

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 199/2006

Smt. Kanchan Pandey Appellant
! through: Mr. A.P.Chaudhary, Advocate

VERSUS

\$ UOI Respondent
^ through: Mr. Apurb Lal for Mr. R.N.Singh, Advocate

% **DATE OF DECISION:** 07-03-2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Present appeal under Section 23 of the Railways Act 1989 challenges an order dated 08.05.2006 passed by the Railway Claims Tribunal, Principal Bench, Delhi dismissing the claim application of the appellant.

2. Appellant had filed a claim application under Section 124-A of the Railways Act, 1989 claiming compensation in the sum of Rs. 4 lakhs on account of the death of her husband Sh. Raj Kumar Pandey @ Raju (hereinafter referred to as the deceased) in a train accident.

3. It was averred in the claim application that on 04.12.2000 the deceased was traveling from Shahdara to Delhi Main by the train no. 6 S.D. That since the train was overcrowded the deceased got a place near the door of the compartment. That at about 9.20AM there was a sudden jerk due to which the deceased accidentally fell down from the train and died of the injuries sustained thereof.

4. On 4.02.02 an application seeking amendment of the original application was filed by the appellant. Amendment sought was that on 4.12.2000 i.e. on the date of the accident the deceased was traveling from Behta Hajipur to Delhi Main by the train no. 6 S.D.

5. Vide order dated 10.04.03 the amendment sought by the appellant was allowed by the Railway Claims Tribunal.

6. Railways defended by pleading that the appellant is not entitled to any compensation for the reason that neither the deceased was a bonafide passenger in the train no.6 S.D. nor his death was a result of an accidental fall from the train.

7. In support of the claim the appellant examined herself as AW-1, Mr. Avdhesh Pandey as AW-2 and Mr. Sant Ram as AW-3.

8. Avdesh Pandey AW-2 who was the nephew of the deceased deposed that on the date of the accident he purchased a ticket for the deceased from Behta Hajipur station and that he saw the deceased boarding the train no.6 S.D.

9. Sant Ram AW-3 who claimed to be a co-passenger in the train no. 6 S.D. and an eyewitness to the said accident.

10. On behalf of the Railways Umed Singh who was the driver of the train no.6 S.D. on the date of the accident was examined as RW-1.

11. On behalf of the appellant under-noted relevant documentary evidence was led: -

- i) DD No.11 dated 4.12.00 Ex.AW1/2
- ii) Inquest Report Ex.AW1/3
- iii) Death Report Ex. AW1/4
- iv) Post Mortem Report Ex.AW1/5

12. Vide impugned order dated 08.05.06 the Railway Claims Tribunal dismissed the claim application filed by the appellant.

Reasoning given by the Tribunal reads as under: -

“The applicant in the claim application has shown the address of the deceased as D-1240, Gali no.78 (Shive Gali) Ashoke Nagar-Shahdara, Delhi-93. However the electoral card issued by the Election Commission of India shows the address as D-732, Ashoke Nagar-Shahdara. Anyone of the above addresses may be correct but the fact remains that the deceased was a resident of Ashok Nagar, Shahdara. In case he had to travel to Delhi by 6 S.D. logically he should have purchased ticket from Shahdara to Delhi Main. However, in the affidavit it has been indicated that the deceased had purchased the ticket from Behta Hajipur which is 5 km beyond Shahdara towards Shamli. The logic of going all the way to Behta Hajipur to buy the ticket towards Delhi which passes through Shahdara (Ashok Nagar) where he stays is not understood. In support of this the applicant have produced the evidence of AW-2 Avdesh Pandey who indicated that

he had dropped the deceased at Behta Hajipur station where he had purchased the ticket for his uncle. Again the reason for going away from the place of residence by 5 kms is not understood, hence the evidence of AW-2 Avdesh Pandey cannot be relied upon. Applicant have also produced the evidence of AW-3 Sant Ram who indicated that he boarded the train along with the deceased at Behta Hajipur, here also similar logic comes into question as to why a passenger would go 5 kms away from his place of residence to travel across his residence towards Delhi when the train stops at Shahdara where the deceased resided, hence evidence of AW-3 Sant Ram cannot be relied upon.

One material fact that has been brought out by the learned counsel for the respondent is that the death of the deceased took place at 9.20 A.m. on 14.12.00 as per the applicant. Train no. 6 S.D. arrived Delhi Shahdara at 8.38, hence it can be reasonably assumed that it would have arrived at the place of incident at 8.36 hours or 8.37 hours. The train had already arrived and terminated at Delhi at 8.55 hours as per the driver's log book. The fact that he died at 9.30 AM has been brought out by the post-mortem report (Ex.AW1/5) wherein it has been stated that on 4.12.00 near 2-C Rly. Phatak opp. Rly. Quarters Ashok Nagar at about 9.20 AM victim died, on the spot.

After hearing arguments of learned counsel of both the parties and going through the documents on record it can be safely assumed that the deceased was not a bonafide passenger of the train and he died due to certain factors near his residence Ashok Nagar, Shahdara much after 6 SD had passed that location. Circumstances leading to his death near his place of residence much later than the train had passed through that location can lead to reasonable assumption that he died near the railway track but not in an untoward incident."

13. A perusal of the reasoning given by the learned Railway Claims Tribunal shows that it has decided the issue pertaining to the manner of the accident with reference to the original pleadings in

the claim application i.e on the date of the accident the deceased was traveling from Shahdara to Delhi Main by train no. 6 S.D., that is why the Tribunal found it strange as to why the deceased who was to travel from Shahdara to Delhi Main would go to a place which was 5 Kms. away from Shahdara particularly when the train no. 6 S.D passes through Shahdara.

14. I note that the learned Tribunal has also considered the oral evidence led by the appellant with reference to the original pleadings in the claim application.

15. The Tribunal committed a fundamental error in not noting and considering the claim petition as amended on 10.04.2003 i.e on the date of accident the deceased was traveling from Behta Hajipur to Delhi Main.

16. Coming to the second part of the reasoning of the learned Tribunal which is based upon the Post Mortem Report Ex.AW1/5 suffice would it be to note that the DD Entry 11 dated 4.12.2000 Ex.AW1/2 was recorded at 9.20 AM by a police official after receiving information about the accident from the Railways. At the time of recording of the DD entry no. 11 i.e at 9.20 AM the deceased had already died. The whole process starting from giving information by the Railways to the Police, the arrival of the Police official at the scene of the accident and the recording of the DD Entry no. 11 must have taken atleast 20 minutes. Therefore it is obvious that the death of the deceased took place before 9.20 AM. The Post Mortem Report Ex. AW1/5 records the time of the death of

the deceased as 9.20 AM. DD entry shows that the Post Mortem Report is flawed with respect to the recording of the time of the death of the deceased.

17. I further note that the learned Tribunal has not considered the relevant documentary evidence led by the appellant.

18. The appeal is allowed. Order dated 8.5.2006 is set aside. I remand the matter to the learned Tribunal which shall re-decide the same with reference to the amended claim application and shall also consider the documentary evidence filed by the appellant particularly the Inquest Report Ex.AW1/3 which records that according to the statements made by the people present on the site of accident the death of the deceased was caused due to falling from the train no. 6 S.D.

19. Appeal stands disposed of in terms of para 18 above.

20. No costs.

21. LCR be returned.

March 7, 2008
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PRADEEP NANDRAJOG, J.