paid Rs.4,00,000/- as ex gratia on account of death of the applicants' son, who died in a railway accident.

2. Brief facts giving rise to the present appeal are as under: That son of the appellants, namely, Late Sujit Kumar Sinha, who died in a railway accident near Bhagalpur Railway Station on 2.12.2006 while travelling with his cousin sister

Anjana Kumari in Howrah- Jamalpur Express (Train No. 3071 UP). When son of the appellants was travelling along with her cousin, by 3071 Howrah-Jamalpur Express from Dhanbad (Sabour) to Bhagalpur Jn. met with an accident when the road over bridge collapsed crushing coach No. 90288 and killed around 35 people, including son of the appellants and his cousin sister, who were travelling in the ill fated compartment. On account of such miserable accident, railway authorities decided to pay ex gratia to the victims' family members to the tune of Rs.4,00,000/-, which has been received by the appellants. Thereafter, claim petition was filed before the Railway Claims Tribunal under Section 124A of the Railways Act, 1989 for getting compensation of Rs.4,00,000/-, but, the said application was dismissed, as not maintainable vide judgment dated 14.09.2009 by the Railway Claims Tribunal, Ranchi Bench. Being aggrieved and dissatisfied with the said judgment, present appeal has been preferred by the appellants on the various grounds, enumerated in the appeal memo.

3. Learned counsel for the appellants submitted that son of the appellants was a bona fide passenger in connection with the said accident. Postmortem report, death certificate and the deceased's travelling ticket etc. were produced along with the claim petition; however, without proper consideration of the facts and circumstances involved in the matter, learned Tribunal dismissed the claim petition, as not maintainable, without properly appreciating the basic difference between the ex gratia payment and the amount of compensation claimed under Section 124A of the Railways Act, 1989.

4. Learned counsel for the appellants further submits that Railway Claims Tribunal has committed an error while dismissing the claim petition as not maintainable without proper consideration of the facts as well as proposition of law on the issue involved in the matter. By referring Annexure-1 of the supplementary affidavit, learned counsel submits that one co-passenger Anjana Kumari was travelling with the son of appellant in the same train had also died in the said railway accident. An application claiming compensation for the death of Anjana Kumari had filed before the Railway Claims Tribunal, Patna Bench, which was registered as OA/TA225207. The claim petition was allowed by the learned Railway Claims Tribunal, Patna Bench vide order dated 24.04.2012.

5. In this context, decision of the Hon'ble Andhra Pradesh High Court in Civil Miscellaneous Appeal No. 1129 of 2008 has been referred by the learned counsel for the appellants, wherein it is clearly held that ex gratia payment and compensation under Section 124A of the Railways Act, 1989 are two different things and one will not overlap other. It is also pointed out that said decision has been affirmed by the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No. CC56842012 vide its order dated 4.4.2012. Copy of both judgments and orders are placed on record by the learned counsel for the appellants.

6. It is further pointed out that in similar situation, judgment delivered by the Hon'ble Delhi High Court has been carried further by the railway authorities and the judgment of Hon'ble Delhi High Court has not been challenged before the Hon'ble Supreme Court of India and thus it attained its finality. Judgment of the Delhi High Court may be taken as judgment in persona.

7. Learned counsel for the appellants further submits that Hon'ble Andhra Pradesh High Court has also given another judgment in the case of Union of India versus S. Padmaja and others, reported in 2013 (3) T.A.C. 635 (A.P.) wherein it has been held that there is no bar for the claimants to claim compensation under the statutory remedy of Section 124 and 124-A of the Act.

8. Learned counsel for the appellants, while referring counter-affidavit filed by the railway authorities and more particularly, while referring Annexure-R/3, pointed out that Government of India, Ministry of Railways (Railway Board) vide its communication dated 29.4.2013, issued by the Jt. Director Traffic Com/CL, Railway Board, intimated to Chief Claims Officer, Northern Railway about adjustment of amount of ex-gratia in total amount of compensation paid by the Railways in train accidents/ untoward incidents defined under Sections 124 & 124A of the Railways Act, 1989, has opined as under: The order of the Supreme Court is binding on all the Courts and is an authority on the interpretation of rule/law. Further the Judgment of the High Court of Delhi has not been challenged by the petitioner before Supreme Court of India and thus has attended finality. Thus the Judgment of Delhi High Court may be taken as judgment in persona. In view of the above, since the Judgment of Hon'ble Supreme Court of India is as per

the existing rules/ policies of the referring department and the same is not been challenged before any Forum, they may not take any action for the present in this case. Copy of the ***** In view of the above, it is advised that there is no need for change in the existing policy wherein ex- gratia paid to the aggrieved/ victim person remains in addition to the amount of compensation paid as decided by Railway Claims Tribunal. Likewise, another communication was also given by the Office of the Legal Adviser (Railway Board) vide its communication dated 10.4.2013.

9. The learned counsel appearing for the respondent-Indian Railways submits that ex-gratia payment is required to be paid in consonance with the policy decision, annexed with the counter-affidavit vide Annexure-R/1 i.e. dated 26.7.2012 and accordingly, in case of train accident, as defined under Section 124 of the Act, ex-gratia payment of Rs.50,000/- is required to be paid, but, in the instant case, ex-gratia payment is made at the higher side as prescribed in the said policy decision and therefore, view taken by the learned Railway Claims Tribunal that appellants are not entitled to get separate claim of Rs.4,00,000/- is the correct approach adopted by the Railway Claims Tribunal.

10. Considering the aforesaid rival submissions and having regard to the facts and circumstances of the present case, it appears that it is admitted position that the son of the appellants died in train accident and accordingly, appellants have been paid ex-gratia amount of Rs.4,00,000/-. After receipt of the said amount, appellants preferred application before the Railway Claims Tribunal for getting compensation of Rs.4,00,000/- under Section 124A of the Act. Sections 124 and 124A of the Railways Act, 1989 read as under:

124. Extent of liability.- When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident. 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. In view of aforesaid provision, claim put forward by the appellants in respect of death of their son on account of railway accident was maintainable; however, learned Tribunal has dismissed the claim petition, without proper appreciation of facts as well as law, as settled by the Hon'ble Apex Court, in a decision given in the case of Union of India versus K.P. Lakshmi & others in Special Leave to Appeal (Civil) No. CC56842012, while affirming the judgment delivered by the Hon'ble Andhra Pradesh High Court in Civil Miscellaneous Appeal No. 1129 of 2008. Said view has been followed by the Hon'ble Delhi High Court as well as Hon'ble Andhra Pradesh High Court in similar situation. It further appears that on administrative side also, railway authorities, under the advice rendered by the Office of the Legal Adviser (Railway Board) specifically conveyed to all the concerned authorities that ex-gratia payment and compensation are two different provisions and will not overlap. The order of the Hon'ble Supreme Court is binding on all Courts and is an authority on

the interpretation of rules and laws. Accordingly, authorities were advised to follow the direction given by the Hon'ble Apex Court, while affirming the decision rendered by the Hon'ble Andhra Pradesh High Court. Submissions advanced by the learned counsel appearing for the respondent-railway authority that the appellants have been paid ex-gratia payment on a higher side and therefore, view taken by the Tribunal is in accordance with law, cannot be accepted, in view of the aforesaid settled legal position that ex-gratia payment and compensation are two different provisions and will not overlap.

11. The submissions made by the learned counsel appearing for the respondent cannot be accepted in view of the material on record, such as: (i) counter-affidavit filed by the Dy. Chief Commercial Manager (Claims)-cum- Presenting Officer, Railway Claims Tribunal, Eastern Railway, Kolkata, wherein it is stated that Railway Board has issued letter dated 26.7.2012 and 7.5.2013 to all concerned officials, inter alia, stating that ex- gratia payment is altogether a different thing than the claim made under Sections 124 and 124A of the Railways Act, 1989, as it has been held by the Hon'ble Supreme Court and accordingly, all the authorities concerned were advised to do the needful in such type of cases. (ii) Paragraph-6 of the counter-affidavit, wherein it is stated that compensation amount may be paid to the claimant, who has already received the ex-gratia amount, as it has been held by the Hon'ble Supreme Court of India that ex gratia payment and compensation under Sections 124 and 124A of the Railways Act, 1989 are two different things and the ex-gratia payment is required to be paid in addition to the claim.

12. It is admitted position that Rs.4,00,000/- has been paid towards ex-gratia payment and therefore, ex-gratia amount cannot be clubbed with amount of compensation, which is required to be considered and paid under the provisions of Sections 124 and 124A of the Railways Act, 1989. Looking to the gravity of the accident, railway authorities have decided to make payment of Rs.4,00,000/- as ex-gratia amount in the instant case, as 35 persons died on account of unfortunate miserable accident. On the other hand, deceased was travelling with his cousin in the same train had also died in the said railway accident. The claim compensation was registered as OA/TA225207 in the Tribunal, Patna Bench. The Tribunal,

Patna Bench allowed the claim of deceased's cousin and directed the Railway Authorities to pay statutory compensation of Rs.4,00,000/- under Section 124 of the Railways Act though the applicants of the said cases had received ex-gratia amount. In this case, learned Tribunal failed to appreciate the meaning of word ex-gratia amount and demand of compensation made under Section 124 of the Railways Act. Therefore, in any circumstance, it cannot be said that view taken by the learned Railway Claims Tribunal is in accordance with law, in view of the above-mentioned settled proposition of law.

13. Under the circumstances, judgment dated 14.09.2009, passed in Case No. OA-70040/07 by Member Judicial, Railway Claims Tribunal, Ranchi Bench is ordered to be set aside. Accordingly, appellants be paid compensation of Rs.4,00,000/- (Rupees Four Lakhs), over and above, the ex-gratia amount of Rs.4,00,000/- (Rupees Four Lakhs), which has been paid by the railway-authority, along with 6% interest from the date of claim petition till realization.

14. With the aforesaid observations and directions, instant appeal stands disposed of. (P.P. Bhatt, J.) S.B.

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