

Uoi Vs. Mukul Gaur

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Court : Delhi

Decided On : Nov-13-2014

Judge : A. K. Pathak

Appellant : Uoi

Respondent : Mukul Gaur

Advocate for Def. : Ms. Rupika Singh

Advocate for Pet/Ap. : Ms. Rashmi Malhotra, Ms. Priyanka Bharihoke

Judgement :

\$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI + FAO1622013 and CM Appl. No.5498/2013 Decided on 13th November, 2014 Appellant UOI Through :Ms. Rashmi Malhotra and Ms. Priyanka Bharihoke, Advs. versus MUKUL GAUR Respondent Through : Ms. Rupika Singh, Adv. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.(ORAL) 1. Respondent, through his father, filed an application under Section 16 of the Railway Claims Tribunal Act, 1987 (the Act, for short) before the Railway Claims Tribunal, Delhi seeking compensation of `4,00,000/- from the appellant in respect of the injuries suffered by him in an accident relating to 2DPM passenger train on 15th November, 2009 at about 7:30 pm at Azadpur railway station. At the time of filing of petition appellant was a minor. During pendency of the petition, respondent attained the age of majority and continued to pursue the matter. After the trial, Tribunal has

awarded compensation of ₹2,40,000/- to respondent together with interest @ 9% per annum from the date of order till payment is made.

2. Appellant is aggrieved by the impugned judgment. It is contended that judgment is erroneous and not in conformity with the evidence adduced by the parties. Adverse inference was drawn against the appellant for not producing the DRM report. Statement of RW-1, Shri Sohan Lal, Guard of the train, was totally overlooked. RW1 had deposed that no untoward incident took place at Azadpur railway station relating to 2DPM passenger train which falsified the story as propounded by the respondent. It is further contended that Tribunal has wrongly accepted the deposition of respondent that his right leg below knee and one finger of right hand were amputated in the accident even in absence of permanent disability certificate. It is further contended that respondent was not a bonafide passenger, since no journey ticket was recovered from him. Per contra, learned counsel for the respondent has vehemently contended that respondent had categorically deposed that on 15th November, 2009 at about 7 pm he boarded 2DPM passenger train at Adarsh Nagar railway station after purchasing a ₹2/ticket. There was huge rush in the compartment, therefore, he was standing near the gate and when train reached near Azadpur railway station, he fell down from the compartment of running train and came in between the platform and train, resulting in amputation of his right leg and one finger of his right hand. He fell down due to sudden jerk from the train. It is contended that testimony of respondent had remained unshattered in his cross-examination, inasmuch as was supported by the police investigation reports and the MLC of Babu Jagjivan Ram Memorial Hospital, Delhi. Tribunal has rightly preferred the statement of respondent duly corroborated by the documentary evidence, that is, police reports and the MLC. Learned counsel for the respondent has next contended that ticket was lost in the incident and said plea has rightly been accepted by the Tribunal, inasmuch as appellant had failed to lead any evidence to show that appellant was not a bonafide passenger of 2DPM passenger train.

3. On scrutiny of ocular as well as documentary evidence adduced by the parties Tribunal has held thus:

5.2. The burden of proving this fact that the injured applicant was not a bonafide passenger and he suffered injuries as a result of some incident other than an untoward incident heavily lies on the respondent/railways. In this case, inspite of the fact that Respondent/Railway has examined three witnesses (out of which one was declared hostile) to prove its case but mandatory DRMs Report has not been filed. In absence of mandatory DRMs Report, any amount of evidence on behalf of Respondent/Railway cannot be considered to be sufficient. Rather adverse inference has to be drawn against the Respondent/Railway for not following the mandate of law as prescribed in Rules. 5.4. As compare to the evidence adduced on behalf of the respondent in this case, the evidence adduced on behalf of the applicant is more cogent and reliable, as he is the eyewitness to the incident and he himself has suffered the injuries on his body due to the accident. The testimony of the injured applicant was also supported by the D.D.entries filed by the injured applicant in support of its case. Respondent Railway also summoned the I.O.Sh.Vikram Singh, P.P.Sabzi Mandi Railway Station and he has clearly stated in his statement that he is the officer who investigated the case and D.D. entries are in his handwriting and he also brought the Journal (Rojnamcha). The oral and documentary evidence adduced on behalf of the injured applicant clearly shows that he was travelling in 2 DPM train on the fateful day after purchasing valid ticket, which was lost during the accident along with his other articles and he fell down from the running train due to sudden jerk of the train. Losing the journey ticket/MST at the time of fall cannot be ruled out in view of the injuries on the body of the deceased & further keeping this fact in view that the deceased was handled by different agencies from the site of incident to the hospital. The burden to prove that the deceased was not a bonafide passenger in view of legal position emerging from the Judgements of several high Courts; more specifically, in 2008 (1) TCJ108(Union of India v. G.Loganayaki & others), the Honble High Court of Madras, while dealing with a case on similar issue held that the burden of proof that he deceased held a valid ticket is impossible to be discharged by the dependants of the deceased, who can have no means of knowledge about the ticket purchased by the deceased on the ground that it is likely that such a deceased passenger held a valid ticket, pass or permission but the same is lost in the accident with the death of person and loss of his belongings if any. Further, it

is also to be kept in view that in this case, the applicant suffered crush injuries on his body and it is almost impossible in that state of body to search for the ticket. I am, therefore, of the considered view that respondent/railway has utterly failed to discharge its burden that injured applicant was not a bonafide passenger hence it has to be presumed keeping the injuries in view besides the principles laid-down by Honble High Court that the petitioner is to be treated a bonafide passenger. Besides the oral and documentary evidence, led by the injured applicant, following principles laid down by the rulings of the Honble Apex Courts are also to be kept in view:1. The Apex Court in Union of India vs. Prabha karan Vijaya Kumar and others reported in (2008) 4 MLJ323(SC) have held that Section 124-A lays down strict liability or no fault liability in case of railway accidents and if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. It was also held therein that the expression accidental falling of a passenger from a train carrying passengers includes accidents when a bona fide passenger travelling with a valid ticket is trying to enter into a railway train and falls down during the process.

2. The Apex Court in the case of Jameela & others v. Union of India reported in AIR 2010 SC3705 held that passenger falling down from running train while travelling on valid ticket and the fact that he was standing at open doors of compartment of running train may be negligent act or even rash act, but it is certainly not criminal act and negligence of passenger does not have effect on liability of railways. 5.5. In view of the evidence available on the file, going/guided by the Judgement cited supra and on the basis of discussion made above, I am of the confirmed view that the injured applicant has been able to prove this fact that he was a bonafide passenger of train no.2DPM and he suffered injuries due to falling from the train, as alleged in the claim petition. The applicant has mentioned in column no.10 of the claim application 100% disability. The injured applicant could not file his Disability Certificate despite availing two dates and the reason given was that the Disability Certificate was not prepared by that time and he requested for a longer date for producing the same. The applicant appeared before the Tribunal for his evidence and his right leg below the knee and right hand finger were amputated in the accident. Issues no.1, 2 are accordingly decided in favour of the applicant and against the respondent and Issue no.3 also

in favour of the applicant with the finding that applicant suffered from unscheduled as well as scheduled injuries.

4. I have heard learned counsel for the parties and have perused the Tribunals record carefully and do not find any illegality or perversity in the impugned judgment for the reasons to follow.

5. Respondent (AW1) has categorically deposed that on 15th November, 2009 at about 7 pm he came to Adarsh Nagar railway station and purchased a valid `2/- ticket and at about 7:15 pm he boarded 2 DPM passenger train. There was huge rush inside the compartment but he got standing space near the gate. When the train reached near Azadpur railway station, due to a sudden jerk and thrust from inside the compartment, he fell down from the running train and came in between the railway platform and running train, and sustained serious injuries all over his body. He was removed to Babu Jagjivan Ram Memorial Hospital in a precarious condition, where his MLC was prepared. Subsequently, he was shifted to Lok Nayak Hospital, New Delhi, where he remained admitted from 16th November, 2009 to 10th December, 2009. His right leg and one finger of right hand were amputated, as a result of the accident. DD No.17 dated 15 th November, 2009, DD No.21 dated 16th November, 2009 and DD No.19 dated 17th November, 2009 were registered at Police Post Sabzi Mandi regarding the incident. He lost railway ticket and some other articles in the accident. His this version has remained unshattered in his cross-examination, inasmuch as has been duly supported by DD No.17 (Ex. AW1/3) dated 15th November, 2009 which clearly indicates that an information was received in the police post at 7:40 pm by phone that one person had fallen at platform No.1 of Azadpur railway station from the train and was cut but was alive. A perusal of DD no.21 (Ex. AW1/2) dated 16th November, 2009 shows that Head Constable Vikram Singh reached railway station and came to know that PCR had removed the injured to Babu Jagjivan Ram Memorial Hospital. Head Constable Vikram Singh reached Babu Jagjivan Ram Memorial Hospital and met Duty Constable there, who informed that one boy was admitted in the hospital by ASI Rajender Singh of PCR and the said boy had sustained injuries in the train accident. It is further recorded in this DD entry that respondent was unfit for making a statement. It has been further recorded that injured was referred to LNJP

Hospital. A perusal of DD No.17 (Ex. AW1/6) dated 17 th November, 2009 prepared by Head Constable Vikram Singh shows that statement of respondent was recorded by him on the said date. Statement of respondent recorded by Head Constable Vikram Singh has been exhibited as Ex. RW3/3 and a perusal thereof shows that respondent had described the incident in the manner, which has been stated by him in his affidavit. Prior thereto statement of father of respondent was also recorded by Head Constable Vikram Singh, which has been proved and exhibited as Ex. RW3/4, which also supports the version of respondent.

6. MLC prepared by Babu Jagjivan Ram Memorial Hospital has also been placed on record, which clearly shows that respondent was got admitted in the hospital by ASI Rajendra Singh on 15 th November, 2009 at 7:40 pm. Alleged history of injuries sustained by the respondent has been shown as Rail Traffic Accident. From the documents placed and proved on record it stands proved that respondent was found lying at the platform at Azadpur Railway Station with critical injuries and was removed to Babu Jagjivan Ram Memorial Hospital by the officials of Police Control Room.

7. First of all, testimony of respondent has remained unblemished and unshattered and there was no reason for the Tribunal not to accept the same. Secondly, his statement is duly corroborated from the documentary evidence in the shape of police reports making his testimony trustworthy and reliable. Head Constable Vikram Singh was produced before the Tribunal by the appellant itself as RW3. He has proved the documents as referred to hereinabove. He denied the suggestion given by the appellants counsel that he had prepared reports in order to benefit the respondent. All the documents have been prepared immediately after the incident in normal course of investigation and there is no reason to doubt the same. Accordingly, Tribunal has rightly accepted the statement of respondent. Merely because, Shri Sohan Lal, Guard of the train has stated that no incident took place at Azadpur railway station relating to 2DPM passenger train, would mean that version of respondent, which otherwise is trustworthy and duly corroborated from the documents, can be disbelieved.

8. It is trite law that statement of a witness, if found trustworthy and reliable, can be accepted even without any corroboration. Be that as it may, in this case, statement of respondent is duly corroborated from the documentary evidence and other advertent circumstances.

9. So far as argument of counsel for the appellant that respondent was not a bonafide passenger since ticket was not recovered from him also has no force. In my view non-recovery of ticket is not always fatal. It is not unknown that in many of such cases of untoward incidents there is probability and/or possibility of the ticket getting lost. No straightjacket formula can be adopted that a person cannot be taken as bonafide passenger if ticket is not recovered from him after the accident. Keeping in mind nature of incident, in this case non recovery of ticket from the respondent is not sufficient to conclude that respondent was not a bonafide passenger more so when no other article was recovered from the respondent.

10. Section 123 (c) of the Railways Act, 1989 defines untoward incident. Section 123 (c) (2) of the said Act provides that accidental falling of any passenger from a train carrying passengers amounts to untoward incident. Section 124-A of the said Act provides compensation to the victims of untoward incidents. Proviso to Section 124-A further envisages 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 this case, no evidence has been led by the appellant that respondent sustained injuries on account of any of the exceptions as stipulated in the proviso to Section 124-A of the said Act.

11. As regards contention of appellant that no medical evidence was produced to prove disability of the respondent is neither here nor there. As per the Rule 3(i) of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 (the Rules, for short), statutory compensation is payable in respect of injuries or death, as per the Schedule. Quantum of compensation has been specified in respect of

death in Part-I of the schedule; whereas in respect of different nature of injuries in the Part II and Part III of Schedule. Respondent had appeared before the Tribunal in person. In the order Tribunal has recorded that amputation below the knee and one finger was seen. Tribunal has awarded compensation in respect of abovenoted injuries in terms of Rule 3 read with the Schedule. Accordingly, non production of permanent disability certificate in this case, is immaterial, more so when such injuries were also shown in the MLC.

12. For the foregoing reasons, appeal is dismissed. Miscellaneous application is disposed of as infructuous. A.K. PATHAK, J.

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