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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 349/2016 & C.M.No. 26977/2016

RAM KUMAR

..... Appellant

Through: Mr. Raj Kumar Rajput, Advocate.

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Hashmat Nabi and Mr. Abhinav
Thareja, Advocates for Railways.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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18.01.2018

C.M.No. 26977/2016 (for delay)

The application seeks condonation of delay of 140 days in filing the appeal.

For the reasons mentioned in the application, the delay is condoned and the appeal is taken on record.

The application stands disposed off.

FAO 349/2016

1. This is an appeal from dismissal of the appellant's claim for compensation by the Railways Claim Tribunal dated 09.12.2015. The applicant Ram Kumar lost his legs in a train accident on 14.08.2013 while travelling from Faridabad to Lucknow. It is his case that he had boarded the train and because of a sudden jerk/ thrust from inside the train compartment, he fell down from the train and both his legs got crushed under its wheels.

2. The injury and his amputation are not disputed. However, the claim of compensation of Rs. 4 lacs was contested by the Railways on the ground that he was not a *bona fide* passenger i.e. he did not possess a valid train ticket and that the injuries sustained by him were not on account of any untoward incident. Both these arguments were sustained against the appellant-claimant by way of the impugned order dated 09.10.2015 of the Railway Claims Tribunal. The appellant has impugned the same on the ground that in the absence of the requisite statutory inquiry (after an incident as reported), the claimants' version cannot be doubted and will have to be accepted. It is not in dispute that on the date of the accident, Daily Diary (DD) Entry Nos. 15A and 46 B were recorded. DD Entry No. 15A records that a person had suffered an accident in a train going towards Shahadra, however, it did not record precise location of the accident. The second DD Entry No. 46B made at 8.40 pm with Police Station Old Delhi Railway Station records that an unknown person of 32 years of age had suffered a train accident near platform No. 9 and he was taken to the Trauma Centre, Civil Lines, Delhi, where the Investigating Officer was told by the attending doctor that the victim had lost both his legs and was declared unfit for statement.

3. The learned counsel for the appellant submits that an enquiry is required to be taken by the Railway Authorities under the provisions of sections 113 and 114 of the Railways Act, 1989. The said sections read as under:-

“113. Notice of railway accident.

(1) Where, in the course of working a railway

(a) any accident attended with loss of any human life, or with grievous hurt, as defined in the Indian Penal Code (45 of 1860), or with such serious injury to property as may be prescribed; or

(b) any collision between trains of which one is a train carrying passengers; or

(c) the derailment of any train carrying passengers, or of any part of such train; or

(d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property; or

(e) any accident of any other description which the Central Government may notify in this behalf in the Official Gazette, occurs, the station master of the station nearest to the place at which the accident occurs or where there is no station master, the railway servant in charge of the section of the railway on which the accident occurs, shall, without delay, give notice of the accident to the District Magistrate and Superintendent of Police, within whose jurisdiction the accident occurs, the officer in charge of the police station within the local limits of which the accident occurs and to such other Magistrate or police officer as may be appointed in this behalf by the Central Government.

(2) The railway administration within whose jurisdiction the accident occurs, as also the railway administration to whom the train involved in the accident belongs, shall without delay, give notice of the accident to the State Government and the Commissioner having jurisdiction over the place of the accident.”

“114. Inquiry by Commissioner.

(1) On the receipt of notice under section 113 of the

occurrence of an accident to a train carrying passengers resulting in loss of human life or grievous hurt causing total or partial disablement of permanent nature to a passenger or serious damage to railway property, the Commissioner shall, as soon as may be, notify the railway administration in whose jurisdiction the accident occurred of his intention to hold an inquiry into the causes that led to the accident and shall at the same time fix and communicate the date, time and place of inquiry :

Provided that it shall be open to the Commissioner to hold an inquiry into any other accident which, in his opinion, requires the holding of such an inquiry.

(2) If for any reason, the Commissioner is not able to hold an inquiry as soon as may be after the occurrence of the accident, he shall notify the railway administration accordingly.”

4. Evidently, no such enquiry was undertaken by the Commissioner or under appropriate instructions by the Railway Protection Force (RPF) at the relevant time i.e. on the same day or the following day or in the immediately subsequent few days. Instead, an enquiry is said to have been initiated/ conducted after about nine months. The report of the Commissioner, purportedly under the aforesaid provisions of law, is dated 14.11.2014 i.e. after a delay of about fourteen months. There is no explanation for the delay. Nothing is brought on record to show that the Commissioner was prevented, by unavoidable extraneous circumstances or force majeure, from undertaking the statutory inquiry. Especially, regarding an accident which resulted in irreparable loss of limbs i.e. amputation of both legs of the unfortunate victim of a rail mishap. In any case, the report cannot be said to be relevant because most of the evidence would have been lost during this long period of Railway's inaction. Its contention that the appellant did not

possess a valid ticket is untenable because the accident happened in the Railway premises i.e. on the railway platform itself. The claimant had pleaded in his claim petition that he had lost his travel ticket and some cash in the accident. There is likelihood of such loss of the ticket and valuables happening in the aftermath of such grievous accident and injury. If the injured did not possess any valid ticket, then it should have been so recorded by the Railways in the two DD entries. They obviously chose not to do so. The Railway Authorities have led no evidence in this regard. Whereas DD entries clearly show that there was an accident which happened at the Railway Station, resulting in subsequent amputation of both legs of the claimant. The appellant examined himself in evidence, and had stated that he had a valid ticket. During the course of his journey, there was a sudden jerk in the train movement, resulting in a push from inside the compartment, due to which he fell down and both his legs were crushed between the platform and the train. Therefore the presumption of the passenger/injured having a valid ticket cannot be denied.

5. The learned counsel for the appellant relies upon the judgment of the Supreme Court in Civil Appeal No. 5608/2017, decided on 25.04.2017 in ***Kalandi Charan Sahoo & Anr. vs. General Manager, South-East Central Railways, Bilaspur***, which dealing with a similar matter held:-

“ We have heard learned counsel for the parties finally at this stage itself with their consent.

Leave granted.

The appellants herein had filed a claim before the Railway Claims Tribunal (hereinafter referred to as 'RCT') on account of death of their son Sunil Kumar Sahoo in a train

accident that occurred on 20.11.2005. The deceased was the employee in Railway and was holding the post of Assistant Loco-Pilot at the relevant time. He was posted at Raipur under the South East Central Railway, Bilaspur. On 20.11.2005, he was returning from Durg to Raipur, when he fell down from the running train near D. Cabin of Raipur Railway Station and, as a result thereof, he died on the spot.

Though Rule 27 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (hereinafter 1 C.A. No. 5608/ 2017 referred to as 'Rules') mandates the Railway authorities to investigate into such an untoward incident. Admittedly, no such inquiry was conducted immediately after the incident. It is only when the appellants filed the claim before the RCT on 27.02.2009 that investigation into the incident was ordered on 23.04.2009. According to the Railways, the said investigation revealed that the deceased de-trained from the moving train at D. Cabin without stoppage of the train and invited the accident. The claim was rejected on the aforesaid basis and the aforesaid plea of the Railway was accepted by the RCT resulting into the dismissal of the claim of the appellants. The appellants filed the appeal, i.e., F.A.O. No. 535 of 2013 challenging the aforesaid order of the RCT. The High Court has dismissed the same by cryptic and non-speaking order with the only observations that findings of the Tribunal in the impugned Award and the reasons assigned in support of the same, do not warrant any interference.

It is in these circumstances, the appellants are before us in these proceedings via Article 136 of the Constitution. After hearing learned counsel for the parties, we find that it is not even necessary to go into the issue as to whether it was the fault of the deceased or that he accidentally fell down. Learned counsel for the appellants has drawn our attention to the provisions of Section 124A of the Railways Act, 1989, which warrants payment of compensation whenever untoward incident occurs whether or not such an incident has occurred by any wrongful act, neglect or default on the part of the

Railway administration. Going by the aforesaid provisions and in the peculiar facts of this case, where no inquiry as mandated by the Rules was conducted immediately after the incident had occurred, we are of the view that the appellants shall be entitled to compensation payable under Section 124A of the Railways Act, 1989. We are informed that, at the material time, compensation payable under the said provision was Rs.4 lakhs.

This appeal is, thus, allowed allowing the compensation of Rs.4 lakhs (Rupees Four Lakhs) to the appellants which shall be paid by the respondent within two months.”

6. The learned counsel for the respondent contends that there is inconsistency in the statement of the claimant insofar as the claimant had deposed that he had fallen down from Sadbhawna Express, which had departed from platform No. 10, whereas his claim petition states that he fell down from platform No. 9. This contention is refuted by the learned counsel for the appellant, who states that the appellant never boarded the said Sadbhawna Express. It is the appellant's case that he was to board a train going towards Lucknow. He had been told that the said train would be coming on platform No. 10. So, he boarded the train and the accident occurred while he was on that train. It is his case that his railway ticket got lost during the melee and chaos following the accident. In the circumstances, the Court is of the view that there is no contradiction between the claim and the statement of the appellant-claimant.

7. The fact of the accident having occurred on the Railway platform is un rebutted, indeed not disputed. The inquiry, as mandated under sections 113 and 114 of the Railways Act was not conducted immediately. Initiation of an inquiry after 9 months of the accident and submission of a report after

14 months, is evidence of palpable apathy and callousness in the discharge of statutory duties by the Railway authorities concerned. Even the amputation of both the legs of the victim/appellant could not elicit a quicker response, *albeit* a rejection of his claim, from the Railways. The inquiry report is of no evidentiary value because it was conducted and prepared after an inordinate delay and there is nothing on record to show that the claimant had suffered due to a self-inflicted injury or on account of criminal negligence by attempting to get down from a running train. The reference to the Beat Book of the RPF, that the fall from the train was an act of de-boarding from the moving empty coaching rack was imprudent or irrational etc. is unfounded and unreliable because of the long time gap. The reliance upon the judgment in **Joseph P. T. Vs. U.O.I.**, AIR 2014 KERALA 12 and judgment of this Court in FAO No. 421/2012 titled as **Bimla Devi and Another Vs. Union of India** decided on 8.1.2014 is misplaced because it is settled law that the liability of the Railways is strict liability even if there is negligence of the deceased, except when there is criminal negligence or self-inflicted injuries. In the facts of the present case, there is no rebuttal of the appellant's case that he fall down on account of a jerk from inside the compartment and came under the wheels of a moving train near the platform. Hence, the appellant's version will have to be accepted and claim will have to be allowed.

8. In view of the above, the Court finds no reason to doubt the claim of the appellant which stands otherwise established in view of the aforementioned DD entries. In the circumstances, the impugned order cannot be sustained and is set aside. The appeal is allowed. The respondent is directed to pay the appellant within four weeks, the claim amount of Rs. 4 lacs alongwith

interest @ of 9% *per annum* (instead of 18%, as claimed) [as per the Notification dated 25.10.1997 issued by the Ministry of Railways (Railway Board) consisting the Schedule for the Compensation Payable for Death and Injuries, particularly Part-II (3)], from the date of the filing of the claim petition.

9. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J.

JANUARY 18, 2018

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