

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.499 of 2010

=====

The Union of India, through the General Manager, East Central Railway, Hazipur.

.... Appellant

Versus

1. Rani Devi W/O Late Ajay Kumr Singh.
2. Aman Kumar Singh S/O Late Ajay Kumar Singh.
3. Kajal Kumari D/O Late Ajay Kumar Singh.
4. Ankit Kumar S/O Late Ajay Kumar Singh.
5. Shanti Devi W/O Ram Krisha Singh.

All are residents of Village & P.O.- Saraiya, P.S.- Dariyapur, District Saran, Bihar.

.... Respondents

=====

Appearance :

For the Appellant : Mr. Ashok Kumar Keshari, Advocate

For the Respondents : Mr. Vijay Kumar @ V.K. Singh, Advocate

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

C.A.V. JUDGMENT

Date: 16-02-2016

I have heard parties and perused the record of this case.

This appeal is directed against the Order and Award dated 23.03.2010 passed by the Railway Claims Tribunal, Patna Bench (hereinafter referred to as 'the Tribunal') in Case No.OA000187/2004 by which the Tribunal had awarded Rs.4 lacs as compensation amount to be paid within two months failing which the claimants-respondents would be entitled to get the interest @ 9% per annum from the date of filing of claim application till its realization.

The facts of the case stand enumerated as under :-

According to the claim application, the deceased was the



husband of applicant no.1, who had boarded Train No.3348 Up (Palamu Express) on 19.12.2003 in the first class compartment with a valid ticket. The deceased was travelling from Patna to Palamu. He boarded the train at Rajendra Nagar Terminal, Patna. Between Rajendra Nagar Terminal and Chiraiyatad over bridge, some dacoits/miscreants boarded the same train and started extorting the articles and money from the passengers including the deceased. The passengers, who had resisted, were attacked by the dacoits. The deceased was attacked by them with a sharp cutting weapon and, as a result of which, he became unconscious. He was taken to the hospital but was declared dead. Thus, the claimants claimed compensation amount of Rs.4,31,500/- as the deceased was the victim of untoward incident. The appellant/respondent filed written statement controverting the claim and stating that the claimants would have to prove that the deceased was an authorized and bona fide passenger failing which the claimants would not be entitled for grant of compensation. Other grounds were also taken in the written statement.

The applicants subsequently filed an amendment petition which was allowed. According to the amended application, the deceased was travelling from Patna to Daltengaj on a second class ticket on 19.12.2003.

Upon the aforesaid pleadings of the parties, the Tribunal framed the following issues :-

1. क्या आवेदिका/आश्रितगण का दावा आवेदनपत्र वैध है ?
2. क्या मृतक दिनांक 19.12.2003 को ट्रेन संख्या 3348 up. (पलामू एक्सप्रेस) में एक सदभावी यात्री था ?
3. क्या प्रस्तुत वाद रेल अधिनियम 1989 की धारा 123 (C) (2) की परिधि में परिभाषित अनपेक्षित घटना की श्रेणी में आता है ?
4. क्या आवेदिका/आश्रितगण प्रतिकर की राशि प्राप्त करने के अधिकारी है, यदि हाँ, तो कितना ?

The claimants produced six witnesses on their behalf who had filed their respective affidavits and were produced for cross-examination. Apart from the affidavits of the witnesses (Exts. A1 to A6), the First Information Report, copy of *fardbeyan*, copy of the Police Report (Final Form), copy of inquest report, copy of death certificate, copies of voter identity cards issued by the Election Commission of India in favour of claimants, namely, Rani Devi and Shanti Devi, copy of family members certificate issued by the Circle Officer, Dariyapur, copy of newspaper cutting and copy of post mortem examination report were also brought on records as Exhibits A-7 to A-17.

The appellant-Railway neither examined any witness nor had brought on record any document. The issues were decided in favour of the claimants by the Tribunal and, thereafter, the Tribunal, after consideration of the pleadings and evidence produced on behalf

of the parties, had awarded Rs.4,00,000/- as compensation amount.

Mr. Ashok Kumar Keshari, learned counsel for the appellant has vehemently argued before this Court that no railway ticket having been produced by the claimants, the deceased cannot be held to be a bona fide or an authorized passenger and in the absence thereof, no compensation amount can be granted to the claimants. It is further contended that the claimants in their application had stated that the deceased was travelling from Patna to Palamu on a first class ticket, whereas, they subsequently changed their version and had amended their application by stating subsequently that the deceased was travelling from Patna to Daltengaj on a second class ticket, however, there is no explanation that if he was travelling on a second class ticket and then how the incident took place involving him in a first class compartment. It is, thus, contended that the deceased was not a bona fide passenger rather he himself should be held to be outsider and unauthorized passenger.

Learned counsel appearing for the claimants-respondents has submitted that the amendment sought was allowed by the Tribunal and the aforesaid order allowing amendment was never challenged by the appellant. Thus, they now cannot take a plea that since there was change in version of the applicants, on that count, the claim case



should have been dismissed. That apart, it is submitted that of course the claimants are not the eye witness or were not co-passengers with the deceased, however, A.W.3 Dhananjay Kumar, A.W.4 Rajesh Kumar, A.W.5 Mohan Singh and A.W.6 Bharat Prasad Singh have stated about the deceased having travelled from the Train No.3348 UP (Palamu Express) and in view of the fact that certain persons were talking about looting the passengers, he subsequently moved to the first class compartment to safeguard himself but unfortunately the dacoits reached that compartment also and assaulted the deceased by a sharp cutting weapon, as a result of which, he succumbed to the injury. It is, thus, contended that all of them have stood the test of cross-examination and, thus, the order and award of the Tribunal cannot be faulted with.

In view of the aforesaid factual matrix and rival contentions, following points have emerged for adjudication before this Court :-

- (i) *Whether the deceased is to be accepted as bona fide passenger travelling on the fateful day?*
- (ii) *Whether it can be held that the deceased has been victim of untoward incident and, as such, the claimants are entitled for compensation under Section 124 (A) of the Railways Act, 1989 (hereinafter referred to as 'the Act'?)*

(iii) Whether, even assuming that the deceased was a passenger travelling on a second class ticket, since he was found injured in a first class compartment for which he was not having a valid ticket in view of the pleadings of the claimants themselves, the compensation could be granted to the claimants or not?

In view of the fact that the aforesaid issues are intertwined, all of them are being considered together.

It is admitted fact that an untoward incident took place on the Train No.3348 Up (Palamu Express) between Rajendra Nagar Terminal and Chiraiya Tand Over bridge and the deceased was found on the train in badly injured condition and had succumbed to the injuries. The aforesaid facts stand proved in view of the Exhibit-A7, which is a copy of the First Information Report, Exhibit- A8, which is a copy of *fardbeyan*, Exhibit- A9 which is a copy of final form submitted by the police, Exhibit- A10, which is a copy of inquest report, Exhibit-A11, which is a copy of death certificate and Exhibit-A16, which is a copy of post mortem examination report. In the aforesaid facts and circumstances, this is admitted position that the deceased was travelling on the aforesaid train on the fateful day and was assaulted and injured badly by the miscreants. The occurrence also gets proved on account of examination of one Rajesh Kumar,

who was a co-passenger and was also assaulted by the miscreants and on his *fardbeyan*, the FIR was registered.

Now the second and most important question would be whether the deceased was a bona fide passenger or not?

Mr. Keshari, learned counsel for the appellant has vehemently argued that there is no iota of evidence that the deceased was an authorized/ bona fide passenger especially when no railway ticket has been produced in support of the aforesaid contention of the claimants. He has further submitted that the amendment which was made by the applicants itself goes to show that the claimants have changed their story completely and, thus, it can be construed that a concocted story was brought subsequently by them. However, the aforesaid fact has to be tested on the basis of the materials available on record. Railway ticket could have found only with the person who was travelling on the train and has admittedly died. The inquest report has been brought on record as Exhibit-A10. Though it stands stated therein that the deceased was wearing certain clothes but it is not stated as to whether the pockets of the clothes were searched and whether something was found in his pocket or not. The Post Mortem Examination was also conducted on the dead body of the deceased. Had it been a case that nothing could have been found after thorough search of



pockets of the clothes of the deceased then the matter might have been different but when there was no effort to search for railway ticket, it cannot be assumed or presumed that he was a ticket-less passenger. That apart, Dhananjay Kumar, who has examined himself as A.W.3 has stated in clear terms that he had purchased the ticket for the deceased and gave it to him and he also accompanied him to second class compartment of Palamu Express where he took his seat and then the aforesaid witness de-boarded the train. Another witness, namely, Bharat Prasad Singh, who has examined himself as A.W.6, has stated in paragraph 4 of his affidavit that 4-5 persons were talking about committing dacoity in the compartment then the deceased Ajay Kumar Singh moved to the first class compartment to safeguard himself and this fact was stated by him on phone to the witness. The witnesses were cross-examined but they could not be shaken and appear to have stood the test of cross-examination. Mr. Keshari has also submitted that even if it is assumed that the deceased had purchased a second class ticket, there was no occasion for him to travel in the first class compartment. The examination of A.W.6, according to him, appears to be an afterthought only for the purpose of filling up the lacuna. However, even assuming that the deceased was having a ticket of second class compartment but he was travelling

in the first class compartment then in view of the provisions contained in Section 138 (2) of the Act, he would be liable to pay on the demand of any railway servant, only the difference between the fare paid by him and the fair payable in respect of the journey he has made. For better appreciation, the relevant provisions is extracted as under :

“Section 138 (2) If any passenger,-

(a) travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket; or

(b) travels in or on a carriage beyond the place authorized by his pass or ticket,

he shall be liable to pay, on the demand of any railway servant authorized in this behalf, any difference between the fare paid by him and the fare payable in respect of the journey he has made and the excess charge referred to in sub-section (3)”.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Therefore, on that basis, it cannot be construed that the claimants would not be entitled for compensation as excess fare amount could have easily been recovered by the railways authorities.

Now, apart from the evidence led by the claimants in respect of the claim that the deceased was having a second class ticket



and was a bona fide passenger, this Court has a benefit of a decision of a Division Bench rendered in *Smt. Kaushalaya Devi & Ors. Vs. Union of India through General Manager, North Eastern Railway [2008 (3) PLJR 711]* holding that in view of the provisions contained in Railways Act providing prosecution of persons entering Railway Station without valid journey/platform ticket as nobody is entitled within the precinct of railway station without having a valid ticket and the fact that the person concerned in the aforesaid case was in the precinct of railway station, the logical presumption would be that he had a valid ticket for him. The Division Bench has also noticed that if the inquest report has indicated the contents of pocket of the shirt/trouser of the deceased, a circumstance could have been created for a person to believe that the deceased was ticket-less traveler but that not having been done, such presumption cannot be reached by any body.

In the case in hand also the inquest report shows that the deceased was wearing a pair of trouser (jeans) and other clothes but contents of pocket have not been described in the inquest report, thus, in my view, in the present case also, it cannot be held on the ground of non-production of railway ticket by the claimants that the deceased was a ticket-less traveler and, as such, the burden would be on the

railway authority to prove that he was not a bona fide passenger as admittedly the deceased was travelling in the train in which dacoity was committed and the deceased became victim thereof are admitted fact. That apart, there is evidence led on behalf of the claimants especially A.W.6 who has stated that the deceased has informed him as to why he had moved to first class compartment. Accordingly, all the issues stand decided against the appellant and in favour of the respondents-claimants.

As a result, this appeal fails and is dismissed.

The appellant would be obliged to pay the compensation amount along with interest as stated in the Order and Award of the Tribunal.

Let the original records be returned to the concerned.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

A.F.R.

U			
---	--	--	--