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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 07th November, 2019

+ FAO 185/2014

SH. BHOLA NATH & ANR

..... Appellants

Through: Mr. S.N. Parashar, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Ms. Shipra Shukla, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Vinay Kumar Pandey, aged about 30 years, ordinary resident of District Sultanpur in Uttar Pradesh suffered injuries around 15:00 hrs on 17.06.2012 at or about Badli Railway Station as a result of being run over by Railway Train described as Train No.12057 Jan Shatabdi Express moving from the direction of Subzi Mandi Railway Station on way to its destination, Badli Railway Station falling enroute. He was taken by Police Control Room (PCR) Van, in the wake of a call received around 15:15 hours, to Dr.B.R. Ambedkar Hospital where, inspite of medical aid and assistance, he succumbed to the injuries, he being declared dead at 18:35 hours on the same evening. An accident claim case (claim application OA(IIu) 305/2012) was submitted by the appellants, parents of the deceased

Vinay Kumar Pandey, on 02.11.2012 before the Railway Claims Tribunal, *inter alia*, on the contention that he (deceased) had suffered a fall from the said train in movement, at a time when he was a *bona fide* passenger in a crowded compartment, the injuries that were suffered and proved fatal constituting the untoward incident on which account the respondent / Railway Administration was obliged in law to pay compensation. The claim was resisted by the respondents. It led to an inquiry by the tribunal culminating in judgment being rendered on 19.11.2013 whereby it was concluded that Vinay Kumar Pandey had suffered a fall from the said railway train “*in a state of intoxication*” and that the incident did not merit grant of compensation since the deceased was not a “*bona fide rail passenger*”, the evidence led by the claimants (appellants), *inter alia*, by examining Dharmender (AW-2) being false and planted.

2. Feeling aggrieved, the claimants have come up with the present appeal assailing the above-mentioned decision.

3. Having heard both sides and having gone through the record of the tribunal which has been called for, this court is of the view that the tribunal has fallen into error by adopting a wholly impermissible approach for appreciating the evidence that was adduced. The reasons may be set out hereinafter.

4. The record of inquiry before the tribunal reveals that the Railway Administration tried to dodge the responsibility by preparing records, truthfulness of which is highly questionable. In one record (Ex. E2), it was indicated by the Station Master of Badli Railway Station that “*one man hanged from 12057 Express*”. This was sought

to be explained that the person in question had been knocked down by the Railway Train. It is in that context, arguments were raised that it was impossible for a person to be knocked down by a train in movement without the driver or his assistant or the guard of the Railway Train coming to know of such incident. The argument ignores the fact that the case at hand is not of a person who had come in front of the moving Railway Train. In fact, the case throughout has been that the deceased was travelling in one of the compartments of the Railway Train, the driver or his assistant sitting in the engine of the Railway Train not being in a position to know of such incident the moment it occurred. They could not have conceivably seen the person falling off the train unless at that opportune moment they would be looking in the rear direction which is not the explanation offered.

5. The Station diary as produced during the departmental inquiry (Ex. R1/22) gave another twist to the tale wherein the Station Master recorded that a man had been “*struck from the Railway Train*”. The tribunal rejected the railway records, and justifiably so, by referring to the corresponding records of the police and the medical records which clearly indicated the history to be fall from the train. The tribunal thus accepted the case of the claimants that Vinay Kumar Pandey had indeed fallen from the moving train but at the same time accepted the argument of the Railway Administration based on an observation recorded in the medical records that the deceased was at the relevant point of time “*in a state of intoxication*”

6. Though the tribunal, in the impugned judgment, would not say so expressly, it appears the smell of alcohol noticed by the examining

medical officer weighed on the mind of the presiding judge of the tribunal to assume that the deceased was in a state of intoxication and, therefore, the accident was on account of his own neglect. Indeed, the smell of alcohol does indicate consumption of alcohol at some stage anterior to the accidental fall. But, the smell by itself does not mean it must lead to the conclusion that the person was in a state of intoxication to the extent that he had lost control over his faculties. For this, something more (in addition to smell of alcohol) was required. The least that could have been done to gather all the relevant facts was to collect the sample of blood of the victim to ascertain the level of alcohol. Since that exercise was never undertaken, even though the railway administration was involved right from the very inception after the accident had been reported, adverse inference will have to be drawn and benefit of doubt extended to the claimants in this regard. The court thus concludes that the claim case could not have been thrown out only on account of presence of smell of alcohol.

7. The tribunal has rejected the claim of the appellants that the deceased was a *bonafide* railway passenger, this primarily on the basis of the fact that his personal effects that were gathered in the hospital where he was taken did not include the railway journey ticket. But then, it has been ignored that the luggage carried by the deceased at the time of his travel in the train was also not found. The deceased had fallen out from the moving train. All that he could carry at that point of time were the things he would keep in the pockets of his wearing apparel. This included two things viz. his mobile phone instrument and his pocket diary. The inquest report, which is part of

the record of the tribunal, shows that it is on the basis of the said mobile phone instrument that HC Vikram Singh (no. 107/Crime) had informed the members of the family about incident. Since no effort was made to trace out the luggage that apparently would have continued to be in the train, the possibility that the journey ticket had remained in the said luggage cannot be ruled out.

8. What pains this court is the fact that the tribunal has unreasonably and unjustifiably ignored the uncontroverted evidence of Dharmender (AW-2). His affidavit (Ex. AW2/A), sworn on 28.02.2013, was part of the evidence that was adduced by the claimants. He is a close relative of the claimants. According to his version, as set out in the affidavit, he was with the victim at the time of commencement of his journey at the said railway train from Subzi Mandi Railway Station. He stated on oath that after some shopping in the Sadar Bazar area in connection with the marriage of the sister of the victim, both of them had reached Subzi Mandi Railway Station from where the victim was to proceed by train to his intended station. He also stated on oath that he had guarded the goods of the deceased at the railway station while he (the victim) had gone and purchased the railway journey ticket, where-after he (the witness) had seen him off noticing, in the process, that the compartment the victim was boarding was heavily crowded. The proceedings recorded by the tribunal show that AW-2 was never cross-examined. In fact, the tribunal observed in the proceedings of 18.07.2013 that there was no need for such cross-examination. The Railway Administration did not take any exception to such observation nor its right to cross-examine the witness and,

therefore, conceded to the view taken by the tribunal. This only means that the word of AW-2 has remained unchallenged and, therefore, there was no reason to disbelieve his version.

9. The claimants (appellants) rely on the decision of the Supreme Court reported as *Union of India vs. Rina Devi*, (2019) 3 SCC 572.

The relevant observations whereof may be quoted thus :-

“29. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

(emphasis supplied)

10. In the present case, the claimants had discharged their initial burden. The Railway Administration, instead of adducing evidence to the contrary, preferred to rely on the record which was not only false but misleading. In these circumstances, the view taken by the tribunal rejecting the claim of the appellants that the deceased was a *bona fide* railway passenger cannot be upheld.

11. The impugned judgment in so far as it rejects the claim of the appellants about the deceased being a *bona fide* railway passenger and it being a case of untoward incident meriting grant of compensation is

set aside. It is held that the claimants are entitled to compensation, the death having occurred at a time when the deceased was travelling in the Railway Train in question as a *bona fide* passenger.

12. It is noted that having returned the impugned findings, the tribunal did not go into the question of assessment of compensation. It will be appropriate to direct the tribunal to undertake the said exercise now. Ordered accordingly.

13. The parties are directed to appear before the Railway Claims Tribunal on 16.12.2019. The tribunal shall proceed further expeditiously by assessing the amount of compensation to which the appellants are entitled in law and pass necessary orders thereupon, bearing in mind the delay which has occasioned on account of the above-mentioned erroneous view taken in impugned decision.

14. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 07, 2019

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