

Sanjay Kumar Vs. Union of India

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Court : Delhi

Decided On : Mar-10-2011

Judge : Mool Chand Garg, J.

Acts : Railway Claims Tribunal Act - Sections 23, 16, 124A

Appeal No. : FAO.No.61/2008

Appellant : Sanjay Kumar

Respondent : Union of India

Advocate for Def. : Mr.Praveen Kumar, Adv.

Advocate for Pet/Ap. : Mr.R.K.Nain, 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 order shall dispose of an appeal filed by the appellant under Section 23 of the Railway Claims Tribunal Act (hereinafter referred to as "the Railways Act") against the judgment dated 23.11.2007, whereby the Railway Claims Tribunal (hereinafter referred to as "the Tribunal") has dismissed the claim application filed by the appellant/injured under Section 16 of the Railways Act against the

respondent Railway Administration for payment of compensation for the injuries alleged to have been sustained by him in an untoward incident.

2. Briefly stating, it was the case of the appellant that he boarded the Train bearing No. SDP2 EMU from Hazrat Nizammuddin Railway Station for his journey to Faridabad Railway Station and in between Hazrat Nizammuddin and Okhla Railway Station, near Nehru Nagar, he fell down from the moving train due to sudden jerk/jolt. As a result of which, he received grievous injuries and his both hands and foot were crushed and cut. The second class ordinary ticket purchased by him was lost due to the fall from the moving train. On these and other allegations made in the claim application, the appellant claimed compensation in a sum of `4,00,000/- against the respondent Railway Administration.

3. The claim was resisted by the respondents, who filed a written statement and contended that the incident had occurred due to the sheer negligence and fault on the part of the injured appellant and hence the respondent Railway Administration is not liable to pay any compensation. It is also contended that the medical papers submitted by the injured himself would suggest that he was struck by a train and as such, the incident in question does not come under the definition of untoward incident. Even otherwise, it is stated that the same is covered under the exceptions given in the proviso to Section 124A of the Railways Act. On these and other contentions taken in the written statement, the respondent prayed for dismissal of the claim application filed by the appellant with costs.

4. On the pleadings of the parties, the Tribunal has framed the following issues:-

(i) Whether the applicant was a bona fide passenger of the train of the accident? If not, to what affect.

(ii) Whether the applicant received injuries because of untoward incident as alleged in the application? If so, to what affect

(iii) What was the nature of the injuries sustained by the applicant?

(iv) To what amount of compensation, if any, is the applicant entitles.

(v) Relief.

5. During the course of trial, the injured appellant has got himself examined as AW-1 and placed on record the documents Ex.AW1/1 to AW1/6. On behalf of the respondent, only one witness, namely, RW-1, who was working as Assistant Station Master at Okhla Railway Station, was examined, however, he did not produce any record.

6. The Tribunal vide impugned order dismissed the claim application filed by the appellant by holding that the appellant does not produce the journey ticket. In the application, he has stated that the ticket was lost due to fall from the moving train, but in his cross- examination, he has stated that the ticket has been misplaced. The Tribunal treating this to be a big discrepancy in the statement of appellant/AW-1 disbelieved his version and dismissed the claim application. It has been observed by the Tribunal that, "If really the incident in question had occurred in the manner as alleged by the applicant, can it not be expected that the same could have been mentioned in any one of the documents produced by the applicant. But, strangely none of the documents produced by the applicant would support the eyewitness account of the incident given by him before the Tribunal. On the contrary, the contents of some of the documents produced by the injured applicant himself would falsify the version of the incident given by the injured applicant. Therefore, having given our anxious consideration to the entire matter in issue, we are of the view that the eyewitness account of the incident given by the injured applicant AW-1 is not capable of being accepted. Moreover, it contradicts with the documentary evidence produced by the applicant himself. It may be mentioned that the cross- examination is not the only method of discrediting a witness. If the oral evidence of certain witnesses is contrary to the proved facts, their evidence might well be discarded on that ground. If their testimony is on the fact of it unacceptable, the Tribunal is not bound to accept their testimony merely because there has been no effective cross-examination to certain witnesses. In the instant case, we find that the oral testimony of the injured applicant AW-1 is quite contrary to the contents of his own documents, namely the medical records. Therefore, the testimony of the injured applicant is on the face of it unacceptable. From the consideration of the entire case, we are unable to agree with the story

put up by the applicant that he was a bonafide passenger on the train and that he sustained injuries due to an untoward incident. Reliance on the provisions of Section 123 (c)(ii) of the Railways Act is not available to the applicant as it is not a case, where the applicant had fallen from the train. Therefore, it is not a case where the applicant had fallen from the train. Therefore, it is not a case of untoward incident within the meaning of Section 123 (c)(ii) of the Railways Act. The facts of the case and the surrounding circumstances do not show that the applicant had sustained injuries as a result of an untoward incident. The applicant has not approached the Tribunal with clean hands. He has tried to take the advantage of the injuries sustained by him due to a hit by the train. Under the circumstances, therefore, we are constrained to record our findings on issue Nos 1 and 2 in the negative, though we may hold that the injured applicants right hand above elbow, little finger of the left hand and third, fourth and fifth toes of the right foot were amputated during the course of his treatment in the Safdarjang Hospital."

7. According to the appellant, the judgment of the Tribunal is not sustainable inasmuch as, the appellant himself is an injured who received injuries in an untoward incident on 25.10.2004. After the incident he was removed to Safdarjung Hospital and was remained admitted there upto 9.11.2004. He was treated for the following injuries:-

"a. His right above elbow was amputated.

b. Left little finger, with right, third and fifth toes were amputated.

As per disability certificate issued by Safdarjang Hospital, his disability was assessed 82%. That the amount of compensation payable is indicated for the injuries in Railway Claims Tribunal Act Part III (2) For amputation below shoulder with stump less than "8" from tip of acromion ` 3,20,000/- and part III (28) for loss of all toes of one foot through the metatarso- phalangeal joint 80,000. The appellant/ applicant further submitted that the appellant/ applicant purchased second class ordinary ticket from Nizamuddin Railway Station for the journey upto Faridabad, which was lost in the incident by falling from the moving train and the appellant/ applicant claimed compensation a sum of ` 4,00,000/- against the

respondent Railway Administration."

8. The appellant has supported his case by filing an affidavit. He was also cross-examined on behalf of the respondent. On behalf of the respondent only one witness, namely, RW-1 Shri Sameer Chakroborty, Station Master, Okhla Railway Station was examined. His cross- examination is reproduced hereunder:-

"If an untoward incident had occurred after the train had left the station, I will not be able to know about the incident unless the same is reported to me at the railway station. I was not reported by any one that a person was run over by the train while crossing the track. If any such incident was to occur, the same will be immediately reported to me."

9. In his examination in chief this witness has stated that, "On 25.10.2004 I was working as Asstt. Station Master at Okhla Railway Station. On that day I was on shift duty from 18.00 to 24.00 hrs. The train bearing No. SDP-2 runs between Shakurbasti to Palwal via Delhi, New Delhi and Okhla. The train in question had left Nizamuddin railway station at 2016 hrs. and had reached Okhla railway station at 2018 hrs. and left for Palwal at 2019 hrs. I have brought along with me the Train Signal Register. No untoward incident was reported to me between Nizamuddin and Okhla railway station. I have given my evidence on the basis of the entries made in the Train Signal Register."

10. It is submitted on behalf of the appellant that in view of the aforesaid statement, the witness produced by the respondent cannot be taken as having proved the case of the respondent or having disproved the case of the appellant, whereas in support of his case the appellant filed his own affidavit and has specifically stated as under:-

"1. That the deponent has filed the present claim application for compensation on account of the injuries received in a rail untoward incident by falling from the moving train on 25.10.2004.

2. That on 25.10.2004 the deponent Shri Sanjay Kumar son of Shri Vijay Pal Singh boarded the train No. SDP2 (EMU)(Shakurbasti-Palwal) passenger train from

Hazrat Nizamuddin railway station for his journey to Faridabad railway station in the evening.

3. That the deponent boarded the general compartment of the train. That after the start of the train, in between Hazrat Nizamuddin and Okhla railway stations the deponent fell down from the moving train due to sudden jerk/ jolt of the train.

4. That due to falling down from the moving train the deponent received multiple grievous injuries and his right hand, right foot and left hand were crushed.

5. That the deponent was taken by Central Administrative Tribunal Ambulance to All India Institute of Medical Sciences and thereafter the deponent was transferred to Safdarjung Hospital.

6. That the deponent remained admitted in the Safdarjung Hospital from 26.10.2004 to 09.11.2004. That during the treatment his right hand above elbow, little finger of the left hand and III, IV & V toes of right foot were amputated due to the said incident.

7. That after the discharge from the hospital the deponent was advised to take further treatment as OPD patient as the wounds were not fully healed up.

8. That the deponent took treatment from Safdarjung Hospital as outdoor patient upto 12.01.2006. The original OPD cards of Safdarjung Hospital are annexed with this affidavit.

9. That medical board of Safdarjung Hospital has assessed his disability as 82% permanent, attested copy of which is annexed herewith this affidavit.

10. That the deponent purchased one ticket from Hazrat Nizamuddin railway station for his journey to Faridabad, which was lost in the said incident.

11. That the deponent was working as a field boy with M/s Reliance Group and was earning ` 5000/- per month.

12. That the deponent has filed certain certified documents which may please be read as a part of my evidence.

13. That it is my true affidavit."

11. The appellant has also placed on record the following documents in support of his case:-

1. True copy of DD No. 18A is marked as Ex. AW-1/1.

2. True copy of DD No. 19A is marked as Ex.AW-1/2.

3. Original case sheet is marked as Ex. AW-1/3.

4. Original OPD papers as marked as Ex AW-1/4 to AW-1/4.

5. True copy of Disability certificate is marked as AW- 1/5 wherein it has been stated that right above elbow amputation with left little finger amputation with Right III, IV & V toes amputation. Disability upto 82% both upper and right lower limb.

6. True copy of Ration Card is marked as AW-1/6.

12. A perusal of DD No.18 A and 19A shows that the body of the appellant whose one hand and one leg were cut was found on railway line at about 9.20 pm. As per DD No.19A, the particulars of the appellant have also been mentioned in the following manner:- "D.D.No.019A dt. 25-10-2004 P.S. H.N.D/N Rly.

D.O. Itlaamad telephone va ravanagi Samai 10.25 pm par darj hai ki Duty Ct. Yogpal 145/5 ne bajariye telephone se itla di hai ki Sanjay S/o Vijay Pal, R/o H.No.10, Police Colony, Kalkaji, Age 32 year PCR No.129161/04 ko PCR me dakhila AIIMS hospital karaya hai. Jiski rail se durghatnagrast hokar daakhil Hosp. karaya tha hasb aamad darj rojnamacha ki nakal rapat alag karke akab me H.C.L.C. sahib ke paas bhijwai ja rahi hai jo munasib karvahi amal me layenge. Rapat itla darj hai. H.C.- D."

13. As far as cross-examination of the appellant is concerned, he has stated as under:-

"Earlier I was working with Reliance as a field boy. At present I am unemployed. Reliance office was in South Extension. I was travelling from Nizamuddin to

Faridabad by EMU. The train starts at 8.20 AM. I had purchased the ticket but due to the accident the ticket has been misplaced. (in the application to the Chief Claims Officer he has mentioned that he is no knowledge of the amount of the ticket which application has not been filed). I was going to Faridabad to meet my aunt. I boarded the train at 8.20 PM and the incident took place around 8.40 PM about 5 to 7 minutes before the train reached Okhla station. I felt certain pressure while travelling in the train and fell down. It is incorrect to suggest that I was not travelling in the train or that I was hit by the train. After being hit the people assembled there and asked me about my name and address they then informed Central Administrative Tribunal ambulance services. I was shifted to AIIMS where I became unconscious. I am not aware of the surroundings where I fell. The location where the incident took place is about 5 kms. from my house. My statement was not recorded in the hospital."

14. The Tribunal has given much emphasis on the statement made by the appellant in his cross-examination that the ticket has been misplaced due to the accident by reading it as a contradiction to the statement made by the appellant in his claim application that the ticket was lost due to fall from the moving train. I find no distinction in the two situations, which have been referred to by the appellant.

15. Whether a person has a ticket or not or whether he is a bona fide passenger or not, the respondent is required to take a specific plea in their written statement by stating that the deceased was a ticketless traveler which plea has not been taken by the respondent specifically.

16. In such circumstances, having interpreted Section 124-A r/w Section 2(29) of the Railways Act, a Division Bench of Karnataka High Court in Leelavathamma v. Union of India represented by General Manager, Southern Railways, 2004 ACJ 1761, has made the following observations:-

"7. The second and the only other aspect which the Tribunal had adverted to in support of its view was that the appellant had not produced the ticket which the deceased is alleged to have purchased. The non- production of the ticket is not in dispute. That does not however tantamount to saying that the deceased was a ticketless traveller. The respondent had also not set up any such case in the

objections filed by it. If the respondent's case was that the deceased was travelling without a ticket and was not therefore a bona fide passenger, there was nothing which prevented it from setting up that case. The absence of any plea in the objections that the deceased was a ticketless traveller would therefore disentitle the respondent from asserting any such defense at the hearing. That apart just because the train ticket had not been produced could not necessarily lead to the conclusion that the passenger had boarded the train unauthorisedly or was travelling without a ticket. The fact that the deceased had fallen off the train and his body was recovered from the track in an injured condition hours after the incident and transported to Tarikere Railway Station and thereafter subjected to post-mortem clearly shows that the body was handled at various stages by different agencies. The loss of the train ticket in the course of its recovery from the site, transportation and post-mortem and other procedures can well be explained and understood. In the totality of these circumstances, we have no hesitation in holding that the deceased was a travelling as a bona fide passenger on the Bhadravathi -Bangalore train on the fateful night.

8. The only other aspect that requires to be considered is whether the deceased had fallen off the train on account of his being intoxicated. That was the version given by the respondent-Railways in support of their disclaimer of the liability under Section 124-A. The witnesses examined by the Railways do not however make any mention about the alleged intoxication of the deceased either at the time the deceased boarded the train or at any time thereafter. R.W. 1-Shivanna is the driver of BDVT Goods 'N' Special Train from Berur to Bhadravathi. According to his deposition, he noticed in the focus of his engine light a body of a person lying on the right side of the track at 1.20 a.m. around 8 kms. short of Shivapura Railway Station. Since it was a 'S' curve and the train was heavily loaded, he could not stop the same at the place where the body was found lying. He stopped the train at Shivapura Railway Station and informed the Station Master about the same."

17. In view of the aforesaid, even if ticket is not available, may be lost because of the fall or is misplaced as stated by the appellant in his cross-examination having said that he purchased the ticket, would make no difference insofar as he being a

bona fide passenger.

18. Now coming to the incident, apparently the deceased had fallen from the train inasmuch his body was recovered from the track after few hours. He was transported to the nearby station and was sent to Safdarjung Hospital. As stated above, a perusal of DD No. 18 A and 19A leaves no room for doubt that injuries were sustained by the appellant by falling from the train and not on account of being struck by the train as is pleaded by the respondent as there is no such evidence placed on record by the respondent to that effect. The appellant was taken to the hospital where again not only the injuries but also the particulars of the appellant stand mentioned. There is no rebuttal to this by the respondent. In these circumstances, the findings returned by the Tribunal cannot be sustained. Therefore, the findings returned on issue Nos. 1 and 2 are reversed.

19. As far as issue No.3 is concerned, the nature of injuries is clarified by the medical document.

20. In these circumstances, even the finding of the Tribunal on Issue No.4 cannot be sustained. The compensation payable to the appellant as per the schedule in the case of injuries suffered by him clarify that he is entitled to receive compensation to the tune of ` 4,00,000/- as calculated by the appellant in his claim application and as quoted by me in paragraph 7 of this judgment.

21. Appeal is accordingly allowed. The appellant is thus entitled to a compensation of ` 4,00,000/- along with interest @9% p.a. from the date of incident, which shall be paid to the respondent within one month from today. In the event, the aforesaid amount is not paid to the respondent within one month from today, then the aforesaid amount shall carry a further interest @9% p.a. till the payment is made.

22. LCR be sent back forthwith along with a copy of this judgment.

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