

Court No. - 8

Case :- FIRST APPEAL FROM ORDER No. - 357 of 2003

Appellant :- Union Of India Thru G.M.

Respondent :- Smt. Kesar Devi

Counsel for Appellant :- Anil Srivastava

Hon'ble Ajay Bhanot,J.

1. Heard Sri Varun Pandey, learned counsel appearing on behalf of the appellant-Union of India.

2. The appeal arises out of the judgment dated 07.04.2003 rendered by the Railway Claims Tribunal , Lucknow Bench, Lucknow in O.A. No. 0000067.

3. Sri Varun Pandey, learned counsel for the appellant submits that following two issues arise for determination in the instant appeal:-

Issue No. (i)-whether the deceased was bonafide passenger in the train in question at the time of accident?

Issue No. (ii) -whether the deceased had accidentally fallen from the train and his case was covered under Section 123(c)(II) of the Railways Act, 1989 and amounts to untoward incident?

4. The brief case of the claimant before the learned Tribunal was that the deceased was a bonafide passenger of Train No. 1512 . His brother had purchased a second class railway ticket for him and made over the same to the deceased. The deceased undertook the fatal journey on

20.10.1999. The deceased fell from the train after he was pushed by the rushing crowd.

5. The claimant introduced one witness to prove the purchase of ticket and the cause of accident. The sole witness on behalf of the claimant P.W. 1- Udit Narain testified before the learned Tribunal that he had seen the brother of the deceased Krishna Shukla purchasing the ticket for the deceased. The said witness Udit Narain held his ground under cross examination. Nothing could be illustrated by the appellant from the said witness, which would disprove the purchase of the ticket of the deceased and that he was a bonafide passenger. The appellants-respondents failed to rebut the aforesaid evidence regarding the possession of valid ticket by the deceased and the fact that he was a bonafide passenger.

6. Learned Tribunal upon consideration of the evidence on record held as under:-

"Since respondent has failed to prove that the deceased was not a bonafide passenger therefore, we hold and decide that the deceased was a bonafide passenger of Train No. 1512 passenger train on 20.10.1999. Thus this issue is decided in favour of the applicant and against the respondent."

7. No perversity or illegality could be pointed out from the records to dispute the aforesaid findings. For the reasons stated in the preceding paragraph, this Court affirms the findings entered by the learned Tribunal in favour of the claimants and against the appellants-respondents as regards the

deceased being a bonafide passenger in the train at the time of the accident.

8. Coming to the second issue, PW-1 namely Udit Narain deposed that he had witnessed the incident. In his testimony Udit Narain stated that the deceased Parmatma Deen fell from the train when his Kurta got entangled. He was standing at the gate of the train and was pushed by rushing crowd. The witness was put to cross examination by the respondents-appellants. The respondents-appellants failed to impeach the credit of the said witness under cross examination. The tribunal which had the benefit of observing the demeanour of the witness found them to be creditworthy and believed his testimony. Nothing has been shown from the record for this Court to take any other view in the matter.

9. Apart from the above said facts, the post-mortem report of the deceased finds several ante-mortem injuries but does not opine that it was a case of suicide. Learned Tribunal upon independently considering the aforesaid evidences held as under:-

"By no stretch of imagination it can be said to be a case of death of suicide or death resulting from any criminal act. We, therefor, find and hold that on 20.10.1999 the death of the deceased was cause due to an untoward incident as defined in Section 123(c) of the Railways Act. In view of the circumstances explained, we are of the opinion that the incident is very well covered as untoward incident, therefore, we hold and decide this issue

in favour of the applicant and against respondent."

10. For the reasons stated in the preceding paragraphs this Court finds that claimant had duly proved the factum of death arising from an untoward incident as defined in Section 123(c) of the Railways Act.

11. The appellants has failed to point out any perversity or illegality in the aforesaid findings from the records or otherwise. There is no reason for the Court to take any other view of the matter. The findings of the learned Tribunal do not warrant any interference.

12. The appeal is accordingly, dismissed.

Order Date :- 16.8.2023

Arun