

5.10.2023
SL No.8 &9
Court No. 551
Ali

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

F.M.A. 1109 of 2015

**IA No.:CAN/1/2014 (Old No:CAN/9571/2014)
CAN/2/2018 (Old No:CAN/8549/2018)**

Union of India

Versus

Margina Bewa

With

FMA 1110 of 2015

Margina Bewa

Versus

Union of India

Mr. S.N. Sukul,

Mr. Sagnik Chatterjee

...for the appellant/claimant in FMA 1110 of
2015 and respondent in FMA 1109 of 2015.

Mr. Soumak Bera,

Mr. Subrata Santra

.....for the respondent in FMA 1110 of 2015
and appellant in FMA 1109 of 2015.

Both the appeals have been preferred against the judgment dated 15th of November, 2013 passed by the Vice-Chairman of Railway Claims Tribunal, Kolkata in claim Application No. OA (IIU)/0123/2010).

The claim application was allowed by the learned tribunal and the learned tribunal has awarded a sum of Rs. 4,00,000/- in favour of the claimants. The Railway Authority has preferred the appeal challenging the compensation and the claimants have also preferred the appeal on the

ground that the learned tribunal has not awarded any interest upon the compensation.

Learned advocate for the Railway Authority submits that the impugned award passed by the learned tribunal is erroneous. The learned tribunal must have considered the evidence of eye witness who deposed as AW-2 before the learned tribunal. He again argued on perusal of the cross-examination of AW-2, it would be revealed that there are gross negligence on the part of the victim himself, consequently he fell down from the train and died on spot. He further pointed out that the learned tribunal has failed to appreciate the provisions of law enumerated under Section 124-A (b) regarding “self-inflicted injury”. In this particular case, the fact goes to show that the victim was standing recklessly and in front of the door of the train loaded with passengers and due to his own negligence he fell down from the train. The learned tribunal has not put emphasis upon the evidence of AW-2 and passed the impugned judgment erroneously. The learned advocate for the appellant also argued that the instant accident is not beyond reasonable doubt; there is no Railway memo in respect of the said accident when it has been alleged by the petitioners that the accident happened at Khagraghat Railway Station. The initiation of the incident Khagraghat G.R.P.S. Case without a railway memo of station

master is doubtful. He prayed for setting aside the impugned award.

Learned advocate appearing on behalf of the claimants submits before this court that the entire evidence of AW-2, who is the eye witness of the accident has been considered by the learned tribunal. During the examination-in-chief, the AW-2 depose the fact of the accident; it has been stated by the AW-2 that while the victim along with two persons were returning after visiting a patient at Kolkata and when they wanted to get down in the platform of Khagraghat Road Railway Station, at that time, due to sudden jerk, victim fell down from the train and entered into between the train in the platform and died on the spot. He further argued that the learned tribunal has considered the entire evidence of AW-2 including the chief and the cross-examination. During the cross-examination though the AW-2 stated that the victim was standing and fell down due to his own negligence but by virtue of Hon'ble Supreme Court laid down in **Prabhakaran Vijaya Kumar and Ors.** reported in **2008 (SC) 689** and **Rina Devi** reported in **(2019) 3 SCC 572** that the said death of the victim cannot be turned as a "self-inflicted injuries".

He submitted that the learned tribunal has not considered the interest on compensation thus, the appeal has been preferred and by virtue of the

decision of the Hon'ble Supreme Court passed in **Rina Devi**. The claimants are entitled to get the interest over the awarded sum.

Heard the learned advocate perused the impugned judgment. The learned tribunal in considering the entire case before him; he has taken the argument of the respondent Railway Authority. The averment of the Railway Authority regarding the cross-examination of the AW-2 was also considered and the learned tribunal has considered the provision of Section 124-A (b) of the Railways Act and is of clear view that the onus is upon the Railway Authority to prove that the instant incident is termed as 'Self-Inflicted' injury and it is within the purview Sub-Section (a) to (e) under Section 124-A of the Indian Railway Act. He is of the view that the Railway Authority has fell to shift the burden thus the award was passed. He also categorically discussed about the self-inflicted injuries at inner page six (6) of the impugned award and by virtue of the Full Bench Judgment of Hon'ble High Court passed in **Union of India Vs. K. Balakrishnan Kani** he termed the said injury is not under the purview of the "self-inflicted injury".

Let me consider whether the observation of the learned tribunal in respect of the "self inflicted injury" is correct or not. It appears from the cross-examination of AW-2 that the victim fell down due to

his own negligence. The entire evidence goes to show that the victim along with other two relatives including the AW-2 were returning from Kolkata and they were wanted to de-board from the train at the said Railway Station. It also the fact that the train was over crowded at that point of time. It is the statement of AW-2 that the victim was trying to get down from the running train. The entire fact goes to show that the victim was in hurry and whether such hurry which resulted the injury to the victim can be termed under the purview of “self-inflicted injury”. The term “self-inflicted injury” has been specifically defined and clarified by the Hon’ble Supreme Court in **Union of India Vs. Prabhakaran Vijaya Kumar and Ors.** reported in **2008 (SC)689** and also **Union of India Versus Rina Devi** reported in **(2019) 3 SCC 572**. The paragraph 25 of the observation of the Hon’ble Apex Court passed in **Rina Devi** is necessary to set out in this case:-

25. “We are unable to uphold the above view as the concept of “self-inflicted injury” would required intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on “no fault theory”. We may in this connection refer to the judgment of this Court in United India

Insurance Co. Ltd. V. Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on “no fault theory” under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an “untoward incident” entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor”.

So, considering the present law laid down by the Hon’ble Supreme Court passed in **Rina Devi**, I am of the view that the observation of the Hon’ble Supreme Court regarding the “self-inflicted injury” has negated the argument of the Railway Authority was correct. The learned tribunal has correctly set aside the plea of the Railway Authority and passed the award successfully. In my view, there is no infirmity in the award passed by the learned tribunal. The person who wanted to get down from the train and fell down in between train and platform is not come under the purview of the “self-inflicted injury”.

Moreover, the final investigation report of the police goes to show that there are Railway memo on the basis of which the Khagraghat, Police Station U.D. Case No. 7 of 2009 dated 04.04.2009 was started. The Surathal report also goes to show that the victim suffered an untoward incident. Observing

all the materials, I think it necessary to hold that the observation of the learned tribunal is very much correct. There is no merit to entertain the appeal lodged by Railway Authority.

In considering the appeal filed by the claimants, it is the observation of the Hon'ble Supreme Court in **Rina Devi** that in all cases of compensation, the claimants are entitled to get the interest. In this case, the same ratio may be adopted thus the award passed by the learned tribunal must have carried some interest.

In considering the entire facts and circumstances of this case, in my view that the award passed by the learned tribunal shall carry interest @ 9% per annum from the date of filling of the claim case. After calculating the principal alongwith the interest if the award come less than Rs.8,00,000/- then the award should be at least Rs.8,00,000/- and if the award coupled with interest goes beyond Rs. 8,00,000/- then the higher amount of award shall be passed. Respondent Railway authority is directed to deposit the award along with interest to the office of the learned Registrar General, High court, Calcutta within ten weeks from this date. On such deposit the claimants are at liberty to receive the same according to the prevalent Rules.

It appears from the order of this court dated 11 of March, 2015 that a direction was made to the

Railway Authority to deposit the awarded sum of Rs. 4,00,000/- with the Registry. If the same was complied with, Railway Authority need not to deposit the same again; the deposit must have carried some interest. The claimants are at liberty to receive the same along with accrued interest; remaining award is to deposited as per direction made above.

Accordingly, FMA 1109 of 2015 alongwith FMA 1110 of 2015 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.)