

Kiran Vs. Uoi

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Court : Delhi

Decided On : Jan-17-2013

Judge : V.K.Shali

Appellant : Kiran

Respondent : Uoi

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + FAO No.437/2010 Decided on :

17. 1.2013 KIRAN Appellant Through: Mr.D.K.Sharma, Adv. Versus UOI Respondent Through : Mr.J.P.Sharma, Adv. CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) 1. I have heard the learned counsel for the appellant.

2. The main contention of the learned counsel for the appellant is that the Railway Claims Tribunal had erroneously dismissed the claim petition of the appellant filed u/S 1.of the Railways Claims Tribunal Act without appreciating the fact that the deceased had died in the railway accident and he had duly established this by the ticket of the deceased that he was a bonafide passenger.

3. I have carefully considered the submissions made by the learned FAO No.437/2010 counsel and gone through the impugned Page 1 of 7 judgment of the Railway Claims Tribunal as well as the record.

4. Briefly stated the facts of the case are that a petition was filed under Section 16 of the Railway Claims Tribunal Act by the appellant alleging that she was dependent on Sh.Binda Sagar, who had died on 27.9.2009 in railway accident. The deceased Binda Sagar was allegedly travelling from New Delhi to Kanpur on the said date by 2452, Shramshakti Express. It was alleged that when the train was near Hathras, due to jostling of fellow passengers and sudden jerk in the train, the deceased fell down from the running train and died.

5. The respondent filed their written statement and contested the claim of the appellant. It was alleged by the respondent that the deceased was not a bonafide passenger of the train in question nor did the accident come within the definition of untoward incident which would entitle the widow of the deceased to any compensation.

6. On the pleadings of the parties the following issues were framed:(i) Whether the appellant proves that she is the dependant of the deceased within the meaning of Section 123(b) of the Railways Act? (ii) Whether the applicant further proves that the deceased was a bonafide passenger on the train in question on the relevant day? (iii) Whether the applicant also proves that the death of the deceased had occurred as a result of an untoward incident, as alleged in the claim application? (iv) Whether the respondent proves that the claim is not covered under the ambit of Sections 123, 124 and 124-A of the Railways Act? (v) Relief.

7. So far as issue no.1 is concerned, it was decided in favour of the appellant. Issue Nos.2, 3 & 4 were taken up together and the learned Tribunal had observed as under:These three issues are taken for consideration simultaneously for the sake of convenience, and also as they are interrelated. The applicant has placed on record a Certified copy of the journey ticket, Ex.AW1/6, which was allegedly used by Sh.Binda Sagar for his travel from New Delhi to Kanpur. This ticket was for the journey commencing on 26.9.2009. According to the applicant, Shri Binda Sagar left Delhi by Shramshakti Express on 26.9.2009 and met with the alleged accident on the next date i.e. 27.9.2009. However, the respondent Railway Administration has argued that this ticket did not belong to the deceased, as the various records pertaining to this case prove that the incident, in which Sh.Binda

Sagar died, did not occur on 27.9.2009, but on a later date. The respondents counsel has pointed out that in the Postmortem report, Ex.AW1/5, which was done on 30.9.09, the demise of Shri Binda Sagar has been indicated as having occurred about one and a half days earlier i.e. on 28.9.09. It is also relevant to mention that in the Panchnama, Ex.AW1/4, the delivery of the dead body has been shown as on 29.9.09 at 6.30 p.m. It is also significant that in the application, Smt. Kiran Devi has admitted vide Annexure A that she was informed about the accident on 28.9.09, and the body was handed over to the family members of the deceased on 30.9.09 after the postmortem. It is necessary to note that Shramshakti Express leaves Delhi around midnight and arrives Kanpur at 7.00 am in the morning. If the applicants version about the ticket is to be believed, then the accident should have occurred in the early hours on 27.9.09. However, the postmortem report and the police records pertaining to this case indicate that the accident had actually occurred on 28.9.09. Based on the evidence on record, it is thus clear that the ticket, which has been placed on record, was not valid on the date of the alleged incident. The nature of the incident becomes irrelevant in view of the fact that Sh. Binda Sagar was not a bonafide passenger at the relevant time of the incident. These issues are decided accordingly in favour of the respondent and against the applicant. In the result, therefore, the application filed by the applicant under Section 16 of the Railway Claims tribunal Act is dismissed. There are, however, no orders as to costs. Sd/(Mathew John) Vice-Chairman (Technical) 8. I have carefully considered the submissions. The sum and substance of the claim petition is that the deceased had died on 27.9.2009 and in this regard, the appellant had also proved a ticket Ex.AW1/6 by virtue of which the deceased was supposedly undertaking the journey from New Delhi to Kanpur but the evidence which has been adduced by the appellant in this regard does not fit in with the other circumstantial evidence brought on record. This evidence is that the body of the deceased was recovered from the place of accident on 28.9.2009. FAO No.437/2010 Panchnama Ex.AW1/4 was prepared and the body was sent for post mortem examination. The postmortem examination done on 30.9.09 revealed that the death of the deceased occurred about one and a half days earlier of the accident i.e. 28.9.09. The body of the deceased was handed over to the victims family on 30.9.2009 after it was shown to them on 29.9.09 at 6.30 p.m.

9. Shramshakti Express was noted to have arrived at Kanpur at 7.00 am on the next morning when the train had started. If it had started on 26.9.2009 as claimed by the appellant around midnight, it would have reached Hathras and at Kanpur on the next morning on 27.9.09. The body of the deceased was seen and lifted for the first time on 28.9.2009.

10. It is highly improbable that a man is lying dead on the railway track and yet nobody noticed him for 24 hours. Therefore, there is a mismatch between the date of travel and the date of recovery of the body from the place of the accident. FAO No.437/2010 only by two things; either the deceased was not travelling on 26th - 27th of September, 2009 and therefore, the ticket so exhibited was not genuine or alternatively, the deceased was travelling on 27th 28th and when the body was located, he did not have a valid ticket. The ticket which was proved by the appellant seems to have been a procured one. Therefore, in such contingency, it is said not to be proved by preponderance of probabilities by the appellants that the deceased was a bonafide passenger in the train in question and if he was not a bonafide passenger, the appellant will not be entitled to any compensation.

11. For these reasons, I do not find that there is any illegality, irregularity or incorrectness in appreciating the facts by the Tribunal.

12. The appeal filed by the appellant is without any merit and the same is accordingly dismissed. V.K. SHALI, J.

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