

28.11.2023
SL No.5
Court No. 551
Ali

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

FMA 54 of 2023

**Renuka Paul @ Pal & Ors.
Vs.
Union of India**

Mr. Amit Ranjan Roy,
Ms. Juin Das

....for the appellants.

Mr. Pulakesh Bajpayee

...for the respondent/Union of India.

The instant appeal is preferred against the Judgment and Order of dismissal passed on 20th July, 2016 by the Hon'ble Vice Chairman, Railway Claims Tribunal, Kolkata Bench, in Claim application No. OA (IIU)/KOL/2012/0347 under Section 16 of Railway Claims Tribunal Act, 1987 read with Section 124-A of Railways Act, 1989.

The brief facts of the case is that the present appellant being the claimants preferred a claim application before the learned tribunal for getting compensation on the ground that their predecessor, namely, Ajit Paul while travelling through a local train fell down due to sudden jerk and sustained severe bodily injury by such accident and succumbed to his injury at hospital. That the claim case was contested by the Railway Authority by filling written statement.

The learned tribunal after hearing the parties and after receiving the evidences has dismissed the claim application.

Being aggrieved by and dissatisfied with the said order of dismissal the present appeal has been preferred by the appellants/claimants.

The learned advocate for the appellants submits that the observation of the learned tribunal regarding issue No. 3 is totally erroneous. He submits that the observation of the learned tribunal is not based on the record itself. He further submits that the victim was fell down from the running train at Bidyadharpur Railway Station and he died due to the untoward incident so the claimants are entitled to get the compensation. He further argued that the learned tribunal has misread the GD Entry No. and the letter issued by the Inspector of Sealdah GRP, to the Superintendent of Railway Police Station, Sealdah. The confusion starts due to the miss numbering of GD Entry No. in respect of the alleged accident. He further argued that there are sufficient materials before the learned tribunal to convince the case of the claimants but the learned tribunal has only based upon the note produce by the Railway Authority wherein it has been mentioned that no such accident was reported by the concerned Station Master. He further argued that the learned

tribunal has wrongly decided the fact in issue and there is a miserable failure of justice.

Learned advocate for the Respondent/Railway Authority submits that the learned tribunal has specifically dealt with the fact in issue and after observing the entire materials very particularly. The learned tribunal has come to an opinion that the claimants have failed to prove the case. He further argued that there is no reason to believe that the claimant was a bonafide passenger. He further argued that the evidence of AW-2 cannot be believed as he is an interested witness. He further submits that there are no illegality in the impugned judgment passed by the learned tribunal so the instant appeal has got on merit.

Heard the learned advocates perused the materials on record.

The claimants have stated the factum of accident as follows:-

On 01.07.2012 the husband of appellant No. 1 was travelling from Jadavpur to Kalikapur by one down train bearing No. SC 34552 with a valid IInd class railway ticket. Due to sudden jerk, he fell down from the running train at Bidyadharpur Railway Station platform No. 2 and got severe injuries all over his body. Initially, he was removed to Subhasgram Rural Hospital and thereafter he was referred to the National Medical College and

Hospital, Kolkata on the same day he expired on 01.07.2012 at about 11.40hrs.

To prove the case the wife of the deceased i.e. appellant No. 1 adduced as AW-1 she filed some documents including her identity card etc and with an attested copy of letter dated 01.07.2012 from Sonarpur GRPS addressed to Officer-In-Charge Beniapukur, PS. He also produced the Post Mortem Report of the deceased including death certificate and injury report issued by the concerned Hospital. During cross examination she deposed that she was not present at the time of accident.

One Yasin Khan was deposed as AW-2 before the learned tribunal who stated before the learned tribunal that he was travelling with a deceased in the said train and when he was ready to get down all on a sudden he found due to sudden jerk said Ajit Pal fell down from the running train. The Railway Authority has cross examined the AW-2 and there is only one denial that the statements are not true. The Railway Authority did not adduce any witness. The Railway Authority has submitted a report before the tribunal which was received by the learned tribunal as a sole evidence on behalf of the opposite parties.

In deciding the entire case the learned tribunal has framed as well as 5 (five) issues. He

decided the only issue No. 3 (three) first. “Issue No. 3 (three) is read as follows”:-

“whether the victim died in an ‘untoward incident’ while making journey by train as defined under Section 123(c)(2) of the Railway Act, 1989”.

The learned tribunal while deciding the issue has concentrated upon the attested copy of letter dated 04.07.2016 signed by the Inspector of Sealdah GRPS address to Superintendent of Railway Police Station. He perused that the said letter reveals a GD Entry No. 56 dated 01.07.2012. On perusing the copy of GD Entry No. 56 it appears that such GD Entry does not reveal any such untoward incident register with Sonarpur GRPS. On the basis of such observation the learned tribunal has placed his reliance upon the report of the Railway Authority dated 18th April, 2013 which indicated that the deceased Ajit Pal was found at Bidyadharpur Railway Station at platform No. 2 with serious injured condition but no record for accident from railway was found neither from Station Manager Office or SRP at GRPS. SRPS reported no railway accident. So, the report disclosed that there are no such accident as stated by the claimant.

The claimant has argued before the learned tribunal that the GD entry No. should be 12 instead of 56 and in support of their claims he produced the

attested copy of the GD Entry No 12 dated 01.07.2012. Learned tribunal found it is not legible thus he disbelieved the claim of the case of the claimant.

In perusing the documents filed before the learned tribunal it appears to me that the letter dated 01.07.2012 issued by the Sonarpur GRPS to the Officer-In-Charge, Beniapukur PS is regarding furnishing information of the death of one Ajit Pal. The GD Entry was mentioned as 56 dated 01.07.2012. The information also indicates the documents i.e. PM report and inquiry report conducted due to the death of Ajit Pal. The letter mentioned that Ajit Pal fell down from the running train being No-SC 34552 down at Bidyadharpur Railway Station platform No. 2 and got severe injuries all over his body. It is surprisingly to note that the Sonarpur GRP GD Entry No.56 was produced before the learned tribunal it is of dated 02.07.2012 but not dated 01.07.2012. It further appears to me that the attested copy of GD Entry i.e. GD Entry No. 12 dated 12.07.2012 though illegible but the incidental death of Ajit Pal can be very well found. Moreover, the PM report also disclosed the cause of death which supports the claimant's case.

Considering the entire record and considering the materials herein, in my view the observation of the learned tribunal regarding the

issue No. 3 is not correct. The learned tribunal has not mentioned anything regarding the disbelievability of the evidence of AW-2.

It was argued by the learned advocate for the respondent that AW-2 is an interested witness but I find no materials in the submission. The AW-2 is not a relative; AW-2 also not a neighbor of the deceased. The house of the AW-2 is not within the village of the deceased thus it cannot be said that the AW-2 is not interested witness. Moreover, the Railway Authority has failed to put a single question to AW-2 during his cross examination to shake the credit of eve witness.

The learned tribunal also not seen the report of GRPS regarding wrong mention of G.D. No.

Considering the same I am of the view that the observation of the learned tribunal in issue No. 3 is not correct. It has been categorically proved by the claimants that the deceased was died in an untoward incident while he was travelling in the running train and fell down at the time of sudden jerk. He fell down from the running train at Bidyadharpur Railway Station platform No. 2 and got severe injuries and succumbed to his injuries at the hospital. The failure of Station Manager to record the accident shall not falsify the case of the claimant.

In considering the other issues regarding the issue No. 2 that whether the victim was a bonafide passenger or not; it appears that no railway ticket was found from the possession of the deceased. The railway has also not filed any case against the deceased to be a trespasser within the Railway platform. Moreover, the plea of the claim of the claimants was not specifically denied by the Railway Authority by filing written statement or evidence to that effect. Whether a particular person is a bonafide passenger or not that has to be proved by the Railway Authority by virtue of the decision of the Hon'ble Supreme Court in **Rina Devi**. Considering the same, I find that the instant appeal has got on merit and the claimants are entitled to get the compensation.

In considering the quantum of compensation in this case the ratio of the Hon'ble Supreme Court passed in **Rina Devi** as well as **Radha Yadav** is followed and in following such observation and direction of the Hon'ble Supreme Court. It appears to me that the instant claim application was filed prior to the amendment so the claimants are entitled to get the award of compensation amounting to Rs. 4,00,000/- under Section 124-A of Railway Act alongwith interest @ 6% per annum from the date of filing of the claim application i.e. from 31.07.2012. If the award of compensation alongwith the interest

come to below Rs.8,00,000/- by virtue of decision of Hon'ble Supreme Court passed in **Rina Devi** and **Radha Yadav** the compensation would be at least Rs.8,00,000/- is the award alongwith interest is calculated beyond Rs.8,00,000/- the higher amount of award shall be given in this case.

Accordingly, the respondent/Railway Authority is directed to pay the compensation alongwith the interest as directed above through the office of the learned Registrar General, High Court, Calcutta within six weeks from the date of passing of this order. On such deposit the office of the learned Registrar General, High Court, Calcutta shall disburse the amount in the name of the claimants through separate three equal account payee cheques after taking note that the minor claimants have already attained majority.

The instant FMA 54 of 2023 is 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.)

