

Krishna Ram Vs. Union of India Through the General Manager East Central Railway

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Court : Jharkhand

Decided On : Aug-29-2016

Appellant : Krishna Ram

Respondent : Union of India Through the General Manager East Central Railway

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Miscellaneous Appeal No. 71 of 2015 Krishna Ram Son of Lt. Muneshwar Ram resident of village Farthiya, PO- Hoor, PS- Garhwa, District- Garhwa Appellant -V e r s u s- Union of India through the General Manager East Central Railway, PO & PS- Hajipur, District- Hajipur (Bihar) ... Respondent CORAM: HONBLE MR. JUSTICE RAVI NATH VERMA For the Appellant :- M/s. Rajesh Kumar Jha & Chandra S. Singh, Advocates For the respondent:- Mr. Vijoy Kumar Sinha, A.S.C.(Railway) ----- C.A.V. ON - 30.06.2016 PRONOUNCED ON-29/08/2016 The claimant has preferred this appeal under Section 23(1) of Railway Claims Tribunal Act, 1987 against the judgment dated 22.07.2013 passed by Railway Claims Tribunal, Ranchi in case no. O.A.(IIU)/RNC/2008/2014 whereby and whereunder the claim application has been dismissed holding that the deceased was not a bonafide passenger and the incident does not come under the purview of untoward incident as defined in Section 123(c)(2) of Railways Act, 1989.

2. The claim application was filed by two claimants: the first claimant namely Rampatiya Devi- the widow of Muneshwar Ram and the claimant no.2(appellant herein)-the son of the said deceased. The claim application was filed stating therein that on 25.04.2006, her husband while traveling by CCB Passenger train from Garhwa Road to Daltonganj fallen down at Nagaruntari railway station and died. In support of the claim application, photo copy of the fardbeyan, post-mortem report and Voter ID-Card were filed. Since the widow of the deceased died during the pendency of the claim application, only applicant no.2 the son has preferred this appeal.

3. Upon notice, the respondent- Union of India through the General Manager, East Central Railway, Hajipur filed written statement on 28.01.2010 stating therein that in the claim application, no train number has been given and no such accident ever took place on 25.04.2006 and that claimant has to put strict proof that the deceased was a bona fide passenger with a valid ticket within the meaning of Section 56, 123 and 124(A) of the Railway Act.

4. It appears from the record that the Central Divisional Commercial Manager on 26.08.2009 submitted an investigation report and from the said report (R-2) dated 25.08.2009, it appears that an inquiry 2 was conducted by IPF/RPF-GHD and CTI/RNQ, which reveals that at morning of 26.04.2006, a dead body of an unknown person was lying at station in line No. 01 of Nagaruntari station. There was no eye witness to the victim fallen down from the train. Only a fardbeyan was recorded bearing U.D. Case no. 15 of 2006 dated 27.04.2006. The person, who gave fardbeyan, stated that he heard, the victim fallen down from CCB Passenger. It further appears that one F.I.R. was lodged at the instance of the present appellant Krishna Ram on 26.04.2006 at 10:45 a.m. at Nagaruntari Railway Station with the allegation that his father Muneshwar Ram was a Cobbler and in the morning of 23.04.2006 at about 8:30 a.m. with all his instrument for repairing shoes had gone to earn his livelihood and in the morning of 26.04.2006 at about 8.00 a.m., he came to know from the villagers that his father has died after falling from the train. On inquiry from the co-villagers and others at the railway station, he came to know that his father had fallen down from CCB Down Passenger Train and got several injuries and subsequently succumbed to those injuries.

5. Learned Claims Tribunal after examining the pleading of both the parties and the documents available on record and considering the submissions of the counsels, framed the following issues; (i) Whether Muneshwar Ram was a bonafide passenger on 25.04.2006? (ii) Whether any untoward incident as defined in Section 123 of Railway Act, 1989 has occurred with the victim? (iii) Whether the applicants are entitled to any claim? (iv) Relief, if any? 6. After considering all the issues and documents as well as oral evidence, the court rejected the claim application as indicated above.

7. Learned counsel Mr. Jha appearing for the claimant assailing the impugned judgment as bad in law and perverse, seriously contended that the finding recorded by the court below is not sustainable in the eye of law as from Ext.R-2, it would appear that no such station diary was handed over to the Inquiry Officer but the court below in the impugned judgment has wrongly recorded that as per D.C.M.s report Ext.- R-2, no such incident is recorded in the station diary of Nagaruntari. It was also contended that the court below erred in not considering the evidence of the appellant (A.W.-1) and also erred in appreciating the term untoward incident as defined in Section 123 (c) (2) of the Railway Act and that on 3 mere perusal of the impugned judgment, it would appear that there is a complete lack of judicial mind and appreciation of the provisions of the Act. It was further submitted that the court below without following the settled presumption that a person travelling in a train holds a valid ticket erred in holding that the deceased was not travelling in a train with valid ticket. Lastly it was submitted that it was the duty of the Railway Authority to produce the case diary of the F.I.R. lodged at the instance of this appellant but even after several requests, the said case diary was not produced before the court below.

8. Per contra, the learned counsel appearing for the respondent- Railway submitted that the onus was upon the claimant to show that the deceased was valid passenger and the court below has rightly appreciated that on the particular date, no such untoward incident was either reported by the Station Master or by the Guard. As such, even if any accident took place as alleged that was due to rash and negligent act of the deceased himself. Hence, the accident does not attract the provision enabling payment of compensation for accidental fall and the

liability to pay compensation cannot be fastened on the respondent under Section 124-A of the Railway Act, 1989.

9. Before I enter into the veils of submissions of the learned counsels , a reference of Section 123 (c)(2) is necessary for the proper adjudication of the issues involved in this case. Section 123(c) of the Railway Act defines untoward incident as follows : C-Untoward incident means- 1.(i) the commission of a terrorist act within the meaning of sub- section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987) ; or (ii) the making of a violent attack or the commission or robbery or dacoity; or (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or (2) the accidental falling of any passenger from a train carrying passengers. Here, I would like to refer Section 124-A of the Act also, which deals with the compensation. The said section provides as follows :

4. 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. Explanation - For the purposes of this section, passenger includes- (i) a railway servant on duty ; and (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date

or valid platform ticket and becomes a victim of an untoward incident.

10. From bare perusal of the aforesaid provision, it would be clear that the incident in which the father of the claimant-appellant died is clearly not covered by the proviso to Section 124-A as the said incident did not occur because of any of the reasons mentioned in Clause (a) to (e) of the said proviso to the said section. The respondent- Railway has not brought on record any evidence to bring the incident within the four corners of the above clause (a) to (e) to the proviso. A report was submitted by the D.C.M. (Ext.R-2) to D.R.M. in which the railway authorities relying upon a report (Ext.R-4) held that no such untoward incident occurred causing death of Muneshwar Ram at Nagaruntari railway station on 25.04.2006 as alleged though admittedly the dead body of Muehswar Ram was found lying on the track of Nagaruntari railway station.

11. Similar issue was considered by the Hon'ble Supreme Court in the case of Union of India.Vs. Prabhakaran Vijaya Kumar : (2008)9 5 SCC527and while interpreting the term accidental falling of a passenger from a train carrying passengers, considering the situation where a person is trying to board the train and falls down from the train 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 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.

12. Obviously, the incidence in which the father of the appellant died was a case of untoward incident but not within the proviso. The further dispute relates to the finding recorded by the Tribunal that the deceased was not a valid passenger. The only ground, on which the finding of the court below is based, is that the train ticket was not produced in evidence but the claimants had a specific pleading that deceased was holding a valid ticket. AW-1 the appellant has testified that his father had purchased the ticket in his presence but no evidence has been produced by the Railway in rebuttal. Onus was upon the Railway to prove that the deceased was not a bona fide passenger. Normally, 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 Section 123 and 124 of the Act and also considering various pronouncements of Hon'ble Supreme Court, held that in the event of death of a travelling passenger, there shall be a presumption that the person travelling in the train was having valid ticket, unless the presumption is rebutted by Railways through cogent and trustworthy evidence.

13. The Hon'ble Supreme Court in the case of Bimla Devi and others Vs. Himachal Road Transport Corporation and others: AIR 2009 SC-2819 while considering the accident under Motor Vehicle Act 6 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.

14. In the instant case, presumption has to be drawn that the deceased was a bonafide passenger, who lost his life in the rail accident. It was for the railway administration to prove contrary and the burden in such circumstance that the deceased was a ticketless traveller or was not a bona fide passenger, is on the railway administration which has special means of knowledge as to whether any ticket was issued to that deceased or whether at any point, before or at the end of journey, he was checked and detected by staff of the railway as an unauthorized

person without ticket.

15. In view of the discussions made above, I have no hesitation in holding that it is the case of death coming within the purview of untoward incident as defined in Section 123(c) and also under Section 124-A of the Railway Act and the claimant-appellant is entitled to get compensation as provided in the Schedule to the Railway Accident and Untoward (Incident) Compensation Rules, 1990.

16. In the result, this miscellaneous appeal is allowed and the impugned judgment dated 22.07.2013 passed by Railway Claims Tribunal, Ranchi in O.A.(IIU)/RNC/2008/2014 is, hereby, set aside. The respondent- Railway is directed to pay compensation amount of Rs.4,00,000/-(four lakhs) to the claimant within 90 days from the date of this order, with simple interest at the rate of 6% per annum from the date of filing of the claim application. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 29th August, 2016 Ritesh/N.A.F.R.

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