(2003) 09 CAL CK 0054

Calcutta High Court

Case No: F.M.A. No. 311 of 1998

Sudhira Mondal		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Sept. 29, 2003

Acts Referred:

- Railway Claims Tribunal Act, 1987 - Section 18
- Railways Act, 1989 - Section 129

Citation: (2005) ACJ 1457 : AIR 2004 Cal 270

Hon'ble Judges: Jayanta Kumar Biswas, J; Aloke Chakrabarti, J

Bench: Division Bench

Advocate: Amul Krishna Basu and Nirapada Mondal, for the Appellant;Asit Banerjee, for Respondent 1, for the Respondent

Final Decision: Allowed

Judgement

Jayanta Kumar Biswas, J.

This is an appeal u/s 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as ''the Act''). The appellant, who was the applicant before the Railway Claims Tribunal, Calcutta Bench (hereinafter referred to as ''the Tribunal''), is aggrieved by the order dated 9th July, 1996 passed by the Tribunal in her claim application (No. A/52/1996). By the impugned order the claim application was rejected on contest.

2. The appellant is the widow of one Shib Prosad Mondal of 2, Bibekananda Colony, P.O. Bhattanagar (Liluah), in the District of Howrah of the State of West Bengal. On 25th November, 1995 at Howrah station of the Eastern Railway the C-252 down Bardhaman-Howrah (Chord) EMU Local met with an accident. The nature of the accident was that the train dashed against the dead end buffer of platform No. 6 at Howrah station. In consequence of the accident, which took place at 10.03 hrs., (a)

the driving coach No. EF-10968 got mounted, (b) coach No. ER-11613 (position 4th from driving coach) got derailed of Howrah end trolley one wheel and Delhi end trolley one wheel, and (c) coach No. ER-10097 (position 5th from driving coach) got derailed of Howrah end trolley two wheels causing damage to the buffer. As a result of the accident two persons died, five persons sustained grievous injury, and eight persons sustained simple injury. Shib Prosad Mondal was one of the two dead persons.

3. On 16th January, 1996 the appellant filed an application u/s 16 of the Act before the Tribunal. As dependant of the deceased, she claimed compensation at Rs. 2.00.375/-, in addition to the ex-gratia amounting to Rs. 10.000/- that had been paid by the railway administration. By an application for amendment dated llth March. 1996 she prayed for amendment of the claim application so as to incorporate the names of the minor son and minor daughter of the deceased in the category of claimants. It was originally stated in the claim application that the deceased was possessing a monthly ticket which was lost at the time he met with the accident. By the amendment application this statement was sought to be amended to the effect that the monthly ticket was "ex-Liluah to Howrah and back."

4. The respondent No. 1 (that is, the Union of India) filed a written statement dated 20th March, 1996. The contents of the written statement were as follows :-

"The Written Statement/Objection petition on behalf of the Respondent Most respectfully sheweth :-

1. That the statements and allegations made in the application are denied save and except what are specifically admitted hereinafter.

2. That the petitioner is called upon to prove that applicant was a bona fide passenger in C. 252DN Local train at Howrah Station on 25-11-1995, otherwise he will be treated as trespasser in the above train within the meaning of Sec. 50 and Sec. 55 of the Rly. Act-1989 which will disentitle him to any compensation.

3. As per D.R.M./HWH/E. Rly. report is that Cause Of Accident (Prima Facie) disturbance of jumper connection between 1st and 2nd coach by unauthorized persons travelling on buffer in that location.

4. The petition is bad for non-joinder.

5. That the Respondent craves leave to file additional written statement on completion of the enquiries if found subsequently necessary.

It is, therefore, prayed that your honour will kindly dispose of the claim application in the light of the above observations for the act of kindness your petitioners as in duty bound shall every pray."

5. An application dated 2nd July, 1995 was filed by the appellant; by this she prayed for summoning a co-passenger of the deceased as witness to record his oral

evidence. It appears, the appellant''s such prayer was allowed, and on 9th July, 1996 oral evidence of one Satrugna Singh was recorded by the Tribunal. His deposition reads as follows :-

"On 25/11 /951, Satrugna Singh, boarded a local EMU train at Liluah bound for Howrah at about 10 a.m. Shib Prasad Mondal also boarded the train along with me from Liluah. We were standing at the gate. The train reached the station and hit the buffer at the extreme end of the platform. Due to jerk myself and Shib Prasad Mondal tell down from the compartment on the wrong side of the platform. I do not know what happened to Shib Prasad. I was with him as a fellow passenger.

To Tribunal

I do not know the father''s name of Shib Prasad Mondal. I know him a little bit. i do not know where he resides and his father''s name. After the train dashed against the buffer I fell down from the train. I do not know what happened to Shib Prosad or whether he at all fell down from the train.

Xxed

I do not know what was the position of Shiv Prosad Mondal. I did not notice whether he had any luggage with him. Shiv Prosad left behind 2 sons. I do not know the age of Shiv Prosad and his sons,"

There is, however, nothing on record to show that the railway administration adduced any evidence in defence either oral or documentary.

6. By the impugned order the Tribunal rejected the appellant''s claim application. For convenience'' sake the impugned decision is reproduced below :-

"Both the cases have been taken up together for analogous hearing since common question of facts and law are involved. In both the cases compensation has been claimed under Sec. 124 of the Railways Act 1989 for alleged death of the Rly. passengers in a Rly. accident.

Admittedly on 25-11-1995, C-252 Dn Bardhaman-Howrah (Chord) Local reached Platform No. 6 of Howrah Stn. at about 10/ 03 hrs and dashed against the dead end buffer of the platform. As a result two persons named Nirmal Ghosh and Shib Prasad Mondal died in the accident while 4 passengers sustained grievous injuries and 4 passengers sustained minor injuries. Applicant Smt. Purnima Ghosh in case No. A/ 15/96 is the widow of deceased Nirmal Ghosh while Smt. Sudhira Mondal in case No. A/52/96 is the widow of deceased Shib Prasad Mondal. Their common case is that deceased passengers were bona fide passengers of that ill-fated train and they died in the Rly accident which occurred when the train dashed against the dead buffer at the end of the platform No. 6 of Howrah Railway Stn. Accordingly both of them have claimed statutory compensation of Rs. Two Lakh each. The case of the Rly. is that the deceased persons along with the persons who sustained injuries

were travelling on the buffer of that local train and they cannot claim any compensation since they were not travelling in the Rly. compartment.

One Sri Satrugna Singh, an injured passenger of the said train, has been examined is case No. A/52/96. This witness has stated that due to jerk he and Shib Prasad Mondal fell down from compartment on the wrong side of the platform. But in cross-examination he admits that while he sustained injury in the accident, he does not know whether Shib Prasad Mondal fell down from train or not.

We have gone through the Rly. case record including the enquiry made after the accident. It appears from the enquiry report that the persons died in the accident and who sustained grievous injuries were travelling on the buffer. It is a fact that the local train dashed against the dead end buffer of the platform No. 6 on 25-U-95 at about 10/03 hrs. Even then no passenger inside the compartment can die due to jerk. At best the passengers in the compartment could sustain injuries when the train dashed against the dead end buffer of the platform, Even any passenger fell down from train due to jerk, at best he could sustain grievous injuries and death cannot result in all possibility. The Rly. report clearly shows that Shib Prosad Mondal and Nirmal Ghosh along with other passengers who sustained grievous injuries were travelling on the buffer of the train. A question therefore arises whether a passenger travelling on a buffer of a train dies in a Rly accident can claim compensation or not.

Under the provisions contained in Sec, 156 of the Railways Act, 1989, travelling on roof, step or engine of a train is a punishable offence. If a Rly. passenger takes upon himself the added peril by travelling on the buffer of a train, and dies as a consequence of the train dashed against the dead end of a buffer at a Rly, platform, like the present case. we are of opinion death of such a Rly passenger could not have taken place had he not travelled on the buffer of the train. As such when the death occurred as a consequence of such travelling on the buffer of a train, it cannot be said that the death was caused due to the Railway accident inasmuch as the proximate cause of death was due to rash and negligent act on the part of such passenger to travel on the buffer of the train.

The Rly. passenger is bound to travel in the- Rly. compartment and not on the buffer or roof of the compartment. If he does so and dies in an accident, the Rly, cannot be held responsible for such death. Even then the Rly. has paid ex gratia compensation of Rs. 10,000/- in both the cases on humanitarian ground.

Since the cause of death of Nirmal Ghosh and Shib Prosad Mondal was not due to Rly. accident but due to their rash and negligent act in travelling on the buffer of a Rly. compartment, even though they might have died when the train dashed against the dead end of a buffer, we are of opinion that no compensation is payable to the dependants under Sec, 124 of the Railways Act, 1989, in the result the applications for compensation are liable to be rejected,

Ordered

that the applications for compensation are rejected on contest without any order as to costs. This Judgment governs both the cases Nos. A/1596 and A/52/96."

7. Being aggrieved, the appellant by invoking the constitutional writ jurisdiction of this Court moved a writ petition [C.O. No, 14967 (W) of 1996]. By an order dated 10th March. J997 it was dismissed with liberty to the appellant to avail of the alternative remedy of appeal. Thereafter the present appeal was filed on 21st March, 1997. By an order dated 30th June, 1998 it was admitted after condoning the delay in preferring the same.

8. One of the annexures to the appellant''s abovenoted writ petition was a report dated 6th December, 1995 submitted by the Divisional Railway Manager, Eastern Railway, Howrah to the Secretary, Railway Board. It was a preliminary enquiry report regarding the accident in question. In this report it was stated that the persons who died and sustained grievous injuries in the accident had been travelling on the buffer of the train, and the prima facie cause of the accident was disturbance of jumper connection between its first and second coaches by unauthorized persons travelling on buffer in that location. It was also stated in this report that the driving coach No. ER-10968 re-railed when pulled from the rear at 10.47 hrs. to remove the trapped persons between buffers, and 4th coach No. ER-11613 and 5th coach No. ER-10097 were re-railed at 12-20 hrs; and these steps were taken as relief measures.

9. The learned counsel for the appellant submits that the order of the Tribunal is contrary to the evidence on record. He submits that there was no evidence on record in support of the case of the Railway Administration that deceased Shib Prosad Mondal was unauthorisedly travelling by occupying a position on the buffer of the train. He further submits that the fact of death being admitted, on the basis of the oral evidence adduced in support of the claim application, the Tribunal should have allowed it, and awarded the compensation specified in Part-1 of the Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. He submits that although under the unamended rules, till before 1st November, 1997 the fixed compensation payable in a death case was Rs. 2,00,000/- and in the instant case the accident had taken place before the amendment of the Schedule to the Rules, in view the Supreme Court decision in the case of Rathi Menon Vs. Union of India, the appellant will be entitled to Rs. 4.00.000/-.

10. The learned counsel for the respondent No. I submits that there is no infirmity in the order passed by the Tribunal. He submits that the oral evidence adduced in support of the claim application did not prove the fact that deceased Shib Prosad Mondal was travelling as a bona fide passenger of the train. He submits that the witness failed to prove that the deceased was inside the passenger compartment and fell therefrom as a result of the accident. By referring to the enquiry report (produced by the appellant as an annexure to her writ petition) the learned counsel

submits that the Tribunal relied on this report in support of its conclusion that the deceased was travelling as an unauthorized person by occupying a position on the buffer of the train. His further submission is that between the oral evidence adduced by the witness examined by the appellant and the records of the Railway Administration, which contained the enquiry report dated 6th December. 1995, the learned Tribunal was perfectly justified in relying on the findings recorded in the enquiry report prepared by the Railway Administration. He submits that in any case, the appellant would not be entitled to compensation at the rate or amount fixed in the Schedule after the 1997 amendment of the Compensation Rules. 1990, as the accident had taken place prior to coming of the amended Schedule into operation.

11. After hearing the parties and perusing the evidence and materials on record, we are of the considered view that the order under appeal is based on erroneous assessment of the evidence on record.

12. The Tribunal proceeded to decide the case by assuming that the case of the Railway Administration was : as the deceased was travelling on the buffer of the train and was not travelling in its compartment, the appellant was not entitled to claim any compensation. This was evidently a wrong assumption, since no such case was made out by the Railway Administration in its written statement, contents whereof have been quoted before. The Railway Administration did not also adduce any evidence to make out such a case.

13. The direct evidence of the witness (Satrugna Singh) examined by the appellant was totally discarded by the Tribunal once again by proceeding on the basis of a wrong assumption. The Tribunal totally brushed aside his evidence on the ground that in cross-examination he admitted that while he sustained injury in the accident, he did not know whether Shib Prosad Mondal fell down or did not fall from the train. True that the witness said so, but he did not say so in cross-examination as recorded by the Tribunal. but, apparently, in reply to the questions put by the Tribunal itself.

14. On the basis of the findings recorded in the enquiry report unilaterally prepared by the Railway Administration and certain undisclosed case record the Tribunal recorded that the deceased was travelling on the buffer of the train. It did not discuss any facts appearing from any material for recording the finding; it rather did not reach any conclusion on this question by any reasoning. It Just accepted the position that appeared from the enquiry report, which was not exhibited, and the author whereof was not examined.

15. We find that the evidence of the witness examined by the appellant was not such, as would warrant mere rejection for the statement as noticed by the Tribunal. From his deposition it appears that the witness boarded the train from Liluah station from where the deceased also boarded. He stated that both the deceased and he. as co-passengers, were standing at the gate of the train. He also stated that on the train dashing against the extreme end buffer of the platform at the station,

both of them fell down from the compartment on the wrong side of the platform. This witness was questioned by the Tribunal, and cross-examined by the presenting officer engaged by the Railway Administration. He was not questioned or cross-examined on any material aspect of his deposition, except a question, apparently, put by the Tribunal as to whether he knew what happened to the deceased after the accident. The statements of this witness that both the deceased and he having boarded the train from Liluah station were travelling as co-passengers by standing at the gate of the train remained totally unchallenged. He was confronted with rather irrelevant questions, like, whether he knew the name of the father of the deceased, how many sons the deceased had, etc. The questions put by the Tribunal about the fate of the deceased, and by the otherside about the position of the deceased, both were vague and unspecified in nature. So on the basis of negative replies given to such vague questions by the witness, his unchallenged direct evidence about the fact that the deceased was travelling in the compartment of the train ought not to have been left unconsidered by the Tribunal.

16. In the enquiry report dated 6th December, 1995 it was recorded that the deceased was travelling on the buffer of the train. We find from the records of the Tribunal that neither this report nor any other document produced by the Railway Administration was taken on record by it. We are unable to ascertain by what process the Tribunal looked into this report and the unspecified case records produced by the Railway Administration. However, by going through the report we are unable to hold that there is any material which shows that the deceased was travelling on the buffer of the train. The report contains certain remarks of its author without any supporting material. Even the remarks, it appears on a close examination, are vitiated by apparent improbabilities. It was not indicated as to between buffers of which two coaches the deceased was trapped. The three coaches dislocated by the accident were :- (1) the driving coach, (2) the 4th coach, and (3) the 5th coach. It was stated that unauthorised persons were travelling on the buffer between the 1st and 2nd coaches. It was not the case that the deceased was one of the persons travelling on the buffer between the 1st coach and 2nd coach. These two coaches, according to the Railway Administration, did not suffer in any manner, although disturbance of jumper connection between them was responsible for the accident. The 4th and 5th coaches simply suffered derailment; this is what the report indicates. If this was the physical position, the answer to the question - between buffers of which two coaches the deceased was trapped - does not simply emerge from the report.

17. The evidence of the witness examined by the appellant and the contents of I the enquiry report prepared and produced by the Railway Administration being as analysed before, in our view, the appellant''s claim application could not be rejected by holding that she would not be entitled to any compensation, as her deceased husband died in the accident while travelling on the buffer of the train. The vague and evasive nature of the remarks and observations of the author of the report just

steals its credibility, The probabilities and improbabilities which were considered by he Tribunal for persuading itself into reaching the conclusion that the deceased was travelling on buffer of the train, were unwarranted in the face of the evidence given by the witness examined by the appellant. There is no reason to disbelieve the direct evidence of such witness. We have no hesitation to hold that the deceased was in the compartment of the train and he was travelling as a passenger, The fact of his death due to the accident is, however, an admitted fact.

18. For the foregoing reasons, in our view, the order of the Tribunal is liable to be set aside, and the appellant''s claim application should be allowed.

19. The next question that arises is - what amount of compensation the appellant will get. In her claim application she prayed for Rs. 2.00.000/-, as it was the amount specified in the Schedule at the time of death of her husband as well as at the time of her filing the claim application. By amendment, with effect from 1st November, 1997 the amount was fixed at Rs. 4.00.000/-. The amendment was not given retrospective effect. But by relying on Rathi Menon Vs. Union of India, the appellant''s learned counsel submits that compensation at the rate prevailing as on date should be awarded. The learned counsel for the Railway Administration has not made any attempt to distinguish this Supreme Court decision.

20. In the absence of any reason for not following the law laid down in Rathi Menon''s case (supra), we are bound to follow the same. We find that after considering the relevant provisions of the Indian Railways Act, 1890, and the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, their Lordships of the Supreme Court interpreted and explained the scope and purport of the amendment to these Rules with effect from 1st November, 1997; and their Lordships held that the claim amount should be determined on the basis of rate prescribed by the Rules prevailing on the date of making the order of payment. There is no dispute that as per the Rules as on date the prescribed rate of compensation for death is Rs. 4.00.000/- Hence we find that the appellant would be entitled to compensation of Rs. 4,00,000/-.

21. In the result this appeal succeeds. We allow the appeal, set aside the impugned order of the Tribunal, and allow the appellant''s claim application. The respondent (Railway Administration) shall pay the appellant Rs. 4.00.000/- towards compensation for the death of her husband. In the event the respondent (Railway Administration) fails to pay the compensation within a month from date, the appellant will be free to execute this order before the Tribunal.

22. In the facts and circumstances of the case. there will be no order as to costs,

23. Urgent xerox certified copy of this judgment and order may be supplied to the parties, if applied for.

ALOKE CHAKRABARTI, J.

24. I agree.