

Ramakant Sharma and Anr Vs. Union of India Through the General Manager South Eastern Railway

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Court : Jharkhand

Decided On : Jul-12-2016

Appellant : Ramakant Sharma and Anr

Respondent : Union of India Through the General Manager South Eastern Railway

Judgement :

IN THE HIGH COURT OF JHARKHAND AT ANCHI. M.A. No. 232 of 2015 1. Ramakant Sharma 2. Smt. Lalan Devi . . Appellants versus The Union of India through the General Manager, South Eastern Railway 3, Koilaghat Street, Kolkata Respondent. ----- CORAM : THE HON'BLE MR. JUSTICE RAVI NATH VERMA ----- For the Appellants : Mr. R.K.Jha For the Respondent: Mr. V.K.Sinha, A.S.C.(Railway) ----- C.A.V. On 23.06.2016 Delivered on:

12. 07/2016 R.N.Verma,J.

The claimants/appellants have preferred this appeal under section 23(1) of the Railway Claims Tribunal Act, 1987 against the judgment and order dated 25.02.2015 passed by the Railway Claims Tribunal, Ranchi in case no. TAU/RNC/2004/0007, whereby and where under the claim of the appellants has been dismissed.

2. The case of the claimants before the tribunal was that their son, namely, Kumar Abhyanand (Since deceased) aged about 24 years after purchasing three second class tickets, boarded the Hatia - Bardhman Passenger Train on 14.03.2003 at Ranchi for going to Chandrapura. Since, the boggy was fully crowded, the son of the claimants went near the door of the train to spit outside. At that time, the train was crossing Silli and going towards Muri railway station, but during spitting his head dashed with an electric pole, where after, he fell down from the train and died. From the FIR lodged at the instance of Apurb Gaurav, one of the friends of the deceased, it appears that the deceased was accompanied with the informant Apurb Gaurav and Sekh Farukh. The photocopy of the ticket no. 20104287 dated 14.03.2003 was filed with the claim application and the two claimants, who are father and mother of the deceased, have claimed compensation of Rs. 4,00,000/-.

3. The respondent- Union of India, through the General Manager, South Eastern Railway, Kolkata filed written statement with the pleading that the deceased was not a bona fide passenger and the station diary of Muri Railway Station narrates different story that five friends were coming from Ranchi and the accident took place between Silli and Muri station. It was also pleaded that the deceased was leaning on the door and the act of the deceased comes under the -2- self inflicted injuries, as defined under the provisions of Section 124- A of the Railways Act. As such, the Railway cannot be held liable to pay compensation. It appears from the record that no report of DRM based on the inquiry as envisaged under "The Railways Passengers (Manners of Investigation of Untoward Incidents), Rules, 2003 has been filed by the respondent-Railway Authority.

4. Learned Tribunal on the basis of the pleadings of the parties framed the following issues : (i) Whether Kumar Abhyababd, s/o Sri Rama Kant Sharma was a bonafide passenger as alleged ? (ii) Whether any untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989 occurred to the Kumar Abhyanand s/o Sri Rama Kant Sharma while traveling from Ranchi to Chandrapura by Hatia-Bardhman Passenger on 14.03.2003 ? (iii) Whether the applicants are entitled for the compensation as claimed and other relief, if any ? 5. Learned Tribunal on the basis of evidence and pleadings available on record held that the submission of photo-copy of the ticket is not sufficient to prove that the

victim was travelling with the authority of the above said ticket and in absence of evidence of original journey ticket, it can not be presumed that the victim was a bona fide passenger. The Tribunal further held that Kumar Abhyanand (since deceased) had an accidental fall from Hatia- Bardhman Passenger train on 14.03.2003 and as such the alleged accident is an untoward incident within the meaning of Section 123(c)(2) read with Section 124-A of the Railways (Amendment) Act, 1994. Hence, the issue was decided in favour of the claimants. But finally, the Court held that the claimants were not entitled for compensation under section 124-A of the Railways(Amendment)Act, 1994. Hence, this Misc. Appeal.

6. Learned counsel appearing for the claimants assailing the impugned judgment and order seriously contended that the court below, while deciding the issue no.(i) as to whether the deceased was a bona fide passenger, has refused to rely upon the photo-copy of the ticket and held that the same is not sufficient to prove that the victim was travelling with the authority of the above said ticket. Though, it is well settled that in the event of death of a travelling passenger, -3- there shall be presumption that the person travelling in the train was having valid ticket, unless presumption is rebutted by Railway through cogent and trustworthy evidence. In support of his contention, learned counsel has relied upon a judgment in case Bimla Devi and others Vs. Himachal Road Transport Corporation and others : AIR-2009-SC-2819. It was also argued that the learned Tribunal while deciding issue no.(ii) has clearly held that on the basis of the evidence available on the record, both oral and documentary that Kumar Abhyanand (since deceased) had an accidental fall from the Hatia-Bardhman Passenger Train on 14.03.2003 and as such alleged accident is an untoward incident, as defined under section 123(c)(2) of the Act, but refused to award compensation. Hence,the impugned judgment suffers from illegality and misconception of law. Therefore, it is liable to be set aside.

7. Learned counsel appearing for the respondent-Railway submitted that the claimants did not produce the original ticket to show that the deceased was a valid passenger and, therefore, the Tribunal has rightly refused to grant compensation against the death of their son. There is no illegality in the impugned judgment and,

accordingly, the appeal is fit to be dismissed.

8. I have gone through the impugned judgment, records of the case and the evidences available on record and found that issue no. (ii), regarding untoward incident, has been decided in favour of the claimants, but the respondent-Railway has not preferred any appeal against the said finding and even it has not been raised by either of the parties. Therefore, the only issue which needs consideration by this Court relates to issue no.(i) framed by the court below as to whether Kumar Abhyanand, S/o Sri Rama Kant Sharma was a bona fide passenger as alleged ?

9. The respondent-Railway in his written statement has come up with the case that the deceased was not a bona fide passenger on the ground that the original train ticket was not produced in evidence, though photo-copy of the ticket was produced along with the claim application. The claimants had specifically pleaded that the deceased was holding valid journey ticket and it has also come in evidence that the original train ticket was handed over to the claimants by Apurb Gaurav, a friend of their deceased son, but any how, the same was misplaced somewhere in the house and even after -4- their sincere effort, they could not find the same. The respondent has doubted the pleadings of the claimants regarding bona fide passenger, merely relying upon the entry made in the Station Diary of the Muri Railway Station, wherein the Station Master, relying upon the report of the friends of the deceased, has stated that five friends were coming from Ranchi but in view of their own evidences, they had purchased three tickets. It further appears from the report and the impugned judgment that the claimants had requested the respondent-authority to produce the said station diary, inquest report and the dead-body challan, but the respondents never produced those documents in support of their case. Even the Station Master, who had made entry in the station diary, has not been examined by the respondents. While dealing with a claim arising under the Motor Vehicles Act, the Hon'ble Supreme Court in case of Bimla Devi and others (Supra) had observed that it was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants and the claimants were merely to establish their case on the touchstone of preponderance of probability. The Hon'ble Supreme Court further observed that the standard of proof beyond reasonable doubt could not be applied in the case of claim petitions.

10. The question mooted for consideration is whether due to non-production of original ticket in place of photo-copy of the ticket, an adverse inference can be drawn by the Tribunal.

11. Obviously in view of the settled principle, the onus lies upon the railway to give evidence that the deceased was travelling without valid ticket and if such evidence is given only then the onus will shift upon the claimants to prove in rebuttal that the deceased was a bona fide passenger having a valid ticket. Normally, the presumption is that a passenger travelling in a train holds valid ticket. In a judgment reported in 2009-1-TAC-644 (Akhtari vs. Union of India), a Division Bench of Allahabad High Court while deciding similar controversy considered the provisions contained in Sections 123 and 124 of the Act and also considering various pronouncement of Hon'ble Supreme Court, held that in the event of death of a travelling passenger, there shall be a presumption that the persons travelling in the train was having valid ticket, unless the presumption is rebutted by the Railways through cogent and -5- trustworthy evidence. In view of the discussions, I am of the considered view that the initial burden of proving such fact has not been discharged by the respondent. Learned Tribunal while deciding this issue has merely relied upon the fact that the photo-copy of the ticket is not sufficient to prove that the victim was travelling with the authority of the above said ticket. Even from the evidence adduced on behalf of the respondent, it would appear that the respondent had not denied the genuineness of the ticket ,but merely relied upon the entry made by the Station Master in the station diary. Though, the station diary has also not been produced in the court and the Station Master has also not been examined by the respondent-Railway. Obviously, that burden is not discharged by the Railway. Hence, the learned Tribunal was not justified in rejecting the pleading of the claimants that the deceased was a bona fide passenger and that there was also no justification to discard the evidence of the claimants. Therefore, the finding of the learned Tribunal that the deceased was not a bona fide passenger is not sustainable in the eye of law. Hence, it is fit to be set aside. Hence, the issue no.(i) as framed by the learned Tribunal is answered in favour of the claimants/appellants.

12. Apparently, the issue no.(ii), as framed by the Tribunal regarding untoward incident has not been argued by any of the parties before this court as the same has already been decided by the learned Tribunal in favour of the claimants, but even then I would like to refer the ratio decided by the Hon'ble Supreme Court in case of Union of India Vs. Prabhakaran Vijayakumar : (2008)9 SCC-527, wherein the Hon'ble Supreme Court while interpreting the terms "accidental falling a passenger from a train carrying passengers", held as follows : In our opinion, if we adopt a restrictive meaning to the expression accidental falling a passenger from a train carrying passengers in Section 123(c) to the Railways Act, we will depriving a large number of railway passengers from getting compensation in railway accident. It is well known that in our country there are crores of people to travel by trains since every body cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (Particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression accidental -6- falling of a passenger from a train carrying passengers includes accidents when bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into railway train and falls down during the process. In other words, a propulsive, and not literal interpretation should be given to the expression.

13. I am constrained to hold that the deceased was a bona fide passenger and the accident is an untoward incident within the meaning of Section 123(c)(2) read with Section 124-A of the Railways (Amendment) Act, 1994, the claimants are entitled to get compensation, as provided under "The Railways Accident and Untoward Incident Compensation ,Rules, 1990".

14. In the result, this Misc. Appeal is allowed. The respondent- Union of India, through the General Manager, South Eastern Railway 3, Koilaghat Street, Kolkata is hereby directed to pay the compensation amount of Rs. 4 lakhs to the two claimants/ appellants i.e. father and mother of the deceased within a period of three months with simple interest at the rate of 9% per annum from the date of filing of claim application in the learned Tribunal. (R.N.Verma, J.) Raman /