

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 139 of 2024

Appellant :- Ms. Shobha Devi

Respondent :- Union Of India Thru. General Manager,
Northern Railway, New Delhi

Counsel for Appellant :- Manish Kumar Srivastava, Chandra
Prakash Singh, Saroj Kumari

Hon'ble Rajnish Kumar, J.

1. Heard Shri Manish Kumar Srivastava, learned counsel for the appellant.
2. This appeal has been filed challenging the judgment and order dated 21.02.2024 passed in OA/II/U/624/2015 (Ms. Shobha Devi Vs. Union of India by the Railway Claims Tribunal, Lucknow, by means of which the claim petition filed by the appellant has been dismissed.
3. Learned counsel for the appellant submits that the appellant had purchased a ticket for traveling from Lucknow to Hardoi but it appears that inadvertently he boarded in a train from Lucknow to Kanpur and fell down near Alambagh Cabin but the learned tribunal without considering it rejected the claim, whereas merely by boarding a wrong train, appellant does not become dis-entitled from claiming the compensation.
4. Learned counsel for the appellant submits that in identical case of Gaurav Kapoor and Others Vs. Union of India; FAO No.401 of 2010, the High Court of Delhi had allowed the appeal and the matter was remitted but the learned tribunal has failed to consider the same, therefore the impugned order is not sustainable in the eyes of law and liable to be set-aside.
5. Having considered the submissions of learned counsel for the appellant I have gone through the records.
6. The appellant had filed the claim petition before the Railway Claims Tribunal claiming that she had accidentally fallen down on 23.03.2015 between Lucknow and Alamnagar Railway Station and received grievous injury. It was also stated that she

had purchased a IIInd class railway journey ticket from Lucknow Railway Station to Hardoi, which was lost at the time of the untoward incident. After the incident the appellant was admitted in Trauma Center K.G.M.U. Lucknow by the Police Authorities and the treatment was received. The claim was contested by the Railway Administration by filing the written statement, wherein apart from denying the allegations made in the claim petition, it was contended inter-alia that the above alleged incident was not an untoward incident and as such the said incident does not fall within the purview of Sec.123(c)(2) of the Railways Act, 1989 and that the injured was not a passenger of the alleged train. It was also alleged that the injured was not passenger of any train and it appears that the injured i.e. the appellant was crossing the track with her friend, as such both persons sustained injuries.

7. The learned tribunal framed the four issues and decided the issues no.1 and 2, together. While considering the issue no.1 and 2 the learned tribunal found that the learned counsel for the appellant had argued that it appears that the appellant had boarded a wrong train moving from Lucknow to Kanpur and fallen between Lucknow - Kanpur railway station, therefore, even if she had boarded the wrong train she is entitled for compensation, while it was not the case in the claim petition. It was an argument at the time of the hearing for the first time and the Alambagh Cabin does not fall on the route from Lucknow to Hardoi. After considering the pleadings and evidence adduced before it, the learned tribunal came to conclusion that it is only an after thought that the appellant had boarded the wrong train and had fallen during such journey.

8. Railway Claims Tribunal has recorded a categorical finding that the sketch of the scene of the offence submitted alongwith the DRM Report, clearly shows that the incident has taken place on the up line at Lucknow and Kanpur Central line which is altogether different line and does not fall in the section between Lucknow and Hardoi and no ticket has been found with the injured appellant. The learned tribunal also found that the affidavit of the appellant does not inspire the confidence of the Court and it is not a case where she was dragged, her clothes were torn and the chances of loosing the ticket are high, therefore the tribunal came to conclusion that the appellant has

failed to prove her case by the cogent and reliable evidence. This Court does not find any illegality or error in the findings recorded by the tribunal.

9. It has also been recorded that as argued by the appellant as per the DRM report alongwith the appellant one more person Ajai Kumar had also sustained injuries and had preferred a claim before the tribunal vide Claim Petition No.OA/II/U/624/2015 but the said claim was dismissed by the Claims Tribunal, Lucknow vide judgment and order dated 23.10.2023.

10. So far as the judgment relied by the learned counsel for the appellant in the case of **Gaurav Kapoor and Others Vs. Union of India; FAO No.401 of 2010** is concerned, it was admitted position in the said case that deceased had a valid train ticket, which was for travel from New Delhi Railway Station to Ludhiana, therefore, the court held that it can not be said that the deceased was a totally unauthorized passenger though he had boarded a wrong train from the New Delhi Railway Station and had fallen barely about 2/3 kms from New Delhi Railway Station. Thus, the High Court has recorded a finding that once the deceased had a valid journey ticket, albeit for travel from New Delhi to Ludhiana, the deceased is a bonafide passenger within the Explanation (ii) to Section 124-A and he has been held a bonafide passenger and accordingly the appeal was allowed and the matter was remitted. This case is distinguishable on the facts and circumstances of the present case and does not of any benefit to the appellant. In this case no valid ticket has been found with the appellant and learned tribunal has also recorded a finding that it can not be said that the ticket was lost by the appellant and nothing has been argued or shown which may show that the said finding is perverse or erroneous.

11. In view of above and considering the over all facts and circumstances of the case, this Court does not find any illegality or error in the impugned judgment and order dated 21.02.2024 passed by the Railway Claims Tribunal, which may call for any interference by this Court. The appeal is misconceived and lacks merit and it is liable to be dismissed.

12. After the aforesaid judgment was dictated, learned counsel

for the appellant relying on the judgment of Delhi High Court in the case of **Vikrant and Others Vs. Union of India; 2022/DHC/004320 (FAO499/2017)** and **Kalindi Charan Sahoo and Another Vs. General Manager, South East Central Railway, Bilaspur; (2019) 12 SCC 387** submits that once the inquiry was made much after the incident had taken place and after filing of the claim petition, it can not be relied by the tribunal. However, these judgments are also of not any help to the appellant because the appellant has failed to prove his case and it does not seem to be the case of the appellant before the tribunal, therefore the contention of learned counsel for the appellant is misconceived and not tenable.

13. The appeal is, accordingly, **dismissed**.

(Rajnish Kumar, J.)

Order Date :- 13.5.2024

Haseen U.