

Neutral Citation No. - 2024:AHC-LKO:24666

Court No. - 20

Case :- FIRST APPEAL FROM ORDER No. - 293 of 2021

Appellant :- Swaraj Singh And Anr.

Respondent :- Herendra Bahadur Singh And Ors.

Counsel for Appellant :- Pritish Kumar, Shantanu Gupta, Syed Aftab Ahmad

Counsel for Respondent :- Saurabh Shukla, Mahendra Kumar Misra, Pragati Singh, Vinay Tripathi

Hon'ble Manjive Shukla, J.

1. Heard Sri Shantanu Gupta, learned counsel appearing for the appellants, Ms. Pragati Singh, learned counsel appearing for Respondent No. 3 and Sri Mahendra Kumar Mishra, learned counsel appearing for Respondent No. 2.

2. Order-sheet of this appeal reflects that the service of notice of this appeal has already been effected on Respondent No. 1 but none has put in appearance.

3. The appellants have filed this appeal challenging therein the order dated 16.09.2021 passed by the Motor Accident Claims Tribunal, Balrampur in M.A.C.P. No. 3 of 2015 whereby claim petition filed by the appellants has been rejected on the ground that the appellants failed to prove any negligence on the part of Respondent No. 3.

4. Facts of the case, in brief, are that deceased Anurag Singh on 12.01.2014 at about 09:25 A.M. was going to attend his official duty at the Sugarcane Purchase Centre at Emiliya, District Balrampur and in that process, he crossed a railway-crossing which is popularly known as Jungli

railway crossing and there he met with an accident with running Train No. 5227 DN. At the time of accident, deceased Anurag Singh was on his motorcycle bearing Registration No. UP-43/S-9987. Due to injuries suffered out of the aforesaid accident, Anurag Singh ultimately died in Balrampur hospital at Lucknow.

5. The claimants filed Motor Accident Claim Petition No. 3 of 2015 categorically stating therein that the motorcycle on which deceased Anurag Singh was crossing the Jungli railway crossing, was insured with the Respondent No. 2 i.e. Bajaj Allianz General Insurance Company Limited. It was further stated in the claim petition that Jungli railway crossing is an unmanned crossing and, therefore, it was obligatory for Respondent No. 3 to put a sign board before the said crossing so that the general public passing through the said crossing may know that this crossing is unmanned and, therefore, they are to be more cautious while passing through the crossing. Claimants produced witnesses before the Claim Tribunal to establish that motorcycle of Anurag Singh was hit by the train passing through the Jungli railway crossing on 12.01.2014 at about 9:25 A.M. Evidence was also led before the Tribunal to demonstrate that the Railways was completely negligent as no sign board was placed before the Jungli crossing to make the general public aware that the crossing is unmanned and therefore, they are to be more cautious.

6. The Respondent No. 3 in the aforesaid claim petition before the Tribunal relied on the provisions of Section 131 of the Motor Vehicles Act, 1988 (hereinafter referred to as "Act of 1988") wherein it has categorically been provided

that at unmanned railway crossing, it is the duty of the person to stop and to look around and to ascertain as to whether any train is passing or not and only thereafter to cross the railway crossing. On the strength of the aforesaid Section 131 of the Act of 1988, it was demonstrated before the Tribunal that the deceased himself was negligent as he did not discharge the responsibility put on him under Section 131 of the Act of 1988.

7. The Respondent No. 3 produced Loco Pilot before the Tribunal and in his testimony, he categorically said that there was a Si/Fa board on the railway track 600 metres before the crossing and when the train reached at the Si/Fa board, horn was blown but deceased was negligently driving motorcycle and thus motorcycle collided with the train. Loco Pilot also categorically stated before the Tribunal that there was no negligence on his part therefore, the claim petition is liable to be rejected.

8. The Motor Accident Claims Tribunal after hearing all the parties, formulated following issues:

"(1) Whether on 12/01/2014 at about 9:25 AM in the morning at Jungli unmanned crossing before Kauapur railway station, police station Maharajganj, District Balrampur, the driver of the train No. 52272 Maharajganj, District Balrampur, the driver of the train No. 52272 running the train negligently caused an accident with Anurag Singh, riding the motorcycle No. UP-43/S-9987, due to which Anurag Singh sustained fatal injuries and succumbed to those injuries, when being carried to hospital;

(2) Whether the train in question was insured, if yes, the effects;

(3) Whether at the time of accident, the train was being run under valid and effective documents, the driver had driving license and the train was being run in accordance with the terms and conditions of the insurance policy;

(4) Whether the petitioners were entitled to any compensation if so what:

(5) Whether the petition was maintainable on the ground of jurisdiction under the Motor Vehicle Act;

(6) Whether the accident occurred due to contributory negligence of the motorcyclist riding the motorcycle No. UP-43/S-9987;

(7) Whether the motorcycle in question UP-43/S-9987 was insured at the time of accident and was being driven according to the terms and conditions of the insurance policy, if yes, effect;

(8) Whether the Petition was barred under section 131 and 161 of the Motor Vehicle Act;

(9) Whether the petition was barred under section 146, 147, 150, 153 and 154 of Railway Act 1989."

9. The Motor Accident Claims Tribunal after appreciating evidence in respect of each issue framed, came to the conclusion that Railways was not, at all, negligent in respect of the accident in question and, therefore, claim petition filed by the claimants, is liable to be rejected and accordingly it was rejected.

10. Learned counsel appearing for the appellants has argued that though duties have been fastened on the driver of the vehicle under Section 131 of the Act of 1988 to be more vigilant but in view of the judgement rendered by the High Court of Karnataka, Kalaburagi Bench in the case of ***The Union of India Vs. Nagnath and Others, M.F.A. No. 32710 of 2011 (MV)*** and the judgement rendered by the Hon'ble Supreme Court rendered in ***Union of India Vs. United India Insurance Co. Ltd. and others, (1997) 8 SCC 683***, Railways is required to put at least a sign board on the road approaching to unmanned railway crossing to inform the public at large to be vigilant while passing through railway crossing but in the present matter, no evidence has been led by the Railways before the Motor Accident Claims Tribunal to demonstrate that any such sign board was put on the spot, therefore, Motor Accident Claims Tribunal

while rejecting the claim vide order dated 16.09.2021 on the ground that Railways was not negligent in respect of the accident in question, has acted in gross violation of the aforesaid law laid down by the Courts.

11. On the other hand, learned counsel appearing for the Respondent No. 3 has argued that the provisions made in Section 131 of the Act of 1988 clearly puts responsibility on the driver of the vehicle who approaches towards the unmanned railway crossing to be vigilant and once the precautions are not taken and accident takes place, the Railways cannot be held negligent, accordingly order dated 16.09.2021 passed by the Motor Accident Claims Tribunal is perfectly in accordance with law.

12. I have considered the rival arguments advanced by the learned counsels appearing for the parties.

13. This Court finds that the claim petition filed by the appellants has only been rejected on the ground that deceased himself was negligent and there was no negligence on the part of the Railways regarding the accident in question.

14. For arriving at a correct conclusion, it is necessary to have close look over the provisions made in Section 131 of the Act of 1988. The Section 131 of the Act of 1988 is extracted as under:

"131. Duty of the driver to take certain precautions at unguarded railway level crossing.—Every driver of a motor vehicle at the approach of any unguarded railway level crossing shall cause the vehicle to stop and the driver of the vehicle shall cause the conductor or cleaner or attendant or any other person in the vehicle to walk up to the level crossing and ensure that no train or trolley is approaching from either side and then pilot the motor vehicle across such level crossing, and where no conductor or cleaner or attendant or any other

person is available in the vehicle, the driver of the vehicle shall get down from the vehicle himself to ensure that no train or trolley is approaching from either side before the railway track is crossed."

15. The provisions of Section 131 of the Act of 1988, if seen at a macro level, no doubt, they put responsibility on the driver to be vigilant while passing through unmanned railway crossing and in the said Section 131, it has been made obligatory for the driver to stop and to ascertain as to whether any train is passing by, before crossing through unmanned railway crossing but if it is scrutinized at a micro level, then this Court finds that no doubt, it is obligation of the driver to follow the the mandate of Section 131 of the Act of 1988 while passing through the unmanned railway crossing but at the same time, Railways is also under obligation to mitigate the possibility of the accident and thereby minimum requirement on the part of Railways is, at least to put one sign board before the crossing so that public at large may know that this is an unmanned crossing, so that they may remain vigilant while passing through the railway crossing.

16. The provisions of the aforesaid Section 131 of the Act of 1988 has already been considered in a judgement rendered on 21.04.2020 by the High Court of Karnataka, Kalaburagi Bench in the case of ***The Union of India Vs. Nagnath and Others, M.F.A. No. 32710 of 2011 (MV)***.

17. The court in the aforesaid judgement has relied on the judgement rendered by the Hon'ble Supreme Court reported in ***Union of India Vs. United India Insurance Co. Ltd. and others, (1997) 8 SCC 683*** wherein it has categorically been held that at common law, the Railways have got a duty to display cautionary notice board along with road

approaching to such railway line and if the said sign board has not been put in, then definitely the negligence on the part of the Railways is apparent. Relevant paragraphs of the judgement rendered in the case of ***The Union of India Vs. Nagnath and Others*** (supra) are extracted as under:

"5. I have given my anxious consideration to the rival submissions on either side and perused the records of the case.

6. Section 131 of the MV Act on which learned counsel for the appellant has placed reliance reads as follows:

"131. Duty of the driver to take certain precautions at unguarded railway level crossings.-
Every driver of a motor vehicle at the approach of any unguarded railway level crossing shall cause the vehicle to stop and the driver of the vehicle shall cause the conductor or cleaner or attendant or any other person in the vehicle to walk up to the level crossing and ensure that no train or trolley is approaching from either side and then pilot the motor vehicle across such level crossing, and where no conductor or cleaner or attendant or any other person is available in the vehicle, the driver of the vehicle shall get down from the vehicle himself to ensure that no train or trolley is approaching from either side before the railway track is crossed.

7. The above provision which is very plain states that whenever a motor vehicle is approached any unguarded railway level crossing the driver should stop the vehicle and watch on either side for any train coming and on ensuring that no train is coming only the motor vehicle should cross the level crossing. However, Hon'ble Supreme Court of India in the aforementioned decision reported in (1997) 8 Supreme Court Cases 683 after elaborate consideration of the nature of care that a driver of a motor vehicle is required to take while crossing an unmanned level crossing and also the duty that is cast on the railways towards users of level crossing where public road is intersected by railway line so as to caution the drivers of the motor vehicles has held that at common law, the railways have got a duty to display cautionary notice boards along the road approaching to such railway line. In this behalf, it is apposite to advert to certain observations made by the Hon'ble Supreme Court in the above decision. The relevant observations are at para-17 onwards and they read as follows:

"17. The next important question is whether there can be any breach of a common law duty on the part of the Railway if it does not take notice of the increase in the volume of rail and motor traffic at

the unmanned level - crossing and if it does not take adequate steps such as putting up gates with a Watchman so as to prevent accidents at such a point? What is the extent of care required at common law has also been decided.

18. In several cases the need to have a constant appraisal of increase in volume of rail and road traffic at level-crossings has been treated as a requirement of the common law. In Smith Vs. London Midland & Scottian Rly. Co. (1949 S.C. 125), Lord Cooper emphasised that the railway should take all precautions which will "reduce the danger to the minimum" and should take into account "the nature and volume of such traffic reasonably to be anticipated". In Lloyds Bank Ltd. Vs. Railway Executive Denning and Romer, L.JJ had occasion to say that the railway authorities were bound to take steps from time to time by considering the increase in the rail and road traffic at the level-crossing. On facts in Lloyds Bank case it was found that 75 to 100 vehicles crossed the level-crossing per day and it was held that the railway company could not say,

"this increased traffic on the road is no concern of ours. It is their concern".

The duties of the railways treating the railway line as an accommodation line at a private road and alternatively as one cutting across a public road were separately considered. It was held that treating it as a private road, the railway authorities ought to have taken steps to have warnings or whistles given. Alternatively, treating it as a public road the railways ought to have put up gates as per the Railway Clauses Consolidation Act, 1845 and a "lodge" as per the Railway Clauses Act, 1863. Under both alternatives, the increased traffic required a re- appraisal of the measures previously taken by the Railways to prevent accidents.

19. In an earlier case Lush, J. also had occasion to emphasise the need to take into account the increase in the volume of traffic. In Cliff Vs. Midland Rly. Co. he stated that the greater the thoroughfare over any part of the line, the greater care and vigilance that ought to be exercised by those who have the charge of the trains. Whatever the degree of traffic may be, be it more or less, a corresponding degree of care was required on the part of the company.

20. In Halsbury's laws of England (Railways Vol. 38. 4th Edn., 1984 para 868), it is stated that if there is increase in the number local inhabitants using the level-crossing, then reasonable additional precautions must be taken.

21. In regard to the absence of a proper noticeboard, we may also refer to what Krishnan, Judicial Commissioner, said in *Union of India vs. Lalman*. He said: "even if the car driver knew that there was a crossing, the road users should be alerted at the proper moment" by the boards and it is not a case for remote knowledge but "one for immediate alertness".

22. Further in our view, the following passage in the judgment of the aforesaid learned Judicial Commissioner correctly represents the position at common law:

"A level-crossing is on the one hand a danger spot in view of the possible movement of trains, and on the other is an invitation to the passer-by. This is a public crossing and not merely one by private accommodation. Therefore it is the legal duty of the railway to assure reasonable safety. The most obvious way of doing it is to provide gates or chain barriers and to post a watchman who should close them shortly before the trains pass.

But failure to do so is not by itself an act of negligence provided that the railway had taken other steps sufficient in those circumstances to caution effectively a passer- by of average alertness and prudence. At a reasonable distance on either side, prominently written boards can be affixed, asking the road-users to beware of trains. If the track on either side is visible from near the caution board or within a short distance from the crossing, this would be sufficient because a diligent road-user could look round and see the train. On the other hand, if there is a bend on the track or there are trees or bush in between, or the road on either side of the crossing is very far below the level of the railway track, or for any other

similar reasons the track is not visible beyond a short distance, then even the caution boards are useless. In that case gates are indicated. Similarly boards may be affixed along the railway, say half to three-fourth of a mile in either direction calling upon the engine driver to whistle. A whistle by the driver can supplement, but cannot replace gates or caution boards as a device to protect the users of a crossing."

24. For the aforesaid reasons, no case is made out by the appellant for disturbing the finding of the High Court that applying common law principles, the Railways must also be deemed to be negligent in not converting the unmanned level - crossing into a manned one with gates - having regard to the volume of rail and road traffic at this point."

8. In this case, the appellant has not led any evidence to show that it has affixed boards along the public roads approaching the level crossing in the manner observed at para-22 of the decision quoted hereinabove. It cannot be denied even by the appellant that no driver of the motor vehicle would enter upon a level crossing with a death wish and no such case is suggested by the appellant itself and obviously on account of the railways not putting up any display boards cautioning the drivers, the driver of the car had proceeded to cross the railway line and he was taken by surprise. This factual situation of the railways putting such cautionary notice boards, if they were in place as a matter of fact, could have been established by the appellant by leading satisfactory evidence before the learned Tribunal below. Unfortunately such evidence is not available on record. The learned Tribunal below has adverted to the material aspects of the evidence placed before it and has also considered the decision of the Hon'ble Supreme Court of India in the above case and thereafter has apportioned the liability equally between appellant and respondent No.4. In the facts and circumstances of this case and also on the materials placed before the Tribunal below, I do not find any error in apportionment made by the learned Tribunal and accordingly, there is no merit in the appeal. Hence, the following:

ORDER

The above appeal is dismissed."

18. Thus, from the aforesaid judgment rendered by the High Court of Karnataka, which is based on the judgement passed by the Hon'ble Supreme Court, it can safely be held that a bare minimum requirement in the matters of

unmanned railway crossing is that Railways must put a sign board before the railway crossing so that public at large may know that it is an unmanned railway crossing and once it has not been done, that reflects negligence on the part of the Railways.

19. The issue in question is in respect of negligence on the part of Railways and therefore, merely because deceased was under obligation under Section 131 of the Act of 1988 to be vigilant, does not absolve the Railways from its liability and accordingly, the Tribunal while holding that Railways was not negligent, in-fact has erred in law and fact both.

20. The case of the appellants is fully supported by the judgement of the Karnataka High Court and, therefore, this Court is of the view that the Tribunal has not decided the Claim Petition correctly.

21. Accordingly, this Appeal is ***allowed***. The order dated 16.09.2021 passed by the Motor Accident Claims Tribunal, Balrampur in M.A.C.P. No. 3 of 2015 is set-aside and the case is remanded to the Motor Accident Claims Tribunal, Balrampur to decide the Claim Petition afresh in the light of the judgement of the Hon'ble Supreme Court rendered in the case of ***Union of India Vs. United India Insurance Co. Ltd. and others, (1997) 8 SCC 683*** and judgement rendered by the Karnataka High Court, Kalaburagi Bench in the case of ***The Union of India Vs. Nagnath and Others, M.F.A. No. 32710 of 2011 (MV)***, expeditiously.

22. Let record of the Tribunal be returned to Motor Accident Claims Tribunal, Balrampur.

Order Date :- 20.3.2024

A. Mandhani