

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.201 of 2013

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MOST. TAREGNA DEVI W/O LATE GIRJA PRASAD SINGH RESIDENT OF
VILLAGE- GHATIA, P.S- KUDRA, DISTRICT- BHABHUA (BIHAR).

.... 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. A.N. Mishra, Adv.

For the Respondent/s : Mr. Bijoy Kr. Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 25-07-2016

Appellant/Claimant being aggrieved by and dissatisfied with the judgment/order dated 31.12.2012 passed by the Member, Technical, Railway Claims Tribunal, Patna Bench in Claim Case No.OA 00355/2002 whereby and whereunder dismissed the claim petition, filed instant appeal.

2. Deceased Girija Prasad Singh, a police constable, posted at police line, Mohania was directed to go to Dehri on 17.06.2002 and for that, Kaman No.687996 was issued. He boarded 302 Dn. Varanashi-Asansol Passengers Train at Bhabhua Road Railway Station in way to Dehri, unfortunately fallen down from the running train near Pasauli Railway Station due to push and pull as well as, jostling on account of heavy rush and died at the spot. The matter was reported to the railway police whereupon Bhabhua Rail Police (UD)

Case no.14/2002 was registered followed with investigation and completed by way of filing police report. Accordingly, claim petition was filed by the appellant/claimant (wife).

3. Respondent/O.P. appeared and filed W.S. wherein, apart from ornamental objection, also raised dispute over status of deceased being bonafide passenger. Furthermore, also disputed death of deceased on 17.06.2002 as well as under untoward incident. It has also been pleaded that unless and until the appellant/claimant substantiate her plea, the O.P. railway could not be saddled with the liability.

4. The learned tribunal rejected the prayer mainly on the ground that none claimed to be an eye witness to occurrence, so plea of death having occurred out of untoward incident, not proved. In likewise manner, neither the train was identified nor had any occasion to identify the dead body. Considering the memo, the learned tribunal further observed that it happens to be a case of run over and so, it happens to be a self-inflicted injury for which, no claim petition would lie.

5. Memo has been served by the Station Superintendent, Bhabhua Road who had informed that he was informed by Station Superintendent, Kurauli that one person has been run over in up line in between 608/09-306/11 (KM) who happens to be a police



personnel. Therefore, dead body of police personnel was known since before issuance of memo and as per inquest report, it is evident that the same was prepared on 17.06.2002 itself wherein name of deceased is found duly identified. Although at column no.8-9 there happens to be cutting and then being substituted by falling, that makes no difference in the background of the fact that there happens to be specific case of the applicant that deceased, a police constable was directed to proceed to Dehri under Command No.687996. Photocopy thereof has been annexed and is part and parcel of the record. Date having thereupon contains 16.06.2002 at 8 PM. That means to say, Kaman was issued on preceding evening of the date of accident. Not only this, the police report does contain the disclosure substantiating the aforesaid plea and on account thereof, travelling by a train could not be disputed. In likewise manner, the respondent had not questioned regarding passing over of 302 Dn. Varanashi-Asansol Passenger at the relevant time. Therefore, mere giving detailed picturisation by the applicant during course of her evidence is not going to adversely affect her plea as observed by the learned tribunal. In likewise manner, absence of ticket is not at all found adverse to the interest of the applicant in the background of the fact that there happens to be complete absence of activity at the end of the police official during course of preparation of inquest report in having the



belongings or apparel duly searched at that very moment. Furthermore, there was every possibility of ticket being lost during course of accident. Apart from this, when the memo discloses that the deceased was a police personnel, that means to say, the railway authorities have occasion to see the deceased as well as might have collected relevant papers whereupon identification being a police personnel was fixed, then, it was expected at its end to have disclosed the details of papers which, the authority failed to disclose. Not only this, the tribunal should have also considered that neither the deceased was resident of surrounding nor was posted at the place where the untoward incident taken place, then, in that circumstance, presence of deceased at the said place would have been being passenger traveling through train. In the aforesaid background, falling of deceased by rail cannot be ruled out. In likewise manner, due to lapses on the part of police official, coupled with the fact that there was every possibility in getting the ticket lost during course of accident, the bonafide status of deceased as passenger as well as meeting with death during course of untoward incident is found more probable, acceptable as well as conveniencable. Even considering that the manner of incident suggest alternative interpretation, that has got no bearing in the background of settled principle.

6. In Union of India Versus Prabhakaran Vijaya Kumar

and Others 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."

7. Run over, over which the learned tribunal had much stressed is not acknowledgeable under the railway act. Even if considering its literal sense it may be outcome of either self-inflicted injury or on account of untoward incident. The learned tribunal should have perceived the possibility of untoward incident, as presence of deceased at the relevant place was only possible by way of travelling by a train. Furthermore, finding of learned tribunal that none of the witnesses on behalf of appellant, being an eye witness, meddled the case of the appellant/claimant is found based upon mere illusion in the background of aforesaid finding. In likewise manner, it is not on record whether station superintendent of Pusauli Railway Station was

an eye witness, which probability is found remote one, as per inquest column no.3 the same was not at Pusauli Station. Hence, there was no material available before the learned tribunal to observe like so, more particularly, self inflicted, and so, rejection of petition is found unsustainable.

8. Accordingly, the judgment/order impugned is set aside. Appeal is allowed. However, in the facts and circumstances of the case parties will bear their own cost.

(Aditya Kumar Trivedi, J.)

PN/-

AFR/NAFR	AFR
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