

**Court No. - 4**

**Case :-** FIRST APPEAL FROM ORDER No. - 800 of 2018

**Appellant :-** Union Of India Throu.General Manager Northern Railway

**Respondent :-** Riyaj Fatima

**Counsel for Appellant :-** Mahendra Kumar Misra

**Counsel for Respondent :-** Chandra Prakash Singh, Manish Kumar Srivastava

**Hon'ble Rajnish Kumar,J.**

1. Heard, Shri Mahendra Kumar Mishra, learned counsel for the appellant and Shri Manish Kumar Srivastava, learned counsel for the respondent.

2. This court, while recording the arguments of learned counsel for the appellant, had passed the following order on 23.05.2024:-

"1. Shri Mahendra Kumar Misra, learned counsel for the appellant submits that the claim petition was filed claiming that Mohd. Zaidi son of Nazahir Hussain has died in an accident by falling from train, however subsequently the name of the deceased was amended as Imran and while amending the name of the deceased the amendment was also sought for writing dead against the name of father i.e. Nazahir Hussain on the ground that he has died without disclosing any date of death or annexing death certificate. The said application was moved on 25.08.2018, which was allowed by the tribunal.

2. He further submits that while filing the application bearing Application No.I.A. 3 of 2022 for withdrawal of money before this Court in December, 2022, a photo copy of invitation of marriage of daughter of Nazahir Hussain was annexed. The invitation was extended by Mohd. Nazahir Hussain and the date of marriage was fixed on 21.12.2022 and it is not mentioned that he was deceased, whereas in the subsequent application for withdrawal of money filed by the respondent in August 2023 Nazahir Hussain has been shown as deceased, therefore the submission is that Nazahir Hussain has died after filing of the first application for withdrawal of money, whereas the amendment was already sought for writing dead against his name in the month of August, 2018 before tribunal and allowed.

3. Learned counsel for the appellant further submits that against the Clause-6(a) of the application for claim, no particulars of the accident indicating the date, time and place of accident and name of the train has been given. The relationship with the deceased has also not been disclosed by the claimant-respondent against clause-15. Thus, the submission is that the application itself was not maintainable.

4. One of the contention of the learned counsel for the appellant is also that the Nazahir Hussain claiming himself to be father of Mohd. Zaidi had filed the claim petition annexing election Votor I.D. Card, in which the

address is given 9/3402, Ghold Dharmapura, Gandhi Nagar, Delhi-31, whereas in the application the address is mentioned as Mohalla- Sarki, Kasba Sirsi, P.S. Mainadher, District- Moradabad and the election Votor I.D. Card also indicates that the name of elector is written in English as Nazir Husain, whereas in the Hindi it has been corrected as Nazhir Hussain manually.

5. The submission is also that one Imran had died, who had fell from train but his wife was also travelling in the same namely Sahnaz Azra, whereas the claimant-respondents claims that Imran was unmarried.

6. In view of above, learned counsel for the respondent is required to clarify as to when Mr. Nazahir Hussain had died and file an affidavit disclosing the date of his death, and his death certificate and also clarify as to if he was alive at the time of fixing of the marriage date of his daughter on 21.12.2022, for which the invitation cards were also printed, a copy of which has been annexed with application for withdrawal of money filed in the month of December, 2022, as to how the application was moved for amendment before the tribunal intimating that he has died.

7. As prayed by learned counsel for the appellant, two weeks' time is granted to file affidavit clarifying the aforesaid.

8. List in the second week of July, 2024. "

3. Learned counsel for the appellant pressing his arguments recorded in the aforesaid order further submits that the respondent has filed the death certificate of Nazahir Hussain issued on 26.10.2018 showing the date of death as 20.07.2018. However the address on the death certificate does not match with the address given in the claim petition as the address on death certificate is of Sambhal and address on Claim Petition is of Moradabad. Thus the submission is that the claim petition has wrongly and illegally been allowed by the Tribunal.

4. Per contra, learned counsel for the respondent submits that the claim petition was filed by Nazahir Hussain annexing his I.D. proof as he may have been living in Delhi at that point of time. He further submits that the address given in the death certificate is of Sambhal, but the address is the same, which is given in the claim petition and only the district is not mentioned. He further submits that learned Tribunal, while relying on the report of Station Master Diary, has found that the deceased had died after falling from the train. Thus the evidence, which could have been considered, has been considered. However the report submitted by the appellant,

which was prepared after filing of claim petition, could not have been considered without any proof in view of a Division Bench judgment of this court in the case of **Union of India Versus Smt.Shyama Pandey and others; 2011 (29) LCD 904**. Thus the submission is that the appeal has been filed on misconceived and baseless grounds and it is liable to be dismissed.

5. I have considered the submissions of learned counsel for the parties and perused the records.

6. The claim petition was filed by Nazahir Hussain and his wife Riyaj Fatima under Section 16 of the Railway Claims Tribunal Act, 1987 for compensation for the death of their son Imran, in an untoward incident on 25.09.2010 alleging therein that while the deceased was travelling from Moradabad to Lucknow he fell down from the train at Shahjahanpur station and succumbed to his injuries. It has been alleged that the deceased was having valid journey ticket, which was lost in the accident. The written statement was filed by the appellant denying the allegations made in the claim petition.

7. On the basis of pleadings of the parties the following four issues were framed by the Tribunal:-

"1. Whether the deceased was a bona fide passenger of the train in question?

2. Whether incident of death of the deceased falls under the ambit of untoward incident as defined U/s 123 (C) (2) read with the section of 124-A of Railways Act 1989?

3. Whether the applicant is only dependent of the deceased?

4. To what relief?"

8. The claimants, alongwith the claim petition, filed copy of the Panchanama, Post-mortem report and Identity Card.

Claimant Nazahir Hussain got himself examined as AW-1, Mr. Jaihar Abbas as AW-2, who has been stated to be a witness for purchase of journey ticket. Both the witnesses were cross examined on 15.02.2014. The claimant-respondents have also filed an affidavit of Mr. Shakil Akbar, who is also stated to be a witness of purchase of journey ticket. He was also cross examined on 20.12.2017. The appellant filed the statutory investigation report containing several documents, such as, S.M.Report etc. No witness was examined by the appellant.

9. The claim petition was filed stating in the first paragraph of the claim petition that the claimant is applying for the compensation on account of death sustained by Imran son of Nazahir Hussain, who died in an accident of untoward incident, however in the first column of necessary particulars in respect of the deceased in the incident which is name and father's name of the persons died (husband's name in case of married widow), Imran son of Nazahir Hussain was mentioned. Therefore the application for amendment was moved on 25.08.2018, which was allowed by means of order dated 27.08.2018 and it appears that no objection to the application was raised. Consequently the name of the deceased was corrected against the first column and no objection/written statement was filed thereafter. Thus the submission of learned counsel for the appellant that the claim petition was filed for Mohd.Zaidi son of Nazahir Hussain is misconceived and not tenable.

10. A plea was taken in the written statement that Late Mohd.Zaidi was not a passenger despite averments in the first paragraph about Imran son of Nazahir Hussain and no objection in this regard was taken. However an application for taking documentary evidence/C.M.I. report as documentary evidence on behalf of respondent/Railway Administration was filed on

18.01.2018 annexing certain documents including the report dated 07.05.2011 conducted after filing of the claim petition on 04.03.2011, which is said to have been submitted on the basis of the S.M.report and report of GRP, Shahjahanpur without recording any statement. The inquiry appears to have been conducted to enquire as to whether Mohd.Zaidi son of Nazahir Hussain had died or not in the untoward incident. However it has been admitted in the report that Imran son of Nazahir Hussain address as above has died, therefore, death of Imran son of Nazahir Hussain resident of the address of the respondent-claimant given in the claim petition does not seem to have been disputed. The photocopy of the report dated 25.09.2010 annexed with the said application of Post Commander, Railway Suraksha Bal, Shajahanpur has been annexed, which indicates that one Imran and his wife Sahnaz Azra were travelling from Patiyala to Moradabad by train number 2238 (Jammu Tavi-Varanasi Express) and they had also fell down from the train and Imran was very serious, however, no ticket was found from them.

11. Learned Tribunal while deciding the issue No.1 and 2 considered the Panchnama of the deceased, Post Mortem report and statutory investigation report containing the S.M.Memo and decided both the issues in favour of the claimant-respondent. Learned Tribunal, after considering the S.M.Diary recorded that it has confirmed the alleged fall of the deceased. However learned Tribunal failed to consider the said report in its totality because it mentions about the falling of five persons and out of which one was Imran and the other his wife Sahnaz Azra, who were travelling from Patiyala to Moradabad by train number 2238 (Jammu Tavi-Varanasi Express), whereas the claim of the claimant-respondent is that the deceased was resident of Moradabad and travelling from Moradabad to Lucknow after

purchasing ticket and while the train reached near Shahjahanpur they fell down from the train on account of jerking in the train. However no ticket was found from them. Thus the learned Tribunal on the one hand considered the S.M.Diary for recording the findings of fall of the deceased from the train, but failed to consider the whole contents of the same which were recorded on the same date. It is also noticed that the claimant-respondent has not disclosed any other dependent or legal representative except father and mother, whereas the said report indicates about the wife of the deceased and her name has also been given, but the learned Tribunal failed to consider it and also that relationship with the deceased has not been disclosed against column no.15, recorded finding of dependency of respondent, while deciding issue no.3. However, if the Tribunal was considering the S.M.Diary for recording the findings without any other proof, then the whole contents of the same and pleadings should have been considered.

12. It is true that this court, in the case of **Union of India Versus Smt.Shyama Pandey and others (Supra)**, while rejecting the contention of learned counsel for the appellant therein held that the inquiry report submitted by the Station Superintendent under Section 191 of the Railways Act 1989 shall be admissible and may be taken as evidence only in case it is proved like other evidence. Thus the inquiry report could not have been considered without any proof thereof. However, if the Tribunal was considering the S.M.Diary, which was prepared on the date of accident, then it should have considered as a whole and only thereafter the findings should have been recorded.

13. In view of above, this court is of the view that the

Tribunal has passed the impugned judgment and award without considering the pleadings, evidence and material on record. Thus the same is not sustainable in the eyes of law and is liable to be set aside and the matter is liable to be remanded to decide a fresh in accordance with law and the observations made here-in-above.

14. The appeal is partly **allowed**. The impugned judgment and award dated 31.08.2018 passed in Case No.OA/II/U/134/11; Nazahir Hussain (dead) and another Versus Union of India by the Railway Claims Tribunal, Lucknow Bench, Lucknow is hereby set aside. The matter is remitted back to the concerned Tribunal to pass a fresh order after affording opportunity to the parties and considering the pleadings, evidence and material on record in accordance with law and the observations made here-in-above in this order. No order as to costs.

15. The matter being old one, it is hereby provided that the claim petition shall be decided a fresh expeditiously and preferably within a period of four months from the date of production of a certified copy of this order without granting unnecessary adjournment to either of the parties and the period of adjournment shall stand excluded.

16. The Original Record shall be remitted back to the Tribunal forthwith and in any case within a period of ten days from today.

**(Rajnish Kumar,J.)**

**Order Date :- 2.12.2024**

Banswar