

Majidan Bibi and Anr Vs. Union of India Through General Manager South Eastern Railway

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Court : Jharkhand

Decided On : Apr-21-2016

Appellant : Majidan Bibi and Anr

Respondent : Union of India Through General Manager South Eastern Railway

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI M.A.No.391 of 2014 --- 1. Majidan Bibi, W/o Sk. Dilkhus @ Sk. Dilkhus Alam.

2. Sk. Dilkhus @ Sk. Dilkhus Alam. Both r/o Zakir Nagar, P.O. Azadnagar, Mango, P.S. Jamshedpur, District- East Singhbhum. . Appellants. Vrs. Union of India, through the General Manager, South Eastern Railway, 3, Koilaghat Street, P.O./P.S. Garden Reach, Kolkata (West Bengal). .. Respondents. --- CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA --- For the Appellant : M/s.Rajesh Kumar Jha, Advocate. For the Respondent: Mr. R.N.Roy, Advocate. -- 03/21.04.2016 I.A.NO.5238/2014 This interlocutory application has been filed for condoning the delay of 311 days in preferring the instant appeal. Learned counsel for the respondent has opposed that no sufficient cause and reasonable explanation has ben given for condoning the delay. Heard. Considering the reasons assigned in paras 3,4 and 5 of the supporting affidavit, sufficient cause and reasonable explanation has been given, accordingly, delay in preferring the instant appeal is hereby condoned. I.A.NO.5238/2014 stands allowed. I.A.No.1669

of 2016 This interlocutory application under Order 22 Rule 2 of the Code of Civil Procedure has been filed for deleting the name of appellant no.1, namely, Majidan Bibi who died on 26.02.2015 and in support of the same death certificate has been filed as Annexure-1. It is submitted by the learned counsel for the appellant that the claim application was preferred by the mother and father of the deceased-Md. Mithun who died on 07.08.2010 due to fall from the train in which he was travelling as a passenger. That during the pendency of the appeal appellant no.1 has died and the right to sue survives upon appellant no.2, i.e. the father of the deceased. Learned counsel for the respondent is in attendance. In view of the submission name of appellant no.1 is permitted to be deleted from the cause title. Learned counsel shall carry out necessary correction in the cause title in course of the day. I.A.No.1669 of 2016 is disposed of.

2. M.A.No.391 of 2014 1. This appeal is directed against the order dated 02.08.2013 passed by Member(Technical), Railway Claims Tribunal,Ranchi in Case no.OA(IIU)/RNC/2011/0046 whereby learned Member, Railway Claims Tribunal, Ranchi has rejected the claim for compensation.

2. Learned counsel for the appellant/claimant has argued that the learned Tribunal has committed error by holding that the injury sustained by the deceased(Md.Mithun) who was traveling from Tata to Howrah by Ispat Express, Train no.2872, on 07.08.2010, was self-inflicted. It is contended that the burden lies on the Railways to prove that the falling of deceased from the train was due to criminal act or negligence on the part of part of the deceased and the injury sustained was self-inflicted which comes within the purview of the Exceptions (a) to (e) of the proviso to Section 124A of the Railways Act,1989(hereinafter to be referred as 'the Act'). It is submitted that the witnesses have stated that the deceased was in the habit of taking gutka and he was standing near the door of the compartment and a passenger was sitting on the foot-board of the door. That the deceased had leaned out of the door of the compartment to spit in order to avoid the spit falling on the person sitting on the foot board of the compartment due to which he fell down. It is urged that even if the statement of the witnesses is believed to be true then the fall of the deceased cannot be termed as a 'criminal act' and the Railway Administration cannot escape the liability to pay the

compensation under Section 124A. Learned counsel has relied on the decision of the Apex Court in the case of Jameela and Ors. vs. Union of India, reported in (2010) 12 SCC443 wherein the Supreme Court has held that even if the deceased fell down from a train due to his own negligence it will not be a reason to deny the compensation under Section 124 A of the Act. It is contended that the Tribunal has not appreciated the provisions of the law as enshrined under Section 124A of the Act and without any material evidence the Tribunal has dismissed the claim of the appellant/claimant hence, the impugned judgment is fit to be set aside.

3. Per contra, learned counsel for the respondent has contended that co-passenger, namely, Ravi Kumar Sahu has categorically stated that the deceased, Md. Mithun was habituated to taking 'gutka' and when he leaned out of the door of the 3. compartment to spit he was hit by the overhead electric pole which proves that the deceased sustained injuries on account of his own fault and criminal negligence hence the injury sustained is self- inflicted injury. It is submitted that the finding of the learned Tribunal is based on the evidence of the co-passenger and the Railway is not responsible to pay any compensation as the incident is covered under the Exception clauses (a) to (e) of the proviso of Section 124A of the Act.

4. Heard. It is settled proposition that provisions of Section 124A is based on the principle of strict liability or no fault liability and it is mandated that the Railway Administration is bound to pay the compensation regardless of any wrongful act, negligent or default on the part of the Railway Administration. The Railways can escape the liability to pay the compensation only when the said injury comes within the exceptions of Clauses (a) to (e) to proviso of Section 124A of the Act. From the sequence of facts as delineated, it is not disputed that deceased(Md.Mithun) was travelling as a passenger on the train namely, Ispat Express, from Tata to Howrah on a valid ticket and was a bonafide passenger as defined under Section 2(29) of the Act and the explanation to Section 124A of the Act. The learned Member of the Tribunal has dismissed the claim on the ground that the injury sustained by the deceased was self-inflicted as he was hit by the electric pole when he leaned out of the door of the compartment to spit, since he was in the habit of taking gutka as stated by the co-passenger, Ravi Kumar Sahu. At this juncture, it is relevant to state that the Tribunal has overlooked the fact that

the deceased had leaned out to spit because another passenger was sitting on the foot board. The co-passenger has stated that the deceased was standing near the door of the compartment. It is evident that the deceased had leaned out to spit so as to prevent the spit falling on the person who was sitting on the foot board and in doing so he had slipped and fallen from the train. Such act cannot be said to be a criminal act or an act of criminal negligence. Untoward incident has been defined under Section 123(c)(2) of the Act as the accidental falling of any passenger from a train carrying passengers. Therefore, the injury sustained by the deceased cannot be said to be self-inflicted. It is settled proposition that the provisions of the Railways Act has been incorporated as a beneficial legislation which has been considered in the case of Jameela and Ors. vs. Union of India(Supra), in para 4. 7 of the said judgment the Supreme Court has held :-

7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section 124-A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railways that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eye witness to the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railways that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section 124- A of the Act. The respondent -Railways have not brought any evidence on record to prove that the deceased was in an intoxicated state or the injury was self-inflicted or was due to any criminal act of the deceased.

5. In view of the discussions made above and the evidence on record it is held that just because the deceased had leaned out of the door of the compartment it cannot be termed as a criminal act and the negligence on the part of the deceased and is not a self-inflicted injury. Therefore, the impugned judgment and order is hereby set aside and the Railway Administration is directed to pay the statutory compensation of Rs.4,00,000/- in terms of Part I of the Schedule of The Railway

Accidents and Untoward Incidents(Compensation) Rules, 1990 with interest at the rate of 9 per cent from the date of filing of the claim application, within three months from the date of receipt of this order failing which the Railway Administration shall be liable to pay interest at the rate of 12 per cent on the accrued sum from the date of this order.

6. With the aforesaid observation and direction the appeal is allowed. (Amitav K. Gupta, J.) Biswas./-

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