

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.529 OF 2018

1. Smt. Keshu Shankarlal Giri	]	
Age 59 years, Occ: Housewife,	]	
2. Mr. Rajesh Shankarlal Giri	]	
Age 35 years, Occ: Self Employee,	]	
3. Mr. Santosh Shankarlal Giri	]	
Age 31 years, Occ. Self Employee,	]	
R/at: Room No.1, Punjabi Colony,	]	
Janata Market, Subhash Road,	]	
Bhandup (W), Mumbai – 400 078.	]	Appellants
Vs.		
Union of India,	]	
Through General Manager,	]	
Central Railway, CSTM Mumbai.	]	Respondent

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Mr. Vasant More, for Appellant.

Mr. T. J. Pandian a/w Mr. T.C. Subramanian, for Respondent.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 5th MARCH, 2021.
PRONOUNCED ON : 23rd MARCH, 2021.

JUDGMENT:

1. This is an appeal challenging the Judgment and Order passed by the Railway Claims Tribunal Mumbai Bench, Mumbai on 30th

June, 2017 in Claim Application No. OA (II u)/MCC/0200/2012 by which the Tribunal dismissed the Claim Application of the appellants who are the dependants of one Shankarlal Giri (for short 'deceased').

2. Briefly stated the facts are as follows;

The deceased was aged about 55 years and was a private car Driver. He was travelling by an unknown local train from Bhandup to Dadar on a strength of a valid second class railway ticket. When the said train reached between Bhandup and Kanjurmarg Railway station, near K.M No.26/1B, due to overcrowded train, he fell off the running train resulting into amputation of both of his legs and ultimately resulting into his death.

3. The appellants, who are claimants, namely his widow and two major sons have moved an application claiming compensation of Rs.4,00,000/- which came to be dismissed by the Tribunal as above.

4. It is the contention of the respondent that the deceased was crossing the railway track and in that process, was hit by an unknown local train, resulting into his death. It is also the stand of the respondent that the deceased was not a *bona fide* passenger of the train, for, he did not possess valid railway ticket as the G.R.P did not find the one either on his person or near the scene. Act of crossing railway track was an offence under section 147 of the Railways Act, 1989 (for short 'Railways Act') which cannot be termed as an 'untoward incident' as defined under section 123 (2) of the Railways Act.

5. After framing necessary issues and recording the evidence of A.W.1-Keshu Giri (widow of the deceased) and A.W-2 Amarnath Goswami, the Tribunal disbelieved their testimonies and refused to grant compensation.

6. It is held by the Tribunal that there was no eye witness to the incident. Witnesses of the appellants had no personal knowledge as to how the incident had occurred. The Tribunal, however, accepted D.R.M's report, postmortem report, inquest and spot panchanama. While accepting the contention of the respondent, the Tribunal laid emphasis on the opinion of the Police and Panch witnesses to inquest panchanama in basing its conclusion that it was not an 'untoward incident'. It is also held that the deceased was not a *bona fide* passenger. As such, the Tribunal had dismissed the application.

7. Heard Mr. More, learned Counsel for the appellants and Mr. Pandian, learned standing Counsel for the respondent.

8. Mr. More has reiterated the grounds raised in the Memo of Appeal by contending that the Tribunal has not only committed grave error in disbelieving the evidence of widow of the deceased and his son-in-law but also reached an erroneous conclusion that the deceased was neither a *bona fide* passenger nor the incident in question was an untoward incident.

9. It is the contention of Mr. More that in the absence of effective cross-examination of the witnesses, the Tribunal ought not to have held that the deceased was not a *bona fide* passenger. If it was an offence under section 147 of the Railways Act then why there was no

E.I.R? On the contrary, it is contended that a report of accidental death under section 174 of the Cr. PC was filed and accepted by the Executive Magistrate. He vehemently argued that the respondent has failed to discharge it's burden to prove that it was not an untoward incident. The appellants, therefore, cannot be denied the benefits under the welfare legislation.

10. Mr. Pandian, however, supported the impugned judgment by contending that the Tribunal has rightly placed reliance upon the D.R.M's report and other documents placed on record by the respondent.

11. Admittedly, there was no eye witness. A.W.1- Keshu Giri, in her affidavit in lieu of examination-in-chief has reiterated the facts. A.W.1-Keshu Giri in her affidavit has stated that on the date of the incident, her husband (deceased) had informed her that he was going to Dadar for collecting money from his friend namely Yadav. He, therefore, asked for Rs.50/- for purchasing a ticket. She gave him Rs.50/-. The evidence of A.W.1-Keshu Giri has not been challenged in cross-examination by the respondent. The only suggestion given during the cross-examination is that she had no occasion to witness the incident which she admits. There is no suggestion given to her that she did not give Rs.50/- to her husband to purchase a ticket. There is no reason to disbelieve or discard her evidence in that regard.

12. Son-in-law of the deceased, A.W.2- Amarnath Goswami, in his affidavit deposed that he had witnessed the deceased at Bhandup Railway Station standing in the queue for purchasing a ticket.

Deceased was intending to go to Dadar. Thereafter, he had seen the deceased going to platform No.4 for catching a local for Dadar. There is no suggestion to this witness on this aspect and, therefore, there is no reason to disbelieve the version of these two witnesses which corroborates the contention of the appellants that the deceased was travelling from Bhandup to Dadar and was standing in the queue to purchase a railway ticket.

13. It seems that the Tribunal has ignored this vital aspect. The inquest panchanama does not reveal that the deceased had a ticket, however, it can be seen that before drawing the spot panchanama, dead body of the deceased was removed from the spot and, therefore, there is every possibility of misplacing the ticket as the panchanama does not indicate that a search was made in the vicinity to find out whether there was a railway ticket.

14. Undisputedly, neither the Station Master nor the Motorman had any occasion to see the incident, however, the memo which appears to have been written by the Station Master indicates that the deceased was hit by a train. It is not even the hearsay evidence of the Station Master. The respondent was not prevented from at least examining the said Station Master and, therefore, the papers produced by the respondent cannot be accepted as a gospel truth to hold that the deceased was hit by a running local while crossing railway track and, therefore, it was a criminal act.

15. The Tribunal has committed patent irregularity in placing implicit reliance upon the so-called opinion of the Police and panchas to inquest panchanama to arrive at a conclusion that while crossing

the railway track, the deceased was hit by a train. It is surprising as to how can an opinion be formed on the basis of the opinion of Police and panch witnesses to inquest panchanama when none of them had been examined. These findings, therefore, need to be discarded in toto as they are perverse and in total ignorance of the settled legal position. The learned Tribunal had erroneously expressed its opinion that such grave injuries (cutting both legs below knee joint) can only be inflicted on a person who had either been knocked down or run over by the same train, without examining any expert to that effect.

16. If it was an offence under section 147 of the Railways Act then why no F.I.R was lodged? Rather, an accidental death report under section 174 of the Cr. P.C came to be filed by the Investigating Agency and accepted by the Executive Magistrate. Thus, it was indeed an 'untoward incident' as defined in section 123 (c) (2) of the Railways Act. From the evidence hereinabove, it can be safely inferred that the deceased was a *bona fide* passenger and, therefore, benefit of the welfare legislation cannot be denied to the dependants of the deceased. The respondent has failed to discharge its burden in bringing the case within the purview of clauses (a) to (e) of section 124-A of the Railways Act, meaning thereby, it was a criminal act on the part of the deceased himself.

17. In case of **Union of India Vs. Rina Devi, 2018 ACJ 1441**, in paragraphs 16.1 and 16.2, the Hon'ble Supreme Court on the point of principle of strict liability and concept of self inflicted injury observed thus;

“16.1 From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and Section 124A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an ‘untoward incident’. Only exceptions are those provided under proviso to Section 124-A. In Prabhakaran Vijaya Kumar, 2008 ACJ, 1895 (SC), it was held that section 124-A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela, 2010 ACJ 2453 (SC)”.

16.2 Coming to the proviso to Section 124-A to the effect that no compensation is payable if passenger dies or suffers injury due to the situations mentioned therein, there is no difficulty as regards suicide or attempted suicide in which case no compensation may be payable. Conflict of opinions in High Courts has arisen on understanding the expression ‘self inflicted injury’ in the proviso. In some decisions it has been held that injury or death because of negligence of the victim was at par with self inflicted injury. We may refer to the decisions of High Courts of Kerala in Joseph PT., 2014 ACJ 559 (Kerala), Bombay in Pushpa, 2018 ACJ 1296 (Bombay) and Delhi in Shayam Narayan, 2018 ACJ 702 (Delhi), on this point”.

18. Section 124-A of the Railways Act lays down strict liability or no fault liability in case of railway accident. The respondent has not been able to bring it's case under clause (c) of proviso to Section 124-A of the Railways Act and, therefore, it is bound to compensate the dependants of the deceased who suffered death in an untoward incident.

19. The Tribunal has answered the first issue in the affirmative so as to say, the appellants are the dependants of the deceased within the meaning of section 123 (b) of the Railways Act.

20. Thus, in the aforesaid background, the appeal needs to be allowed with costs of Rs.3,000/-.

21. The impugned judgment and order dated 30th June, 2017 passed by the Railway Claims Tribunal, Mumbai Bench in Claim Application No. OA (II u)/MCC/0200/2012 is quashed and set aside.

22. The respondent–Railway shall deposit compensation of Rs. 8,00,000/- (Rupees Eight Lakhs only) in the Railway Claims Tribunal Mumbai within a period of six weeks from today.

23. There shall be equal apportionment of the amount of compensation amongst the appellants.

24. If the respondent fails to deposit the compensation within six weeks, future interest at the rate of 9% p.a. shall have to be paid on the amount of compensation, till the entire amount is realised.

25. The Record and Proceedings be remitted to the Railway Claims Tribunal, Mumbai.

[PRITHVIRAJ K. CHAVAN, J.]