

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

First Appeal No.662/2021

Rambhau s/o Gyanadev Giri,
Aged 49 years, Occ.-Labour,
R/o.-Muli, Tq. Gangakhed, Distinct Parbhani. Appellant.

-versus-

Union of India, through the General Manager,
South-Central Railway Secunderabad (A.P.). Respondent on R.A.

Mr. R.G. Bagul, Advocate for appellant.
Ms N.G. Choubey, Advocate for respondent.

CORAM : NITIN W. SAMBRE, J.
DATE : 30-08-2022

Oral Judgment

Heard.

2. The appellant/applicant filed Claim Application No.OA (II-u)/NGP/2011/0091 before the Railway Claims Tribunal, Nagpur Bench, alleging that on 18-03-2010, his uncle while travelling in a train suffered an railway accident. As such, the claim for compensation was made, which was rejected by the Tribunal on the ground that the applicant/appellant is not dependant within the meaning of provisions of sub-section (b) of Section 123 of the Railways Act (for short, 'Railway Act').

3. The learned Counsel for the appellant has invited my attention to the judgment of the Hon'ble Apex Court in the case of *Smt.*

Manjuri Bera vs Oriental Insurance Co. Ltd¹. According to the learned Counsel for the appellant, the provisions of Section 123(b) of the Railways Act are *pari materia* with the provisions of Sections 166 and 168 of the Motor Vehicles Act, 1988. He would as such claimed that the word 'dependant' is a relative term. In the present case even if the appellant can be termed as Class-I heir but is entitled to claim compensation. He would try to lend support of the paragraphs 12 to 14 and 16 of the above referred judgment of the Hon'ble Apex Court, which read as follows :-

12. According to Section 2(11) of CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. under Section 2(1)(g).

13. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique (AIR 1989 SC1589) the definition contained in Section 2(11), CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. (AIR1987 SC1690) a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

14. *There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of [Section 140](#) of the Act does not cease because of absence of dependency.*

16. *Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to [Section 140](#) of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from [Section 140](#) of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae."*

4. The learned Counsel for the respondent would support the judgment impugned. According to her, in sub-section (b) of Section 123 of the Railways Act term 'Nephew' is specifically mentioned as Nephew is not a Class-I legal heir. Hence he cannot fall within the definition of dependent. According to her, the appellant has no locus to claim compensation in the matter.

5. I have appreciated the said submissions.

6. Considering the adverse social/financial impact over the dependents of the victim of railway accidents, the provision of remedy of

compensation is made. As such the word 'dependent' used under the provisions of Section 123 (b) of the Railways Act has to be considered as relative term.

7. In the aforesaid backdrop, particularly when the applicant is holding Succession Certificate, it was necessary for the Tribunal to record a finding of fact of effect of such Succession Certificate on the provisions of the Railways Act. It appears that the Tribunal has failed to consider the same.

8. That being so, the appeal is partly allowed. The impugned judgment dated 07-06-2013 passed by the Railway Claims Tribunal, Nagpur Bench in Claim Application No.OA (II-u)/NGP/2011/0091 is set aside. The Claim Application No.OA (II-u)/NGP/2011/0091 filed by the applicant/appellant stood restored to the file of Railway Claims Tribunal, Nagpur Bench. The parties shall appear before the Railway Claims Tribunal, Nagpur Bench on 12-09-2022.

9. The Appeal stands disposed of.

JUDGE