

04.07. 2023
item No.42
n.b.
ct. no. 551

FMA 1606 of 2008

Sikha Modak.
Vs.
Union of India.

Mr. Jayanta Banerjee,
Mr. Prasanta Banerjee,
Ms. Ruxmini Basu Roy,
Mr. Sandip Bandyopadhyay,
..... appellant.
Mr. Avinash Kankani,
Mr. Suan Majunder
..... the respondent.

The instant appeal has been preferred by the claimant/appellant, being aggrieved by and dissatisfied with the judgment and order dated January 30, 2008 passed by the Railway Claims Tribunal, Kolkata in connection with Claim Application being No. U/784/2004.

The brief fact of the case is that one claim application was preferred by the appellant before the Learned Tribunal on the ground that on 14.10.2003 the applicants son Indra Modak, after selling fish at Memari Market left for Burdwan by a local train at about 10.00 a.m. to purchase ice. During the office time the train was overcrowded and he was standing at the doors with the others, when the train at the Banka bridge in between Gangpur & Burdwan station he was about to spit up by leaning his head from the door, and suddenly his head dashed with electric post and he fell down from the

running train. Other passengers shouted loudly and tried to pull the chain but the ACM system was out of order and train was not stopped. The victim succumbed of his injuries on the spot. It was pleaded by the appellant that the victim was travelling on the second class monthly ticket being No.0302 between Memari and Burdwan, which was valid up to 02.11.2003.

Postmortem over the dead body was conducted at Burdwan Medical College & Hospital. Initially, the dead body was un-identified and thereafter, the grandfather of the deceased identified the dead body and received the same from the Morgue. In support of the case, the claimant has produce several documents including F.I.R, monthly ticket of the victim and other police papers. The present appellant deposed before the learned Tribunal as A.W.1, one Bimal Saha was deposed as A.W.2 as eyewitness to this case.

Learned Tribunal after hearing the parties and after perusing the evidences on record both oral and documentary disbelieve the case of the claimant/appellant and rejected the claim petition. Hence this appeal.

Learned advocate appearing for the appellant submitted before this Court that it was not disputed that the deceased at the relevant point of time was travelling at the local train with a valid monthly ticket. The monthly ticket was verified by the respondent and it was observed be as correct. He also pointed out that the dead body was

identified and received by the grandfather of the deceased from the Morgue after proper identification. The A.W.2, who was co-passenger of the said local train has deposed before the learned Tribunal regarding the factum of the accident but the learned Tribunal has not believed the case of the claimant on some flimsy grounds. He further argued that learned Tribunal should have considered the claim case to be true and necessary award should have passed. He further pointed out that the observation of the learned Tribunal on the attending facts and circumstances of the case is totally erroneous. The police papers have already proved the death of the deceased due to falling from the train, by virtue of Postmortem Report and other statement of witnesses. Thus, at this juncture, the case of the claimant cannot be disbelieved.

He further pointed out that the observation of the learned Tribunal regarding the statements of A.W.2 is not correct. It was appeared from the evidence of A.W.2 that he was co-passenger at the same local train in the same compartment. He knew the deceased to be a co-passenger, though he was not aware the actual name of the deceased, but his statement cannot be disbelieved only on the ground that just at the time of accident, did not see the deceased fall down from the local train; but it is the fact after such accident, the A.W.2 returned back from the next railway station to the accident spot. The belongings of the deceased and the monthly are deposited

to the nearest Stationmaster. No evidence was adduced before the learned Tribunal to contradict the statement of A.W.2. Thus, the statement of A.W.2 need be believed.

Learned advocate appearing for the Union of India submitted before this Court that the learned Tribunal has considered the evidence both oral and documentary. It is the observation of the learned Tribunal that the claimant has failed to prove their burden to prove the case. He further pointed out that there is no illegality in the observation of the learned Tribunal. He again pointed out that the evidences adduced by the claimant before the learned Tribunal was properly scanned by the Tribunal and as a result thereof, the learned Tribunal is of the opinion that the claimant has failed to prove the case. He again pointed out that the A.W.2 cannot be believed as he stated before the learned Tribunal that he knew the deceased prior to the accident. It is the reasonable suspicion before the learned Tribunal that why the dead body of the deceased remained unidentified for long three days.

On such submission, the learned advocate appearing for the Union of India submitted that the so-called accident is fabricated in nature. Thus, the Union of India is not liable to pay the compensation.

Heard the learned advocates for the parties and perused the materials on record. It appears that the accident stated to be happened when the deceased wanted

to split up by leaning his head from the running train. Whether this act of the deceased would be “self-inflicted” or not which can only be ascertained as per view of Section 124A of the Railways Act. Section 124A of the Railways Act mentioned same exceptions.

The Hon’ble Supreme Court in the case of ***Union of India Vs. Rina Devi*** has dealt with the same consequences and the Hon’ble Supreme Court is of the view that the conduct of splitly leaning outside the train is not come under the purview of the “self-inflicted injury” mentioned in Section 124A(B) of the said Act.

Learned advocate for the appellant also submitted some decisions reported in ***Union of India Vs. Radha Yadav*** reported in **2019(1) T.A.C 731(S.C)** and ***Union of India Vs. Rina Devi.*** reported in **(2019) 3 SCC 572** and in the case of ***Union of India Vs. Prabhakaran Vijaya Kumar*** reported in **(2008) 3 SCC(Cri) 813**.

I have perused the observation of the Hon’ble Supreme Court in the above-mentioned judgments. The Hon’ble Supreme Court in the case of ***Provakaran (supra)*** has held that the injury inflicted by the passenger and the claim of the claimant under the Railways Act, 1989 should be dealt with principle of “no fault liability”. It is also observed by the Hon’ble Supreme Court that accidentally falling of passenger from the train carrying passenger is not come under the purview of “self-inflicted injury”.

In considering the facts and circumstances of the case, it appears that the learned Tribunal has disbelieved the evidence of A.W.2 on the ground that A.W.2 has not seen the accident. It appears from the statement of A.W.2 that he was a co-passenger, who usually travelling with some other co-passengers regularly. By virtue of their travel in the same train and in the same compartment they appears to face-known to each other. Their names and proper address may not be within the acquaintance of other passengers, but it is within their knowledge that wherefrom the particular passengers boarded the train and where they left train. It appears that A.W.2 has deposed before the learned Tribunal that he knew the deceased on such way. The A.W.2 has also stated before the learned Tribunal that on the fateful day the deceased board the train with the A.W.2 in the same compartment just because of the fact that A.W.2 did not notice when the deceased felll from the train does not prove that A.W.2 never witness the accident. The A.W.2 was all along in the ride of the train with the deceased and he noticed that deceased fall from the running train. It is further stated that he returned back to the spot of accident from the nearest station and collected the documents from the possession of the deceased and produced the same before the Stationmaster. The submission of A.W.2 cannot be disbelieved on that score. Thus, finding of the learned

Tribunal regarding the correctness of the statement of A.W2 appears to be erroneous.

Considering the entire facts and circumstances of the case and considering the view of the Hon'ble Supreme Court in the case mentioned herienabove, I am of the view that the claimant has successfully proved the case and she is entitled to get the compensation, as prayed for.

Thus, the appeal succeeds.

The impugned judgment and order passed by the learned is set aside.

To assess just and proper compensation in this case, it appears that the claimant has filed to claim application for getting compensation to Rs.4,00,000/-. By virtue of notification of Central Government published in the **Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i) No.877 dated 22nd December, 2016,** the amount mentioned in **Sub-Rule 2 is amended from Rs.4,00,000/- to Rs.8,00,000/-**. The Hon'ble Supreme Court in **Bimla Devi & Ors.** has discussed the amount of compensation. Consequently, it was clarified by the Hon'ble Supreme Court in **Radha Yadav(Supra)** at paragraph 10.

Considering the attending facts and circumstances of the case, the claimants are entitled to get the compensation of Rs.4,00,000/- along with 6% per annum from the date of the accident. If the accrued interest along with principal appears to less than Rs.8,00,000/-, then

the compensation would be at least Rs.8,00,000/- and if the principal along with accrued interest appears more than Rs.8,00,000/- then the higher amount should be awarded.

The Union of India/respondent is directed to pay the compensation within 12 weeks from the date of this order through learned Registrar General, High Court, Calcutta by issuing an account payee cheque in the name of the appellant (Smt. Sikha Modak). The appellant shall receive the cheque upon proper identification and verification by the concerned office of the learned Registrar General.

The instant claim is pending since 2003. Considering the long pendency of this matter, the office of the learned Registrar General is requested to disburse the cheque as early as possible.

Accordingly, FMA 1606 of 2008 is disposed of.

Connected applications, if any, are consequently disposed of.

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

(Subhendu Samanta, J.)