

GAHC010008312012



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : MFA/86/2012

BIKASH CHOUDHURY
S/O- LATE BIROJA NANDAN CHOUDHURY, VILL- MISOAJAN, PO-BARHAT,
DIST- SIBSAGAR, ASSAM

VERSUS

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER, NF RAILWAY,
MALIGAON, GUWAHATI-11

Advocate for the Petitioner : MR.J MOLLAH

Advocate for the Respondent : SC, NF RLY

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Appellant : Shri J Mollah, Advocate.

For the Respondent : Shri G Goswami, SC, Railway.

Date of Hearing : 18.06.2024.

Date of Judgment : 18.06.2024.

JUDGMENT & ORDER

The instant appeal has been preferred under Section 23 of the Railway Accident Claim Tribunal Act, 1987 (Tribunal) against the judgment dated 17.04.2012 passed by the Railway Claims Tribunal, Guwahati in Original Claims Application No. OA/II-1/2008 (Old)/Claim Application No. OA (IIu) GHY/2008/0001 (New).

2. By the aforesaid judgment dated 17.04.2012, the claim was rejected. The projected case before the Tribunal was that the deceased-Abhajit Choudhury, son of the claimant, had purchased a ticket at Naharkotia and had boarded the 902 Dn Passenger to Borhat. However, due to commotion of the passengers inside the train, he fell down as a result of which, he had succumbed to his injuries. It is also stated that on the request of the family members, no post-mortem was done. Thereafter, the claim was lodged before the learned Tribunal. The learned Tribunal, however, vide the impugned judgment dated 17.04.2012 had rejected the claim and it is the legality and correctness of the said judgment which is the subject matter of challenge in this appeal.

3. I have heard Shri J Mollah, learned counsel for the appellant. I have also heard Shri G Goswami, learned Standing Counsel, Railways.

4. The records of the learned Tribunal which had been requisitioned have also been perused.

5. Shri Mollah, learned counsel for the appellant has submitted that Section 2(29) of the Railways Act, 1989 (Act) defines passengers and to come within the said definition, such person needs to have a valid pass or ticket. He has also referred to Section 55 of the said Act on the aspect of prohibition against travelling without pass or ticket. He submits that under the aforesaid provision, it is not possible for any person, either to enter the platform or board the train. In any case, he submits that the AW2 had deposed that he had accompanied the deceased to the Naharkotia Railway Station and saw the deceased purchasing a railway ticket for the 902 Dn Passenger Train. It is submitted that the observation of the learned Tribunal that AW2 is the brother of the deceased is not correct. The learned counsel for the appellant, accordingly submits that the burden of proof that the deceased was a *bona fide* passenger being duly discharged in accordance with law, there was no reason to reject the claim made by the claimant-appellant.

6. Shri Mollah, learned counsel for the appellant also criticizes the judgment wherein the learned Tribunal has come to a finding that it is practically impossible for a passenger to fall down and being run over by the same train. He submits that such presumption is without any materials on record and is not liable to be accepted. In support of his submission, the learned counsel for the appellant has referred to the following case laws:

- i) ***Union of India Vs. Prabhakaran Vijaya Kumar & Ors., (2008) 9 SCC 527;***
- ii) ***Bandana Misra Vs. Union of India, 2017 ACJ 2447 (Calcutta);***
and

iii) *Agam Shanthamma Vs. Union of India, 2004 ACJ 713 (Andhra Pradesh).*

7. The Case of ***Prabhakaran Vijaya Kumar*** (*supra*) has been cited to bring home the contention that the concerned Act is a beneficial piece of legislation and therefore, a liberal and wider interpretation is to be given.

8. In the Case of ***Bandana Misra*** (*supra*), the Hon'ble Calcutta High Court had made certain observations on the applicability of the personal knowledge of the Tribunal adjudicating a */is*.

9. In the case of ***Agam Shanthamma*** (*supra*), the aspect of the burden of proof upon the Railways to prove that the deceased was a ticketless passenger has been highlighted. The learned counsel, accordingly submits that the rejection is not sustainable in law and accordingly is required to be interfered with.

10. *Per contra*, Shri Goswami, learned Standing Counsel, Railways has submitted that the deceased was not a *bona fide* passenger and there are no materials on record to come to a conclusion regarding the assertion made by the claimant that the deceased was a *bona fide* passenger. He submits that the only evidence on record was a statement made by the AW2 that he saw the deceased purchasing a ticket. He has, however, submitted that it reveals from the impugned judgment that he was not aware as to the fare paid by the deceased. It is also pointed out that in the cross-examination, the said AW2 admitted that he was a relative of the deceased.

11. Shri Goswami, learned Standing Counsel, Railways has also submitted that the claim was upon an assertion that the death was caused by the accident in which, the deceased was run over by the concerned train. He submits that it is practically impossible for a passenger to fall down and being run over by the same train and this issue was considered by the learned Tribunal. It is submitted that the claimant had failed to discharge his burden and no inquest report was produced. He has also submitted that no ticket was produced to claim that the deceased was a *bona fide* passenger.

12. Shri Goswami, learned Standing Counsel has relied upon the case of ***Union of India Vs. Rina Devi***, reported in **(2019) 3 SCC 572** to buttress his submission regarding the burden of proof. In paragraph 17.2 of the said judgment which is upon the aspect of burden of proof when a body is found on the railway track/premises along with definition of passenger, the following has been laid down:

“17.2. In Jetty Naga Lakshmi Parvathi (supra) same view was taken by a single Judge of Andhra Pradesh after referring to the provisions of the Evidence Act as follows:

‘22. So, from Section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the

deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of A.W.1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. Section 114(g) of the Indian Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal.“

13. The learned Standing Counsel, accordingly submits that no error has been committed by the learned Tribunal and accordingly, the instant appeal is liable to be dismissed.

14. The rival submissions of the learned counsel for the parties have been duly considered.

15. The claim is on the death of one Abhajit Choudhury by his father. To

sustain a claim before a Railway Claims Tribunal, it is mandatory to prove, at least, *prima facie* that the deceased was a *bona fide* passenger. Towards the discharge of the said burden, evidence was adduced by AW2 who had stated that he saw the deceased purchasing one ticket and boarding the 902 Dn Passenger Training at Naharkotia Railway Station. The ticket, as such has not been produced. In a given case, it may not be possible to retrieve the ticket, more so in death case. However, it is required to examine as to whether the said burden was discharged with regard to the aspect of the deceased being a *bona fide* passenger. The said AW2, in his cross-examination, had admitted that he was related to the deceased. However, that aspect will not make his evidence less credential if he, otherwise meets the other requirements. The said deposition has to be balanced with the other materials. In the instant case, there is a specific report marked as 'R1' as per which, no ticket was issued on that particular date from Naharkotia to Borhat which was claimed on behalf of the appellant-claimant. In view of such rebuttal evidence which was not contested, it is difficult to come to a concrete conclusion regarding the aspect of the deceased being a *bona fide* passenger in favour of the claimant. Therefore, this Court is required to look into the other materials on record.

16. The case projected is that the deceased fell down from the running train and was run over by the said train. The learned Tribunal has come to a conclusion that such a claim was not practically possible as a passenger who claims to have fallen down from a running train cannot be run over by the same train. The Tribunal has also discussed the aspect of running over which could only possible by another train which is not the facts of the present case. Though the personal knowledge of the adjudicator may not be a conclusive proof to

come to a definite finding, such a view is not a totally unreasonable or impossible view. In the instant case, what intrigues this Court is that there is not even an Inquest Report which was proved or produced by the claimant. So far as the post-mortem report is concerned, this Court may accept that the same was not available as the family members had requested not to have a post-mortem done. However, since GRPS case was registered in this case, being GD Case No. 348, dated 21.10.2007, the production and proving of the Inquest Report was necessary to come to any conclusion which could have been a factor for consideration if the version projected by the claimant was *bona fide* and acceptable. An accident by involvement of a train, *per se* will not entail payment of compensation and it is only when the conditions are fulfilled under the Act and the settled principles of law that such claims can be considered.

17. In the instant case, the aspect of the deceased being a *bona fide* passenger was itself not proved in accordance with law which is coupled with the fact that the claim that the deceased was a *bona fide* passenger, who had succumbed to his injuries being run over, does not appear to be an acceptable and believable projection.

18. The learned Tribunal being seized with the facts and circumstances and the evidence on records had come to a conclusion and unless, such conclusion is *prima facie* against the materials on record or perverse, this Court, being an Appellate Court may not interfere such findings in a routine manner.

19. The appeal accordingly stands dismissed.

20. Send back the records.

JUDGE

Comparing Assistant