

Latesh and ors Vs. Union of India

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Court : Delhi

Decided On : Mar-20-2013

Judge : V.K.Shali

Appellant : Latesh and ors

Respondent : Union of India

Advocate for Pet/Ap. : Mr. N.K. Gupta

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + FAO No.502/2011 Date of Decision:

20. 03.2013 LATESH & ORS. Through: Appellants. Mr. N.K. Gupta, Adv. Versus UNION OF INDIA Through: Defendants. Ms.Shilpa Singh, Adv. CORAM :HONBLE MR.JUSTICE V.K. SHALI V.K. SHALI, J.

(Oral) 1. This is an appeal against the order dated 29th July, 2011 by virtue of which the claim petition of the appellants, under Section 16 of the Railway Claims Tribunal, Act 1987 for grant of compensation to the extent of Rs.8 Lakhs was dismissed.

2. Briefly stated the facts of the case are that a claim petition came to be filed by the appellants, who were the legal heirs of the deceased, Prabhu Dayal. It was alleged, in the claim petition, that on 12.07.2009, after purchasing a railway ticket from Palwal Railway Station, Prabhu Dayal boarded the EMU train not SNP-3 for going to New Delhi and since there was a heavy rush in the compartment of the

train, he was standing inside the gate of the compartment. It was alleged that when the train reached New Delhi railway station, there was a sudden jolt/jerk in the train and due to that jerk he lost his balance and fell down accidentally on the track, suffered injuries and was run over by the train, which resulted in his death. Accordingly, it was averred that since Prabhu Dayal was a bona fide passenger and was killed in a railway accident, his family was entitled to compensation.

3. It was denied by the respondents that Prabhu Dayal was a bona fide passenger or that he had accidentally fallen from the train. It was alleged that the accident took place because of the negligence and the carelessness of the deceased himself as he was unauthorizedly breaching the railway track.

4. On the pleadings of the parties, the following issues were framed:

1. . Whether the deceased Sh. Prabhu Dayal S/o Sh.Durga was a bonafide passenger of a EMU train not SNP-3 from Palwal Railway Station to New Delhi Station as on 12.7.2009? 2). Whether the death of Sh.Prabhu Dayal was caused due to an untoward incident as defined in Section 123(c) read with Section 124-A of the Railways Act?

3) 4) 5. Whether the applicants are the sole dependents of the deceased Sh.Prabhu Dayal and are entitled to get compensation as claimed? Relief? After the parties were permitted to adduce evidence or prove the documents, the Railway Claims Tribunal arrived at a definite finding that neither the deceased was a bona fide passenger nor was it proved that he had fallen from the train in consequence of which he had died. The reasons for this are given by the Tribunal in the following words: After perusal of record, I observe that in the documents i.e.AW1/2 to AW1/5, AW1/7 to AW1/10, placed on record by the applicants, it is nowhere mentioned that (deceased) fell down from the train & died. The burden of proof rests entirely upon the applicants to prove the untoward incident, within the meaning of section 123 (c) read with section 124-A of the Railways Act. In this connection, a reference may be made to a decision of Honble High Court titled as Jamirul Nisha and another vs. Union of India, 2009 ACJ 1393.wherein it is held in para no.34 & 35 of the decision as under:

34. From the perusal of section 123 c(2) & 124 A, it is clear that sine qua non for claiming compensation, on account of death or injury sustained in a train accident is that the victim of a train accident, or his dependants as the case may be, must first establish that the victim or the deceased had accidentally fallen from the train.

35. In the instant case, applicants have failed to establish that the deceased had accidentally fallen from the train, therefore, the question of the proof by the Railways that the death of the deceased was not the result of untoward incident does not arise. Hence, it is clear that the applicants miserably failed to prove the untoward incident by placing on record the documents i.e. AW1/2 to AW1/13 & Mark A. It is also relevant to mention that in the DD No.16-A dt.12.7.09 i.e. AW1/5 & the Brief facts report of the police i.e. AW1/3, submitted by the applicants, it is clearly mentioned that a person has been run over by a train on the railway line between PF No.7&8 on 12.07.2009 & the Brief facts report also revealed that the deceased person had consumed liquor. The documents mentioned (supra) were prepared in the ordinary course of duties by the Govt.officials and the veracity of the documents, cannot be doubted. Hence, it is clear that it is a case of run over by a train, & the incident occurred due to the negligence of the deceased Sh.Prabhu Dayal & for that Railway Administration is not responsible & the present case falls under the exceptions of section 124-A of the Railway Act. I also observe that no journey ticket was recovered either from the possession of the deceased or from the site of the incident & in this regard, I find momentum of force, when the Ld.Counsel for the respondent states that the story put forth by the applicants, is a mere concoction only to get false compensation and now a days, it is a simple tendency of some people by adopting other means by misquoting tht the deceased was travelling on the strength of valid railway journey ticket and the ticket lost in the incident. However, the legal position of law is very much clear as it has been held in Dinesh Kumar Singh Maurya Vs. Union of India, vide FAO no.1023 of 2010, decided on 28.8.2010 by the Honble Allahabad High Court (Lucknow Bench), wherein it is observed as under: True may be in certain cases the ticket of bonafide passenger is lost, snatched or taken away by some criminal and unscrupulous persons but there cannot be a presumption that the ticket of every deceased necessarily is taken out or it is lost or mutilated. In case ticket is not found from the body of the deceased or from its vicinity, the presumption would be

that such a person was not a bonafide traveler of course, evidence can be led to prove otherwise. If any untoward incident takes place within the meaning of Section 124-A of the Railways Act, initial burden lies on the Railways to prove that the passenger was not a bona fide passenger, but the same having been discharged, onus shifts on the person claiming compensation, to establish by some believable evidence, that such a passenger was a bonafide passenger, more so when contrary admissible evidence is produced by the Railways.

6. I have heard the learned counsel for the appellants and gone through the record. I do not find any reason to disagree with the finding of fact recorded by the Railway Claims Tribunal. It is unbelievable that when the deceased was personally searched after the incident every other document was recovered from him except the train ticket. If the deceased was undertaking a train journey and he had an accidental fall from the train the minimum which was expected was recovery of a train ticket from his possession or from the site of the incident.

7. In addition to this, a person, who would have accidentally fallen from the train, would not be cut into two pieces as has been in the instant case. He would only fall by the side of the running train because of which he would suffer head injuries or his legs may be mutilated or cut but he would not be cut right in the middle. Therefore, all these facts clearly show that more than accidental death, it was a death on the tracks, which had perhaps been caused by the negligence of the deceased himself, who seems to be unauthorizedly breaching the railway track.

8. In view of the above, I agree with the finding of fact recorded by the Railway Claims Tribunal and accordingly do not find any merit in the present appeal and the same is accordingly dismissed. April 5th, 2013 ss FAO No.502/2011

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