

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 168 OF 2016

1. Smt Vilalbai w/o Ganesh Chitte,
Age: 53 years, Occu: Household,
R/o Bembar, Tq. Bhokar, Dist. Nanded.
2. Shivraj w/o Ganesh Chitte,
Age: 25 years, Occu: Nil,
As above.
3. Vishnukant w/o Ganesh Chitte,
Age: 21 years, Occu: Nil,
As above.
4. Santosh s/o Ganesh Chitte,
Age: 18 years, Occu: Nil,
As above.
5. Swaroop d/o Ganesh Chitte,
Age: 13 years, Occu: Nil,
As above.
6. Sarika d/o Ganesh Chitte,
Age: 13 years, Occu: Nil,
As above.
(Applicant no. 4 to 6 minor u/g
of their Mother Appellant No.1) ... Appellants

Vs.

Union of India,
Through General Manager,
South Central Railways,
Secunderabad (Andhra Pradesh) ... Respondent

.....
Mr. P.S. Agrawal, Advocate for the appellants.
Mr. M.N. Navandar, Advocate for the respondent.
.....

CORAM : P.R. BORA, J.

DATE OF RESERVING THE JUDGMENT : 14-09-2016.
DATE OF PRONOUNCING THE JUDGMENT : 21-11-2016.

JUDGMENT:

1. The appellants have filed the present appeal against the judgment and order passed by the Railway Claims Tribunal (hereinafter referred to as the Tribunal) at Nagpur in OA (IIU) /NGP/2013/0037 decided on 06.11.2015. The aforesaid application was filed by the appellants seeking compensation on account of the death of Ganesh Chitte in an accident happened on 16.11.2012 at Bhokar Railway Station. According to the appellants, deceased Ganesh was traveling as a bonafide passenger from Bhokar to Nanded and fell down after receiving a jerk immediately after the train started from Bhokar Railway Station. Deceased was stated to be traveling by Adilabad-Nanded Intercity Express i.e. train no. 17409. The tribunal has held that the appellants have failed in proving that deceased Ganesh was a bonafide passenger. The tribunal has further held that the alleged incident happened because of the negligence of deceased Ganesh. On the aforesaid grounds the tribunal has dismissed the claim petition.

2. Shri P.S. Agrawal, the learned counsel appearing for the appellants has assailed the impugned judgment on various grounds. Learned counsel submitted that relying upon the hearsay evidence of the witness examined by the railway administration the tribunal has held that alleged accident happened because of the negligence of deceased Ganesh himself. The learned counsel submitted that,

the witness so examined by the railway administration has admitted in his cross-examination that he did not eye witness the alleged incident. In the circumstances, according to the learned counsel no such conclusion could have been recorded by the tribunal that the untoward incident happened because of the own negligence of deceased Ganesh. In order to support his said contention the learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Jameela and Ors. Vs. Union of India** reported in **AIR 2010 SC 3705**.

3. The learned counsel further submitted that, the tribunal has also committed erred in arriving at a conclusion that the deceased Ganesh was not a bonafide passenger. Learned counsel further submitted that, in his testimony before the court one of the appellant namely Shivraj Ganesh Chitte has specifically deposed that brother of the deceased namely Bhujangarao Datram had purchased a ticket for the deceased and had handed over it to the to his deceased. Learned counsel further submitted that, during the course of investigation also statement of said Bhujangarao Datram was recorded. Learned counsel further submitted that in absence of any contrary evidence, there was no reason for the tribunal to disbelieve the aforesaid fact stated by the AW1 Shivraj and the statement of Bhujangarao Datram, recorded during the course of investigation. The learned counsel further submitted that, merely

because said Bhujangarao Datram has not been examined before the tribunal no such inference could have been drawn that deceased Ganesh was not a bonafide passenger. The learned counsel, therefore, prayed for setting aside the impugned judgment and consequently to allow the claim application filed by the appellants.

4. Shri M.A. Navandar, learned counsel appearing for the respondent supported the impugned judgment. The learned counsel submitted that, the tribunal has thoroughly assessed evidence on record and has recorded the right conclusions. Learned counsel submitted that, deceased Ganesh slipped while boarding the train from off side. The learned counsel submitted that, to board a train from off side is impermissible. The learned counsel submitted that, the alleged accident has, thus, happened because of the own negligence of deceased Ganesh and the Railway Administration is, therefore, not liable to pay any compensation to the legal heirs of deceased Ganesh. The learned counsel further submitted that, the appellants have also failed in proving that deceased Ganesh was a bonafide passenger. The learned counsel submitted that, nothing was recovered from the person of deceased Ganesh. The learned counsel submitted that even nothing was recovered and more particularly no railway ticket was recovered from the spot where the alleged accident had happened. The learned counsel further submitted that, had it been the fact that the

railway ticket was kept by deceased in his pocket as has been deposed by AW1 Shivraj, the said ticket ought to have been seised from the clothes of the deceased or must have been found on the spot if it is presumed that the same was likely to be thrown somewhere from the pocket when deceased slipped while boarding the train. Learned counsel submitted that, since the ticket was not found in the clothes of deceased Ganesh or on the spot, only inference which emerges is that deceased was not having any ticket with him and he was not a bonafide passenger. The learned counsel submitted that, the tribunal has passed a well reasoned order while rejecting the claim application and no interference is required in the judgment and order so passed. The learned counsel, therefore, prayed for dismissal of the appeal.

5. I have carefully considered the submissions made on behalf of the learned counsel appearing for the respective parties. I have also perused the impugned judgment, evidence adduced in the matter and the other material placed on record. It is not in dispute that the alleged accident happened within the precincts of Bhokar Railway Station. According to the railway administration deceased Ganesh was attempting to board the train from off side. The tribunal has relied on the said contention having regard to the statement of the guard of the concerned train and certain other witnesses whose statements are recorded during the investigation

carried out in respect of the accidental death of deceased Ganesh. The tribunal, placing its reliance on the judgment of Karnataka High Court, has held that the act of the deceased to board a running train and that too from off side, amounts to self-inflicted injury and, as such, the railway administration cannot be held liable to pay compensation in such case.

6. Material on record shows that in order to substantiate the defence raised by the railway administration in its written statement, Shri Yogesh Kumar who was working as station master at Bhokar Railway Station at the relevant time was examined as a witness. In the cross examination said Yogesh Kumar has admitted that he did not eye witness the alleged accident and visited the spot after happening of the accident. On careful perusal of his testimony, it is revealed that, whatever was said by him in his examination in chief about the occurrence of the alleged incident was based on the information received to him from the guard of the said train. Admittedly, the guard of the said train has not been examined before the tribunal. In the circumstances, it is difficult to draw any concrete inference that deceased fell down in an attempt to board the train from off-side merely on the basis hearsay of the evidence of said Yogesh Kumar.

7. In the case of **Jameela and Others Vs. Union of India cited (supra)** in the similar circumstances Lucknow Bench

of the Allahabad High Court had upheld the contention of the railway administration that the accident in the said case had taken place because of the negligence of the deceased in the said matter, though, no eye witness was examined by the railway administration so as to prove that the deceased was standing at the open door of a train compartment in a negligent manner from where he fell down. The Hon'ble Apex Court in an appeal preferred against the judgment of the High Court disapproved the conclusion drawn by the High Court with the following observations.

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.

8. In the instant case in absence of any concrete evidence showing that, the deceased fell down while attempting to board a running train from off-side, the conclusion recorded by the tribunal cannot be sustained. From the material which is available on record fall of deceased Ganesh from the train has to be held as accidental fall of a passenger from a train carrying passengers.

9. The learned counsel for the appellants has relied upon

one more judgment of the Hon'ble Apex Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar and Ors.** reported in **AIR 2009 SCC 383.** Having regard to the facts involved in the present case, I find it appropriate to reproduce herein-below the observations made by the Hon'ble Apex Court in paragraph nos. 10 to 12 of the said judgment, which are thus:

10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of a passenger from a train carrying passengers'. Hence, it is an 'untoward accident' as defined in Section 123(c) of the Railways Act.

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. Nilakjar vs. Telecom Distt. Manager (2003) 4 SCC (para 12).

10. In view of the observations made and the conclusions recorded by the Hon'ble Apex Court as aforesaid, the finding recorded by the tribunal that deceased Ganesh fell down as a result of his own negligence cannot be subscribed. I reiterate that in absence of any concrete evidence brought on record by the railway administration the fall of deceased Ganesh from the train has to be held as accidental fall of a passenger from a train carrying passengers.

11. The next question arises whether deceased Ganesh was a bonafide passenger. Admittedly, the train ticket has not been produced on record by the appellants. It is also true that railway ticket was not recovered from the person of deceased Ganesh or from the spot of occurrence. AW1 Shivraj, in his testimony before the tribunal has, however, positively deposed that the brother of the deceased namely Bhujangarao Datram had purchased the railway ticket for the deceased and had handed it over to deceased Ganesh. It is true that the appellants have not examined said Bhujangarao Datram as their witness but his statement recorded by the railway authorities during the course of investigation is very well existing on

record. I do not see any reason to disbelieve the said statement. The possibility that when deceased fell down from the train, the ticket either kept in his pocket or carried by him in his hand would have been thrown and could not be noticed thereafter cannot be ruled out. In absence of any contrary evidence it may not be proper to record a negative finding that deceased Ganesh was traveling without any valid ticket.

12. After having considered the entire material on record, I have no hesitation in holding that the appellants have sufficiently proved that deceased Ganesh was traveling as a bonafide passenger and suffered death in an untoward incident. The appellants are, therefore, entitled to the compensation as claimed by them. In the result the following order:

ORDER

- i) The order passed by the tribunal in OA (IIU)/NGP/2013/0037 on 06.11.2015 stands quashed and set aside.
- ii) The claim application is allowed.
- iii) The respondent shall pay Rupees Four Lakhs to the appellants by way of compensation within six months from the date of this order.
- iv) The appeal stands allowed in the aforesaid terms.

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(P.R. BORA, J.)