

AFR

Neutral Citation No. - 2024:AHC-LKO:11226

Court No. - 4**Case :-** FIRST APPEAL FROM ORDER No. - 635 of 2018**Appellant :-** Anil Kumar Chaturvedi**Respondent :-** Union Of India Through General Manager North Eastern Railway**Counsel for Appellant :-** Manish Kumar Srivastava, Chandra Prakash Singh**Counsel for Respondent :-** Ambrish Rai, Jai Prakash Tripathi, Sm Singh Royekwar**Hon'ble Rajnish Kumar, J.**

1. Heard Sri Manish Kumar Srivastava learned counsel for the appellant and Sri Ambrish Rai learned counsel for the respondent.

2. This First Appeal From Order under Section 23 of the Railway Claims Tribunal Act as well as under Chapter 9 of the High Court Rules has been filed against the order dated 06.07.2018 passed in Case no.O.A/II/U/979/11; Anil Kumar Chaturvedi vs Union of India by Railway Claims Tribunal, Lucknow Bench, Lucknow by means of which the petition has been returned to the appellant as the Railway Claims Tribunal, Lucknow Bench, Lucknow (hereinafter referred as Tribunal) has no jurisdiction to try the case and the tribunal at Gorakhpur has jurisdiction.

3. Submission of learned counsel for the appellant is that the claim petition was filed in the year, 2011 and it has been returned after 7 years, whereas in case, the tribunal was of the view that the tribunal concerned has no jurisdiction then it could have been returned at the threshold by the Registrar. He further submits that as per Rule 8 of the Railway Claims Tribunal (Procedure) Rules, 1989, the application for compensation can also be filed where the claimant normally resides, therefore, the claim petition is maintainable before the tribunal at Lucknow also because the appellant normally resides at Lucknow. In this regard, the applicant had filed a certificate issued by the Corporator to the effect that the appellant resides at Bahadurpur, P.S-Gudamba, Kursi

Road, Lucknow, but it has been discarded only on the ground that the appellant could not file the copy of the gas connection, electricity bill, receipt of the house etc, whereas it is not required, once, the certificate of the Corporator was filed. As such, learned counsel for the appellant submits that the impugned order is not sustainable and it is liable to be set aside with a direction to the tribunal concerned to decide the claim petition expeditiously. Learned counsel for the appellant relies on the judgment and order dated 12.07.2018 passed in FAFO no.767 of 2012 (Pankaj Kumar vs Union of India).

4. Per contra, learned counsel for the respondent submits that the appellant is resident of Gram Chaubepur, Post & P.S- Phephna, District-Ballia, the address which was given by the appellant in the claim petition also. The accident had occurred at Sagarpali railway station and the appellant claims that he was travelling from Amlai to Ballia on 04.09.2011, when the alleged accident had occurred, which falls under the jurisdiction of the Railway Claims Tribunal, Gorakhpur and not in the jurisdiction of Railway Claims Tribunal, Lucknow. The appellant was cross examined in regard to the address of Lucknow, where he claims that he normally resides. In the cross examination, the appellant admitted that he does not reside at Lucknow after the accident and he only used to come to Lucknow. He further submits that certificate of Corporator cannot be said to be conclusive proof of the ordinary residence of the appellant at Lucknow because the said certificate has been issued only on the basis of the facts which were brought to his knowledge, which is mentioned in the certificate itself. Therefore, it cannot be said that the appellant normally resides at Lucknow on the given address. Thus, the submission is that the claim petition has rightly been returned in accordance with law. The appeal is misconceived and liable to be dismissed.

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

6. The appellant had filed the claim petition before the Tribunal at Lucknow claiming compensation in regard to the accident held at Sagarpali, Railway Station, while the appellant was traveling from Amlai to Ballia on a second class ticket of the train on 04.09.2011. The claim

petition was filed showing his address as resident of Gram Chaubepur, Post & P.S.-Phephna, District-Ballia. However, in column no.14 of the claim petition, in regard to the local address of the petitioner, Bhendahapur, P.S-Gudamba, District-Lucknow has been shown as his local address.

7. Perusal of the order sheet of the tribunal indicates that the case was registered and the notices were issued. The respondent filed the written statement raising a plea of jurisdiction in paragraph-15 that the claim petition is not maintainable before the tribunal at Lucknow on the ground that the journey has been shown from Amlai to Ballia and the place of incident was near Sagar Pali railway station and the address of the applicant has been shown in Ballia District and all these places do not come under the jurisdiction of the tribunal at Lucknow. It has further been stated that the application has been filed on the basis of local address but no documentary proof of it has been filed, as such the application is not maintainable before the tribunal at Lucknow.

8. The tribunal, while observing as to whether the case is maintainable as alleged in para-15, framed four issues on 28.03.2012. Thereafter, in support of the proof of the local address, the appellant filed an undated certificate issued by the Corporator as paper no.11/1 along with an application for taking document on record on 25.08.2015. On the said date, the additional issue no.5 was framed "whether this Bench of tribunal has territorial jurisdiction to entertain and dispose of this case". It was also observed that this issue shall be taken as preliminary issue and shall be decided at first during pronouncement of judgment as it requires evidence also. Thereafter, the evidence was adduced by the parties. The appellant was also cross examined on the point of local address on 29.01.2016.

9. The tribunal decided the preliminary issue by means of the impugned order and held that on the basis of evidence, it is not proved that the appellant resides in Lucknow, therefore, the tribunal at Lucknow has no jurisdiction to hear and decide the claim petition, accordingly, returned the claim petition to the appellant by means of the impugned order dated 06.07.2018. Feeling aggrieved the instant FAFO has been filed.

10. Section 14 of the Railway Claims Tribunal Act, 1987 (hereinafter referred as the Act of 1987) provides the distribution of business amongst Benches. Sub-section (2) of Section 14 provides that if any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairman shall be final. The explanation appended to the Section 14 provides that the expression "matters" includes an application under Section 20. Section 20 of the Act of 1987 provides the power of Chairman to transfer cases from one Bench to another on the application of any of the parties.

11. Rule 3 of the Railway Claims Tribunal (Procedure) Rules, 1989 (hereinafter referred to as Rules of 1989) provides the territorial jurisdiction of Benches which is extracted hereinbelow:

"3.Territorial jurisdiction of Benches-(1) The number of Benches, the headquarter of and the territorial jurisdiction of a Bench shall be as specified in Sch.I and Sch I(A).

(2)If an application is received by a Bench which does not have territorial jurisdiction to deal with the matter, the Registrar of the bench shall return the application to the applicant.

(3)Notwithstanding anything contained in sub-rule (2) the applicant may apply to the Chairman and the Chairman may thereupon for reasons recorded in writing direct a Bench other than the Bench before which an application has been filed to hear such application and issue such orders as may be necessary for the transfer of the application."

12. Rule 8 of the Rules of 1989 provides the place of filing application for compensation in accident or untoward incident claim, which is extracted hereinbelow:-

***"8. Place of filing application for compensation in accident or untoward incident claim-** An application for compensation payable under Sections 124 and 124A of the Railways Act, 1989 (24 of 1989) may be filed before the Bench having territorial jurisdiction over the place from which the passenger obtains or purchases his pass or tickets or where the accident or untoward incident occurs or where the place of destination station lies or where the claimant normally resides."*

13. According to the aforesaid Rule 8, the application for compensation can be filed before the Bench having territorial jurisdiction over the place from which the passenger obtains or purchases his pass or tickets or

where the incident or untoward incident had occurred or where the place of destination station lies or where the claimant normally resides.

14. In the present case, the appellant has filed the application before the tribunal at Lucknow claiming that he normally resides at Lucknow. In support of his claim for the address at Lucknow, a certificate of Corporator has been filed. The certificate has been issued by the Corporator on a printed proforma, which is extracted here-in-below:-

प्रमाण-पत्र
(निवास, आय, जाति)

श्री/ श्रीमती/ कु० अनिल कुमार चतुर्वेदी

पुत्र/ पुत्री/ पत्नी/ श्री स्व० द्वारीकानाथ चौबे

निवासी भेडहापुरा लखनऊ

लखनऊ के निवासी है जिनकी जाति X

इनके पिता/ माता /अभिभावक X

की मासिक आय लगभग X प्रतिमाह है।

उपरोक्त तत्व जहाँ तक मेरी संज्ञान में लाया गया उसके अनुसार मैं इनके उज्ज्वल भविष्य की कामना करता हूँ।"

15. The certificate has been issued by the Corporator on a printed proforma. It is mentioned at the bottom of the certificate that to the extent the aforesaid fact has been brought to his knowledge, he wishes for his bright future. The appellant was cross examined on this point on 29.01.2016. In the cross examination, he admitted that he is permanent resident of Ballia and he used to reside in Lucknow from the year, 2010 i.e. from the date of accident. Thereafter, he himself stated that he does not reside here after the accident and he used to come occasionally, therefore, the contradictory statement has been given by the appellant in his cross examination. On one hand, he says that he resides in Lucknow after the accident in 2010 and on the other hand, he says that he does not reside here after the accident. Therefore, this Court is of the view that the appellant can not be treated to be a normal resident of Lucknow, merely on the basis of certificate of Corporator, which has been issued only on the basis of information provided to him, without any enquiry or proof.

16. The Hon'ble Supreme Court, in the case of ***Morgina Begum vs Managing Director Hanuma Plantation Ltd; AIR 2008 SCC 199***, has

held that the statements of the claimant regarding place of residence given cannot be doubted to be false simply because they have not produced the documents to show that in fact they are residing at the said place, however, other party wanted to prove that they were deposing false, they should have been cross examined.

17. In view of above, in case of raising doubt about the place of residence of the claimant, he can be cross examined. Once he has been cross examined and on the basis of cross examination it has been found that he normally does not reside at the given address, the certificate submitted by the applicant cannot be accepted as proof of normal residence of appellant, coupled with the fact that the certificate itself indicates that the same has been issued only on the basis of the facts brought to the knowledge of concerned Corporator. It also shows that it has been issued without verifying the facts and any enquiry.

18. One of the submissions of learned counsel for the appellant is that in case the tribunal at Lucknow had no jurisdiction to entertain and decide the claim petition filed by the appellant, it should have been returned to him by the Registrar of the Bench and if it was not returned it cannot be returned by the tribunal after such a long time,, therefore, the question arises as to whether, if the Registrar of the Bench, after receipt of the application has not returned the application on the ground that the Bench does not have territorial jurisdiction to deal with the matter, it can not be returned by the tribunal, even if, it finds that the tribunal has no jurisdiction.

19. Section 11 of Rules of 1989 provides the scrutiny of applications. Sub- Section (1) of Section 11 provides that the Registrar or the officer authorised by him shall endorse on every application, the date on which it is presented or received through post under Rule 5, and sign the endorsement. Sub-Rule (2) provides that if, on scrutiny, the application is found to be in order, it shall be registered and given a serial number, therefore, in case the application is found in order on scrutiny, the same is to be registered and given a serial number.

20. Rule 7 of the Rules of 1989 provides the documents to accompany the application which is extracted hereinbelow:-

"7. Documents to accompany the application. - (1) Every application for compensation in respect of loss, destruction, damage, deterioration or non-delivery of animals or goods or in respect of refund of fare or freight shall be accompanied by the following documents, namely:-

(a) copy of the railway receipt/parcel way bill/luggage ticket;

(b) original sale invoice (Bijak), if any;

(c) copy of order or letter, if any, of the railway administration deciding the claim of the party;

(d) copy of the original certificate issued by the railway administration regarding loss, deterioration or damage to the goods, at the time of granting open delivery or assessment delivery;

[(e) copy of notice under section 106 of the Railways Act, 1989 (24 of 1989);]

(f) copies of any other relevant document in possession of the applicant.

[(2) The documents referred to in sub-rule (1) may be attested by a legal practitioner or by a Gazetted Officer of the Central Government or a State Government.

(3) An application filed under sub-rule (1) of rule 5 by a legal practitioner shall be accompanied by a vakalatnama and that by an agent shall be accompanied by a document authorizing him to act as such.

(4) When any document accompanying an application or reply appears to be defaced, torn, or in any way damaged or otherwise its condition or appearance requires special notice, a mention regarding its condition and appearance shall be made by the party producing the same in the index of such application or reply, as the case may be, and the same shall be verified by the Registrar.]"

21. The aforesaid provision does not provide for filing of the proof of residence along with an application, therefore, once the claimant (appellant in the present case) mentions the local address of the applicant, if any, in Clause 14 of the application and on the basis of the said local address, if the claim petition is maintainable before the tribunal concerned (Lucknow in the present case), it could not have been returned by the Registrar and liable to be registered, as has been done in the present case. However, once a plea of jurisdiction was raised in the written statement and the issue was framed to this effect, it has rightly been decided in accordance with law after framing the issue to this effect because the tribunal has to see as to whether the tribunal has jurisdiction or not to hear and decide the claim and it can not be said that if the Registrar of the Bench has not returned the application on the ground of

jurisdiction, it can not be decided by the tribunal and the application can not be returned.

22. Considering the plea of the parties and the documents placed on record, the tribunal found that the normal residence of the appellant is not at Lucknow and accordingly directed to return the claim petition to the appellant as the case does not fall within the jurisdiction of the Tribunal at Lucknow. This Court is of the view that the learned tribunal has rightly and in accordance with law has decided that the tribunal at Lucknow has no jurisdiction to hear and decide the claim petition filed by the appellant as the appellant has failed to prove that he normally resides at Lucknow. Therefore, once the claim petition has been returned, it can be filed by the appellant before the Bench of tribunal, which is competent to decide the same.

23. In the present case, as submitted by learned counsel for the appellant, the pleadings are complete and evidence has also been adduced by the appellant and relevant document in evidence by the respondent has also been placed on record, which could not be disputed, therefore, since the claim petition was filed in the year, 2011 and the issue has been decided by means of the impugned judgment and order dated 06.07.2018 and the Chairman of the Tribunal has a power to transfer the case on an application moved by the applicant, this Court is of the view that in place of returning the claim petition to the applicant/appellant, the liberty should have been granted to the applicant to move an application before the Chairman for transfer of the case or the tribunal itself could have directed to put up the matter before the Chairman to consider for transfer of the case in the interest of justice and to save the time of the tribunal in the facts and circumstances of the case.

24. This Court also, in FAFO no.767 of 2012 (Pankaj Kumar vs Union of India), relied by learned counsel for the appellant, has held that the applicant can also apply for transfer of the case to the Chairman.

25. In view of above and considering the over all facts and circumstances of the case, the impugned judgment and order dated 06.07.2018 is set aside only to the extent it directs to return the claim petition to the appellant/applicant Anil Kumar Chaturvedi and modifies it to the effect that the appellant may move to the Chairman for transfer of the case to

the appropriate Bench of the tribunal having jurisdiction to hear and decide the claim.

26. It is further provided that in case, the application is moved by the applicant/appellant before the Chairman within a period of four weeks from today, the Chairman shall take appropriate decision on the application within a period of four weeks thereafter in light of the observations made above by this Court in this order. Consequences shall follow accordingly as per law.

27. With the aforesaid, the appeal is partly **allowed** only to the aforesaid extent. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 7.2.2024/Harshita