

Court No. - 6

Case :- FIRST APPEAL FROM ORDER No. - 406 of 2008

Appellant :- Union Of India Through G.M.Northern Railway

Respondent :- Smt. Ram Lali And 4 Ors.

Counsel for Appellant :- Anil Srivastava,Ajit Kumar Dwivedi,S P Maurya,Suniti Sachan

Counsel for Respondent :- Ajay Madhavan,Janki Prasad,Janki Saran Pandey,Mata Prasad Yadav,Rajendra Jaiswal

Hon'ble Rajnish Kumar,J.

1. Heard Sri Ajit Kumar Dwivedi, learned counsel for the appellant and Sri Shiva Shashank, Advocate holding brief of Sri M.P. Yadav, learned counsel for the respondent.
2. This F.A.F.O. under Section 23 of the Railway Claims Tribunal Act, 1987 has been filed against the impugned judgment and award dated 31.10.2007 passed in O.A.0300191(Smt. Ram Lali versus Union of India) by Railway Claims Tribunal, Lucknow.
3. Learned counsel for the appellant submits that the untoward incident has not been proved by the respondents because as per the claim petition, the deceased fell down from the train on account of jerk when he was going to toilet, whereas it is not possible unless he was standing near the open door. Therefore the appellant is entitled for benefit of proviso to Section 124-A of the Railways Act. He further submits that the deceased was not a bonafide passenger because the ticket has not been recovered from him.
4. On the basis of above, submission of learned counsel for the appellant is that the impugned judgment and award passed by the Railway Claims Tribunal(hereinafter referred to as the RCT) is not tenable in the eyes of law and is liable to be set aside.
5. Per contra, learned counsel for the respondents submits that the deceased was a bonafide passenger, who was travelling from Delhi to Sultanpur after purchasing a second class ticket,

which was lost somewhere alongwith his real brother Ram Jas Yadav and one Dinesh. The purchasing of ticket has been proved by the co-passenger Ram Jas Yadav by filing his affidavit who was also cross examined. The accident has also been proved by co-passenger, who was also cross examined by the appellant but nothing could be extracted, which may create any doubt about his veracity.

6. He further submits that learned Tribunal, after considering the pleadings of the parties, evidence and material on record has allowed the claim petition by means of the impugned judgment and award. The appellant has neither specifically pleaded for benefit of proviso to Section 124-A of the Railways Act nor proved by adducing any cogent evidence, therefore the appellant is not entitled for the same. The police report was also to the effect that the deceased had died on account of falling from the train and there was no criminal act in the same.

7. On the basis of above, submission of learned counsel for the respondents is that the impugned judgment and award passed on the basis of pleadings, evidence, material on record and considering the law laid down by the Courts does not suffer from any illegality or infirmity, which may call for any interference by this Court. The appeal has been filed on misconceived and baseless grounds and it is liable to be dismissed.

8. Having considered the submissions of learned counsel for the parties, I have perused the records.

9. The claim petition was filed claiming compensation on account of the death of the husband of the respondent no.1 Ram Het Yadav. He was travelling from Delhi to Sultanpur alongwith co-passenger Dinesh and Ram Jas on 16.08.2002. The deceased fell from the train near Gumtal station in District

Moradabad due to sudden jerk. The respondent no.1 and Ram Jas, the co-passenger of the deceased adduced their evidence. The co-passenger Ram Jas proved the purchasing of ticket and also the untoward incident. He stated that the deceased fell from train while he was going to toilet near Guntal station on account of jerk in train. The witness was cross examined by the appellant but nothing could be extracted, which may create any doubt about his veracity.

10. The learned tribunal after considering the pleadings of the parties, material and evidence on record came to the conclusion that the deceased was a bonafide passenger and he died in untoward incident by falling from train. So far as the claim of benefit of Section 124-A of the Railways Act is concerned, the appellants have neither pleaded specifically in the written statement nor proved through any cogent evidence. Abrar Ahmad appeared on behalf of the appellant. He stated in paragraph 3 of this evidence that the particulars furnished by the claimant are not sufficient to attract the ingredients of Section 123(C)(2) read with Section 124-A of the Act. The benefit of proviso to Section 124-A of the Railways Act is available in 5 contingencies but none of the same have been proved by the appellant therefore the contention of learned counsel for the appellant is mis-conceived and not tenable. The impugned judgment and award has been passed in accordance with law after considering the pleadings of the parties and evidence on record, which does not suffer from any illegality or error, which may call for any interference by this Court.

11. The appeal is mis conceived and lacks merit. It is accordingly **dismissed**. No order as to costs.

Order Date :- 2.8.2024/Akanksha Sri.