(2011) 10 AD 426 : (2012) 2 TAC 677

Delhi High Court

Case No: FAO No. 424 of 2011

Union of India (UOI)	APPELLANT
Vs	
Radha Devi	RESPONDENT

Date of Decision: Sept. 22, 2011

Acts Referred:

- Railway Claims Tribunal Act, 1987 - Section 23
- Railways Act, 1989 - Section 123, 124A

Citation: (2011) 10 AD 426 : (2012) 2 TAC 677

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Manoj V. George and Shilpa George, for the Appellant;

Final Decision: Allowed

Judgement

Valmiki J Mehta, J.
The challenge by means of this First Appeal u/s 23 of the Railway Claims Tribunal Act, 1987 is to the impugned judgment of the Railway Claims Tribunal dated 14.6.2011, and by which judgment, the Railway Claims Tribunal has allowed the Claim Petition of the Respondent/widow for the death of her son, Sh. Rahul in an untoward incident on 7.12.2009.

2. The facts of the case are that the deceased Sh.Rahul was travelling by train from Delhi Junction to Ghaziabad on 7.12.2009. He fell down from the train near old Seelampur Fatak/gate resulting in his death whereupon the subject Claim Petition was filed.

3. The Appellant/railways contended before the Railway Claims Tribunal that deceased was not a bonafide passenger of the train in question in which the deceased was said to be travelling. It was also argued that the deceased was not a bonafide passenger travelling on a valid ticket.

4. The Railway Claims Tribunal has held the deceased to be a bonafide passenger travelling on the train inasmuch as during the Jamatalashi/search of the body of the deceased, a train ticket bearing No. 42243612 was, in fact, recovered. This recovery is mentioned in two reports/DD entries of railway police officials. The Railway Claims Tribunal also held that the documents Ex. AW1/7 to Ex. AW1/9, and which documents are: the DD entry No. 17 dated 7.12.2009, the statement of the Head Constable Sh. Om Prakash and the copy of the brief facts as prepared by the railway police, quiet clearly showed that the deceased had fallen down from a train. The Railway Claims Tribunal therefore held that the deceased was a bonafide passenger who fell from a train and therefore there was an untoward incident within the meaning of the expression as found in Section 123(c) read with Section 124A of the Railways Act, 1989 consequently statutory compensation was bound to be awarded to the Respondent. An important aspect noted by the Railway Claims Tribunal was that normally the railway through the DRM conducts an inquiry whenever there is an untoward incident, but in the present case there was no investigation/verification report of the railways conducted through any agency.

5. Learned Counsel for the Appellant stressed two points before this Court:

i) The first argument was that as per the Guard Memo Book of the train from which the deceased is stated to have been fallen down, shows that the departure timing of the train in fact was 6.10 P.M. from the Delhi railway station and whereas the first information of the death relied in the case was received around 5.30 P.M i.e. earlier and consequently it could not be said that the deceased was travelling in the train which is stated in the Claim Petition.

ii) The second argument was that it has not been established that the deceased in fact fell from the train and that the death is result of a fall from the train. It is argued that the incident in question has not been proved to be an untoward incident within the meaning of expression as found in Section 123(c) read with Section 124A of the Railways Act, 1989.

6. In my opinion, the judgment of the Railway Claims Tribunal does not call for any interference by this Court as there is no illegality in the same. It cannot be disputed that the deceased was a bonafide passenger because admittedly during the search/Jamatalashi of the person of the deceased the ticket was in fact recovered by the Railway officials themselves. The body was lying unattended till the same was searched by the railway officials and it could not therefore be said that the ticket had been planted on the body. Also, there was no relative or friend or any person who was personally travelling with the deceased and who had reached the site of the accident before the Railway officials found the body in order to plant the ticket. Therefore, it is proved beyond all doubt that the deceased in fact had purchased a railway ticket and was travelling as per the railway ticket making him a bonafide passenger.

7. The only issue then remains is as to whether the deceased in fact fell from a train or not. The Railway Claims Tribunal has relied upon the documents Ex.AW1/7 to Ex.AW1/9, and which are the documents of the officials of the Appellant being the DD entry, the brief facts and also the investigation report of the Head Constable which showed that the deceased had fallen from a train. I completely agree with this finding and conclusion more so because the present is not one of those cases where the deceased was living in and around the area or was having an office/work place in or around the area where the death by untoward incident took place. Clearly therefore the death would have to be accidental and because of a fall from the train. The provisions of Section 123(c) and Section 124A have been enacted as a social/beneficial legislation for social welfare vide Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, . Such provisions have to be interpreted liberally once it is found that the facts do not show that the deceased died as a result of his own criminal negligence, and only in which case of self-inflicted criminal negligence can compensation be denied vide Jameela and Others Vs. Union of India (UOI), .

8. At the first blush the argument as raised on behalf of the Appellant with reference to the Guard Report of the train 1 DM seemed to indicate as if that the deceased did not fall from the local train 1 DM considering that the Claim Petition states that the deceased died by fall from a local train No. 1-DM whereas the train 1DM had only left the Delhi railway station at 6.10 P.M. and the first report of a person lying dead near the track was earlier of around 5.30 P.M. However, this confusion in my opinion can very well be explained from the fact that the Respondent/widow was not travelling in the train with the deceased and also there was no other acquaintance/relative traveling with the deceased in the train and therefore the widow would have mentioned the train number in the Claim Petition only on the basis of information received. Though the train number could have been wrongly stated in the Claim Petition, however, considering the balance of probabilities as per which the civil cases has to be decided, the deceased in fact quite clearly had died on account of a fall from a train in view of the documents of the Respondent''s officers themselves being Ex.AW1/7 to Ex.AW1/9. Therefore, even if one accepts the report of the guard, and which document has been filed and exhibited as Ex.RW1/1 before the Railway Claims Tribunal, yet, on that basis itself it cannot be said that the deceased did not die by a fall from a train. The deceased may not have died by fall from the specific train as stated in the Claim Petition, however, it has to be held that he died on account of fall from a train in view of the documents of the Respondent itself being documents Ex. AW1/7 to AW1/9. Credence is very much there of the factum of death on account of fall from a train, because as already stated, the place of death is neither near the residence nor the work place of the deceased for the accident to be of any form of criminal negligence/self inflicted injury of wrongly standing on the railway tracks or crossing of the railway tracks.

9. Accordingly, I do not find that the impugned order of the Railway Claims Tribunal requires to be interfered by this Court in appeal for the Respondent/widow to be denied

compensation for death of her son who was a bonafide passenger and who died on account of an untoward incident of a fall from a train.

10. Dismissed.