

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO 231/2012

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Date of Decision: 19.07.2012

UNION OF INDIA

..... Appellant

Through Mr Vibhu Shankar, Adv.

versus

SARITA DEVI & ORS

..... Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J. (ORAL)

1. In the present appeal under Section 23 of the Railway Claims Tribunal Act 1997, a challenge has been made to the impugned judgment dated 21.02.2012 in Claim Application No. OA/IIu/No.6/2010 passed by the Railway Claims Tribunal, Principal Bench, Delhi (hereinafter referred to as the said Tribunal) whereby compensation of Rs.4 lakhs with interest @ 8% per annum has been granted to the claimants from the date of filing of the claim application till its realization.

2. The claimant i.e. respondent no.1 had filed a claim application before the Tribunal stating therein that she is the wife of deceased Pradeep Kumar

@ Bobby. Respondent nos.2 to 4 are his children. On 10.12.2009 deceased was travelling from Kishan Ganj railway station to Jind Railway Station in Kissan Express train, on the strength of MST which was valid for travelling from Jind to New Delhi with effect from 10.12.2009 to 09.01.2010. It was alleged that there was heavy rush in the train due to which Pradeep Kumar @ Bobby had to stand near the gate of the compartment after boarding the train from Kishan Ganj railway station. It is alleged that when the train started from Kishan Ganj railway station due to sudden jerk of the train as well as thrust from the passengers, he fell down and received serious injuries and later on died during the course of treatment in the Civil Hospital. The post mortem of the deceased was conducted in Aruna Asaf Ali Govt. Hospital, Mortuary Sabzi Mandi, Delhi and the police registered the case vide DD No. 12 PP dated 10.12.2009, P.P. Kishan Ganj Railway. She had alleged that the untoward incident occurred due to accidental falling of her husband from the train and the claimants are his dependents.

3. The appellant contested the claim before the Tribunal by filing a written statement wherein they took a stand that it was not an untoward incident and the deceased had died while he was trying to catch the running train as a result of which he fell down and died of self-inflicted injuries. It was denied that he was a bona fide passenger of train in question as such he was not entitled for any compensation.

4. On the basis of pleadings of parties, the issues were framed by. In support of the claim petition, the wife of the deceased i.e. Smt. Sarita Devi had placed on record her affidavit as Ex.AW1/I along with documents

Ex.AW1/2 to AW1/17. The appellant had examined Sh. Tek Narain, Driver and Sh. Vijay Pal, Guard of the train as RW-1 and RW-2 respectively and had produced documents i.e. Ex. RW1/2, RW2/2, RW2/3, R1 and R2.

5. After hearing the counsel for both the parties, the Tribunal awarded compensation along with interest as is stated above to the respondents. Aggrieved with the same present appeal is filed.

6. Ld. counsel for appellant has contended that deceased was not a bona fide passenger. It is further contended that there is clear evidence on record of RW-2 Vijay Pal (Guard) who has categorically stated in his affidavit Ex.RW 2/1 that at the relevant time he was sitting in the compartment of the train and had seen the deceased jumping from the train due to which he died. It is contended that present is not a case of 'untoward incident' as defined under Section 123(c) as the deceased died of his own negligence. It is contended that the finding of the Tribunal that the deceased was a bona fide passenger and the present case is covered under Section 123(c)(2) of the Railways Act are contrary to evidence on record.

7. I have heard the submissions made.

8. The wife of the deceased has stated in her affidavit Ex.AW1/I that her husband was a daily passenger from New Delhi to Jind and was having MST No. 59104629 and I card No. 897266 valid from 10.12.2009 to 09.01.2010 and she had produced on record the said MST as well as I. Card of her husband i.e. Ex.AW1/12. She has further deposed that the same were

recovered by the police and were given to her by the officers of the appellant. The said MST and I. Card i.e. Document Ex.AW1/12 were not properly verified by the appellant through proper mode of evidence. The counsel for appellant had produced a hand written application signed by her regarding verification of MST/I.Card of the deceased which was objected to on behalf of the respondent and, accordingly, the same was not taken into consideration by the Tribunal. The appellant did not discharge the burden that the deceased was not a bonafide passenger. On the basis of evidence on record it was held that deceased was a bona fide passenger. The finding of the Tribunal in this regard is reproduced as under:-

“I observe that onus lies on the respondent to prove that the deceased was not a bona fide passenger of the train in question & in this regard, no convincing & plausible evidence was adduced on behalf of the respondent because during arguments, Ld. counsel for the respondent placed on record an application, prepared by herself regarding verification of MST of the deceased & the same was objected to by the counsel of the applicants on the ground that it was not admissible & relevant as the verification of MST was not properly proved & verified by the respondent through proper mode of evidence. However, the aforesaid application is marked as R3 (objected to, by the applicants through counsel). The document AW1/12 i.e. MST & I. card was recovered by the police and the same is mentioned in the documents i.e. AW1/4, AW1/5 & AW1/9. The MST & I.Card was issued in the name of Sh. Pradeep & it was valid for journey from Jind to New Delhi w.e.f. 10.12.2009 to 9.1.2010 & there is a laxity on the part of deceased as there was no signature of the holder of MST as it was issued on the same day of occurrence i.e. 10.12.2009 & the same might have been left inadvertently. I find momentum of force, when Ld. counsel for the applicants states that the application as R3, submitted by the respondent through Counsel, was not admissible & relevant as it was not properly proved & verified

by the respondent through proper mode of evidence.”

9. As regards the stand of the appellant that the present is not a case of untoward incident as defined under Section 123(c)(2) read with Section 124A of the Railways Act, 1989, it is contended that deceased died of his own negligence by jumping from the running train and reliance is placed upon evidence of Vijay Pal RW-2, Guard of the train. His evidence is contrary to the stand taken in the written statement. It is stated in the written statement that deceased died while he was trying to board the running train, he slipped and fell down. Sh. Vijay Pal Singh RW-2 in his affidavit Ex. RW2/1 has stated that on 10.12.2009 he was ‘Guard’ on train no. 4519. When the train was reaching Kishan Ganj, one man i.e. the deceased had jumped from the train. In cross-examination, he has stated that he had informed to ASM that one person had sustained injuries. No reasoning is given in cross-examination as to why he did not state to ASM about jumping of one man from train. Even the Driver Sh. Tek Narain RW-1 has stated that Guard Vijay Pal (RW-2) had informed him by walkie-talkie that one person had been injured. In further cross examination, Vijay Pal (RW-2) has stated that victim had fallen from the train in which he was performing the duty of ‘Guard’. The evidence of Sh. Vijay Pal, Guard, is not believable. Further the same is also contrary to the stand taken in written statement. The evidence of respondent does not in any manner establish that the deceased died of his own negligence or injuries were self inflicted.

10. Relying on the case of the Jameela and Ors. V. Union of India 2011 (1) T.A.C. 10 (Supreme Court), the Tribunal has returned the finding that the

present case falls under the definition of ‘untoward incident’ as defined under Section 123(c)(2) of the Railways Act and respondents are entitled to compensation under Section 124A of the Railways Act. All the relevant documents and material evidence have been considered by the Tribunal while giving the finding that the present is not a case of self inflicted injuries.

11. In view of above discussion, no illegality or perversity is seen in the impugned order which calls for interference of this court. The appeal stands dismissed.

CM No. 9838/2012

In view of above order on the main appeal, no further orders are required on this application. The same stands disposed of.

VEENA BIRBAL, J

JULY 19, 2012

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