

Ashok Kumar Singh and Anr Vs. Union of India Through the General Manager South Eastern Railway

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Court : Jharkhand

Decided On : Sep-08-2016

Appellant : Ashok Kumar Singh and Anr

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

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI. Misc. Appeal No. 89 of 2015 1. Ashok Kumar Singh 2. Smt. Kalawati Singh, both R/o Sector IIID, Qr.No.316, Bokaro Steel City, Bokaro, Jharkhand Appellants versus Union of India, through General Manager, S.E.Railway, Koilaghat Street, Kolkata, West Bengal Respondents. ----- CORAM : THE HON'BLE MR. JUSTICE RAVI NATH VERMA ----- For the Appellants : M/s. Rajesh Kr. Jha .& A.K.Singh For the Respondent: Mr. Vijoy Kumar Sinha, A.S.C.(Railway) ----- C.A.V on 11.08.2016
Delivered on:

08. 09/2016 R.N.Verma,J.

Claimants/appellants have preferred this Misc. Appeal under section 23(1) of Railway Claims Tribunal Act, 1987 against the judgment dated 02.12.2014 passed by Railway Claims Tribunal, Ranchi in Case no. TAU/RNC/2005/0011, whereby and whereunder claim of the appellants for compensation of Rs. 4,00,000/- has

been rejected.

2. The case of the appellants before the tribunal, in brief, was that the deceased Manish Kumar, son of Sri Ashok Kr. Singh, aged about 22 years was travelling from Allahabad to Bokaro Steel City on 19.10.2004 in train no. 2802 DN New Delhi Puri- Purushottam Express and he was holding proper ticket but accidentally fell down from the train near northern side of platform no. 2 of Bokaro Steel City Station and run over by the said train and died. Thereafter, U.D. Case no. 14/2004 dated 19.10.2004 was instituted at Bokaro G.R.P.S. and after due enquiry, final report was submitted stating therein that it is a case of railway accident, run over due to falling from the alleged running train. In support of his claim, claimants had examined himself as witness AW-1 and produced photocopy of FIR, Fardbeyan of one Sri Harinarayan Singh and Final Report submitted by the police.

3. Contesting the claim, the respondent-Union of India, through General Manager, S.E. Railway, filed written statement stating inter alia that the claim application is not maintainable as the deceased was trying to detrain from a running train and fell down and died on the spot. So it is a case of "self inflicted injury". Secondly, the deceased was not a bonafide passenger, as no ticket was recovered from the dead body of the deceased. Since it was due to rash and negligent act of the deceased himself and the injury comes under the self inflicted injury, hence the accident does not attract the provisions of enabling payment of compensation " For Accidental Falling". -2-

4. The Tribunal considering the pleadings of the parties and documents available on record framed the following issues : (i) Whether the deceased Manish Kumar, s/o Ashok Kumar Singh was a bona fide passenger as alleged ? (ii) Whether any untoward incident as defined under section 123 (c)(2) of the Railway Act, 1989 occurred to Manish Kumar, S/o Sri Ashok Kumar Singh while travelling in Train no. 2802 DN New Delhi-Puri- Purushottam Express on 19.10.2004 near Bokaro Steel City Railway Station ? (iii) Whether the applicants are entitled for the compensation as claimed and other relief, if any ? The Tribunal after hearing the parties and examining the oral as well as documentary evidences came to the findings as follows : (i) the deceased was not a victim of an untoward incident within the meaning of section 123(c)(2) of the Railway Act. 1989 (ii) the deceased was a bona fide passenger of the train. But the claimants were not

entitled to any compensation as the respondent has proved that Manish Kumar, since deceased, died due to self inflicted injury caused by criminal negligence which falls under the proviso (b) of section 124-A of the Railway (Amendment) Act, 1994. Hence, this Misc. Appeal.

5. Mr.R.K.Jha, learned counsel for the appellants assailing the impugned judgment as bad in law seriously contended that when the deceased was found to be a bona fide passenger, the rejection of the claim application can not sustain in the eye of law. It was also submitted that the court below also erred in holding that deceased died due to self inflicted injury as defined under proviso (b) of Section 124-A of the Act in absence of any evidence on record and the entire finding of the Claims Tribunal is based on mere presumption that the deceased fell down from the train due to his own negligence.

6. On the other hand, the learned counsel representing the Railway supporting the impugned judgment submitted that the findings recorded by court below needs no interference as is based on correct appraisal of the evidence on record.

7. Chapter XIII of the Railway Act, 1989 deals with the liability of Railway Administration for death and injury to passengers due to accidents and the very first section of the Chapter is section 123, which deals with the definition part and Clause (c) defines "Untoward incident". For proper adjudication of the dispute between the parties, a reference to section 123 (c) is necessary, which is reproduced, herein, below : -3- (c) "Untoward incident" means- (1) (i) the commission of terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ; or -3- (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." From bare perusal of the aforesaid provision, it would appear that case of the deceased covers under section 123(2) of the Act which stipulates a death shows due to accidental falling of any passenger from a train carrying passengers.

8. A reference of section 124-A of the Act is also relevant for the present case which is as under :- 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. Apparently, the said deceased died to falling from the running train. The tribunal has come to the finding that the deceased was a bonafide passenger. It is now to be seen that under Section 124A the liability to pay compensation is regardless of any wrongful, neglect or default on the part of the Railway administration but the proviso to the section says that Railway would have no liability to pay any compensation in case of death or injury caused due to any -4- of the reasons enumerated in clause (a) to (e). The respondent-Railway has not brought on record any evidence to prove the accident within the four corners of the above Clause (a) to (e) to the proviso. The court below while considering the issue no.2 has relied upon the FIR (Ext A1), Inquest Report (Ext. A4) and the report submitted by the police (Ext. A3) wherein it is mentioned that death has been caused due to run over while trying to get down from the train and the court below has relied on the statement of the Duty Guard of the Purushottam Express (Ext. A7) that when the train arrived at platform no.2 of Bokaro station and the train was in slow motion before stopping there was some noise from the passenger's portion of the Guard Brake Van. Immediately after the train stopped, he personally went to the site and found one male person, aged about 20 years lying inside the track. Admittedly, the Guard has not actually seen the alleged

incident and the said guard has not been examined in court. So the said evidence can not be relied upon in absence of the corroboration by the said Guard. Even if there was any negligence on the part of the deceased, the negligence of that kind is not very uncommon on Indian trains and the same can not be equated with the criminal act mentioned in Clause (a) to (e) to the proviso to Section 124-A. Even it can not be brought within the clause of "Self inflicted injury" in absence of any evidence.

9. Similar issue was considered by the Hon'ble Supreme Court in the case of Union of India.Vs. Prabhakaran Vijaya Kumar: (2008)9 SCC-527 and while interpreting the term "accidental falling of a passenger from a train carrying passengers", the Hon'ble Supreme Court 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." -5- 10. The Hon'ble Supreme Court in paragraph nos. 10 to 12 has further held as follows :

"0. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an "accidental falling of a passenger from a train carrying passengers". Hence, it is an "untoward incident" as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression "accidental falling of a passenger from a train carrying passengers", the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the above mentioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh.v. Union of India (SCC para 9), B.D. Shetty v. Ceat Ltd.(SCC para 12) and Transport Corpn. of India v. ESI Corpn.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co.Ltd v. Workmen (AIR para 7), Jeewanlal Ltd.V. Appellate Authority (AIR para 11), Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd.(AIR para 13), S.M.Nilajkar v. Telecom District Manager (SCC para

12) The Hon'ble Apex Court has further held that even if the incidence does not come within the purview of section 124-A and the death occurred due to travelling in train or at the time of boarding or getting down from the train, the claimants are entitled for compensation as provided under Rule 3 and 4 of the Railway Accident and Untoward Incidents (compensation) Rules 1990.

11. In the instant case, I find that claimants/appellants are succeeded in establishing that deceased while travelling in the train accidentally fell down from the train and sustained injury which eventually led to his death. Therefore, I have no hesitation to hold that it is an "Untoward accident " prescribed under section 123(c) of the Act. Hence, claimants are entitled to the compensation in view of the finding of the Tribunal -6- that deceased was a bona fide passenger.

12. It is true that the claimants in the claim application has not made any claim for grant of interest and cost but the Hon'ble Supreme Court in the case of "Thazhathe Purayil Sarabi and others.Vs. Union of India and another" :(2009)7 SCC-372, while considering similar situation in paragraph 37 and 38 held as follows :

37. Even if the appellants may not be entitled to claim interest from the date of the accident, we are of the view that the claim to interest on the awarded sum has to be allowed from the date of the application till the date of recovery, since the appellant cannot be faulted for the delay of approximately eight years in the making of the award by the Railway Claims Tribunal. Had the Tribunal not delayed the matter for so long, the appellants would have been entitled to the beneficial interest of the amount awarded from a much earlier date and we see no reason why they should be deprived of such benefit.

38. As we have indicate earlier, payment of interest is basically compensation for being denied the use of the money during the period in which the same could have been made available to the claimants. In our view, both the Tribunal, as also the High Court, were wrong in not getting any interest whatsoever to the appellants, except by way of a default clause, which is contrary to the established principles relating to payment of interest on money claims. So from the ratio decided by the Hon'ble Supreme Court, it would be clear that even if there is no claim with regard to the interest, since it is money claim, claimants are entitled to the interest.

13. In the result, this Misc. Appeal is allowed and the judgment dated 02.12.2014 passed by Railway Claims Tribunal, Ranchi in Case no. TAU/RNC/2005/0011 is, hereby, set aside. The Respondent-Union of India, through General Manager, S.E. Railway, Koilaghat Street, Kolkata, West Bengal is, hereby, directed to pay compensation amount of Rs. 4,00,000/- to the claimants/appellants within a period of three months with simple interest at the rate of 6% p.a. from the date of filing of claim application till the date of final payment. Sd/- (R. N. Verma, J.) Raman /