

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.541 of 2018

Rajesh Nivrutti Dongre and ors .. Appellants
Versus
Union of India, through General .. Respondent
Manager, Central Railway Mumbai.
...

Mr.Vasant More for the applicant.
Mr.T.J. Pandian for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 25th APRIL, 2022

P.C:-

1 The present Appeal is filed by the appellants/claimants before the Railway Claims Tribunal, on rejection of their claim for compensation from the Railway, on account of the death of their father, aged 75 years in an untoward incident while he travelled in a local train on a second class valid railway ticket from Sandhurst Road to Dadar Railway Station.

 The Railway Claims Tribunal, Mumbai Bench, rejected their claim application filed by them vide OA (II) U-MCC/0468/2012 by judgment dated 30/6/2017, on the ground that the claimants have failed to establish that the deceased was a

bonafide passenger of railway and also on the ground that the deceased was trying to board the running local train, and resultantly, fell down and sustained serious head injuries and therefore, the accident is not covered within the term 'untoward incident' defined u/s.123(c)(2) of the Railways Act.

2 Heard learned counsel Shri Vasant More for the applicant and Mr.T.J. Pandian for the UOI, Central Railway, Mumbai.

On 5/3/2012, Nivrutti Baban Dongare, aged 75 years resident of Mandvi Koliwada was travelling by Dn Kasara local train from Sandhurst Road to Dadar Railway station, and while he was boarding the said train, which was overcrowded, it is alleged that he received a forceful push from the co-passengers inside the compartment and lost his balance and fell from the train, sustaining serious injuries on his head. He succumbed to the said injuries, leaving behind his two sons; Rajesh and Pramod as his dependents.

3 The dependents of Nivrutti lodged a claim with the Tribunal u/s.16(A) r/w Section 13(1)-A of the Railway Claim Tribunal Act, 1987 and Section 124-A, seeking compensation to the tune of Rs.Four lakhs from the Railways, on account of the death of their father Nivrutti Baban Dongare, in an untoward incident alleged to have taken place on 5/3/2012. It was submitted that he was aged 75 years and since it was reported that

the incident took place while boarding the train, the Railway was liable to pay compensation since he was a bonafide passenger, as per Section 2(29) of the Railways Act.

In the claim, it was stated that the applicants were not the eye witness to the said incident, but their father was travelling on second class railway ticket which was valid, but during the entire episode, the ticket was lost.

4 The Railway defended the claim on the ground that the deceased was not a bonafide passenger of local train, as no journey ticket was recovered from his possession during the panchnama, though on checking his person, cash of Rs.39,340/-, a telephone diary and bunch of keys were recovered. On the basis of the documents in his bag, in form of the voting card, his identity was traced. However, the railway took a specific stand that there was no mention of recovery of any ticket or travelling authority from possession of the deceased and therefore, he cannot be said to be a bonafide passenger.

The claim was also contested on the ground that the deceased met with an accident while he was trying to board a running train which is an imprudent and criminal act, and in the process, he had fallen down and sustained injuries. This was indicative of the fact that he endangered the safety of his life and therefore, the incident is not covered within the meaning of Section 123(C)(2) of the Railways Act and the Railway

Administration is exempted from any liability u/s124-A of the Railway Act.

5 In support of the claim, the applicant no.1 filed his affidavit dated 12/1/2015 and re-iterated his claim. He stated that his mother had pre-deceased his father and the two applicants are the sons of the deceased. Their dependency was established before the Tribunal from various documents like the ration card, Aadhar card and election identity cards. Since no evidence to the contrary was brought on record, it was held that the applicants were the legal dependents of deceased Nivrutti u/s.123(b)(i) of the Railways Act, 1989.

The deponent of the affidavit stated that his father was travelling by Dn Kasara local train from Sandhurst Road to Dadar Railway station and on the fateful day when he was boarding the train, he received a push from the co-passengers inside the compartment and account of his old age, he lost balance and fell down from the train, resulting into head injuries.

In support of the claim, the police report, the report from DRM as well as Inquest Panchnama and post mortem report were placed on record.

The DRM report dated 5/3/2012 reported that information was received from the Control Helpline that one person had fallen down while boarding the local train and he sustained injuries on his right hand palm. The said person was

identified as 'Nivrutti'. The police report for registration of accidental death also mentioned about falling of an unknown person aged 55 years from the local train on platform no.1 in between km 2/11 and 2/12 and he was taken to St. George's Hospital but was declared dead before admission.

The police report also mentioned about the belongings recovered from the deceased, including a switched off mobile, calculator, one spare dress and some cash along with telephone diary, voting card, bunch of keys etc.

On identifying the body, contact was established with his son and the body was handed over to them.

6 The Inquest Panchnama record a contused lacerated wounds on right occipital area as well as over right forehead, admeasuring 25 x 5 x 5 and 2x1x1, respectively. The post mortem report Column no.17 record – 'abrasion' 15 cm x 5 cm on left portion of the chest and amputation of middle finger of left hand with crush injury of ring finger and index finger – Abrasions of thigh and knee. As far as head injury is concerned, corresponding to the contused lacerated wound, it mention presence of haematoma over right occipital area and over right fronto parietal area. The cause of death has been ascertained as 'Due to head injury' (unnatural).

7 As indicated above, the Railway contested the claim by denying that the deceased was not a bonafide passenger since

no ticket was recovered from him, though his other belongings were intact and were recovered from his body and the clothes/bag which he was carrying. The panchnama recovered certain belongings, it did not however, include the ticket, is the submission advanced on behalf of the Railway and on this basis, the Tribunal reject the claim by recording that no material has been placed on record by the applicant to establish that the deceased was a bonafide passenger of the train.

8 The learned counsel for the applicant has relied upon the decision of the Apex Court in case of Union of India vs. Rina Devi, ACJ, 2018, 1441.

The Hon'ble Apex Court, while dealing with the extent of liability of a Railway, as provided u/s.124 of the Railways Act, when an accident occurs, being either collision between the trains or on account of derailment or of a train or any part of train, carrying passengers, whether there is any wrongful act or default on part of the railway administration, which entitled a passenger injured or suffered a loss to maintain an action to recover damages, dealt with the issue whether the principle of strict liability applies. Dealing with the aspect whether the claimant is a bonafide passenger, when the body is found on railway premises and in such situation, who shall discharge the burden and dealing with the conflict in decisions on the said point, by recording that compensation is payable for death or injury to a passenger, the Hon'ble Apex Court concluded as under:-

“We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket with with such injured or deceased will not negative the claim that he was a bonafide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly”

9 In the wake of the aforesaid, enunciation of law to the effect that mere absence of ticket with an injured or deceased will not negative the claim that he was a bonafide passenger and though initial burden will be on the claimant, it can be discharged by filing an affidavit of the relevant facts, and then the burden shall shift on the railways and the issue can be decided on the facts shown or the attaining circumstances.

10 The applicants have specifically filed an affidavit deposing that their deceased father was a bonafide passenger travelling in second class compartment and he was armed with a ticket which was lost during the journey, shift the burden upon the railway to refute the said claim. In absence of discharge of the said burden by the railway, mere assertion that the deceased was not a bonafide passenger, shall not deprive the claimants of compensation.

11 Another aspect on which the claim has been refused is for the reason that the deceased took a risk on his own and therefore, he was not entitled for compensation, as his act amounted to criminal negligence.

I am unable to agree with the said submission advanced by Mr.Pandian in the facts of the present case, since there is a succinct distinction between an untoward incident and an act of criminal negligence. Negligence itself, may not disentitle grant of compensation, however, once the negligence becomes the criminal negligence and it is a self-inflicted injury, then the compensation cannot be granted in terms of Section 124-A of the Railways Act, which clearly provide that compensation will not be payable in case the death takes place on account of suicide or attempt to suicide, self inflicted injury, bonafide passengers criminal act or the act committed by the passengers in state of intoxication or insanity.

The concept of 'self inflicted injury' is distinguished from negligence or contributing to the negligence. In United Insurance Co. Ltd Vs. Sunil Kumar 2018 ACJ 1(SC), it was held that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' u/s.163A of the Motor Vehicles Act, 1988.

A death or injury in the course of boarding or de-boarding a train, will definitely fall within the purview of

‘untoward incident’ entitling a victim or his family to claim compensation and by no stretch of imagination, it would fall within the purview of proviso to section 124A, merely by pleading negligence of the deceased as a contributing factor.

12 It is not an unusual situation when the passengers boarding or deboarding a local train in Mumbai, which is often overcrowded, take a risk either to gain entry or exit of the local train, in haste, considering the number of people attempting to gain an entry or secure an exist. The version of the applicants, while claiming the compensation, is their father was boarding a train, but was pushed out by crowd present inside the compartment and therefore, he fell on platform no.1, sustaining a head injury. The railway has not brought any evidencen to the contrary, except

submitting that the deceased had contributed to the act and was negligently attempting boarding the train.

I am unable to be persuade myself to accept the stand of the railway or uphold the finding of the Tribunal, to the effect that the deceased had fallen out of the train as he was attempting to board a train which was overcrowded. Since the report of the police clearly record ‘one unknown person, aged 55 years, lying injured at KM-No, 02M-12 on 5NR.b station PF No.01, Reason has fallen down while boarding or alighting local train and sustained injury on right hand palm and rendered first aid, is

clearly indicative of the fact that the deceased is the victim of an 'untoward incident', which would entitle his dependents for the compensation.

13 For the reasons recorded above, the impugned judgment which fail to appreciate the factum of the manner in which the accident took place, cannot be sustained and deserve to be set aside. The applicants are entitled for the compensation for death of their father in an untoward incident, covered by Section 123(c)(2) of the Railways Act, and since the claim was instituted in the year 2012, which entitle them to a compensation of Rs.Four lakhs, on the amendment, since claim is allowed today, they are held entitled for compensation of Rs.Eight lakhs to be equally divided amongst the two. However, I am not entitled to grant any interest on the said amount, provided the railway make the payment to the claimants within a period of 12 weeks from the date of communication of the said judgment. However, failure to make over the compensation to the claimants within the aforesaid period, shall carry an interest of 9% p.a. till the date of it's realization.

Appeal is allowed in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)