

GAHC010201302019



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

Case No. : MFA/259/2019

MAYARUN BEGUM
W/O SAMED MEAH, R/O BHORAKHAI TEA ESTATE, P.O. SILCOORIE, P.S.
SILCHAR SADAR, DIST. CACHAR, ASSAM, PIN 788118

VERSUS

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

Advocate for the Petitioner : MR. M TALUKDAR, MR. A SHAKIL

Advocate for the Respondent : SC, NF RLY,

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 02.05.2024

Date of Judgment & Order : 31.07.2024

JUDGMENT & ORDER (CAV)

Heard Mr. M. Talukdar, learned counsel for the appellants. Also heard Mr. B. Sharma, learned Standing Counsel, NF Railway.

2. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment and order dated 22.05.2019, passed by the learned Member, Railway Claims Tribunal, Guwahati in Claim Application No. O.A. IIu-18/2015.

3. The brief facts leading to his appeal is that on 18.12.2014, the deceased Fakaruddin Ali was coming from NJP to Guwahati Railway Station by UP Kanchanjanga Express Train with a valid Railway Ticket No. G-44992001. On the way when the said Train reached in between Falakata and Gumanihat Railway Station, the deceased accidentally fell down from the said running train due to heavy rush and commotion of passenger and died on the spot. In this connection, the police registered a case being NCB GRPS U/D Case No. 49/2014, dated 19.12.2014, and Post Mortem of the dead body was conducted in M.J.N. Hospital, Cooch Behar. The appellants, as applicants, had filed a claim application before the Railway Claims Tribunal, Guwahati claiming compensation for the death of their son Fakaruddin Ali due to railway accident and the said case was registered as Claim Application No. O.A. IIu-18/2015. But, vide judgment and order dated 22.05.2019, the said application was dismissed by the learned Member, Railway Claims Tribunal.

4. On being aggrieved and dissatisfied with the judgment and order dated 22.05.2019, passed by the learned Member, Railway Claims Tribunal, the

appellants had preferred the present appeal.

5. It is submitted Mr. Talukdar, learned counsel for the appellants, that the learned Member, Railway Claims Tribunal committed error in both facts and law and did not consider the evidence on record as well as the documents in its proper perspective and accordingly arrived at an erroneous decision which cause serious prejudice to the present appellants. It is held by the learned Tribunal that the applicants/appellants had failed to prove that the deceased was a *bona fide* passenger and he died due to railway accident, however the learned Tribunal failed to consider that he was travelling in the said train and had a valid Railway Ticket which was also seized during investigation. The learned Tribunal erred in coming to the findings that the applicants/appellants have failed to prove that the deceased died in an 'untoward incident' and also failed to appreciate the evidence as well as the exhibits produced by the appellants/applicants.

6. Mr. Talukdar further submitted that the learned Tribunal miserably failed to take into consideration that the Railway Act being beneficial piece of legislation, benefits of doubts should be given in favour of the beneficiary/claimants. Thus, the judgment and order passed by the learned Railway Claims Tribunal is liable to be set aside and interference of this Court is necessary. He further submitted that the claim application was dismissed by the learned Tribunal solely on the ground that the deceased was not a *bona fide* passenger, in spite of the fact that the appellants have already produced all the relevant documents along with Railway Tickets to show that their deceased son was a *bona fide* passenger who was travelling from NJP to Guwahati on the day of incident. He further

submitted that in support of the claim application, the applicants/appellants had filed the certified copy of the Journey Ticket as A1, certified copy of seizure list as A2, certified copy of the dead body forwarding as A3 and the dependency certificate as A8 along with other documents, however in spite of producing those documents, the learned Tribunal dismissed the application only with some presumption and imaginary facts and ignored the fact that the deceased was a *bona fide* passenger who was travelling with a valid ticket on the day of incident. Initially the case was registered as UD Case, but on enquiry, it has come to the knowledge that the deceased died by falling from the running train and the case has been registered under the Railway Act, 1989. During the Inquest also, the train tickets were found from the possession of the deceased which was earlier seized by the Railway Police at the time of investigation, but the learned Court below arrived at an erroneous finding based on some presumption and assumption.

7. Mr. Talukdar further submitted that the learned Tribunal has held that there was a delay in lodging the complaint, but the fact is that the first information of the dead body, which was lying on the track, was received only at 11:55 hours, i.e. almost 15 hours of the incident, and the body was lying undetected for long period of time. In this context, Mr. Talukdar relied on the decision of Delhi High Court passed in the case **Union of India Vs. Pratima Devi & Ors. [2014 (3) T.A.C. 171 (Del.)]**, wherein it has been held that that once deceased was a *bona fide* passenger, compensation has to be given because deceased was found on railway track and delay in finding body or reporting of incident cannot take away incident from being an 'untoward incident'.

8. He further relied on the decision of this Court passed in **Bhabatosh Malakar Vs. Union of India [2014 (3) T.A.C. 406 (Gau.)** and emphasized on paragraph No. 6 of the judgment, wherein it has been held that *"by definition under Section 123 of the Railways Act when a passenger falls from a moving train it comes within the purview of 'untoward incident' and in that event Railway becomes liable to compensate the death"*

9. Mr. Talukdar also relied on another decision of Delhi High Court passed in **Sudha Choudhary & Ors. Vs. Union of India** wherein also, it has been expressed the view that "mere inconsistency of timings with respect to accident of about half an hour cannot take away conclusion as per other facts that there was an untoward incident of deceased falling from train.

10. Mr. Talukdar further submitted that even if from the presumption that that the deceased died due to his own negligence, in that case also, the dependant of the deceased is entitled for compensation and in this aspect, he also relied on the decision of Apex Court reported vide **2011 (1) T.A.C. 10 (S.C.) (Jameela & Ors. Vs. Union of India)** and emphasized on paragraph No. 5 of the judgment, which reads as under:

"5. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under [section 124A](#) of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railway that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness of the fall of the deceased from the train and, therefore, there is absolutely no evidence to support

the case of the Railway that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under [section 124 A](#) of the Act.”

11. Accordingly, relying on those judgments and considering the facts and circumstances of this case, Mr. Talukdar, learned counsel for the petitioner, submitted that the learned Member, Railway Claims Tribunal committed error and mistake while dismissing the claim petition of the present appellants and thus, the appellants, who are the father and mother and dependants on the deceased, are entitle to compensation.

12. Mr. B. Sharma, learned Standing Counsel, NF Railway, submitted in this regard that it is the admitted fact that one railway ticket was recovered from the deceased at the time of Inquest. But it is the duty of the appellants to prove that the deceased was a *bona fide* passenger as required under Section 124 of the Railway Act, 1989 as well as to established that it was an ‘untoward incident’. He further submitted that there is no eye witness to prove the alleged ‘untoward incident’ which resulted to death of the victim nor there is any evidence to show that the deceased was a *bona fide* passenger with the train ticket. He further submitted that the victim died due to his own act of negligence and carelessness and there is no negligence on the part of the respondent/Railway Authority. More so, all the documents which were furnished at the time of evidence are all photocopies of the documents which are not admissible in the eye of law.

13. Mr. Sharma further submitted that from the Injury Report, it is seen that

the deceased sustained injuries on his left knee, cut injury on the thumb, left hand was broken and one deep cut injury was found on the hip and the skull was completely found to be damaged. From the Post Mortem report, it is found that the death was caused due to the affect of the injuries mentioned above and he sustained almost 6 (six) numbers of injuries on his body. Mr. Sharma further submitted that the learned Tribunal rightly held that the injuries sustained by the deceased appears to be injuries sustained due to assault where both legs were found broken, which cannot generally happens in an accident falling from a train and thus, there is no reasonable doubt that the deceased was assaulted by someone and his body was dump near the track. More so, the father of the deceased initially suspected it to be the murder of his son and lodged a criminal case, but subsequently he withdraw his case and filed a claim petition. Mr. Sharma further submitted that the dead body was also found lying 7 (seven) feet away from the Railway Track and was lying for more than 1 (one) day which also creates a doubt that the deceased died due to untoward incident.

14. Mr. Sharma further relied on the decision of this Court in the case passed in **MFA No. 190/2018 (smt Swaraswati Haloi & 3 Ors. Vs. Union of India)** and emphasized on paragraph Nos. 9, 12, 13 & 14 and paragraph No. 14 of the judgment is quoted hereinbelow:

"14) In view of the aforesaid finding that the accidental death of the deceased is attributable to self inflicted injury as per section 124A of the Railways Act, 1989, the presence or absence of a valid railway ticket is of no consequence. Moreover, as per the evidence of AW-2 and AW-3, they purportedly saw the accident, got the train stopped and saw the dead body after being run over by other train and the AW-2, being the son immediately went towards the dead body, the absence of a valid travel

ticket is quite conspicuous and its loss remains unexplained because as per the evidence of AW-1, the train reached the station and the deceased went to bathroom and after coming out, he was washing his hands and face at the time when he slipped out of the train. The said situation leads to a presumption that the railway ticket was definitely was not being held by the deceased in his hands as he was washing his hands and face and, as such, there is no way that only the ticket would be lost or misplaced at the time of the accident. Hence, no interference is called for in respect of the finding recorded by the learned Tribunal that in the absence of journey ticket, the deceased was a bonafide passenger could not be established. Hence, the cases of Kandarpa Kr. Das (supra), Nrihanya Devi (supra), Nellamma (supra) and Joji C. John (supra) has no application in this case."

15. Mr. Sharma also relied on another decision of this Court passed in **MFA No. 231/2019** wherein this Court discussed about the 'untoward incident' and he emphasized on paragraph Nos. 21 & 22 of the said judgment:

"21. It is true that the definition of the word 'untoward incident' in Section 123 (C) (2) of the Act is exhaustive. It can only be construed having regard to the further consideration that the scheme of the Act appears to be that the legislature has mulcted the railway with the liability to pay compensation without reference to there being any need to prove wrongful act, neglect or default on the part of the railway administration. The liability imposed on the railway can therefore be held to be not a tortuous liability as understood in law.

22. It is also true that the provision should receive a liberal construction but we cannot carry the matter to the point where if the facts as established would show that the incident cannot be brought under untoward incident. If there is accidental falling of any passenger from a train carrying passenger, it would be an untoward incident. In the instant case, admittedly there is no eye witness to the incident that anybody had seen the deceased falling down from the train in which he was allegedly travelling on the date of accident. It is also admitted that no journey ticket was found from the dead body of the deceased. Nobody had seen the deceased person had purchased any ticket for his journey from Dhemaji to North Lakhimpur. Two witnesses examined by the claimant were not present when the accident occurred . Therefore , it is not proved that the deceased died due to falling from the train of Intercity Express, Down 15614 while he was travelling from Dhemaji to North Lakhimpur. The only fact is that

the dead body was recovered near railway track in between Baginadi and Gogamuk railway station. Except the recovery of the dead body near the railway track, there is nothing on the record to show that the case of the deceased falls under the purview of Section 123 (C) (2) of the Railways Act i.e. untoward incident."

16. He also relied on another 2 (two) other decisions of this Court passed in **MFA No. 11/2018 & MFA No. 85/2018** in support of his submission.

17. Mr. Sharma further submitted that from the Injury Report or the DRM Report, it is seen that the deceased sustained 6 (six) numbers of injuries on his body. However, it is submitted that though the deceased died due to injury sustained by him, but one cannot sustain such kind of injury in a railway accident. In this connection, he relied on the decision of Apex Court passed in **Kamrunnissa Vs. Union of India [Special Leave Petition (C) No. 26625/2015]**, wherein also, considering the nature of injury, the petition was dismissed as it could not be considered by the Apex Court that such kind of injury can be sustained by a deceased in an accident while boarding a train. He further emphasize on paragraph No. 7 of the said judgment, which reads as under:

"7. The aforesaid report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train."

18. After hearing the submissions made by the learned counsels for both

sides, I have also perused the case record and the judgment passed by the learned Tribunal.

19. As per the appellants, their son died due to railway accident and he was the *bona fide* passenger and he duly purchased the train ticket and he was supposed to travel from NJP to Guwahati via Kanchenjunga Express Train. But, when the train reached in between Falakata and Gumanihat Railway Station, the victim accidentally fell down from the said running train and due to heavy rush and commotion of passenger and died on the spot. In this connection, the NCB Guwahati also registered a case being NCB GRPS U/D Case No. 49/14, dated 19.12.2014, and after the Post Mortem, the body was handed over to family members for cremation.

20. On the other hand, it is the case of the respondent that the victim cannot be considered as a *bona fide* passenger and the appellant could produce any genuine railway ticket of the deceased to prove that he was a *bona fide* passenger. Further it is the case of the respondent that there is no eye witness to the incident to prove that the deceased sustained injury by falling down from a train and he died on spot. More so, there is no report received from any witness in regards to the said incident that one passenger fell down from the running train and sustained injury. Further it is the case of the respondent that the deceased died due to his own act of negligence and carelessness and there is no negligence on the part of the railway authority. Moreover, the appellants produced some photocopies of the documents which are not admissible in the eye of law and thus, the appellant could not prove that the deceased was a *bona fide* passenger to entitle compensation under Section 123 of the Railways

Act. The learned Tribunal also discussed about the report of the DRM and from the said report, it is seen that initially the case was registered under Section 379/302 of the Indian Penal Code in connection with the same incident, but subsequently, the Final Report was submitted considering that the case was filed due to mistake of fact.

21. The appellants also exhibited certain documents including the railway journey ticket, seizure list, inquest report, post mortem report etc., but it is seen that all the exhibits are the photocopies of the documents and they did not produce any original documents specially the railway ticket to prove that the deceased was a *bona fide* passenger who purchased the railway ticket to travel from NJP to Guwahati by Kanchenjunga Express Train.

22. The learned Tribunal also framed the following issues at the time of passing the judgment:

“(i) Whether the victim was a bonafide passenger?

(ii) Whether the victim died in an untoward incident?

(iii) Whether the applicant is entitled for compensation? If so, to what sum?

(iv) Relief and costs?”

23. So, the important issues are the issue Nos. 1 & 2 as to whether the deceased was a *bona fide* passenger and he died due to an ‘untoward accident’.

24. Section 123 (C) of the Railways Act, 1989 reads as under:

"123(c)"untoward incident" means—

(1)(i)the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii)the making of a violent attack or the commission of robbery or dacoity; or

(iii)the indulging in rioting, shoot-out or arson,by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2)the accidental falling of any passenger from a train carrying passengers."

25. In the instant case, it is seen that one photocopy of Railway Ticket was produced by the appellant which is also exhibited as A1 and said ticket is not legible and the appellants could not produce the original ticket to prove that the deceased purchased the ticket to travel in the UP Kanchenjunga Express Train on the day of incident from NJP to Guwahati. From the findings of the DRM report also, it is seen that there was no negligence from the railway authority, but the deceased fell down from the running train due to his carelessness and negligence.

26. The appellant No. 1 herein as A/W-1 deposed before the learned Tribunal, wherein it is stated that his son was travelling from NJP to Guwahati by UP Kanchanjanga Express Train and one person coming from Ghungur Out Post had informed him about the accident of his deceased son and then only, he came to know about the incident and on the next day, he sent his brother to the place of incident and on next date, i.e. on 21.12.2014, they received the body, which was identified by them. He was also examined by the Standing Counsel,

Railway, wherein also, he stated that his son was travelling from NJP to Guwahati on 18.12.2014 by UP Kanchanjanga Express Train. But, apart from A/W-1, i.e. the appellant No. 1 of this case, the appellants could not examine any other witness nor any eye witness could be examined to prove that his son fell down from a running train and died on the spot and the same can be considered as an 'untoward incident' as per Section 123 of the Railway Act. More so, from the record, it reveals that the learned Member, Railway Claims Tribunal also discussed in detail regarding the discrepancy and the authenticity of the ticket as well as the journey of the deceased in paragraph No. 3 of the judgment and it is observed that the first information about the dead body lying on the track was found after 15 hours, though that was the main line section wherein numbers of train are moving in each direction and for which, it is not possible that the body will remain undetected for such a long period of time. It is also observed by the learned Tribunal that there was no mention of the journey tickets at the time of initial discovery of the body during the inquest when the identification was done on the basis of identity card found near the body and thus, it creates a reasonable doubt in regards to the genuineness of the railway ticket which is stated to be issued on 18.12.2014 and the journey of the said train started from NJP at about 18:40 hours.

27. It also reveals that there are no other documents to confirm the train journey of the deceased as well as his accidental fall from the running train. No passenger of the train reported about falling of the deceased from the running train, though it is stated that he fell down from the running train due to heavy rush and commotion of the passenger. Further, as per DRM's report, the body of the deceased was found 7 feet away from the railway track. It is a fact that only

for the reason that the deceased was found 7 feet away from the railway track, it cannot be held that the appellant is not entitled for the compensation and in the same time, from the judgment relied by the learned counsel for the appellant, it is also seen that even if the deceased died due to his own negligence or fault, it can be considered as an 'untoward incident' and dependant may be liable to get the compensation under Section 124 of the said Act. But, here in the instant case, as discussed above, it is seen that there is no evidence or no witness who have seen that incident while falling of the deceased from the running train and in the same time, the appellant could not produce any genuine railway ticket to prove that the deceased was a *bona fide* passenger who purchased the ticket to travel from NJP to Guwahati by UP Kanchanjanga Express Train. One photocopy of the ticket was furnished by the appellant while adducing his evidence, which is not legible and in the same time, the photocopy cannot be considered to be a valid document. Further, from the report of the initial inquest report, it is also seen that the availability of the railway ticket with the deceased was not mentioned at the time of first inquest when the body was identified from his identity card and hence, the subsequent production of the photocopy of the railway ticket also creates reasonable doubt in regards to veracity of the ticket relied by the appellant.

28. Further, from 6 (six) numbers of injuries sustained by the deceased, including the fractures on his legs and hands and other cut injuries etc. including the skull injury, it is seen that such type of injury cannot be sustained in a railway accident and accordingly, it is rightly held by the learned Tribunal that such kind of injury which is described in the report, can only be sustained in a case of assault. Thus, the injury sustained by the deceased also creates a

doubt as to whether the deceased died due to accidental fall from the train.

29. It is true that a liberal consideration should be given even if the person falls accidental or due to his negligence, but if it can be proved that he was a *bona fide* passenger that can be considered as an 'untoward incident' and the dependant or the appellant may be entitled for compensation.

30. The co-ordinate Bench of this Court in **MFA No. 231/2019**, as relied by the respondent side, has held in paragraph No. 23 as under:

"23. In the case of Union of India –vs- Prabhakaran Vijaya Kumar & Ors reported in 2008 4 MLJ 323 SC, the Hon'ble Supreme Court while interpreting expression accidental falling of a passenger from a train carrying passenger, which is an 'untoward incident' under Section 123 (C) (2) of the Act and the consequential payment of compensation under Section 124 (A) for such untoward incident has held that it is well settled that if the words used in a beneficial or welfare statute under Section 124 (A) for such 'untoward incident' has held that it is well settled that if the words used in a beneficial or welfare statutes are capable of two construction, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given liberal and not literal or strict interpretation. In the said decision, the Apex Court has held as follows-

"12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647, Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842, Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27 etc.

13. In Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others 1995(6) SCC 326 this Court observed:

"In this connection, we may usefully turn to the decision of this Court in Workmen vs.

American Express International Banking Corporation wherein in para 4 of the Report has made the following observations:

*The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court* we had occasion to say:*

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus: "A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-andliteral construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

31. But, a claim under Section 123 (C) (2) of the Act, the two ingredients has to be satisfactorily established by the appellant that the deceased was a *bona fide* passenger and he died due to 'untoward incident' to claim for compensation under Section 124 (A) of the Railway Act, 1989.

32. But, here in the instant case, from the discussion made above, it is seen that the appellant not only failed to prove that the deceased was a *bona fide* passenger, but also failed to produce any eye witness to the incident and in the same time, as discussed above, the injury sustained by the deceased cannot be held to be the injury sustained in a railway accident. Thus, it is seen that the appellant could not establish the two ingredients that the deceased was a *bona fide* passenger and in the same time, he died due to 'untoward accident' to get any compensation under the Act.

33. In view of the entire discussion made above, I am of the view that no illegality has been committed by the learned Member, Railway Claims Tribunal, Guwahati while passing the judgment and order dated 22.05.2019, in Claim Application No. O.A. IIu-18/2015. Resultantly, I find no merit in the present appeal and accordingly, the same stands dismissed. However, there shall be no order as to cost(s).

34. In terms of above, this appeal stands disposed of.

JUDGE

Comparing Assistant