

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 325 of 2011

Appellant :- Union Of India Thru The G.M. North Central Railway

Respondent :- Ram Khiladi Singh And Another

Counsel for Appellant :- Pratul Kumar Srivastava, Arun Kumar Mishra, Vijay Pratap Singh

Counsel for Respondent :- Vishal Tahlani, Manish Tripathi

Hon'ble Abdul Moin, J.

1. Heard Sri Vijay Pratap Singh, learned counsel for the appellant, and Sri Vishal Tahlani, learned counsel appearing for the respondents.

2. Under challenge is the judgment and award dated 23.12.2010 passed by the Railway Claims Tribunal (hereinafter referred to as the 'Tribunal') in Case No. OA 0600069 in re: Ram Khiladi Singh and another vs. Union of India, whereby learned Tribunal has awarded compensation of Rs.4,00,000/- along with interest.

3. Bereft of unnecessary details the facts as set forth by the learned counsel for the appellant are that an incident is said to have taken place on 11.02.2005 with Train No.2815 Puri Express in which one Sri Kale @ Sunil Kumar, who was said to have been travelling from Kanpur Central to New Delhi on a second class ticket purchased by him had fallen down from train which resulted in his death.

4. A claim application was filed before the learned Tribunal by the parents of the deceased/respondents herein. The learned Tribunal vide the impugned judgment has awarded the compensation as indicated above.

5. Being aggrieved, the Union of India has filed instant appeal.

6. The sheet-anchor of the argument of the learned counsel for the appellant while raising a challenge to the impugned judgment is that

learned Tribunal has considered two affidavits that had been filed by Sri Ashwani Kumar, Senior Commercial Inspector, North Central Railway, Allahabad dated 27.03.2009 and 13.03.2009 of which the affidavit dated 27.03.2009 was containing the report of the Divisional Railway Manager per which no proof has been found of the deceased having fallen from the train, sustained injuries and having died.

7. Sri Singh argues that earlier an affidavit had been filed by Sri Ashwani Kumar dated 13.03.2009 which had indicated that the body of a person had been found at Kathpula (wooden bridge).

8. The learned Tribunal after considering both the affidavits dated 13.03.2009 and 27.03.2009 was of the view that there is material contradiction in two affidavits of Sri Ashwani Kumar and has consequently held that in fact an accident took place from the train in question and the deceased died and thus awarded compensation.

9. The contention of Sri Singh is that the affidavit dated 27.03.2009 which contained the report of the Divisional Railway Manager had specifically indicated that as per records no such incident took place in the Aligarh region and in support thereof the report of the Station Superintendent Aligarh junction had also been filed which has been considered by the learned Tribunal to be a material contradiction of the earlier affidavit dated 13.03.2009.

10. The argument is that once the affidavit dated 27.03.2009 was duly accompanied by the report indicating that no such incident took place at Aligarh consequently it was the duty of the learned Tribunal to have considered the said report and it was within the powers of the learned Tribunal to have negated the said report but there cannot be any occasion of totally ignoring the said report as has been filed along with the affidavit dated 27.03.2009 which thus vitiates the impugned judgment passed by the learned Tribunal.

11. Responding Sri Vishal Tahlani, learned counsel appearing for the respondents, has argued that no witness was produced in support of the alleged report which was accompanying the affidavit of Sri Ashwani Kumar dated 27.03.2009 and the person who had prepared the report of Divisional Railway Manager was also not examined and consequently no error has been committed by the learned Tribunal in ignoring the said report.

12. Heard learned counsels for the parties and perused the original records.

13. From the arguments as raised by the learned counsels for the contesting parties and perusal of the records, it emerges that an incident is said to have occurred on 11.02.2005 which has resulted in the death of Sri Kale @ Sunil Kumar.

14. The parents of the deceased filed a claim application before the Railway Claims Tribunal praying for being awarded the compensation contending that the deceased had fallen down from Train No.2815 Puri Express after he had purchased a second class ticket from Kanpur. Purchase of ticket was sought to be proved on the basis of the evidence of one Sri Vimal Agnihotri.

15. During proceedings two affidavits in the shape of evidence have been filed by Sri Ashwani Kumar, Senior Commercial Inspector dated 13.03.2009 and 27.03.2009. In the affidavit of 13.03.2009 it was specifically indicated that an information had been received at Aligarh Station at 12.40 PM of a body lying at Kathpula (wooden bridge). It is also indicated in the said affidavit that as per the report Train No.2815 had arrived at Aligarh Station 14.25 and had left at 14.41 and consequently there is no occasion for the accident to have occurred from the said train. Subsequent thereto a second affidavit dated 27.03.2009 was filed by Sri Ashwani Kumar duly bringing on record the report of the Divisional Railway Manager.

16. The report of the Divisional Railway Manager was accompanied by the report of the Inspector Incharge of the RPF which indicated that no incident occurred in Aligarh region on that date.

17. Learned Tribunal vide impugned judgment after considering both the affidavits has found that there is material contradictions in both the affidavits and has consequently allowed the claim application filed by the claimants.

18. The sheet-anchor of the arguments of the learned counsel for the appellant is the finding of the learned Tribunal of there being material contradictions in the two affidavits dated 13.03.2009 and 27.03.2009 as had been filed by Sri Ashwani Kumar.

19. The Court has perused both the affidavits.

20. As already indicated above, two affidavits were filed by Sri Ashwani Kumar, Senior Commercial Inspector dated 13.03.2009 and 27.03.2009. The affidavit of 13.03.2009 indicated of an information regarding a body lying at Kathpula (wooden bridge) and that the train having arrived at 14.25 and having left at 14.41. The second affidavit dated 27.03.2009 was accompanied by the report of the Divisional Railway Manager and the report of the Inspector Incharge, RPF which indicated that no incident occurred in the Aligarh region on that date. In case the learned Tribunal found that there is some contradiction in two affidavits the said contradiction should have been spelt out more particularly when one affidavit has indicated about the body being found even earlier to the train having arrived at Aligarh station and the second affidavit having denied any such incident in Aligarh region. It was always open for the learned Tribunal to have considered the contradiction, if any, by indicating the contradiction but summarily rejecting one affidavit clearly cannot be countenanced in the eyes of law.

21. Thus on this short question itself it is found that the judgment of the learned Tribunal dated 23.12.2010 merits to be set-aside.

22. Keeping in view the aforesaid discussion the impugned judgment and award dated 23.12.2010 passed by the learned Tribunal is set-aside. The matter is remitted to the learned Tribunal to pass a fresh order in accordance with law.

23. Considering that the claim application had been filed before the learned Tribunal in the year 2006 and a period of 19 years have lapsed as of date as such learned Tribunal is directed to decide the said claim application in accordance with law which would be decided within a period of six months from the date a certified copy of this judgment is brought on record.

24. The record be returned as per procedure.

Order Date :- 22.4.2025

A. Katiyar