

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.185 of 2013

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Suraj Gope S/o Sri Hajari Gope, resident of village-Bahri Dhawalpura, P.S.-Chowk
Patnacity, District- Patna.

.... Appellant/s

Versus

The Union of India through the General Manager, Eastern Railway, Kolkata.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amar Nath Jha

For the Respondent/s : Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-08-2015

In this case, the appellant is challenging the order dated 22/01/2013 passed by the Member (Technical) Railway Claims Tribunal, Patna in Claim Case No. OA 00358/2002 whereby and whereunder the claim made by the claimant has been rejected.

The short facts of this case is that wife of the claimant, namely, Anita Devi was travelling from Patna Sahib station to Patna Jn. by Train No. 557 Passenger along with her *Nanad*, Usha Devi but at Gulzarbagh Railway station, she had fallen down from the train and sustained grievous injury. She was rushed to N.M.C.H. where she in course of treatment, died on 24th August 2002.

Claim application was filed making out the case of bona fide passenger, met with untoward accident, died in hospital. The claim application has been resisted by the Railway

Administration. The Tribunal marked the following documents as exhibits:-

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| 1. | Affidavit of Suraj Gope | Ext.A-1 |
| 2. | Affidavit of Usha Devi | Ext.A-2 |
| 3. | Copy of FIR | Ext.A-3 |
| 4. | Copy of Final Report | Ext.A-4 |
| 5. | Copy of Fardbeyan | Ext.A-5 |
| 6. | Copy of Inquest report | Ext.A-6 |
| 7. | Copy of Post Mortem report | Ext.A-7 |
| 8. | Copy of railway ticket | Ext.A-8 |
| 9. | Copy of Identity card of Suraj Gope | Ext.A-9 |
| 10. | Copy of Identity card of Anita Devi | Ext.A-10 |
| 11. | Copy of Identity card of Usha Devi | Ext.A-11 |

The Tribunal rejected the claim application on the ground that copy of FIR, copy of Final report and copy of Inquest report were forged, fabricated and doctored documents, were prepared for the purposes of raising claim of compensation with a view to gain undue financial benefit in the form of compensation.

The counsel for the appellant submits that the finding of the Tribunal is completely illegal arbitrary, finding is based on without any material facts, so much so declaring document as forged and fabricated without any reason, is not sustainable.

Another ground assigned by the Tribunal is that at the first instance, the claimant had made statement that the ticket was traceless, not available but subsequently Ticket no. 69138 was

produced to make out the claim of compensation. The Inquest report does not mention about the ticket one of the grounds for holding that story was concocted, built for the purposes of making claim of compensation so much Usha Devi claimed that she had a ticket but she did not produce the same during trial.

The counsel for the appellant submits that mere a technical ground of early statement that the ticket having lost subsequently bringing train ticket cannot be a ground to discard the claim of the appellant.

The counsel for the Railway administration has submitted that the order of the Tribunal is completely correct which is apparently clear from the record that these documents were/are forged and fabricated, were prepared for the purposes of making out the claim of the compensation.

Before deciding the case on merit, the chapter XIII, which is dealing with the liability of Railway administration for death or injury to passengers due to accidents, is a legislation of welfare to the passenger who utilizes the service of the train. When a beneficial piece of legislation comes for interpretation, it cannot be given narrow, literal strict interpretation but must receive liberal and wide construction with the purpose of advance the object of legislation has been brought. The provision of statute should be construed in a



manner which advance the object of statute and serves its purpose relevant to rely upon the judgment reported in **2008 (4) PLJR 40 (SC)**, *Union of India v. Prabhakaran Vijaya Kumar* where the Hon'ble Supreme Court has considered the nature of the legislation and said that it is a beneficial piece of legislation, must receive the liberal construction.

The Court has also said 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. It will be appropriate to quote paragraphs 11, 12 and 13 of the aforesaid judgment, are as follows:-

Para-11 No doubt it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a persons is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow



and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred *vide* **Kunal Singh vs. Union of India**, (2003) 4 SCC 524 (para 9), **B.D. Shetty vs. CEAT Ltd.**, (2002) 1 SCC 193 (para 12), **Transport Corporation of India vs. ESI Corporation**, (2000) 1 SCC 332 etc.

Para-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, (para7), **Jeewanlal Ltd. vs. Appellate Authority** AIR 1984 SC 1842 (para 11), **Lalappa Lingappa and Others vs. Laxmi Vishnu Textile Mills Ltd.**, AIR 1981 SC (852) (para 13) **S.M. Nilajkar vs. Telecom Distt. Manager** (2003) 4 SCC 27 (para 12) etc.

Para 13 In **Hindustan Lever Ltd. v. Ashok Vishnu Kate and others** (1995)6 SCC 326 (vide para 42) this Court observed:-

In this connection, we may usefully turn to the decision of this Court in **Workmen v. American Express International Banking Corporation** wherein

Chinnappa Reddy, J. 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 recognised 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, *Surendra 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*, 2nd 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-and-literal 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).’

At p. 661 of the same book, the author has considered the topic of ‘*Purposive Construction*’ in contrast with literal construction. The learned author has observed as under:

‘*Contrast with literal construction.—*

Although the term “purposive construction” is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975 : “If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years *one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive*

construction of statutory provisions.” The matter was summed up by Lord Diplock in this way—

... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.”

It is well known principal of law that the Tribunal is a regular court like Civil Court which is apparently clear from the provisions of Section 18 of the Railway Claims Tribunal Act, 1987. In Section 18 of the Railway Claims Tribunal Act postulates, while exercising the power by the Claims Tribunal, the Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and subjects to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry which itself shows the claim Tribunal is not like traditional Civil Court, is an indication factor that strict application of Evidence Act does not apply, in proving any material fact rather principle of preponderance does apply, but basically the Tribunal has to follow the principle of

natural justice. Tribunals though have all trappings of court, but not court, the standard of proof of any fact, will not be of highest degree, as like, a criminal case but the facts of the case has to be proved in reasonable and fair manner following the principle of natural justice.

It will be relevant to rely upon judgment, reported in **AIR 1950 SC 188, *the Bharat Bank Ltd. Delhi vs. the Employees of the Bharat Bank Ltd., Delhi and the Bharat Bank Employee's Union, Delhi***, where the Hon'ble Supreme Court held that the Tribunals have all trappings of Court but is not Court. It will be relevant to quote paragraphs 7 and 8 of the aforesaid judgment, are as follows:-

Para-7 "Now there can be no doubt that the industrial tribunal has, to use a well-known expression, " all the trappings of a Court" and performs functions which cannot but be regarded as judicial. This is evident from the rules by which the proceedings before the tribunal are regulated. It appears that the proceeding before it commences on an application which in many respects is in the nature of a plaint. It has the same powers as are vested in a Civil Court under the Code of Civil Procedure when trying a suit in respect of discovery, inspection, granting Government, reception of evidence taken on affidavit, enforcing the attendance of witnesses; compelling the production of documents, issuing commissions, etc. It is to be deemed to be a civil



Court within the meaning of Ss. 480 and 482, Criminal P. C., 1898. It may admit and call for evidence at any stage of the proceeding and has the power to administer oaths. The parties appearing before it have the right of examination, cross-examination and re-examination and of addressing it after all evidence has been called. A party may also be represented by a legal practitioner with its permission.

Para-8 The matter does not rest there. The main function of this tribunal is to adjudicate on Industrial disputes which implies that there must be two or more parties before it with conflicting cases, and that it has also to arrive at conclusion as to how the dispute is to be ended. Prima facie, therefore, a tribunal like this cannot be excluded from the scope of Art. 183, but before any final conclusion can be expressed on the subject certain contentions which have been put forward on behalf of the respondent have to be disposed of.”

Let us examine the merit of the case whether the victim lady was a bona fide passenger and met with an untoward accident or not. As a passenger covered under section 123C (2) of the Railway Act was met with an untoward accident, will be entitled to the compensation except those covered under Section 124A deals with the amount of compensation includes also the exception where the person received an injury, in certain situation, will not be entitled



to any benefit. Section 156 of the Railways Act also provides that the passenger travelling on the roof, step or engine, after being warned by the Railway servant, desist and persist their travelling on the aforesaid position on the Railway, are also not entitled to the benefit of compensation. It is always presumption, if the person is found to be boarded in the train compartment will be presumed there that he was travelling with valid ticket as under Railways Act, person cannot travel or even enter into the platform without having a valid ticket. If he does so, he is liable for the punishment under the Railway Act so in that circumstance, presumption will be there, the passenger was travelling with the valid ticket. It will be appropriate to place reliance on the judgment reported in **2008 (3) PLJR 711** (Smt. Kaushalya Devi vs. Union of India).

In the present case, Usha Devi close relative was a co-passenger, was travelling along with the deceased-victim and made her statement that both boarded in train No. 557 Passenger at Patna Sahib station, were going to Patna Jn. but the accident has taken place at Gulzarbagh Railway station as victim slipped out compartment and received injuries, and died during her treatment.

The statement of Usha Devi shows that she was a co-passenger of Train No. 557. After the accident, the victim was admitted to Gulzarbagh Hospital and during the treatment she died.



Ext-A/3 is the first information report, shows that Anita Devi died on account of falling from Suttle Train no. 557. Ext. A/4 is the final report of the Police, shows that the Police has received the report through the memo of Station Master on 24/8/2002 at 8 hour mentioning therein that the victim lady while getting down from Train no. 557, slipped and ultimately she went down to railway track and met with an accident. This document has not been denied by any parties. Incident has been explained in detail.

Ext. A/5 is the statement of the husband of the deceased where he has stated that his wife along with his sister, Usha Devi was travelling by Train no. 557 and met with an untoward accident on 23rd August 2002 at Gulzarbagh Railway station.

Ext. A/6 is the Inquest report where the same statement has been made that the victim while getting down from Train no. 557, slipped and cut in the accident

The Railways has not come forward, Train no. 557 was not running at the relevant time and detail of fact has been stated in the fardbeyan that victim lady boarded Train No. 557 at 01.00P.M., reached near Gulzarbagh Railway station and there the accident had taken place. Oral and documentary evidences say that the claimant has made out that the victim lady was a bona fide passenger and met with an untoward accident.



While deciding the case by the Tribunal, the standard of proof, as like, criminal case is not required to be applied, but the facts of the case to be proved on the principle of preponderance, if the materials brought by the parties substantially indicate accident has taken place on account of untoward accident, the Tribunal is not required to make microscopic scrutiny of the fact even in the criminal case minor discrepancy does not hold field, proper to rely upon the judgment reported in **2013 (1) PLJR 727** (Ram Sudha Devi vs. Union of India).

This Court is of the view that the Tribunal has committed an error of law and fact, wrongly held that the documents produced are fabricated and doctored documentary evidence which has been brought by the parties. The Tribunal cannot make out a ground which the Railway has not taken any where nor any supporting document has been filed. This Court is of view that judgment and order of Tribunal is based on surmises and conjecture, based on his personalised view without any basis.

In such view of the matter, the impugned order dated 22nd January 2013 is set aside and the appeal is, accordingly, allowed.

The Railway Administration is directed to make payment of compensation of Rs. 4,00,000/- as provided under the

Railways Act. As the matter is of an old one, the appellant is entitled to 6% interest of the compensation amount from the date of filing of the application.

The appellant will furnish a Mandate Form which he is liable to furnish the same.

The Office is directed to return the Lower Court Records to the proper Court.

(Shivaji Pandey, J)

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