

(2010) 08 PAT CK 0177**Patna High Court****Case No:** M.A. No. 122 of 2008

Vijay Shankar Sharma

APPELLANT

Vs

The Union of India (UOI) and
Others

RESPONDENT

Date of Decision: Aug. 23, 2010

Acts Referred:

- Railways Act, 1989 - Section 123(C), 124(A), 156

Citation: (2011) 2 PLJR 459

Hon'ble Judges: Gopal Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Gopal Prasad, J.

Heard learned Counsel for both the parties.

2. This miscellaneous appeal is directed against the order dated 22.1.2008 passed by the Bench of Railway Claim Tribunal in Claim Case No. O.A. 00137/2004 by which claim of the claimant regarding the death of the deceased Shambhu Nath Sharma has been disclaimed.

3. The case of the claimant is that on 19.4.2004 while his father Shambhu Nath Sharma was going with valid ticket from Guljarbagh to Patna by DMU train alongwith the co-passenger Ajay Kumar Singh, when the train reached Agamkuan near upper bridge, Shambhu Nath Sharma fell down from the train due to jerk in train and dashed with the electric poll causing injury. He was taken to NMCH from where referred to the PMCH where he succumbed to injury on 21.4.2004 at 11.00 P.M.

4. The fardbeyan was recorded by Pirbahore Police and transferred to the GRP, Patna Junction and U.D Case No. 32 of 2004 was registered on 22.4.2004. The dead body was handed over to the Son of the deceased. The claimant Appellant claimed that the deceased the father of the claimant was a bona fide passenger and died out of the untoward incidence. It is stated that the ticket of the train was lost at the time of the accident.

5. The claim was contested by the railways and in reply to the claim petition it has been asserted that the deceased was not a bona fide passenger and no ticket has been recovered from his possession during inquest or the ticket number has been mentioned. It is further asserted that no untoward incidence as per Section 123 (C) of the Railway Act, 1989 rather the same is covered u/s 124(A) proviso (b) and (c) and the accident took place due to his negligence and hence has denied the claim. It is submitted that the deceased may have been met with the accident due to traveling in negligent manner with carelessness of prohibited conduct of the required standard of care and hence covered under self-inflicted injury and it has been submitted that as per evidence the deceased was traveling by catching paudan of the compartment causing fall, which is itself unlawful u/s 156 of the Railways Act, so as the deceased was negligent and careless amounts to self-inflicted injury.

6. However, during enquiry two witnesses examined on behalf of the claimant are A.W. 1 Ajay Kumar Singh and A.W. 2 Vijay Kumar Sharma.

7. The documentary evidence has adduced on behalf of the claimant as Ext.-A is the affidavit filed by Vijay Kumar Sharma, Ext.-A/1 is the affidavit filed by Ajay Kumar Singh, Ext.-A/2 is the fardbeyan, Ext.-A/3 is the inquest report, Ext.-A/4 is the final report, Ext.-A 5 is the post mortem report, Ext.-6 is the death certificate.

8. However, no evidence has been adduced on behalf of the Railway but the Railway has also filed documentary evidence, which is Ext.-R affidavit of Shashi Bhusahn Sinha, Ext.-R/1 is the certificate of Station Master Rajendra Nagar Terminal and R/2 is the station diary report of Gulzarbagh Station..

9. However, after considering the evidence and submission of the parties, the Tribunal has hold that the claimant has neither produced any documentary evidence nor ticket to prove that the deceased was traveling in the train in question. Hence, deceased was not a bona fide passenger and further held that at the time of occurrence the railway administration was not informed either at Rajendra Nagar Terminal nor at Guljarbagh Station about the occurrence give rise to a doubt that the occurrence took place on 19.4.2004.

10. Learned Counsel for the Appellant, however, contended that there is evidence of A.W. 1, who was a co-passenger traveling alongwith the deceased and has stated in his evidence that he was traveling with the deceased after purchasing the ticket and the victim was standing after entering into the train by catching hold of the handle, when the train halted due to the signal after taking a break causing a jerk by which

the deceased fell down and collided with the electric polls and after the accident he was taken to the NMCH from where he was referred to the PMCH and the deceased died in PMCH. and thereafter fardbeyan was lodged, which was sent to the railway police station and in the inquest report it is also mentioned that the death was due to accident and the charge-sheet has been submitted showing that the death was due to the train accident and the witnesses have stated about the same, but the learned Tribunal fail to consider and appreciate the evidence of the witnesses as well as the First Informant Report, inquest report and the charge-sheet, though these documents have not been challenged by the railway to be forged or fabricated document. The learned Counsel for the railways has contended that the claimant has not produced the ticket nor produced the papers regarding the treatment at NMCH and matter having not been reported to the railway administration and supported the impugned order stating that the deceased could not be a bona fide passenger as no ticket has been produced and that the deceased might have got injury some where else and making false report and further the nature of the accident shows that the victim was negligent in standing at the gate of the compartment or holding the handle is violation of u/s 156 of the Railways Act.

11. Hence, the question for consideration as to whether the deceased was a bona fide passenger while met with the accident on 19.4.2004 further whether the accident was untoward accident.

12. The case of claimant that deceased met with the accident while traveling with co-passenger Ajay Kumar Singh after purchase of the ticket when met with accident. A.W. 1 in his evidence has stated that on 19.4.2004 he alongwith Shambhu Nath Sharma purchased tickets from Guljarbagh to Patna Junction and both got over the DMU train and there was excessive crowd in the train and both were standing inside the train near the gate catching hold of the handle of the DMU train and as soon as the train reached the Agamkuan over bridge and was crossing then there was a great jerk due to the hard break for the reason that the single is not down and due to this jerk the deceased fell down and then he was taken to the NMCH from where he was referred to the PMCH and in the PMCH he succumbed to injury on 21.4.2004 at 11.00 P.M and thereafter the inquest, report was prepared by the Pirbahore Police Station. The dead body was sent for post mortem and after post mortem handed over to the family members of the deceased. However, in cross-examination he has stated that he was traveling alongwith the deceased and the victim was catching hold of the handle inside the train, which is provided in the DMU train and due to the fall of the deceased he got injury on his head with collision with pole. However, stated that he did not inform the guard or other authorities and the bag of the deceased was taken by some one and deceased was taken to the NMCH. However, there is nothing in the cross-examination of this witness to disbelieve his testimony A.W. 2 is a hearsay witness. He was not present at the time of the accident.

13. Hence, from these evidences it is apparent that the victim was traveling from train. However, to the contrary there is no evidence contrary on the point from railways. However, the suggestion has been given that deceased jumped from train during ticket checking. However, except suggestion there is nothing in evidence to show that the victim has jumped from the train. However, Ext.-A/2 is the fardbeyan by the informant, Ext.-A/3 is the inquest report and A/4 is the charge-sheet support the case of claimant about the occurrence or injury by fall from the train and the post mortem report also suggests of the injury by hard blunt substance also supports the case of claimant.

14. Hence, the witnesses who were following the deceased has deposed the case of the claimant and the fardbeyan, inquest report and charge-sheet which are exhibit also supports the version of the claimant and hence merely because the accident not reported at the railway at the time of the occurrence cannot lead to conclusion that victim was not traveling on the train when the accident took place. It is a matter of common experience that when the accident took place. The whole exercise is to save the victim and for the treatment to save the victim and hence taking into consideration the entire facts and circumstance, I find and hold that the victim was traveling as bona fide passenger at the time of the accident.

15. In decision reported in AIR 2007 Pat 38 (Union of India v. Hari Narayan Gupta and Anr.) where it has been held that the passenger is presumed to be innocent, a legal presumption can be drawn that he had followed the law and that he had, indeed, purchased a valid ticket prior to boarding the train and the presumption in favour of the Railway that the railway officers would have discharged his duty for checking the ticket, in a bona fide manner, it can be presumed that the ticket collector would have examined whether the deceased possesses a valid ticket or not and thereafter the railway has a means through which they can easily prove that the deceased was not a bona fide passenger and the burden of proof lied on the railway administration to lead evidence and to prove that the deceased was not a bona fide passenger and hence in view of the fact that A.W. 1 has appeared as a witness and has stated that the deceased has boarded the train after taking a valid ticket and there is no evidence against and since there is presumption of the passenger traveling any rail with bona fide tickets and the burden of proof lies on the railway administration.

16. However, the learned Tribunal appears to have taken the view that the onus is on the deceased or the claimant and since the ticket of the victim was not produced or mentioned in the inquest report and hence held that the deceased was not a bona fide passenger disbelieving the evidence of the A.W. 1 for the reason he has not been the valid tickets without taking into consideration the onus is on the railway and railway administration has not given any evidence and hence the finding recorded by the Tribunal is not sustainable and is set aside. The evidence of A.W. 1 that he alongwith deceased was traveling on train after purchase of ticket at the

time of accident and this evidence has not been challenged and stood the test of cross-examination and hence followed with presumption that a person is traveling by train is traveling with valid ticket as held in 2007 (4) PLJR 92. Hence, I find and hold that victim at the time of accident was traveling with bona fide tickets as bona fide passenger.

17. However, the next question for consideration is whether accident comes in category of untoward incidence u/s 123 (C). Section 123 (C) defines the untoward incidence as the accident falling of any passenger from a train carrying passenger. However, Section 124(A) mention that no compensation shall be payable under this Section if the passenger dies or suffers injury due to (a) suicide or attempted suicide, (b) self-inflicted injury, (c) his own criminal act, (d) any act committed by him in a state of intoxication. (e) any interest cause of disease. However, the defence taken by the railway authority that it is negligent on the part of the deceased which has caused "untoward" incidence as was standing near the gate and further the negligent covering u/s 156 of the Railways Act and has however taken the plea that self-inflicted injury or his own criminal act has caused the death. However, any evidence or even plea taken in the written statement that it is a case of suicide or self-inflicted injury. It is stated that there was violation of Section 156 of the Railways Act. Section 156 of the Railways Act provides that if any passenger is warned from traveling on roof or foot step or on engine of train not intended to use for passengers then he shall be punishable with imprisonments. However, here there is no material brought in evidence to suggest that the victim was either traveling on roof or foot step or engine of a train or was even warned by railways and hence the objection that the accident took place due to his own criminal act falls to ground. There is clear evidence that the victim was traveling in the train holding a handle inside the train used for catching hold for standing passenger as provided in DMU train and hence it is neither a case of traveling on engine or foot steps or roof neither is a case to be covered under proviso of Clauses A, B, C, D and E of Section 124(A).

18. However, it has been asserted by the railways that the victim fell down due to the negligence. However, learned Counsel for the Respondent having relied upon a decision reported in [Union of India \(UOI\) Vs. Prabhakaran Vijaya Kumar and Others](#), and while interpreting this Section 124(A) that u/s 124(A) lay down strict liability or no fault liability in a case of railway accident and hence if a case comes within the purview of Section 124(A) it is wholly irrelevant to consider as to who was at fault and hence the submission that the accident took place due to negligence of the victim is not available to the railways and any submission that the negligence will amount to self-inflict injury is also not sustainable and hence taking into consideration the entire facts and circumstances and the evidence on record it can well be inferred that the accident took place deceased died out of the accident or untoward accident due to fall from the train while the deceased was traveling as a bona fide passenger and Tribunal holding that the claimant is not entitled to claim

as the deceased is neither been able to prove to be a bona fide passenger nor death due to untoward incidence is not sustainable in law.

19. Accordingly, I find and hold that the Appellant has been able to prove that the deceased was bona fide passenger and during the traveling he is met with the untoward accident causing injury by which succumbed due to injury and hence the claimant is entitled to the claim and hence the claimant is entitled to the relief of Rs. 4,00,000/- with interest @ 6% from the date of petition.

20. This miscellaneous appeal is allowed.