

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.186 of 2013

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1. Ashok S/O Kailash Resident Of Village Sarai, P.S. Town, District Siwan.

.... Appellant/s

Versus

1. The Union Of India through the General Manager, East Central Railway, Hajipur
(Bihar)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. A.M. Mishra.

Mr. Anant Kumar No.1, Advocates.

For the Respondent/s : Mr. Bijoy Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 23-09-2015

Heard the parties.

2. In the present appeal the appellant is challenging the order dated 21.1.2013 passed by the Railway Claims Tribunal, Patna in O.A. No.00443 of 2002 by which the Tribunal has refused to grant compensation on account of the fact that the deceased was vending Gutka in the running train which is not permissible as provided under Section 144 of the Railways Act.

3. From the record it appears that son of appellant, namely, late Gopal, had purchased a second class ticket from Siwan to Chapra, boarded in Train No.5708 Amritsar-Katihar Express at Siwan railway station. When the train was crossing the outer signal of Ekma railway station, his son accidentally dashed

against the signal post, fell down from running train and died at the spot. Claim has been made on the ground of being bonafide passenger, died in an untoward incident entitled to receive compensation amount.

4. Railway Administration has filed written statement. In paragraph 3 it has been stated that the son of the claimant died on account of his negligence and carelessness as he was travelling keeping the body hanging outside compartment and on that account he dashed the outer signal and the Railway cannot be held responsible for the negligence act of the passenger.

5. During trial the appellant in support of his claim has exhibited the following documents:

Exhibit A/1- Affidavit of Ashok

Exhibit A/2- Photocopy of memo

Exhibit A/3- Photocopy of FIR

Exhibit A/4- Photocopy of final report

Exhibit A/5- Photocopy of voter identity card of Ashok

Exhibit A/6 Letter addressed/written to GRP

Exhibit A/7-Photo copy of School Leaving Certificate.

6. Exhibit A/2 is letter dated 9.10.2002 address to the Station Superintendent, GRP stating therein an unknown boy of



22 years died on account of dashing against starter pole, no railway ticket was found from his possession. Exhibit A/3 is the FIR raised on the basis of Station Superintendent, Ekma. Final report is Exhibit A/4 from which it appears that during investigation the police recorded that a young person had died on account of having dashed against starter pole. The name has been described as Gopal and it has been recorded that he was a Gutka vendor vending Gutka in the running train.

7. The Tribunal has recorded that as Gopal was a Gutka vendor will not be entitled to any compensation.

8. Learned counsel for the appellant submits that it is not the case of the appellant nor the case of the Railway appearing from the written statement that Gopal was a Gutka vendor vending the Gutka in running train. Even if he was a Gutka vendor having a valid ticket will be treated as bonafide passenger and the dependent will be entitled to compensation in the event of having met with an untoward incident. He further submits that even if he was unauthorizedly selling the Gutka, cannot be said that he was not a passenger as defined under Section 2(29) of the Railway Act and Section 124-A of the said Act explanation inserted in the year 1994 enlarged the definition of passenger.

9. To understand as to whether the person who is vending the Gutka or any article without proper licence will be covered under the definition of passenger is the issue to be looked into.

10. For deciding the issue it will be relevant to consider the provisions of Section 2(29) of the Railway Act which defines that passenger means a person travelling with valid pass or ticket and explanation of Section 124-A provides that for the purposes of this section passenger includes (i) a railway servant on duty; and (ii) a person who has purchased a valid ticket for traveling by a train carrying passenger on any date or a valid platform ticket and becomes a victim of an untoward incident and Section 144 of the Railway Act is also a very important provision for the purposes of deciding the present case. Section 144 of the Railway Act runs as follows:

“144. Prohibition on hawking, etc. and begging.- (1) If any person canvasses for any custom or hawks or exposes for sale any article whatsoever in any railway carriage or upon any part of a railway, except under and in accordance with the terms and conditions of a licence granted by the railway administration in this behalf, he shall be punishable with imprisonment for a term which may extent to one year, or with fine which may extent to two thousand rupees, or with both:

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such punishment shall not be less than a fine of one thousand rupees.

(2) If any person begs in any railway carriage or upon a railway station, he shall be liable for

punishment as provided under Sub –section (1).

(3) Any person referred to in sub-section (1) or sub-section (2) may be removed from the railway carriage or any part of the railway or railway station, as the case may be, by any railway servant authorized in this behalf or by any other person whom such railway servant may call to his aid.”

11. So Section 2(29) of the Railway Act provides that the person having valid pass and ticket will be treated to be a bonafide passenger and thereafter in 1994 legislature has enlarged the meaning of passenger by including railway servant on duty, if passenger who has purchased the valid ticket for travelling by a train carrying passenger on any date or a valid platform ticket becomes a victim of an untoward incident.

12. Here the question has arisen whether the persons who have been prohibited to hawking any material even though he has purchased a ticket will be treated to be a bonafide passenger or not.

13. Learned counsel for the appellant has drawn the attention towards the statement of the claimant who is father has stated that in his presence the victim had purchased the ticket and he was travelling from Siwan to Chapra, met with an accident at Ekma railway station and died after he dashed against starter pole in line no.1. During investigation it has been found that he was engaged in hawking of Gutka. Section 144



of the Railways Act prohibits such activity in the running train. He further submits that save and except the police report there is no other material on record to suggest that Gopal was a Gutka vendor in the running train nor any such plea has been taken in the written statement rather specific statement has been made by the father of the victim that the victim had purchased the ticket in his presence which shows that he was a bonafide passenger. Even it is presumed the bonafide passenger the question arose that during journey he himself was engaged in illegal activity which is prohibited under the Railways Act and met with an accident, will the dependent be entitled for compensation. In my view even if a bonafide passenger engaged in the illegal activity will not be entitled for compensation, reason is that, a person engaged in illegal activity, punishable under the Act, cannot claim protection. The compensation from Railway will be only for those who purchased valid ticket but is engaged in illegal activity, laws for those who respect, rule of law not for those violates law.

14. Learned counsel for the appellant submits that even if a person is engaged in the illegal activity prohibited under the Railways Act but he has purchased a valid ticket he cannot be said that he was not a bonafide passenger and will not be

entitled to the benefit.

15. Having considered the rival contentions of the parties even though the person has purchased a ticket but he himself involved in the illegal activity which has been prohibited under the Railways Act meets with an accident, in my view, will not be entitled to any compensation as violator of law which has been prohibited under the Railways Act cannot claim the benefit from the Railway Administration. The idea of legislature in the Railways Act and Railways Claim Tribunal Act that if a bonafide passenger is using the railway journey without involving himself in illegal activity meets with an accident, will be entitled for compensation. A person who himself involved in the illegal activity prohibited under the Railways Act, in my view, cannot claim any compensation amount.

16. As learned counsel for the appellant submits that except the police report there is no material on record to suggest that Gopal was engaged in the hawking Gutka only on the basis of police report, the Tribunal should not have recorded such finding. For limited purpose this Court is remanding back the case. The parties will lead evidence with respect to their cases about the involvement of Gopal in illegal activity and Tribunal



will decide the entitlement of compensation amount on the basis of recording of finding by him with regard to the activity of Gopal. The Tribunal will decide the case within six months from the date of receipt of file.

17. With the aforesaid observation this appeal is disposed of.

18. Office is directed to return the lower court records to the court below forthwith.

(Shivaji Pandey, J)

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