

23.06.2023
SL No. 10 & 11
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

**F.M.A. 678 of 2010
IA No: CAN/1/2008 (Old No.:CAN/2137/2008)**

Rajib Ali Mirza

Versus

Union of India

With

FMA 679 of 2010

Union of India

Versus

Rajib Ali Mirza

Mr. Supratim Dhar

Mr. Kazi M Rahaman

....for the appellant-claimant.

Mr. Pradip Kumar Das

...for the Union of India.

FMA 678 of 2010 is preferred by the appellant-claimant and FMA 679 of 2010 was preferred by the Union of India, Railway Authority represented by General Manager, South Eastern Railway against the same order dated 15th February, 2008 passed by the Railway Claims Tribunal, Kolkata.

The brief facts of the case is that the claim application was filed by Rajab Ali Mirza claiming compensation for a sum of Rs.4,00,000/- for the death of his unmarried son, Md Noor Alam Mirza who died by accidental falling from the train. It is contended in the claim application that on 06.06.2005 Md Noor Alam Mirza

while travelling by Sambalpur-Howrah Express with a IInd Class Railway Ticket vide No. 98137 (Ex. Sambalpur to Howrah) alongwith his friend, accidentally fell down from that train in between Tata Railway Station and Rajkwasia Railway Station and succumbed to his injuries. The body was recovered by Chakradharpur GRPS and sent it to Chaibasa for Post-mortem.

The claim application was filed by the father of the deceased, namely, Rajab Ali Mirza as a sole dependent of the deceased. During the continuation of this appeal the said Rajab Ali Mirza expired and in his place the present appellant has been substituted.

The respondent South Eastern Railway has contested the claim by filling written statement contending inter alia, mainly two grounds. Firstly; the deceased was not a bona-fide railway passenger and travel without a valid railway ticket. Secondly; the deceased fell down from the running train which is nothing but a "self-inflicted injury". Learned tribunal has taken the evidences on behalf of the claimants. Some documents including railway ticket were also produced before the learned tribunal. Learned tribunal also heard the argument for both the sides and passed the impugned order directing the railway authority to pay compensation amounting to Rs. 4,00,000/- only inclusive of all

costs. It is further directed that the claim amount has to be paid within two months from the date of order unless it will carry interest @ 6% per annum till realization. The claimants have preferred the appeal No. FMA 678 of 2010 on the sole ground that the award does not carry any interest. The award should be enhanced as the award was passed on 5th February, 2008 and the alleged accident was happened on 6th June, 2005. It is further ground that the claimants that by virtue of notification of the railway, the railway claim in respect of death cases is enhanced to Rs.8,00,000/- so they are entitled to get the enhanced amount.

FMA 679 of 2010 was preferred by the Union of India represented by the General Manager, South Eastern Railway, Kolkata on the ground that the learned tribunal has mislead and misconstrued the evidences and came to an erroneous finding by holding that the deceased was a passenger of the Sambalpur-Howrah Express though the statement of P.W-2 is not at all believable.

It is the further contention of the learned advocate for the Railway Authority that the learned tribunal has passed the order erroneously without going through the provision contained under Section 124-A of the Railway Act. Heard the learned advocate perused the materials on record and also

perused the paper books, evidences and the impugned order of the tribunal itself.

In considering the facts and circumstances of the case, it appears to me that the complainant i.e. Rajab Ali Mirza has deposed before the learned tribunal on behalf of the claimants as AW/1 and another person, namely, Md. Mahiruddin deposed before the learned tribunal as eye witnesses (Aw/2). The statement of the AWs had produced before me. I have perused the statement and also perused the findings of the learned tribunal. Considering the impugned order of the tribunal, it appears to me that before passing the impugned order the learned tribunal has framed four issues to decide the matter. All the issues are categorically discussed by the learned tribunal and it was specifically answered in favour of the claimant. I find no infirmity in the finding of the learned tribunal. The discussion of the learned tribunal regarding “self-inflicted injury” on behalf of the deceased and denial thereof, it appears to be justified.

In considering the compensation of this case by virtue of the decision of Hon’ble Apex Court in **Union of India V Rina Devi** reported in **(2019)3 SCC 572**. It appears that:

“ Re: (iii) Burden of Proof When Body Found on Railway Premises – Definition of Passenger : 17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a „passenger“. In Raj Kumari

(supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket *Union Of India vs Rina Devi* on 9 May, 2018 Indian Kanoon - <http://indiankanoon.org/doc/94898543/> 10 was punishable, the burden was on the railway administration to prove that passenger was not a bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in *Gurcharan Singh* (supra) held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows : “3(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules 11 or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a learned Single Judge of this Court in the case reported as *Pyar Singh Vs. Union of India* 2007 (8) AD Del. 262 which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of *Leelamma* (supra).” 17.2 In *Jetty Naga Lakshmi Parvathi* (supra) same view was taken by a single Judge of Andhra Pradesh after referring to the provisions of the Evidence Act as follows : “22. So, from Section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come

to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of A.W.1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. Section 114(g) of the Indian Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal.” 17.3 In *Kamrunnissa* (supra), from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of „untoward incident“ but a case of run over. It was observed : “7. The aforesaid report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach. 12 This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train. 8. In addition to the factual position emerging out of a perusal of paragraphs 7 & 8 extracted hereinabove, the report also reveals, that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere railway station.” 17.4 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. Re: (iv) Rate of Interest 18. As already observed, though this Court in Thazhathe Purayil Sarabi (supra) held that rate of interest has to be at the rate of 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in Mohamadi (supra), rate of interest has to be reasonable rate at par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises upto the date of payment, without any difference in the stages. Legal position in this regard is at par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner. The appeal will stand disposed of accordingly.”

Following the judgment of **Rina Devi** Hon’ble Supreme Court in **UNION OF INDIA VERSUS RADHA YADAV** in Civil Appeal Nos. 1265-1266 of 2019 has formulated that:

10. The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in the case of Rina Devi¹ is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the

award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.

Learned advocate for the claimants also cited a decision report in **2020(1)T.A.C. (S.C.)**

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Considering the views of Hon'ble Supreme court and present law of the land both the appeals are disposed of.

The operative portion of the order passed by the learned tribunal is hereby modified to the effect that the claimant i.e. Jahannara Bibi wife of late Rajab Ali Mirza is entitled to the compensation to the tune of Rs.4,00,000/- alongwith interest @ 7.5% per annum from the date of accident till its actual realization and if the compensation amount is less than Rs.8,00,000/- then the compensation must be at least Rs.8,00,000/- and if it reached more than

Rs.8,00,000/- then the calculated amount more than Rs.8,00,000/- should be paid.

The respondent Railway Authority is further directed to pay the compensation through the office of learned Registrar General, High Court, Calcutta within 50 (Fifty) days from the date of passing of this order failing which the award shall carry further interest @ 9% per annum till its actual realization.

Both the FMAs are disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)