

21.05.2024
SL No.1
Court No.25
Ali

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

**FMA 488 of 2021
With
IA No: CAN/1/2021
Rina Rajbanshi & Ors.
Vs.
Union of India & Ors.**

Mr. Jayanta Banerjee,
Mr. Sandip Bandyopadhyay,
Mr. Asish Kr. Sasmol,
Ms. Ruxmini Basu Roy,
Mr. Argha Bhattacharjee
..... for the appellants/claimants.

Mr. Sanjit Ghosh
Ms. Mary Datta
...for the respondent/Union of India.

The instant appeal has been preferred against the judgment and order dated 12th day of August, 2020, passed by the learned Railway Claims Tribunal, Kolkata Bench in Claim Application No. O.A. (Ilu)/KOL/2017/0093.

The brief facts of this case is that on 20.07.2016 the victim of this case, namely, Haripada Rajbanshi along with his brother and one neighbour, namely, Shri Bijoy Das went to their respective work place at Srirampur after boarding a train at Hooghly Railway Station at about 8.25 by purchasing a return journey Railway ticket. As soon as the said train arrived at Chandennagar Railway Station the said victim became sick and felt and unresistable urge for vomiting and express his

desire to his companion brother; in his bit to commit vomiting when the train was passing to Mankundu to Bhadeswar Railway Station, the victim slipped from open door and thus felt down from compartment; as sequel of his accident he dashed against an electric pole and in effect the body was thrown inside the truck consequent such accident the victim died on spot.

The legal heirs of the victim filed an application for getting compensation.

The claim case was contested by the Railway Authority by filing written statement.

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

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

Mr. Banerjee learned advocate appearing on behalf of the claimants submits that the observation of the learned tribunal in deciding issue Nos. 2 and 3 is erroneous. He submits that in this case the widow of the deceased was deposed as AW- 1 and the brother of the deceased was deposed as AW 2. The AW-2 specifically deposed that he was present at the time of accident and witnessed the accident in his own eyes. He submits that the version of AW-2

was disbelieve by the learned tribunal only on the ground that the AW-2, though present as P.O. with the deceased but did not put his signature in the Surathal report as witness. He further argued that the observation of the learned tribunal regarding not signing the surthal report by AW-2 is erroneous. Mr. Banerjee further argued that the observation of learned tribunal regarding the fact that the ticket which was seized by the police has mentioned the time of purchase to be 9.42 hours while the accident happened before 8.50 hours. Mr. Banerjee argued that there is no evidence on behalf of the Railway Authority to justify the fact that the ticket was implanted. He submits that the ticket was seized during the course of investigation of this case and the seizure list was properly prepared. Thus, the observation of the learned tribunal is erroneous. Mr. Banerjee further argued that there is a sufficient material to show that the victim died in an untoward incident. So, the claimants are entitled to get the compensation.

The learned advocate appearing on behalf of the Railway Authority argued a lot and submits that the observation of the learned tribunal is quite justified. He further argued that the learned tribunal has correctly opined that Bijoy Das who signed the surthal report as witness never produce before the

learned tribunal as witness so the case of the claimants is not believable.

He specifically pointed out that the accident happened prior to the 8.50 hours as appearing from the Railway station memo. The Railway ticket depicts the date and time of issue as 20.07.2016 at 9.42 hours. He submits that the learned tribunal has justifiably held that the ticket was issued latter the accident and, thereafter it was implanted. So he submits that the documentary evidence of the ticket cannot be disbelieve at this stage.

Heard the learned advocates perused the materials on records.

On considering the entire facts it appears to me that initially after the accident one U/D Case was registered by RPF, Howrah on the basis of the Railway Memo. The Railway Memo reflected that the guard of 37916 Dn. KWAE local reported one unknown male person aged about 30 years dead body lying on Dn.M/L between CGR-BHR at KM 20/26-28/24 inside the Track. On the basis of the said memo the Railway Station diary was prepared by the Station manager and a porter informed the same to the OC, GRPS/SHE & IPF, BDC regarding such information. On the basis of such information, the GRPS, Howrah started a U/D Case being No. U/D 63/16 dated 20.07.2016 and proceeded to

inquest the dead body of the deceased placed on the Railway Truck. The inquest report was commenced on 10.00 hours and it was concluded on 11.00 hours. The preliminary observation of the inquest report as per the opinion of the witnesses has mentioned therein “as a case of fell down from running train due to hit something and died”. Three person witnesseth the inquest report including one Bijoy Das. After conclusion of investigation police has submitted final report, containing inter alia, that it is a case of accident fell down from the running train. The seizure list contained the money purse which was recorded from the body of the deceased containing some amount of Rs. 51 (fifty one), one Xerox copy of voter identity Card, one Railway journey ticket No.H44Sa6040 from Hooghly to Serampur dated 20.07.2016 ordinary return journey thereof. It further appears that the Railway also took up an internal investigation regarding the untoward incident case of Haripada Rajbanshi. After such investigation the Railway Authority is of view that the deceased was dashed with electric pole while leaning out from a train in motion. As the leaning out from the running train is punishable offence under Section 156 of Railway Act, thus, they are of view that the accident does not fall under the purview of provision of Section 123 (c)(2) of Railway

Act, 1989, amended in 2003. It further appears from the investigation that by the said investigation that the Railway ticket was verified by the Hooghly Booking Supervisor, but nothing has been mentioned regarding the implantation of the said Railway Ticket. At the time of submission of the report the Railway Authority is of view that they shall produce the evidences on the ground that:

The deceased fell down from running train when he was travelling on footboard and lean out by violating the safety precaution and negligence. Travelling on footboard of train is an offence of u/s 156 Rlys Act 1989. It was self inflicted injury.

As per surathal report prepared by GRPS/SHE on the material date, time and place it is mention that the deceased dashed with electric pole located beside the Rly. Track during his journey Ex. Hooghly to Srirampore with railway ticket No. 4596040.

As per PM report that immediate course of death was due to shock and due to hemorrhage from multiple injuries. Ante mortem in nature.

During investigation no foul play could be detected behind the death.

During the course of trial it appears that the widow of the deceased deposed as AW-1 and brother of the deceased, namely, Paritosh Rajbanshi

deposed as AW-2. The AW-2 Paritosh Rajbanshi stated that he accompanied the deceased in the said train and the deceased felt irresistible urge of vomiting at the time of leaning towards the door and he slept towards the door. During cross examination the fact of accident as stated by the AW-2 was not shaken. Furthermore, during the inquiry of the Court he also stated that he saw the accident in his own eyes. It appears that the Railway Authority has not produced any witness to disprove the claim case.

The learned tribunal has framed as many as five issues to decide the matter. But, it appears that the learned tribunal has only decided the issue Nos. 2 and 3 and is of opinion that the name of the brother of the deceased, namely, Paritosh Rajbanshi was not cited as witness in the surathal report, thus his evidence is not believable. After observing the entire materials I find that the Railway Authority has not produced any witness to substantiate the fact that the ticket was later implanted. However, the ticket was exhibited by virtue of the claimant but the Railway Authority has not conducted any positive investigation regarding the implantation of the Railway ticket. More so, it further appears to me that the inquest of the police was started at 10.00 hours and the police himself seized the Railway

ticket from the purse of the dead body. Thus the fact of implantation of the ticket as opined by the learned tribunal appears to be not justified and it is not based on positive or convincing evidence.

I make it clear that the ticket and its presence thereof have been investigated by the Railway Authority by their internal inquiry report but they are of opinion that there is no foul play. It further appears to me that the opinion of the learned tribunal regarding not signing as a witness by the AW-2 in the surthar report does not fade the evidentiary value of AW-2 before the learned tribunal. Moreover, the Railway Authority in their investigation is opined that the deceased was inside the train at the time of accident. I make it clear that the opinion of the Railway Authority regarding the offence punishable under Section 156 of Railway Act is the onus to be proved the Railway Authority; as no evidence has been placed by the Railway Authority. So, the punishable offence under Section 156 of Railway Act is not at all applicable in this case. More so, by virtue of law laid down by the Hon'ble Apex Court in ***Union of India Versus. Prabhakaran Vijaya Kumar*** reported in **2008 (2) T.A.C. 777 (S.C.)** the claim application under the Railway Act has to be proved under the principle of preponderance of probability also under the

principle of no fault liability. So, contradictory negligence cannot be pleaded in this case.

The learned advocate for the Railway Authority has cited two decisions reported in ***Gurcharan Singh & Ors. V. Union of India & Jethuli Devi & Ors. Versus Union of India***. It appears that the facts and circumstances of these cases are totally different to this case. Thus, they are not applicable in this case.

Considering the entire matter the impugned judgment passed by the learned tribunal appears to me baseless and without appreciation of any evidences on record. Thus, the same is set aside. The claimants are entitled to get the compensation according to the amendment of the Railway Accident and Untoward Incident Compensation Rules, 1990 as amended with effect from 01.01.2017. The award of this case would be Rs. 8,00,000/- along with interest @ 6% per annum from 06.03.2017 till its actual payment. Appellant to comply the order within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court, Calcutta. On such deposit the wife, daughter and son of the deceased shall receive the 75% of the compensation and 25% of compensation shall be receive by the father and mother of the deceased.

Accordingly, the application being **FMA 488 of 2021** 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.)