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Court : Delhi

Decided On : Mar-04-2011

Judge : Mool Chand Garg, J.

Acts : Railways Claims Tribunal Act - Sections 16, 124(c)

Appeal No. : FAO.No.322/2009

Appellant : Kala

Respondent : Union of India

Advocate for Def. : Ms. Rashmi Malhotra, Adv.

Advocate for Pet/Ap. : Mr. S.N. Parashar, Adv.

Judgement :

1. Whether reporters of Local papers may be Yes allowed to see the judgment?
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in Yes the Digest?

1. This appeal arises out of an order dated 06.03.2009 passed by the Railways Claims Tribunal, Principal Bench, Delhi, (hereinafter referred to as "the Tribunal"), whereby the learned Tribunal has dismissed the claim of the appellant filed under Section 16 of the Railways Claims Tribunal Act for payment of compensation on account of death of Sh.Jagdish, who was admittedly a bona fide passenger.

2. According to the appellant, the deceased was a daily passenger and was holder of MST bearing No. 002270 from Khekra to Vivek Vihar. On the day of the incident i.e. 24.07.2007 at about 5.30 p.m. the deceased commuting on the abovementioned route came to Shahdara Railway station from Vivek Vihar but due to the heavy rush he could only hold on to the gate and after the train started, due to heavy rush, jerk, push and pull, fell down from the train and sustained grievous injuries which eventually led to his death on 01.08.2007.

3. The claim was contested by the respondent-Railway Administration by filing a written statement, wherein they have denied that the deceased died due to falling from a running train but instead, the death occurred when the deceased was waiting for the train on the platform and due to the force of the arrival of the train he fell down on the platform and sustained injuries. They have further made a plea that the respondents are protected under Section 124(c) of the Railway Claims Tribunal Act as the deceased was negligent and was standing close to the railway line on the railway platform while waiting for the arrival of train.

4. The Tribunal recorded the evidence led by the parties which comprises of the statement made by the appellant as AW-1 and one other witness Shri Anil as AW2 and has also placed on record Ex. AW1/1 to AW2/3. On behalf of the respondents, no evidence has been adduced either oral or documentary but it has placed on record the DRMs report as per ex. R-1 wherein, it is stated interalia that the deceased was standing at the edge of the platform and when the train came at the platform, he fell down and died.

5. While deciding Issue No.1 in favour of the appellant by holding that the applicant and her aforesaid four sons are the dependants of the deceased, the tribunal relied upon ration card ex. AW1/7 placed by the appellant and the cross-examination of AW-1. Issue No.2 was also decided in favour of the appellant i.e. the deceased was a bonafide passenger, on the basis of the MST No. 002270 dated 3.07.2007 and the Identity card No. 834489 from Khekra to Vivek Vihar which were placed on record as ex. AW1/5 and ex. AW1/4 respectively. Furthermore the report of Sr. DSO/RPF/ New Delhi to Sr. DCM, Northern Railways, New Delhi, also shows that the MST was recovered from the person of

the deceased. Thus in totality of the circumstances, the deceased was held to be a bona fide passenger.

6. That Issue Nos. 3 and 4 were decided together for the sake of convenience. AW1 in her cross examination stated that AW2 had informed her about the incident over the phone. AW2 is also a daily rail passenger from Baraut to Shivaji Bridge and a monthly pass-holder bearing No.087287 and has stated in his affidavit that he entered the compartment of the train but due to the heavy rush, the deceased was standing near the gate of the compartment and when the train started, he fell down due to the heavy jerk of the train and push from inside the compartment and sustained grievous injury. Under cross-examination, he has clearly admitted that his MST was not valid for Vivek Vihar and stated that though he did not pull the alarm chain he was the one who had lifted the deceased and took him to the hospital and that he was the one who had informed the incident to the police but the police never recorded his statement. Regarding AW2, the tribunal observed that the evidence of AW2 was full off loop holes and implicit reliance could not be placed upon it. Furthermore the contents of DD No. 21 dated 24.07.2007 would clearly reveal that the deceased while he was standing at the platform, had a fall due to the force of the arrival of the train and thus the tribunal placed reliance on the contents of the DD no. 21 and held the evidence of AW2 being highly artificial and unnatural. Thus once the evidence of AW2 was rejected, perusal of AW1 and DD No. 21 clearly states that the deceased did not fall from the train accidentally while boarding the train but instead he sustained injuries when he fell down at the platform on account of the arrival of the train at the platform.

7. The Tribunal arrived at the following conclusion :- "On careful perusal of the entire material placed on record, I find that the incident in question had occurred when the deceased was standing at the edge of the platform, due to the gush of the wind, he fell on the platform and sustained injuries. Therefore in all probability, the accident was due to the negligence of the deceased himself, when he was standing at the edge of the platform, totally unmindful of the arrival of the train at the said platform. Even if there was any negligence on the part of the Railway Administration, the application under Section 13 of the Railways Claims Tribunal

Act is limited."

8. No evidence has been led by the Respondents.

9. I have heard the submissions made on behalf of the parties and have also gone through the written submissions filed by counsel for the respondent.

10. I have also gone through the judgment delivered by the Apex Court in the case of Union of India V. Prabhakaran Vijaya Kumar and Others. (2008) 9 SCC 527 which appears to be applicable to the facts of the present case. In the aforesaid case the deceased was trying to board the train and fell down. The Apex Court held it to be an accidental fall and the relevant observations have been quoted hereunder for the sake of reference:-

"10. 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 abovementioned 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 : (2003)IILLJ735SC , B.D. Shetty v. CEAT Ltd. : (2001)IILLJ 1552 SC , Transport Corporation of India v. ESI Corporation : (2000)ILLJ1SC etc.

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. The Workmen* : (1961)ILLJ328SC , *Jeewanlal Ltd. v. Appellate Authority* : (1984)ILLJ464SC , *Lalappa Lingappa and Ors. v. Laxmi Vishnu Textile Mills Ltd.* : (1981)ILLJ308SC , *S.M. Nilajkar v. Telecom Distt. Manager* : (2003)ILLJ359SC etc."

11. In the present case, even if the contents of the DD no. 21 have been accepted by the Tribunal as a gospel truth, a perusal of the abovementioned case *Union of India V. Prabhakaran Vijaya Kumar and Others.* (Supra) it is clearly held by the apex court that falling down of a bonafide passenger from a train while trying to board it is covered under "untoward incident" and whether the passenger was not actually inside the train while falling down was held to be inconsequential. In any event , no evidence has been led by the respondent to prove that anybody saw the passenger being negligent on the station so as to ring his conduct in the exceptions provided for under Sec. 124A of the Railways Claims Tribunal Act. Furthermore the Tribunal's observation that the deceased fell on the tracks due to the gush of the wind is not really sustainable since a gush of wind cannot push a grown man off the platform unless there is a heavy storm which was not the case in the current situation. In these circumstances considering the law laid down by the Apex Court in the case of *Union of India V. Prabhakaran Vijaya Kumar and Others.* (Supra), the order passed by the Tribunal cannot be sustained.

12. Consequently, the appeal is allowed and the Respondents are directed to pay `4 lakhs, which is the amount fixed towards compensation in case of death, to the appellant along with interest @ 9% per annum w.e.f. the date of filing of the claim petition. The amount shall be paid by the Respondent within 1 month from today. A copy of this order be sent to the Tribunal along with records.

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