

Court No. - 5

Case :- FIRST APPEAL FROM ORDER No. - 184 of 2020

Appellant :- Smt. Bhagawati

Respondent :- U.O.I. Thru. General Manager Northern Railway New Delhi

Counsel for Appellant :- Indu Lal, Anil Srivastava

Counsel for Respondent :- Harsha Yadav, Mrs. Suniti Sachan

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the appellant as well as Ms. Harsha Yadav, learned counsel for the respondent.
2. The instant first appeal from order under Section 23 of the Railway Claims Tribunal Act, 1987 has been filed against the impugned judgment and order dated 14.02.2020 passed by the learned Railway Claims Tribunal, Lucknow in Claim Application No. OA/II/U/513/2011 in Re: Smt. Bhagawati vs. Union of India, whereby the learned Tribunal has dismissed the application of the appellant.
3. Bereft of unnecessary details, the facts set forth by learned counsel for the appellant are that husband of the claimant / appellant namely Shri Ramakant Pathak (**hereinafter referred to as "deceased"**), who is a resident of District Ayodhya, was returning by Train No. 3237 Up from Patna to Ayodhya. He was having a second class ticket and was accompanied by one Shri Prem Das.
4. Although the train stopped at Ayodhya Railway Station but on account of extreme rush, the deceased could not get down at the station and the train started. While he was standing at the door, he fell down near Acharya Narendra Deo Railway station, which is said to be at a distance of hardly 2 kms. from Ayodhya Railway station. As a result he sustained serious injuries and died on the spot. The Panchnama was made and the police also submitted its report.
5. Thereafter, the wife of Shri Ramakant Pathak namely Smt. Bhagawati had filed claim application before the learned Tribunal claiming compensation for the death of her husband.
6. The learned Tribunal, vide the impugned judgment and order dated

14.02.2020, has dismissed the claim application.

7. Being aggrieved, the instant appeal has been filed.

8. The argument of learned counsel for the appellant is that three considerations have prevailed upon the learned Tribunal while dismissing the claim application of the appellant namely (a) that the deceased appears to have committed suicide as, after the alleged incident, a bicycle was handed over to the family members of the deceased which was taken away by the family members of the deceased, (b) Smt. Bhagawati Devi and other family members of the deceased were present at the place of incident which creates a doubt as to how they could have reached the place of incident at a short span of time and, (c) the ticket which has been filed by the claimant indicates it to be of a senior citizen women and the deceased was a male. The learned Tribunal has held that the claimant has miserably failed to prove the alleged incident and has consequently dismissed the claim application.

9. Learned counsel for the appellant has argued that so far as the ground (a) is concerned, a perusal of the Panchnama, a copy of which is annexure 2 to the appeal, would indicate that it is only an LG Mobile, his slippers and his clothes which were handed over to the claimant and nowhere does it indicate of a bicycle being handed over and, thus, the learned Tribunal has patently erred in this regard.

10. So far as the ground (b) is concerned, the contention is that during the course of cross-examination of Smt. Bhagawati Devi, no question was put to her as to how she had managed to reach at the place of the alleged incident in a short space of time and the learned Tribunal has also failed to appreciate that had a query being put to the claimant, she could have replied that the distance from where the alleged incident took place and where they reside in Ayodhya is hardly 2 kms. and the family members could easily have reached the spot within a short span of time.

11. So far as the ground (c) is concerned, it is contended that whatever ticket

was handed over by the booking clerk was taken by the deceased and buying of a ticket was duly supported by the person who was accompanying the deceased namely Shir Prem Das and merely because a wrong ticket might have been handed over by the booking clerk to the deceased, it would not be a ground to negate the claim of the claimant.

12. It is also contended that no query in this regard was ever put to either Shri Prem Das by the authorities in his examination before the learned Tribunal nor he was subjected to any cross-examination with regard to the ticket and thus, the learned Tribunal has patently erred in passing the impugned judgment and in having rejected the claim application filed by the claimant.

13. Learned counsel for the appellant has also argued that a perusal of the police report, a copy of which is part of annexure 6 to the appeal (page 112), would indicate that the authorities have also concluded that Shri Ramakant Pathak had died on account of falling from the train which aspect of the matter has not been considered by the learned Tribunal.

14. On the other hand, Ms. Harsha Yadav, learned counsel appearing for the respondent has argued that a perusal of the Panchnama would itself indicate that he was struck by the train and his Panchnama was also being signed by Shri Prem Das, who was accompanying the victim, which all factors were considered by the learned Tribunal while dismissing the claim application of the appellant.

15. It is also contended that a perusal of the ticket which has been filed by the claimant herself raises a suspicion about the said ticket as it has been issued for a woman and the deceased being a male obviously the ticket has been fabricated by the claimants.

16. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Rina Devi** passed in **Civil Appeal No.4945 of 2018** decided on 29.05.2018, the argument is that initial burden of proving the accident is on the claimant and a perusal of the judgment passed by the learned Tribunal would indicate that the claimant has miserably failed to prove the said

accident and consequently, there is no error which has been committed by the learned Tribunal while dismissing the claim application.

17. Heard the learned counsels for the parties and perused the records.

18. From the arguments as raised by learned counsels for the contesting parties, it emerges that the husband of the claimant died on 09.04.2011.

19. As per the Panchnama, it has been indicated that the deceased died on account of the accident with the train but the police report indicates of the deceased having fallen from the train and having died on account of injuries sustained on account of he having fallen down.

20. Learned Tribunal has considered three aspects of the matter namely (a), (b) and (c), as indicated above, while rejecting the claim application. Being aggrieved, the instant appeal has been filed.

21. A perusal of the records would indicate that so far as ground (a) of handing over the bicycle to the family members of the deceased, which has prevailed upon the learned Tribunal while dismissing the claim application, a perusal of the Panchnama and supurtugi report would indicate that at no stretch of time was a bicycle ever handed over to the family members of the deceased. It is not known as to how the learned Tribunal has arrived at the said finding more particularly when none of the documents indicate about a bicycle being handed over. Thus, the learned Tribunal has patently erred in making such observation.

22. So far as ground (b) is concerned of the family members being present at the place of incident, apart from the fact that no questions were put to the wife of the deceased as to how she and the other family members managed to reach at the spot in question yet from the arguments as advanced by the learned counsel for the appellant it emerges that the distance between the place of accident and the station at which the deceased was expected to get down, i.e. Ayodhya Railway station, and their residence is hardly 2 kms. and the family members, on account being informed by the co-passenger namely Shri Prem Das, easily reached the said spot. Thus the said ground is also rejected.

23. So far as the ground (c) is concerned regarding ticket, it would suffice to state that it is a second class ticket. It has not been indicated that the deceased was a highly educated person. He was traveling in second class. Whatever ticket was handed over by the booking clerk was taken by the deceased and the claimant bonafidely filed the said ticket before the learned Tribunal. Thus the said ground, as has been considered by the learned Tribunal for dismissing the claim application, is not found to be legal and tenable in the eyes of law.

24. So far as the judgment of the Hon'ble Supreme Court in the case of **Rina Devi (supra)** is concerned, it would suffice to state that although the Hon'ble Supreme Court had held that initial burden of proving the accident lies on the claimant yet in the instant case it is apparent that the learned Tribunal has failed to appreciate the Panchnama and the police report and has arrived at a finding which is clearly not sustained, more particularly, when no queries were put to the witnesses before the learned Tribunal pertaining to the finding that has been arrived at by the learned Tribunal.

25. Keeping in view of the aforesaid discussion, the appeal is **allowed**. The impugned judgment and order dated 14.02.2020, a copy of which is part of the appeal, is **set aside**. The matter is remitted to the learned Tribunal to pass a fresh order in accordance with law after hearing all the parties concerned.

26. Considering that the claim application was filed before the learned Tribunal in the year 2011, as such, the learned Tribunal is directed to decide the claim application in accordance with law without granting any unnecessary adjournments to either parties, which decision would be taken within a period of six months from the date the certified copy of this order is placed on record before the learned Tribunal.

27. Let the trial court record be transmitted back.

Order Date :- 12.5.2025/S. Shivhare