

Before Dr. Ravi Ranjan, J.

DHARAMVATI AND ANOTHER—Appellants

versus

UNION OF INDIA—Respondent

FAO No.5108 of 2015

November 28, 2018

Railways Act, 1989—S.123(c) (2) and 124A—Untoward accident—Bonafide passenger—When a valid ticket was found from deceased, it has to be understood prima facie that person was boarding train, some accident took place as he fell down from train and lost his life—In view of Schedule of Accidents and Untoward Incidents (Compensation) Rules, 1990, claimants entitled for compensation of Rs.4 lacs along with interest @ 9% per annum—Exemplary costs of Rs. 25,000/- on Railway.

Held, that when a valid ticket was found from the deceased, it has to be understood *prima facie* that the person was boarding the train and, therefore, that has to be further understood that some accident had taken place as he fell down from the train and lost his life which is the case of applicant. No cogent evidence could be led by the respondent-railways to rebut the aforesaid, as discussed above. In my considered opinion, the stricture upon the police authority, placing reliance upon statement of Pradeep Kumar, since he was not produced as witness nor was the written statement amended by the Railways and even his statement does not stand appended to the DRM report, was totally unwarranted and the same stands expunged. Thus, in the facts and circumstances of the case, it is held that, the railway authority would have the liability to compensate the deceased. In my considered opinion the compensation amount, as reflected in the Schedule of Accidents and Untoward Incidents (Compensation) Rules, 1990, has to be awarded to the claimants/appellants which would be lump sum of Rs.4 Lacs along with the interest @ 9% per annum to be calculated from the date of filing the claim petition till its realization.

(Para 19)

Anand Singh, Advocate, *for the appellant.*

Yogesh Saini, Advocate, *for respondent/UOI.*

DR. RAVI RANJAN, J.

(1) I have heard parties and have perused the records of this case.

(2) The decision dated 18/19.02.2014 passed by the Railway Claim Tribunal, Chandigarh Bench, Chandigarh in case No.OA-II/246/2011, which was registered on claim petition having been filed by the appellants/claimants, is under challenge in this appeal.

(3) The claim application was filed by the appellant No.1-Dharamvati Devi, seeking compensation on death of her son Manoj Kumar in the alleged railway untoward incident. According to the claimant, the deceased was going to Lakarpur, Delhi after purchasing valid train ticket from Ballabgarh to Delhi and had boarded the train. However, when the train reached at km 1503/10-12, the deceased accidentally fell down from the train due to pull and push of passengers and received serious grievous injuries and died on the spot.

(4) Respondent-railways filed written statement controverting the allegations and disputing the averments made in the claim petition. The written statement was filed pending inquiry and right was reserved to amend it at the relevant point of time, but in fact, no such amendment was made in the written statement even after completion of inquiry and after the DRM came into existence. It was also stated in the written statement that the train number has not been disclosed by the claimant and, as such, he was not a *bona fide* passenger and denied that he purchased the alleged railway ticket from Ballabgarh to Delhi. Other averments were also denied.

(5) The Tribunal, upon appreciation of pleadings of the parties, framed the following issues:

1. Whether the deceased was a *bona fide* passenger of train at the time of incident?
2. Whether the incident is covered within ambit of Section 123 (c)(2) read with Section 124-A of the Railways Act.
3. Whether the applicant(c) is/are the sole dependants of the deceased?
4. Relief.

(6) The applicants led oral evidence by producing the claimant-Dharamvati Devi, mother of the deceased as AW-1. The deponent affirmed the details of the incident as per claim application. During

cross-examination, she testified that she is resident of Sector-24, Ballabgarh and there is no path way from her residence to railway station. She has further stated that her son Manoj Kumar was working as part-timer in a factory namely Ishwar Company which is nearby to her residence and, for that reason, there was no need to cross the railway line. On the fateful day, her son left the house at 6 or 6:30 p.m. However, she neither accompanied him nor did she saw him purchasing the ticket in her presence or boarding the train or falling down from the train. She has stated that cash of Rs.840/-and a train ticket was recovered from his pocket as was told by neighbours. She has also admitted in the cross-examination that she was not present at the time of personal search of the deceased. AW-2 Rajbir Singh also stated in detail regarding the claim in his affidavit. During cross-examination, he has stated that he was in Faridabad at the time of incident and his mother-in-law did not talk to him personally but some neighbour namely Pardeep talked to him. He has also stated that, since he was at Faridabad, he could not see the deceased falling down from the train. However, he visited the place of incident and police was present there and his mother-in-law was also with him. He has further stated that he signed the paper but he did not know what was written in it. He has also stated that his mother-in-law also signed the same. The police conducted *jamatalashi* in which some cash, a ticket and one card of ESI Insurance were recovered and these things were returned back after 2-3 days by the police.

(7) The applicants also filed documents viz., Ex.A-1, copy of station memo dated 13.12.2010, Ex.A-2, death report No.299 dated 13.12.2010 prepared by GRP/Faridabad with sketch of site plan and brief history of the case; Ex.A-3, *fard jamatalashi* dated 13.12.2010 by GRP/Ballabgarh recovering cash of Rs.840/-, one ticket No.33242361 from railways station Ballabgarh to Delhi Jn. and one receipt of ESI Insurance; Ex.A-4, *Hawalagi Jamatalashi* by GRP; Ex.A-5, copy of train ticket No.33242361 ex. Ballabgarh to Delhi Jn. Dated 13.12.2010 purchased at 19.31 hours; Ex.A-6, copy of old receipt of ESI Corporation; Ex.A-7, brief history of the case by GRP; Ex.A-8 to 11, statements of Shri Rajbir s/o Shri Shiv Charan, Smt.Dharamvati w/o late Shri Rattu Kumar, mother of deceased, Shri Rajesh s/o Shri Har Parshad, Shri Rakesh s/o Shri Har Parshad before GRP; Ex.A-12, letter dated 14.12.2010 written by GRP/Ballabgarh to MO/BK hospital, Faridabad to conduct postmortem of deceased; Ex.A-13, postmortem report; Ex.A-14-15, copy of ration card; A-16, death certificate of Manoj Kumar.

(8) The respondent/railway has filed DRM-report contending that, on enquiry by RPF, it transpired that Raj Singh, Head Constable/RPF received a telephonic call from one Pardeep S/o Shri Sharan of Azad Nagar that a boy named Manoj Kumar S/o Rattu, resident of Jhuggi No.1249 died by coming in direct contact of a running train while he was crossing the railway lines. The said incident was reported at 19:00 hours on 13.12.2010 and the IO/GRP has shown a train ticket recovered from the deceased which was factually purchased at 19:31 hours, i.e, after the incident, from Ballabgarh railway station to railway station, Delhi. The dead body of the deceased was lying between the IIIrd line which clearly proved that he had not fallen down from the train. In such case his body should have been found on the side of the track and not between the track. It is also established that deceased Manoj Kumar was living in jhuggi No.1249, built unauthorizedly on the railway land near to the spot of incident at railway lines. In a nutshell, a view has been taken in the DRM report, on the basis of statement of Raj Singh, HC/RPF and statements of various other witnesses including mother of the deceased & HC/RPF Shri Balwan Singh, that railway authority was not responsible for the accident, thus, that cannot be acceptable as an untoward incident as per the relevant statute.

(9) Affidavit has been filed by Shri Arun Dev Garg, Station Master, Ballabgarh, stating that the deponent was on duty on 13.12.2010 as Station Master, Ballabgarh and he was informed by the Head Constable Raj Singh, RPF that the deceased was a trespasser and body was lying at km 1503/10-12-IIIrd line between Ballabgarh New Town Faridabad railway stations. The memo was issued by him at 21:45 hours after receiving the message from Head Constable.

(10) RW-2 is Raj Singh, Head Constable, who has affirmed that the deponent was on duty on 13.12.2010 as Head Constable, RPF at Ballabgarh and the body of the deceased was lying on IIIrd line at km 1503/10-12 between Ballabgarh-Faridabad New Town. The deceased was the resident of Jhuggi No.1249, Azad Nagar, Sector 24, Ballabgarh New Town. This deponent was informed on his cell phone by one Pradeep s/o Shri Ram Sharan, resident of Jhuggi Azad Nagar, Ballabgarh that his neighbour Manoj Kumar S/o Rattu died while crossing the railway lines at 19:00 hours. He has further stated that the ticket recovered from the deceased was sold at 19:31 hours. However, in cross examination, he has accepted that he was on duty on that day from 8:00 to 20:00 hours at Ballabgarh railway station. The place of

incident was about 1 ½ – 2 kms away from Ballabgarh railway station and he did not visit the site of incident. He was only informed by Pradeep that in front of him a boy has been run over by a train while crossing the railway lines. He has further stated that he informed the Station Master about the phone call. He has made further statement that he had not investigated the case rather he has recorded his statement before the IO/RPF and further, that he has not given his statement before GRP. RW-3 is G.R.Meena, SI/RPF/Ballabgarh. He has affirmed the aforesaid statement regarding the deceased being resident of Jhuggi No.1249, Azad Nagar, Ballabgarh, KMN 1503/10-12 having died after receiving injuries on coming under the train. The matter was investigated by him and relevant information and documents were collected by him during which it came to the light that Pradeep Kumar stated that he saw Manoj Kumar crossing the railway line and had also seen that he has been hit by the train. He has also seen that ticket recovered from the body of the deceased was issued at 19:31 hours i.e. after the time of incident. He admitted that after the accident, other trains must also had passed from that route. According to him accident occurred at 1900 hours as per eye-witness, Pradeep Kumar s/o Shri Ram Sharan.

(11) On the basis of materials placed on record including the oral and documentary both and on heavily relying upon the version of one Pardeep Kumar, whose statement was allegedly recorded by the RPF personnel during the DRM inquiry, the Tribunal has recorded the finding that the deceased was run over by the train and the ticket was actually purchased at 19:31 hours on 13.12.2010 i.e. much after the time of incident. Hence, the ticket was found to be planted one to make out a case of accidental fall from a train though the Tribunal has also found that, according to the respondent, statement of witness- Pradeep has not been recorded during the inquiry. Pradeep Kumar saw the deceased crossing the railway lines and being run over by the train and dying on the spot. He informed Head Constable on phone immediately. The Tribunal has further recorded that there is no denial by the applicants that the alleged incidents took place at 19:00 hours and perusal of the copy of train ticket reveals that the same was issued at 09.31 hours. Some sort of adverse comment has also been made against the investigating officer as according to the Tribunal, he had tried to plant the ticket to make out a case of accidental falling down from train, Tribunal has recorded that his act necessarily requires to be investigated by a high level officer and action should be taken against him.

(12) Learned counsel appearing for the appellant stated before us that as the ticket was recovered from the dead body. A *jamatalashi* memo is also on record and there is no reason for disbelieving the same. Thus, the Tribunal has committed gross error by rejecting the claim of the appellants.

(13) *Per contra*, learned counsel appearing for the railways has fully supported the decision of the Tribunal and submitted that the *fard jamatalashi* is not acceptable since AW-1 Dharamvati has already stated in her version that she did not sign or put any thumb impression and the same was accepted by RW-2. He has stated the ticket and other things recovered from the dead body was returned to Dharamvati by the police.

(14) Upon consideration of rival contentions and a perusal of the records of the case, this Court finds force in the submission made on behalf of the appellants that before proceedings to record reasons, the Tribunal was required to see as to whether there was sufficient pleading in the written statement that *fard jamatalashi* is a forged document and the ticket was implanted and the accident took place at 19:00 hours and ticket was purchased at 19:31 hours. Actually, these are not part of the pleading of the Railways. It has come only in the evidence led by them. Now the question has arisen as to whether evidence led beyond the pleading would be admissible? The answer is bound to be in negative. Of course the written statement was filed at the time when the DRM inquiry was still going on. The written statement was filed by the Railways on 20.01.2012 and inquiry report of the DRM is dated 23.08.2012, therefore, there was no question of those materials having found place in the written statement which was filed earlier to that, however, in paragraph No. 1, thereof it stands stated in black and white that the respondent authority reserves right to amend the written statement if so warranted and if new material or fresh facts are revealed during inquiry. In such a situation, it was bounden duty of the Railways to amend the written statement so that claimant could have also got an opportunity to amend their pleadings or file a supplementary to controvert the allegations but that did not happen.

(15) It is a cardinal principle that no party can be allowed to lead evidence beyond its pleading which has been done by the railway authorities and has been accepted by the Tribunal.

(16) Now coming on to the merits, after perusal of the evidence of the respondents, it appears that everything revolves around and is dependent upon the information given by so called Pradeep who had

informed the RPF personnel on telephone at 7:00 p.m., that the deceased was run over by a train and since, the ticket was admittedly issued at 19:31 hours, the whole case has been disbelieved by the Tribunal.

(17) The question is as to whether Pradeep was required to be examined as a witness by the Railways? Answer has to be in affirmative because the finding of the Tribunal is based upon the statement given by the Pradeep in front of the railway authorities but he has not deposed before the Tribunal so that the claimant could have also got an opportunity to test the veracity of his statement during cross-examination. This could have definitely been done by the railway because the witness of respondent has stated that Pardeep was known to him as, while patrolling on the railway lines, he had met him several times but it is intriguing as to why the railway authority failed to produce him as a witness before the Tribunal. One of his statement stands appended with the affidavit of RW-3 G.R.Meena, SI/RPF/ Ballabgarh, which was recorded and signed by said Pradeep on 04.04.2013. Which means that it was recorded on that day before the railway authority. The question would be, why such statement could be recorded so late on 04.04.2013 whereas the DRM inquiry report is dated 23.08.2012. It clearly indicates that this evidence was created to demolish the case of the claimant during the pendency of the claim petition otherwise that could have been appended with the DRM report also. In my considered view such evidence created during the pendency of the case would be of no value. Even if, such statement of Pradeep Kumar, which has been brought on record along with affidavit AW-3 is read carefully he is telling on telephone about an incident which had taken place on 13.12.2010 “*sat baje sham ke aas pass*” the deceased was run over by the train. He has not given the exact time.

(18) Thus, in my view, an adverse inference could be drawn against the Railway Department for not producing the vital witness for examination before the Tribunal and gross error has been committed by the Tribunal by simply passing the judgment in favour of Railways without recording the statement of the aforesaid Pradeep Kumar regarding the incident. If, he has given any information on mobile phone, the call records should have been procured and produced and even for doing that the pleadings were required to be amended.

(19) In such a situation, when a valid ticket was found from the deceased, it has to be understood *prima facie* that the person was boarding the train and, therefore, that has to be further understood that

some accident had taken place as he fell down from the train and lost his life which is the case of applicant. No cogent evidence could be led by the respondent-railways to rebut the aforesaid, as discussed above. In my considered opinion, the stricture upon the police authority, placing reliance upon statement of Pradeep Kumar, since he was not produced as witness nor was the written statement amended by the Railways and even his statement does not stand appended to the DRM report, was totally unwarranted and the same stands expunged. Thus, in the facts and circumstances of the case, it is held that, the railway authority would have the liability to compensate the deceased. In my considered opinion the compensation amount, as reflected in the Schedule of Accidents and Untoward Incidents (Compensation) Rules, 1990, has to be awarded to the claimants/appellants which would be lump sum of Rs.4 Lacs along with the interest @ 9% per annum to be calculated from the date of filing the claim petition till its realization.

(20) However, before parting with the matter, in my opinion, since the Railways have heavily placed reliance upon the statement of one person Pradeep Kumar who was the eye-witness of the incident but it has not produced him as a witness before the Tribunal nor was the written statement amended and the statement of the aforesaid person does not stand appended in the DRM report but the same is the reason for incorrect rejection of the claim petition, due to which the appellants, being poor persons, had to approach this Court by preferring this appeal, it is a fit case in which exemplary costs should be imposed upon the respondents which is assessed at Rs.25,000/-.

(21) In the result, this appeal stands allowed with costs of Rs.25,000/- to be paid by the Railways authority in favour of the appellants.

Ritambhra Rishi