

05.03.2024
SL No.8
Court No. 551
Ali

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

FMA 1741 of 2018

Srimati Sarita Bisen

Versus

Union of India

Mr. Navin Mittal,
Ms. Orindrila Sinha

....for the Appellant.

Mr. Subrata Santra

.....for the Union of India.

The instant appeal is preferred against the Judgment and Order dated 14th August, 2016 passed by the Hon'ble Vice Chairman, Railway Claims Tribunal, Kolkata Bench, in Claim application No. OA (IIU)/KOL/0565/2014 under Section 124-A of Railways Act, 1989.

The brief facts of the case is that the present appellant being the claimant preferred a claim application before the learned Railway Claimas Tribunal, Kolkata Bench for getting compensation on account of death of his husband, namely, Suraj Bisen @ Surajlal Bisen in an untoward train accident. It is the fact of the claimant that on 10.10.2013 Suraj Bisen @ Surajlal Bisen, the deceased, was travelling Ex-Kolkata to Malda by railway ticket No. 52844140 by train. During the course of such journey the said deceased accidentally fell from running train due to over-Crowded pressure and sudden jerk at Farakka

Station and died on the spot. The police case has been registered under Agimganj GRPS U/D Case No.39/13 dated 10.10.2013. It is the claim before the learned tribunal that the deceased died due to untoward Railway accident, so, the claimant prayed for compensation. The matter was contested by the Railway Authority.

The learned tribunal after hearing the parties and after receiving the evidences has dismissed the claim application; against the order of dismissal, the instant appeal has been preferred.

The learned advocate appearing on behalf of the appellant submits that the learned tribunal has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. He submits that the learned tribunal has not considered the FIR, PM Report and final police report. The deceased was a bona fide passenger having valid Railway ticket for a journey. The learned tribunal has failed to appreciate the fact that being a bona fide passenger who is running from Kolkata to Malda it is not necessary for him to get down at the Farakka Station. He further submits that the learned tribunal has also failed to appreciate the fact that the Railway Authority has not produced the DMR report or other connected papers i.e. inquest report etc. to disprove the claim of the claimant. He further argued that in this case

the final report of the police suggests that the deceased was run over by a train bearing train No. 12363 at Farakka Station. The purport of meaning of “run over” by a train means the deceased first fell down from the running train and, thereafter, run over by the train. He further argued that the order of dismissal passed by the learned tribunal is erroneous. So, the order passed by the learned tribunal is need be set aside and the claimant may be awarded appropriately.

Mr. Subrata Santra, learned advocate appearing on behalf of the Union of India/Railway Authority raised strong objection and submits that the claimant has stated the fact of accident in the claim application to the effect that the deceased was travelling from Ex-Kolkata to Malda in a train with a valid ticket Number. No witness was adduced before the learned tribunal to prove that the deceased was a bona fide Railway passenger and fell down from the train. He further argued that the so called submission of railway ticket by one relative of the deceased does not prove that those documents are actually collected from the dead body of the deceased. He further argued that the learned tribunal has correctly assessed the entire facts and came to a correct finding. The claimant has failed to prove the fact of accident. So, in this case, they are not entitled to get any compensation.

Heard the learned advocates perused the observation of the learned tribunal it appears that to decide the entire claim case the learned tribunal has framed as many as five issues. In deciding the issue No. 1 he is of the opinion that the claim case is quite maintainable in its present form and prayer. Thereafter, the learned tribunal has decided the issue No. 3 to the fact that, whether the victim died in an untoward incident while making journey by a train as defined under Section 123(c)(2) of the Railways Act, 1989.

In deciding the issue the learned tribunal is of opinion that there are no eye witnesses to the fact that the deceased had ever boarded the train. The learned tribunal has relied upon the FIR, memo of GRPF and the copy of final report as well as the death certificate, all the documents stated the fact that, one unknown person was run over by 1263 up train and lying death in Up main line.

Learned tribunal after perusing all the documents is of opinion that there is no evidence which can crystallize the fact that the deceased was failed down from the train.

The final report which was submitted by the police discloses the receiving of a Railway ticket from the relatives of the deceased. It is the submission of the learned advocate for the appellant that the relatives of the deceased was informed the matter to

the IC GRP through a letter also mentioned listed the documents which was collected from the dead body of the deceased and they received the documents when they received the dead body after post-mortem examination from the police authority.

However, no such receipt of dead body or other connected papers are available. The learned tribunal has also not considered the DRM reports which are actually not submitted by the Railway Authority. The learned tribunal has also not perused the inquest report.

Considering the entire aspects it appears to me that the learned tribunal has not properly decided the issues in hand. The learned tribunal must have decided the issue. That, whether victim was a bona fide passenger or not. This issue was not at all decided. In deciding the issue No. 3 it is also not opined by the learned tribunal that whether the victim was travelling through a train or not. The learned tribunal has not decided regarding the validity of the ticket collected by the investigating agency during the course of investigation.

The learned advocate appearing on behalf of the appellant cited a decision of Hon'ble Madras High Court reported in ***Rajalakshmi vs. The Union of India*** it appears that in the cited case the statement of the Loco Pilot and other statements of witnesses were there, but in the present case no

such report or the evidence of Loco Pilot is there. So, the facts and circumstances of the cited case is distinguishable in nature.

However, from the entire facts it appears to me that, the claimant has preferred the claim application before the learned tribunal for alleged Railway accident dated 10.10.2013. No independent witnesses were produced before the learned tribunal to substantiate the claim of the claimant. At this juncture, the learned advocate submits that the claimant may be given an opportunity to prove the case according to the law.

Considering the submissions, I think it necessary to remand the matter back to the learned tribunal to decide the case afresh.

The impugned award passed by the learned tribunal is hereby set aside; matter be remanded to the learned tribunal for fresh decision. The claimant is at liberty to file oral or documentary evidence before the learned tribunal and the learned tribunal shall also allow the Union of India/Railway Authority to adduce their evidence oral and documentary according to their wish.

Learned tribunal is further directed to dispose of the matter by passing a fresh decision on the basis of the attending facts and circumstances and witness as well as the witness and evidence so

adduced after remand, as early as possible most preferable within September, 2024.

The instant **FMA 1741 of 2018** is disposed of.

Let the LCR be sent down immediately before the learned tribunal.

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.)