

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Miscellaneous Appeal No.175 of 2013

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1. Most. Naimunesa W/O Late Bigu Khalifa R/O Village - Saraia, P.S. Amjhor,  
District – Rohtas.

.... .... Appellant/s

Versus

1. The Union Of India Through The General Manager, Eastern Railway, Kolkata

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Anant Kumar-1, Advocate

For the Respondent/s : Mr. Bijoy Kumar Singha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**CAV JUDGMENT**

**Date: 19-07-2016**

Appellant/claimant (wife) challenged the order dated 10.10.2012 passed by the Member, Technical, Railway Claims Tribunal, Patna Bench, Patna in Claim Application No. O.A. 000187/2002 whereby and whereunder the aforesaid claim petition has been dismissed.

2. It has been pleaded that on 06.05.2002 while the deceased, Bigu Khalifa was on his way to Banaras to visit the place of his daughter, after purchasing railway ticket boarded Train No. 053 EMU at Dehri-on-Sone. While the train was crossing the bridge near Bahera Railway Station, the aforesaid Bigu Khalifa fell down from the train due to heavy rush in the bogie on account of which he sustained severe injuries and subsequently, died and for that, Sasaram Rail PS (U.D.Case No.10/2002) was registered wherein after completing investigation, police report was submitted.

3. It has also been pleaded that while the police had reached at the place of occurrence, the deceased, who was alive, on his own disclosed his identity and telephone number. Police, accordingly, informed whereupon, applicant reached. The dead body was sent to mortuary for postmortem. Consequent thereof, instant claim petition has been filed.

4. Respondent/Opposite Party appeared and filed WS whereunder the facts so pleaded at the end of appellant/claimant has been controverted. Furthermore, it has also been pleaded that claimant happens to be under obligation to substantiate the status of the deceased to be a bona fide passenger and further, his death was in an untoward incident.

5. During course of trial on behalf of claimant two witnesses have been examined. AW-1 is applicant, Naimunesa while AW-2 is Nasruddin, major son of deceased. Side by side, had also exhibited FIR, police report, inquest report and postmortem report. Neither any witness nor any kind of documentary evidence has been brought up on behalf of respondent/opposite party.

6. The learned Tribunal had framed the following issues:-

1. Whether the deceased was a victim of the alleged untoward incident as defined under Section 123(C) of the Railways Act, 1989 ?
2. Whether the deceased, Bigu Khalifa was a

bonafide passenger of train No. 053 Up EMU passenger on 06.05.2002 at the time of the alleged untoward incident ?

3. Whether the claim application of the applicant is maintainable ?

4. Whether the applicant/dependants of the deceased are entitled to receive compensation, as claimed for ?

7. While discussing the issues, the Tribunal doubted over authenticity of the documents as well as also took it a case of run-over as well as also considered non presence of ticket and dismissed the petition.

8. Learned counsel for the appellant submitted that the learned Tribunal had wrongly and illegally doubted the authenticity of the document, more particularly, when inception of case happens to be at the end of Railway official itself who had issued Memo acknowledging the incident. Therefore, inception of the case followed with other paraphernalia, so required, during course of investigation coupled with filing of police report happens to be in accordance with law, goes out of purview of challenge. In likewise manner, it has also been submitted that learned Tribunal was not at all justified in doubting the authenticity of the document, more particularly, when there happens to be no objection at the end of respondents. Apart from this, it has also been submitted that there happens to be specific disclosure in the claim petition itself that at the



time of arrival of police the deceased was alive who disclosed the identity as well as telephone number by which family members were informed by the police and so presence of son of deceased, namely, AW-2 during course of preparation of inquest report was not at all abnormal one. Furthermore, during course of cross-examination, the respondents have not cross-examined over distance in between the P.O. as well as village of the deceased and so, it could not be said that mere presence of PW-2 at the time of preparation of inquest report, was something otherwise than normal event.

9. On the other hand, the learned counsel for the respondents submitted that though after registration of the case, the police conducted investigation in accordance with law and submitted its report but, right from beginning the police connived and the aforesaid event is itself exposed from the relevant document. Further, it has been submitted that the learned tribunal rightly doubted over genuineness of the document as well as the deceased being bonafide passenger.

10. Gone through the record. From the LCR it is evident that Dy.SS/Bhabhua had issued Memo on 06.05.2002 at about 9:30 p.m. that at the same day at about 9:20 hours, he was informed by Dy.SS/DGO that one unknown person has been run over and killed by a train and his dead body is lying over the DN track near village-

Bahera. So, it is evident therefrom that it happens to be in vagueness. Had there been bonafide conduct, the Dy SS/DGO should have informed by which train the said incident occurred, and further, whether it was near Bahera Railway station after crossing the bridge.

11. The inquest report is dated 07.05.2002 at 8:00 a.m. So the inquest report was prepared after eleven hours. Furthermore, from the Memo itself, it is evident that deceased had died and dead body was lying. Furthermore, from the format of the formal FIR it is evident that the entry having under column thereof, happens to be contrary to the memo as it was not disclosed in the memo that deceased was a passenger and had fallen from Up EMU train. Not only this, it is also evident from Column-4 thereof, that the same was transmitted to the court of Magistrate on 07.05.2002 and certainly, as per inquest report, the presence of Nasiruddin, AW-2 happens to be before transmission of the FIR to the Magistrate and on account thereof, column-3 of the FIR has been incorporated contrary to the memo. The aforesaid event is found totally contradicted from police report whereunder it has been incorporated that the deceased was alive who disclosed his identity as well as telephone number whereupon family members were informed son of deceased arrived and then inquest followed with other requirements were performed. In the petition, it has been incorporated that the police had arrived at the



place of occurrence who was informed by the deceased regarding his identity as well as telephone number which in the police report is not found confirmed at the end of the Investigating Officer that he was informed by the deceased. From minute observation of the police report, it is evident that deceased might have disclosed to the persons having assembled there and some one, out of them, might have informed whereupon persons of AW-2 was there.

12. From Memo as well as from the postmortem report, the death of deceased is found out of controversy. In the background of infirmities as pointed out in foregoing paragraph, now it has to be seen whether appellant/claimant succeeded in substantiating her case.

13. Run over is not defined under the Railways Act. Three kinds of eventualities may be perceived. The deceased might have fallen down, might have committed suicide, accidentally would have come under wheels. It could not be inferred on its own contrary to the evidence having on the record. That means to say, the court cannot on its own presume contrary to pleading. For the purpose of presumption, the certain eventualities have been perceived under the Evidence Act. Therefore, the learned Tribunal presumed it a case of run over without having so permitted in the eye of law nor having been coming out from the evidence of the witnesses.



14. Then coming to the nature of evidence, first of all propriety of the documents have to be seen in consonance with the conduct of the parties. As is evident, inquest report was prepared on 07.05.2002 at 8:00 A.M at which time presence of AW-2, son of deceased was there. During cross-examination, he has not been cross-examined over time of his arrival, source of knowledge as well as distance in between his village from Place of occurrence. It has also not been cross-examined that at the time of arrival, deceased had already met with death. It has also not been challenged by way of cross-examination that not even a single person was present at the site of accident. Though AW-1, during her cross-examination at para-7 had disclosed the distance as 15 'Kosh'. So without having proper information, presence of AW-2 at place of occurrence, would not be expected, that means to say, somebody whose presence was at the site, might have informed. That means to say, identity of deceased was established.

15. Now coming to the evidence on the score of bona fide passenger, it is evident that certainly AW-1 as well as AW-2 have not claimed themselves to have witnessed the occurrence, it probabalizes in the background of memo having been at the end of railway official itself regarding the occurrence. Furthermore, the distance in between as per evidence of AW-1, para-7, speaks a lot

contradicting it a case of self inflicted, as presence of the deceased would not have been save and except passenger of a train.

16. With regard to non availability of the ticket, less said is better, more particularly, in the background of the prohibition having under the Railways Act whereunder travelling without ticket has been made an offence which, the respondent Railway failed to substantiate that the deceased was found travelling without ticket for which he was fined. Not only this, the inquest did not divulge that pocket of apparel having worn by the deceased was checked.

17. Apart from this, the intention of the legislature while introducing the specific provision has also to be perceived. The act, in its nature suggests benevolent one. It is for welfare of the passengers, who lost lives or sustained injuries during course of his travelling and further, should not be allowed to leave in the lurch. Therefore, each case has to be adjudged in the background of the nature of the statute. Furthermore, it has been settled at rest that when two version is found coming out then in that event, the version suited to the claimant has to be accepted as held in *Union of India Versus Prabhakaran Vijaya Kumar and Others* as reported in 2008(2) TAC 777, it has been observed:

“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 person 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.

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( para 7), *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.

13. In *Hindustan Lever Ltd. vs. 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 vs. 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 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-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."

(emphasis supplied)

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

18. Consequent thereupon, the order impugned is set aside. The appeal is allowed. However, in the facts and circumstances of the case, the parties will bear their own cost.

(Aditya Kumar Trivedi, J)

Patna High Court  
July 19<sup>th</sup> 2016  
Perwez/AFR

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