

29.09. 2023
item No.10
n.b.
ct. no. 551

FMA 2459 of 2013

**Sujata Bebnath
Vs.
Union of India**

Mr. Saswata Bhattacharyya,
Mr. Sujoy Sinha
..... for the appellant.

Mr. Sukumar Bhattacharyya,
Mr. Subrata Santra,
Ms. Amrita Panday,
.... For the Union of India.

This appeal has been preferred against the judgment dated January 10, 2011 passed by the Vice Chairman of Railway Claims Tribunal, Kolkata Bench in Railway accident claim case No.U/36/2005.

The brief fact of the case is that the present appellant being the claimant preferred an application before the learned Tribunal for getting compensation of Rs.4,00,000/- on the ground that her husband, namely, Nani Gopal Debnath was died in an untoward accident on 18.10.2004 when he was traveling in local train from Sealdah with a valid monthly ticket no.007765032 with identity card bearing no.065477.

The matter was contested by the Union of India before the learned Tribunal by filing written statement. Oral evidence including documentary evidences were produced on behalf of the claimants. The union of India has not produced any witnesses. After hearing the

parties, the learned Tribunal has dismissed the claim case.

Learned advocate on behalf of the appellant argued before the court that the judgment passed by the learned Tribunal is erroneous. Learned Tribunal has not considered the facts and circumstances of the case and come to an erroneous finding. He further argued that the learned Tribunal has allowed the issue no. 1 to the effect that the deceased was bona fide passenger. But at the same time, he dismissed the claim case on the ground that the claimant could prove that the victim was fell down from the running train. He argued that the necessary oral evidence i.e. AW 2 was adduced, who himself witnessed the accident in his own eyes and credibility of his oral evidence could not be shaken by the Union of India in his cross-examination. The inquest report as well as the investigation conducted by the police corroborated the claimants case.

He further argued that the ratio of Hon'ble Supreme Court in **Rina Devi**, is applicable and the claimant is entitled to get the proper relief. He prayed for necessary order.

Learned advocate for the Union of India submits that the observation of the learned Tribunal regarding the fact that the claimant has failed to prove the plea that the victim fell down from the running train is quite justified. The conduct of the investigating officer as well as the facts

and circumstances of the case to show that the case stated by the claimant is purposive and false.

He further argued that the AW 2 was not cited inquest report or no police report to be the eye witnesses of the accident. So, at this juncture, the evidence of AW 2 cannot be believed at all

In support of his contention, he cited a decision of Hon'ble Supreme Court passed in **Kamukayi & Ors. Vs. Union of India & Ors.** reported in **(2023)SCC On Line 642.**

The principles laid down in **Ria Devi** and **Kamukayi** are same. It has been held by Hon'ble Apex Court that:

“ We thus hold that mere presence of a boy 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 bone 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.”

Heard the learned advocates. Perused the materials on record and perused the impugned judgment. It appears

to me that the effect of the accident was stated by the claimants as follows:

On 18.10.2004 p.m. when the victim after his days word boarded EMU train from Sealdah at about 7.00 p.m, the compartment of the train was very much overcrowded and when the said train just depart Agarpara station at about 7.45 P.M., he approached near the door of the said compartment to get down at Sodpore station when the said train arrive near Kilimetre Post number 14/24 station, due to tremendous pressure of jostling near the door and heavy jerk due to sudden application of break, the victim handgrip went adrift and he fell down from the said compartment and remmed on the nearby post at the said place of occurrence and resulted the instant death. The fact of the case to shows that after such accident a railway memo was forwarded by the Station Master which mentioned that the Station Master has received the information from the duty gate man that, one male aged bout 30 years knocked down by the running train. On the basis of the said memo, the police along with Dom went to the place of occurrence and made inquest over the dead boy of the victim. At the time of inquest, the railway monthly ticket along with identity card recovered from the pocket of the dead body. The police thereafter, sent the dead body for post mortem. The investigation of the police concluded with a report that the victim died by falling from train. The inquest report also stated that statement

of the nearby witnesses who stated that the victim was fell down from the train. The claimant appearing herself to be the wife of the deceased and produced the original ticket along with identity card. One witnesses was examined to be eye witness of the incident appearing before the learned Tribunal as AW 2. AW 2 stated on oath that he boarded the same train along with victim and he saw the victim to fell down from the train due to overcrowded and certain applying of break by the train. No witnesses were adduced by the Union India.

After hearing the both parties, the learned Tribunal has framed three issues.

1. Whether the victim sustained injury by falling down from a running train on the alleged date and time and if so, whether this incident is covered as an untoward incident in terms of provisions of Sec 123 of the Railways Act, 1989?
2. Whether the applicant is entitled to get compensation, as prayed for?
3. To what other relief, if any is the applicant entitled?

So, issue no.1 was framed to answer the question whether the victim sustained injury of falling down from the running train on the alleged date of time and if so, whether this incident is occurred as an untoward in terms of the provision of Section 123 of the Railways Act 1989.

After deciding the issue no.1, the learned Tribunal has decided the issue in favour of the appellant. The entire issue no.1 has come under all question raised in the accident,¹ which was decided in favour of the claimant. Now, in deciding issue nos.2 and 3 and learned Tribunal has again proceeded to decide some portion of the issue no.1. He is of the opinion that though the deceased was a bona fide passenger with valid monthly season ticket but claimant has fail to proved that the victim fell down from the running train.

The observation of the learned Tribunal appears to be self-contradictory; If a person boarded a running train, how is it possible for the person to be knocked down by the said train.

Learned Tribunal has observed that name of the AW 2 was not mentioned in the police paper i.e. in the inquest as well as final investigation report as eye witnesses. Several persons may witnesses of an accident. It is not mandatory for the police to mention the name of each and every person to be the eye witnesses in the inquest report or police final report.

It further appears that the Union of India i.e. railway have not produced any convincing document or witnesses to disbelieve the fact of AW 2. Considering the same, I am of the view that the observation of the learned Tribunal regarding issue nos. 2 and 3 is completely

erroneous and not justified to the fact and circumstances of the case.

I am of the view, the instant appeal has got merit and there are sufficient reasons to believe that the claimants are entitled to get the compensation according to law.

The appeal is hereby allowed; the impugned finding passed by the learned Tribunal in respect of issue nos.2 ,3 and 4 is hereby set aside

To assess just and proper compensation of this case, it appears to be that by virtue of decision of Hon'ble Supreme Court passed in **Rina Devi**, the claimants are entitled to get compensation amount to Rs.4,00,000/- along with 9% interest per annum from the date of filing of the claim application. If the amount i.e. principal along with interest come less than the Rs.8,00,000/- then the compensation should be at least Rs.8,00,000/-, and if the amendment coupled with interest appears to be more than 8 lakh, then, the higher amount is to be the award in this case.

Accordingly, FMA 2459 of 2023 is disposed of.

Connected applications, if any, are also disposed of.

The Union of India is directed to pay the compensation with the officer of the learned Registrar General, High Court, Calcutta within eight weeks from the date of passing of this order. On such deposit the claimant

is entitled to receive the same according to the prelevant rules.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)