

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
FIRST APPEAL NO.658 OF 2018

Mr. Sadashiv Ramappa Kotiyan]
 Age Years, Occ: Retired,]
 R/at: Dhobighat Housing Society,]
 Room No.118, Trombay,]
 Mumbai – 400 088.] **Appellant**

Vs.

Union of India,]
 Through General Manager,]
 Central Railway, CSTM, Mumbai.] **Respondent**

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Mr. Vasant N. 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 : 4th MARCH, 2021.
PRONOUNCED ON: 15th MARCH, 2021.

JUDGMENT:

1. This appeal takes an exception to the judgment and order of dismissal of Claim Application No. OA/(IIu)/MCC/1151 of 2011 passed on 31st January, 2018 by the Railway Claims Tribunal, Mumbai Bench, Mumbai.

2. Facts in brief are as follows;

On 2nd May, 2011, one Jagdish Sadashiv Kotiyan (for short 'deceased') a labourer aged about 27 years was travelling by a local train from Mankhurd to Sewri on the strength of a second class ticket bearing No. C-65423677. When the train reached near Govandi station, he accidentally fell down from the running train and was cut into two pieces from the waist and died on the spot leaving behind his father Sadashiv Kotiyan, the appellant herein.

3. A claim application was filed before the Railway Claims Tribunal, Mumbai, seeking compensation. The Tribunal, after going through the evidence of the appellant on affidavit and having considered the record of the respondent arrived at a conclusion that the presence of the deceased in the railway premises was unauthorized and consequently, he was knocked down by an unknown train while crossing railway track, meaning thereby, the Tribunal held that it was the negligence of the deceased which resulted into his death. As the said act was an offence, it does not cover within the term "untoward incident" as defined in Section 123 (c) (2) of the Railways Act, 1989 (for short 'Railway's Act').

4. Aggrieved with the said judgment and order, the appellant has preferred this appeal.

5. I heard Mr. More, learned Counsel for the appellant and Mr. Pandian, learned Counsel for the respondent.

6. In short, it is contended by Mr. More that the Tribunal has committed a grave error in ignoring a valid ticket held by the deceased while travelling in a local train on the date of the incident. It was indeed a case of falling down from a running local train and, therefore, according to Mr. More, the Tribunal ought to have held that it was an accidental death of the deceased and it was the duty of the respondent to prove that it was not an untoward incident as per section 123 (c) (2) of the Railways Act. It is contended that the Motorman who has given evidence was not an eye witness of the accident.

7. According to Mr. More, had it been an offence under section 147 of the Railways Act and had there been sufficient material on record then Investigating Officer ought to have registered an F.I.R but in the absence of an F.I.R, it can be said to be an accidental death of the deceased. The respondent has not proved the exceptions (a) to (e) of Section 124-A of the Railways Act to deny its liability to compensate the appellant on account of death of the deceased in railway accident.

8. Finally, it is contended that the learned Tribunal is not an expert to opine as to how the injuries could have been sustained as erroneously observed in the impugned judgment.

9. Mr. More, therefore, strongly contended to quash and set aside the impugned judgment and order.

10. Mr. Pandian, the standing Counsel for the respondent, however, has supported the impugned judgment by contending that

the appellant Sadashiv Kotiyan-A.W.1, father of the deceased was not an eye witness to the incident. According to Mr. Pandian, the Tribunal has rightly believed the photostat copies of the inquest panchanama, postmortem report, death certificate of the deceased as well as the D.R.M's report which is marked as "R colly" to reach to a conclusion that the deceased died due to his own criminal act. He, therefore, prayed for dismissal of the appeal.

11. Affidavit in lieu of examination-in-chief of the appellant, in sum and substance, indicates that the deceased was a bachelor who was travelling from Mankhurd to Sewri by a local train on 2nd May, 2011 on the strength of a valid second class railway ticket bearing No. C-65423677. Admittedly, the said ticket was recovered while drawing an inquest panchanama by the respondent.

12. On the other hand, Rajesh Kumar Parmeshwar Singh – R.W.1 working as a Motorman of the Central Railway in his affidavit of examination-in-chief deposed that on 2nd May, 2011 he was on duty on local train No. PLAD-5, from Panvel to Andheri. The local train reached Govandi Railway Station at 8.27 hours on up local line. The said local train entered platform No.2 at Govandi Railway Station. Before stopping the train at Govandi Railway Station, he noticed a person who was cut into two pieces from waist lying at a distance of 10 meters near EMU on the up local line. He immediately informed the Guard of his train on his public announcement system.

13. Admittedly, there was no occasion for this witness to notice as to how the deceased died, meaning thereby, he had no occasion to see whether the deceased was cut into two pieces while crossing the

track or whether he fell down from a running train and subsequently came underneath the wheels of another local. The postmortem report confirms the fact that cause of death of the deceased was Haemorrhage shock due to polytrauma as his body was cut into two pieces. The Tribunal appears to have ignored the fact that the deceased was holding a valid travelling ticket and, therefore, it cannot be lost sight that the deceased was a *bona fide* passenger at the relevant time. The respondent has failed to discharge its burden under section 123 (c) (2) of the Railways Act that it was an untoward incident.

14. A.W.1-Sadashiv Kotiyan, father of the deceased, apart from his affidavit of examination-in-chief, has also tendered photostat copies of inquest panchanama, postmortem report, death certificate, copy of railway ticket, PAN Card, ration card, election identity card, Aadhar Card as well as birth and leaving certificate of the deceased on record. There is no effective cross of this witness. Even, the Tribunal has failed to consider that since the respondent did not challenge the genuineness of the railway ticket on the strength of which, the deceased was travelling, he was held to be a *bona fide* passenger of an unknown local train with a valid railway ticket, it ought to have been held that it was an untoward incident. On one hand, the Tribunal held that the deceased was a *bona fide* passenger but on the other hand, it held that it was not an untoward incident for which the Tribunal laid emphasis on the evidence of the Motorman of Local No. PLAD-5, the inquest panchanama and reports prepared by the Railway Personnel during the course of their duties. The Tribunal went on to observe that the genuineness and veracity of those papers cannot be doubted. I am afraid, the findings returned by the Tribunal

comprising Vice Chairman (Judicial) and Member (Technical) are in ignorance of settled principle of law *sans* considering the evidence on record in its correct perspective.

15. As already observed, there was no occasion for the Motorman to actually witness the incident as to how it had occurred, meaning thereby, there was no eye witness. Secondly, how can opinion of the Police and the witnesses of inquest panchanama be accepted and relied upon by holding that;

“death may have come to the said deceased as to body cut into two pieces and due excess bleeding due to railway accident”.

These observations are not only improper, incorrect but also perverse and are required to be set aside. Rather, the so-called opinion of the Police and Panchas of inquest panchanama does not indicate that, they had, in fact, seen the deceased crossing the track and hit by the local train, resulting into cutting his body into two pieces. This is something ridiculous.

16. In paragraph 13 of the impugned judgment, the Tribunal observed and I quote;

“It is also worth mentioning that when a person falls down from the running train, his/her body will fall away, where as in this case the deceased body – had been cut into two pieces and was laying in the tracks. This circumstantial evidence

indicates that deceased was crossing the railway track and was not run over by a local train”.

There was no evidence of an expert before the Tribunal to opine as to under what circumstances a person’s body would cut into two pieces and when it would not. The Tribunal should not have rendered its personal opinion while adjudicating the claim under the present Statute. Since the provision for compensation in the Railways Act is a beneficial piece of Legislation, it should receive liberal and wider interpretation and not narrow and technical one. It should advance the object of the Statute.

17. At this stage, it would be advantageous to refer to the observations of the Hon’ble Supreme Court in case of ***Union of India Vs. Prabhakaran Vijaya Kumar & Ors. 2008 ACJ 1895***. The salient features of the said judgment are reproduced as under :-

“8. However, the evidence of D. Sajja, DW-1, who was the Station – Master at the railway station corroborates the evidence of PW-2, DW-1 had deposed that he saw one girl running toward the train and trying to enter the claim and she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. For this reason, the Tribunal held that this was not an ‘untoward incident’ within the meaning of the expression in Section 123(c) of the Railways Act, 1989, as it was an accidental falling of a passenger from a train carrying passengers.

9. In appeal, Kerala High Court was of the view that the deceased sustained injuries, even according to the respondents, in her anxiety to get into the train which was moving. Hence, the High Court held that the deceased came within the expression ‘accident falling of a passenger from a train carrying passengers’ which is an ‘untoward incident’, as defined in section 123(c) of the Railways Act, 1989.

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 passenger from a train carrying passengers'. Hence, it is an 'untoward incident' 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 above mentioned two interpretations, i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh V. Union of India*, (2003) 4 S.C.C. 524 (para 9), *B.D. Shetty V. CEAT Ltd.*, (2002) 1 S.C.C. 193 (para 12), *Transport Corporation of India V E.S.I. Corporation* (2000), 1 S.C.C. 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, the beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemicals Works Co. Ltd. V Workmen*, A.I.R. 1961 S.C. 647 (para 7), *Jeewanlal Ltd. V Appellate Authority*, A.I.R. 1984 S.C. 1842 (para 11), *Lalappa Lingappa V Laxmi Vishbnu Textile Mills Ltd.*, A.I.R. 1981 S.C. 852 (para 13), *S.M. Nilakjar V Telecom Distt. Manager*, (2003) 4 S.C.C. 27 (para 12), etc.

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 larger 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 the railway trains since everybody cannot afford travelling 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 travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, purposive, and not literal, interpretation should be given to the expression.”

18. In case of **Union of India Vs. Rina Devi, 2018 ACJ 1441**, in paragraph 16.1, 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”.

19. In the case at hand, once having held that deceased was a *bona fide* passenger, there was no reason for the Tribunal to construe that while crossing the railway track, he met with an accident which was, *per se*, a criminal act in the light of the discussion made hereinabove. The respondent has failed to discharge it's onus in that regard. It would be apposite to refer to paragraph 16.6 also which reads thus;

“16.6 We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar, 2018 ACJ 1 (SC) laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall

under the proviso to section 124-A merely on the plea of negligence of the victim as a contributing factor”.

20. It has been rightly held by the Tribunal that the appellant has proved that he is the father of the deceased and that mother of the deceased had pre-deceased the deceased.

21. Thus, in the aforesaid background, the appeal is allowed with costs of Rs.3,000/-.

22. The impugned judgment and order dated 31st January, 2018 passed by the Railway Claims Tribunal, Mumbai Bench in Claim Application No. OA (IIu).MCC/1151 of 2011 is quashed and set aside.

23. The respondent–Railway shall pay a compensation of Rs. 8,00,000/- (Rupees Eight Lakhs only) to the appellant, within a period of six weeks from today.

24. If the respondent fails to pay 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.]