

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2078 OF 2016

Sow. Kantabai w/o Dilip Rathod and others ...Appellants

versus

Union of India, Through General
manager, South Central Railways,
Secunderabad (A.P.) ...Respondents

WITH
FIRST APPEAL NO. 2097 OF 2016

Smt. Sumanbai w/o Madhavrao Dhone and others ...Appellants

versus

Union of India, Through General
manager, South Central Railways,
Secunderabad (A.P.) ...Respondents

.....
Mr. P.S. Agrawal, advocate for the appellants
Mr. D.V. Soman, advocate for respondent in F.A. No. 2078 of 2016
Mr. D.G. Nagode, advocate for respondent in F.A. No. 2097 of 2016.
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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 02.05.2017**

**Date of pronouncing
the Order: 18.07.2017**

ORDER :-

1. Being aggrieved by the judgment and award dated 16.11.2015

passed in claim application No. OA(IIU)/NGP/2012/0114, by the Member, Railway Tribunal Nagpur, the original applicants preferred first appeal No. 2078 of 2016 and being aggrieved by the judgment and award dated 07.01.2016 passed in claim application No. OA(IIU)/NGP/2013/0255 by the Member, Railway Tribunal Nagpur, the original applicants preferred first appeal No. 2097 of 2016.

2. Since in both the appeals, an identical issue is involved and as such, both the appeals are being decided by this common judgment and order.

3. Brief facts, giving rise to the present appeals are as follows:-

a) The first appeal No. 2078 of 2016 is concerned, on 23.1.2012, deceased Mahesh, alongwith his two friends, was travelling from Nanded to Bodhdi by Nanded Adilabad Intercity Express, bearing train No. 7404. On reaching to Hadgaon railway station, deceased Mahesh got down from the train to take drinking water and while re-boarding the train fell down and came under the wheels. He had sustained severe injuries. He was immediately shifted to the hospital at Hamayatnagar, where he succumbed to the injuries.

b) In so far as first appeal No.2097 of 2016 is concerned, on

29.6.2013 deceased Madhavrao was travelling from Basar to Nanded by Secunderbad-Mumbai Devgiri Express, bearing No. 17058. On reaching to Mudkhed station, he got down from the train for taking drinking water and while re-boarding the running train, he fell down and came under the wheels of the train. Madhavrao died on the spot.

c) In both the cases, the applicants/dependents approached the Railway Tribunal by filing aforesaid applications seeking compensation. In both the claims, deceased Mahesh and deceased Madhavrao were holding valid railway tickets. In both the claims, respondent Railway department strongly resisted the claims on the ground that deceased persons in both the cases died due to their own negligence and the applicants in both the cases failed to prove that death of deceased persons occurred as a result of untoward incident. Both the parties adduced the evidence in support of their rival contentions. Railway Tribunal, by the aforesaid judgment and award dismissed the both the claim petitions mainly on the ground that deceased persons died due to their own negligence and that their negligence is not an ordinary negligence but the same amounts to criminal negligence. It has also been held that fall of deceased persons while boarding the running train, cannot be construed to be a fall from the train amounting to an untoward incident within the

meaning of Section 123(c) r.w. Section 124-A of the Railways Act. Hence, these two separate appeals.

4. In both the appeals, learned counsel for the appellants claimants submits that deceased persons were travelling in their respective trains with valid railway tickets and as such, they were bonafide passengers travelling in the train. Learned counsel submits that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers,' firstly, it applies when the person has actually got inside the train and thereafter falls down from the trains, and secondly, it includes where a person is trying to board the train and falls down while trying to do so. In both the cases, deceased persons got down from the train for the purpose of taking drinking water at the station, where the train was halted for sometime and when they were to board the train, fell down from the running train and died. Learned counsel submits that by any stretch of imagination, the said act on the part of deceased persons cannot be treated as an act of criminal negligence. Railway Tribunal has misinterpreted the observations of the Supreme Court in the case of ***Jameela and Ors. vs. Union of India, reported in AIR 2010 (12) SCC 443.*** Learned counsel submits that the accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Both the cases

are clearly covered by the main body of Section 124-A of the Railways Act and not by its proviso.

5. Learned counsel for the appellants, in both the appeals, in order to substantiate his contentions, placed reliance on the following judgments:-

- i) Union of India vs. Prabhakaran Vijaya Kumar and others, reported in AIR 2009 SC (Supp) 383,
- ii) Jameela and others vs. Union of India, reported in AIR 2010 SC 3705.

6. Learned counsel for the respondent Railway department submits that such an act of trying to board the train, which is already in motion, is an act of criminal negligence on the part of deceased persons. Both the deceased persons were aware of the consequences of their rash and negligent act of boarding the running train. Deceased persons were responsible for their own death. The appellants original claimants have failed to prove that death of deceased persons occurred as a result of an untoward incident and as such, the Tribunal rightly dismissed both the claim petitions.

7. On careful perusal of the pleadings, evidence and the

judgment and award passed by the Railway Tribunal, it appears that the Tribunal has dismissed both the petitions mainly on the ground that it is not accidental falling of deceased persons from the train and as such, there is no untoward incident as alleged in the claim petitions and secondly, on the ground that deceased persons are responsible of their own death and negligence on their part is not an ordinary negligence but the same is an act of criminal negligence.

8. In the case of ***Union of India vs. Prabhakaran Vijaya Kumar and others (supra)***, in para 14 of the judgment, the Supreme Court has made the following observations:-

“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.”

9. In both the cases, deceased persons were travelling with valid ticket and while trying to re-enter into the Railway,, they fell down during the process. I do not think that the accident occurred because of any of the reasons mentioned in clauses (a) to (e) to proviso of Section 124-A of the Railway Act. The present case is clearly covered by the main body of Section 124-A of the Railway Act.

10. In both the claim petitions, deceased persons were travelling in the train with valid ticket, got down at certain station for the purpose of taking drinking water. In such cases, the passengers may not be knowing the time of halt at such station and as to when the said train leaves that station. Moreover, such passengers may not be in a position to purchase the water bottle in the train itself. In the aforesaid cases, the Hon'ble Supreme Court declined to adopt a restrictive meaning of the expression 'accidental falling of a passenger from a train carrying passengers' and held that said expression includes accidents when a bonafide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. The Supreme Court held that purposive, and not literal interpretation should be given to the expression.

11. In first appeal No. 2078 of 2016, it appears that the Railway Tribunal has not correctly appreciated the facts of the said case. Witness Mukeshkumar Mina, Station Manager, has admitted in his cross examination that he has not seen the incident personally. He has deposed on the basis of certain information given to him by the guard Mr. Gautam L. of the said train. According to him, as per the information given to him by the guard, he has given statement to police that a person had fallen down from moving train and got run over. He has also admitted in the cross examination that guard did not tell him that somebody had come in front of engine. On perusal of record and proceedings, it appears that statement of station master K. Murlidhar Naidu of Himayatnagar also recorded during the course of investigation and he has stated in his statement that said guard Gautam L. informed him that deceased Mahesh got down at railway station, Hadgaon for the purpose of taking drinking water and while re-boarding the train, came below the wheels.

12. In first appeal No.2097 of 2016, on perusal of statement of Loco Pilot Vyankat Ramanna, it appears that Loco Pilot had just started the train and at that time, the guard informed him on walkie-talkie and he immediately stopped the train. It appears from his statement that even the train has not taken speed as such. In both the cases, the Tribunal has not considered that it is purely an

untoward incident.

13. In view of above discussion, the impugned judgment and award passed by the Tribunal, in both the appeals, are required to be quashed and set aside. The appellants/claimants in both the appeals are entitled for fixed compensation of Rs.4,00,000/- (Rupees Four lacs). Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal No.2078 of 2016 (Kantabai Deelip Rathod and Anr. vs. Union of India) and first appeal No. 2097 of 2016 (Sumanbai Madhavrao Dhone and Anr vs. Union of India) are hereby allowed with costs.
- II. The judgment and award dated 16.11.2015 passed by the Member, Railway Claims Tribunal, Nagpur in Claim application No. OA(IIU)/NGP/2012/0114 and judgment and award dated 07.01.2016 passed by the Member, Railway Claims Tribunal, Nagpur in Claim application No. OA(IIU)/NGP/2013/0255 are hereby quashed and set aside.

- III. Both the claim petitions bearing Nos. OA(IIU)/NGP/2012/0114 and OA(IIU)/NGP/2013/0255 are hereby allowed in terms of their prayer clauses.
- IV. The respondent do pay an amount of Rs.4,00,000/- (Rupees four lacs only) separately to the appellants/original claimants in each of the claim petitions alongwith interest @ 6% p.a. from the date of accident till realization of entire amount.
- V. The award be drawn up accordingly.
- VI. Both the first appeals are accordingly disposed of.

(V. K. JADHAV, J.)

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