

(2021) 02 JH CK 0006

Jharkhand High Court

Case No: Miscellaneous Application No. 222 Of 2015

Sita Devi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Feb. 1, 2021

Acts Referred:

- Railways Act, 1989 - Section 123(c)(2), 124A

Hon'ble Judges: Kailash Prasad Deo, J

Bench: Single Bench

Advocate: Chaitali Chatterjee Sinha, Vijay Kumar Sinha

Final Decision: Allowed

Judgement

Heard, learned counsel for the appellant, Mrs. Chaitali Chatterjee Sinha and learned counsel for the respondent / railway, Mr. Vijay Kumar Sinha.

Learned counsel for the appellant has submitted that the appeal has been preferred by the appellant/claimant namely, Smt. Sita Devi against the

judgment dated 01.08.2013 passed by Member (Technical), Railway Claims Tribunal, Ranchi Bench in Case No. OA(IIU)/RNC/2011/0019, whereby

the claim application of the applicant / appellant has been dismissed holding that deceased was bonafide passenger having valid ticket no. 95008234, 35

& 36, which were received from the deceased, but deceased Shri Thakur Prasad died in accident, which was not covered under untoward incident as

defined under Section 123 (c)(2) of the Railways Act, 1989, rather the same will come under exception (a) to (e) of Section 124(A) of the Railways

Act, 1989.

Learned counsel for the appellant has submitted that the finding with regard to untoward incident is contrary to the judgment passed by learned Apex

Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar reported in (2008) 9 SCC 527 (Para- 10, 23 & 24). Para-10, 23 & 24 of the

aforesaid judgment are probability quoted hereunder:

10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or

whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger

from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.

23. Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the

defendant may not have been at any fault.

24. The basis of the doctrine of strict liability is two fold (i) The people who engage in particularly hazardous activities should bear the burden of the

risk of damage that their activities generate and (ii) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually

a corporation) being in the best position to spread the loss via insurance and higher prices for its products.

Learned counsel for the appellant has submitted by setting aside the impugned award, the Railway may be directed to pay compensation to the

claimant to the tune of Rs. 4,00,000/- with interest @ 7.5% per annum from the date of filing of the claim application i.e. 27.01.2011 till the actual date

of indemnifying the award or Rs. 8,00,000/- in view of subsequent amendment in Railway Accidents and Untoward Incidents (Compensation) Rules,

1990, vide the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 2016, which is applicable with effect from 01.01.2017,

whereby the amount of compensation for death has been enhanced from Rs. 4,00,000/- to Rs. 8,00,000/-, may be granted to the claimant in view of

ratio laid down by the Apex Court in the case of Union of India Vs. Radha Yadav reported in 2019 (3) SCC 410, wherein the Hon'ble Apex Court has

held in paragraph-11 as under:-

11. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs 4,00,000. If, after applying reasonable rate of interest, the final figure were to be less than Rs 8,00,000, which was brought in by way of amendment, the claimant would be entitled to Rs 8,00,000. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs 8,00,000 the compensation would be in terms of figure in excess of Rs 8,00,000. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.

Learned counsel for the respondent/Railway, Mr. Vijay Kumar Sinha, has opposed the prayer and has submitted that the learned Tribunal has passed the order based on materials available on record, as such, this Court may not interfere with the same.

Learned counsel for the respondent - Railway has relied upon Paras-10, 11 & 12 of the counter affidavit, which are re-produced hereunder:

10. That the Learned Tribunal already decided the Issue No. 1 in favour of the appellant on the basis of letter of SM/Hathidah dated 20.09.2011, whereby confirmed that these three Ticket Nos. 95008234, 95008235 and 95008236 were purchased from Hathidah on 17.10.2010.

11. That the Learned P.O. of the Railway Claims Tribunal decided the Issue No. 2 against the appellant by holding that this incident cannot be covered under untoward incident, as defined in Section 123(C)(2) of the Railway Act, 1989. Rather it will come under exception (a) to (e) of Section

124(A) on the basis of the deceased along with his wife Sita Devi and grandson boarded the train at Hathidah, but, in different compartment wife

AW-1, the fard beyan of Abhay Kumar Singh, Rail Thana, Hathidah, indicated that he saw the injured person lying down on PF No. 1 East End. In

unconscious state and was brought to Mahatma Gandhi Hospital, Maranchi, where he expired during the course of treatment, and the Police Final

Report states that the deceased fell down while boarding the train. The wife Sita Devi, A.W.-1, says in his deposition that her husband suffered from

head injury. Both the witnesses examined on behalf of the appellant, confirms the Police Final Report that ""the deceased died due to cardio respiration

failure and because of his brain not functioning", it is clear that Shri Thakur Prasad was trying to board a running train and fell down in the process and subsequently expired.

Hence, the Learned P.O. of the Railway Claims Tribunal, Ranchi, comes to the conclusion that the applicant will not be entitled to any compensation,

Issue No. 3 is decided in this manner.

12. That it is humbly stated and submitted that the case of the appellant not comes under the territorial jurisdiction of the Hon'ble High Court of

Jharkhand, due to occurrence took place on Bihar, the appellant / claimant resided in Bihar and respondent resided at Bihar, thus, the cause of action

on this case arising out of the territorial jurisdiction of the Railway Claims Tribunal and Hon'ble High Court of Judicature at Patna and on this ground

alone, this appeal is liable to be dismissed by this Hon'ble Court.

After hearing learned counsel for the parties and on the basis of materials available on record, it appears that there is no dispute between the parties

with regard to the bonafide passenger, as the same has also been accepted by learned Tribunal, the deceased was bonafide passenger. No appeal has

been preferred by the respondent- Railway with regard to such finding.

However, with regard to the accident, in which deceased Thakur Prasad lost his life has not been accepted by the learned Tribunal as an untoward

incident, though admittedly the evidence has been brought on record that due to heavy rush and jerk, he fell down from the running train, which has not

been considered by Claim Tribunal to be an untoward incident.

So far untoward incident is concerned, this Court considered the evidence adduced by A.W.-1 -Sita Devi and A.W.-2 - Om Prakash Dhiraj.

Para-2, 3, 4, 5, 6, 7, 8 & 9 of the evidence of A.W.-1 reads as follows:-

2. That on 17.10.2010 after purchasing and having a valid second class ticket bearing Nos. 95008234, 950082235, 95008236 for Hathidah Jn. to Jasidih

Jn. My deceased husband Thakur Prasad boarded train No. 2352 DN. Danapur-Hawrah Express train at Hathidah Station for going to Jasidih along

with me and his grandson.

3. That we were to board another means of transport for going to Deoghar (Baba Dham).

4. That there was heavy rush in the general compartment.
5. That due to heavy rush I and grandson anyhow boarded in the train (compartment), but due to heavy rush my deceased husband boarded in another compartment and was standing near the gate inside the compartment.
6. That the passengers were jostling one another for space.
7. That as my deceased husband boarded in the train, the train suddenly started from Hathidah Station with a jerk.
8. That due to heavy rush and jostling amongst the passengers coupled with a sudden start of the train with a jerk my deceased husband accidentally fell down from the moving train at Hathidah Station.
9. That as a result of which my deceased husband sustained serious injuries and brought to Mahatma Gandhi Hospital, Maranchi for treatment.

Paras-2, 3, 4, 5, 6, 7, 8, 9 & 10 of the evidence of A.W.-2 reads as follows:-

2. That after purchasing and having valid second class ticket bearing Nos. 95008234, 950082235, 95008236 for Hathidah Jn. to Jasidih Jn. my deceased father Thakur Prasad boarded train No. 2352 DN. Danapur-Hawrah Express train at Hathidah Station for going to Jasidih along with my mother and his grandson.
3. That they were to board another means of transport for going to Deoghar (Baba Dham) from Jasidih.
4. That there was heavy rush in the general compartment.
5. That due to heavy rush my mother and her grandson anyhow boarded in the train (compartment), but due to heavy rush my deceased father boarded in another compartment and was standing near the gate inside the compartment.
6. That the passengers were jostling one another for space.
7. That as my deceased father boarded in the train, the train suddenly started from Hathidah Jh. with a jerk.
8. That due to heavy rush and jostling amongst the passengers coupled with a sudden start of the train with a jerk my deceased father accidentally fell down from the moving train at Hathidah Jn.

9. That as a result of which my deceased father sustained serious injuries and brought to Mahatma Gandhi Hospital, Maranchi for treatment.

10. That unfortunately my deceased father succumbed to his injuries in the course of treatment at Mahatma Gandhi Hospital, Maranchi.

It appears that the deceased has already boarded the train, but because of rush and jerk, he fell down from the running train, as such he was a

bonafide passenger and lost his life in an untoward incident as defined under Section 123(c)(2) of the Railways Act, 1989.

In my opinion, in view of the evidence of A.W.-1 & 2 and in view of the ratio laid down by the Apex Court in the case of Prabhakaran Vijaya Kumar

(Supra), this Court is inclined to allow the appeal.

Accordingly, the Miscellaneous Appeal is allowed and the impugned judgment dated 01.08.2013 passed by the Member (Technical), Railway Claims

Tribunal, Ranchi Bench, Ranchi in Case No. OA (IIU)/RNC/2011/0019 is set aside.

The Railway is directed to pay compensation to the tune of Rs. 4,00,000/- along with interest @ 7.5% per annum from the date of filing of the claim

application i.e. 27.01.2011 till the actual date of indemnifying the award or Rs. 8,00,000/-, whichever is higher to the appellant /claimant in view of

judgment passed by the Apex Court in the case of Radha Yadav (Supra).

Let the L.C.R. be sent down.