

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 959 of 2011

Kakali Kurmi

Vs.

Union of India & Anr.

For the Appellant/
Claimant

:Mr. Supratim Dhar, Advocate
Mr. Kazi M. Rahaman

For the Respondent /
Union of India

:Ms. Aparna Banerjee, Advocate

Hearing concluded on
Judgment on

: January 03, 2023

: January 09, 2023

Bibhas Ranjan De, J.

Brief facts available on record for just decision of the appeal

1. This appeal has been preferred challenging the judgement and order passed by Railway Claims Tribunal, Kolkata Bench in

connection with A/922/2002, whereby Ld. Tribunal dismissed the claim petition.

2. The claim petition filed by one Kakali Kurmi under the Railways Act, arose out of an accidental death of her father Nitya Gopal Kurmi in an 'untoward incident' within the meaning of Section 124A of the Railways Act, 1989 for payment of compensation of Rs. 4,00,000/-. Specific case of the claimant is that on 12.01.2002 her father was travelling from Berhampur Rail Station to Jiaganng Rail Station by **103 by Up Lalgola Passenger Train**. It is alleged that her father fell down from the running train between Berhampur and Cossimbazar Rail Station at about 2.00 p.m. In effect her father succumbed to his injuries on the spot. It is further alleged that her father was carrying a bag containing brass, copper household materials, some money and ticket which was lost after the accident.

3. On receiving notice Railways Administration appeared and filed written statement denying all material averments of the claim petition contending inter alia that claimant is not entitled to any compensation whatsoever.
4. In course of trial, claimant examined herself as AW-1 and one Pradip De has been examined as AW-2 .In course of their evidence, ration card, Police Report, Post Mortem report and inquest report were admitted in evidence as exhibit A1 to A4.
5. After scrutiny of the entire evidence on record, Ld. Tribunal ignored the evidence of eye-witness (AW-2) and returned his finding as follows:-

“ Considering all the oral and documentary evidence filed on record and the pleadings of the Ld. Counsels of both the sides, I am of the considered opinion that the applicant has miserably failed to prove that the deceased was a bona fide passenger of the train in question and he

accidentally fell down from the running train causing his death on the spot as alleged in her claim application.

These three issues are, therefore, decided against the applicant and in favour o the respondent railway.”

Argument advanced:-

6. Learned Advocate, Mr. Supratim Dhar, appearing on behalf of claimant, at the outset, submitted that Learned Tribunal should not have discarded the evidence of AW-2 only because of discrepancies of surname. It has been submitted further that accidental death due to railways accident has been proved beyond doubt by adducing the oral evidence together with the documents admitted in evidence as exhibit A2 (final Police Report), exhibit A3(Post Mortem Report) and exhibit 4 (inquest report) within the meaning of ‘untoward incident’ enumerated in Section 124A of the Railways Act, 1989. In

support of his contention Mr. Dhar has referred to the provisions of Railways Act, particularly Section 123 & 124A.

7. Mr. Dhar has further argued that there is no dispute that the dead body of father of the claimant was recovered from the railways track and railway authority did not take any steps under Section 147 of the Act required to be taken against a trespasser.
8. In support of his contention, Mr. Dhar relied on the following authorities.

A. Union of v Rina Devi reported 2019) 3SCC 572

B. Keshu Shankarlal Giri Vs Union of India (2021) 03 BOM CK 0020

C. Suchitra As (Ash) Vs. Union of India in FMA 384 of 2015 passed by Hon'ble Division bench of this Court on 11.04.2019.

9. Per contra, Learned Advocate, Ms. Aparna Banerjee, appearing on the behalf of the Railway Authority, supporting the

judgment passed by the Learned Tribunal, submitted that there is material discrepancy in the evidence of AW-2 (so called eye-witness) with regard to alleged accident due to falling from the train. Ms. Banerjee has further submitted that the residence of AW-2 is situated at ½ kilometer away from the station and thereby Ms. Banerjee has tried to make this Court understand that, it was not possible for AW-2 to hear the sound of people over there at the place of accident. Ms. Banerjee has concluded her argument by submitting that claimant failed to prove any 'untoward incident' within the meaning of Section 124A of the Railways Act, 1989 to justify the claim in the case.

Decision:-

10. PW-1, in her evidence corroborated the entire facts of claim petition and further she specifically stated that at about 2.30 p.m. she came to know from their neighbour that her

father fell down from running train between Berhampur and Cossimbazar and succumbed to his injury. She went to the spot and found dead body of her father lying beside the Railway Track with head injury. From her examination-in-chief it further appears that her father was travelling by train for Jiagang to purchase vegetables for his business. In her cross-examination she also stated the date of accident of her father who was engaged in vegetable business near their house. One Pradip Saha of their locality informed her about the accident but she was not acquainted with Pradip Saha who knew her father.

11. Learned Tribunal took a stand of discrepancies of surname of Pradip. Actually, Pradip De was examined as AW-2 claiming himself to be an eye-witness to the accident. From the evidence of AW-1 it appears that she did not know Pradip who informed her about the accident of her father. Therefore,

mistake of disclosing the surname of Pradip as Saha instead of De cannot be a fatal.

12. Next, coming to evidence of AW-2, I find that in his examination-in-chief, he has stated that on 12.01.2002 while he was working in his crop field adjacent to his house nearby Sealdah Lalgola Railways Track suddenly he heard hue and cry from the train which was passing by .He saw a person falling from the train. He along with other local people rushed to the spot and found dead body of father of the claimant. Thereafter, he informed the matter to the house of the claimant. In cross-examination, he testified that he heard sound of 'pore gelo pore gelo' and he went to the spot and saw the victim. He had not seen the victim falling down from the train and deceased was his neighbour whose house is situated at a distance of 2/3 Kms from his house. He further testified that he informed the daughter of the deceased but did not

informed Police. Therefore, from the evidence though I find few discrepancies but ultimately it comes out from his evidence that he heard sound of people of the train from a distance of 1/2 kms away from his field where he was working and that fact has not been challenged throughout his cross-examination.

13. From the inquest report, Post Mortem Report and also the police report, I find that deceased sustained accidental injury by the involvement of 103 Up Lalgola train. It is also found from those reports that dead body of Nitya Gopal Kurmi was found on the railways track and no foul play could be detected behind the death of the deceased and final report in connection with DPC/ GRPS U/D Case No. 2 of 2002, was submitted.

14. After scrutiny of the entire oral evidence of AW-1 and AW-2 together with the Police Repots, I am unable to find out

any discrepancies in holding accidental death of Nitya Gopal Kurmi by the involvement 103 Up Lalgola train.

15. In **Rina Devi** (supra) Hon'ble Apex Court observed as follows:-

“ Re: (iii) Burden of Proof When Body Found on Railway Premises – Definition of Passenger :

17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket Union Of India vs Rina Devi on 9 May, 2018 Indian Kanoon - <http://indiankanoon.org/doc/94898543/> 10 was punishable, the burden was on the railway administration to prove that passenger was not a bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in Gurcharan Singh (supra) held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows :

“3(ii) In my opinion, the contention of the learned counsel for the appellants/claimants is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the facts of a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants.

I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bonafide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules

or as per any judgment of the Supreme Court. No doubt, in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at a place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of a learned Single Judge of this Court in the case reported as *Pyar Singh Vs. Union of India* 2007 (8) AD Del. 262 which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of *Leelamma* (supra).” 17.2 In *Jetty Naga Lakshmi Parvathi* (supra) same view was taken by a single Judge of Andhra Pradesh after referring to the provisions of the Evidence Act as follows :

“22. So, from Section 101 of the Indian Evidence Act, 1872, it is clear that the applicants, having come to the court asserting some facts, must prove that the death of the deceased had taken place in an untoward incident and that the death occurred while the deceased was travelling in a train carrying passengers as a passenger with valid ticket. Therefore, having asserted that the deceased died in an untoward incident and he was having a valid ticket at the time of his death, the initial burden lies on the applicants to establish the same. The initial burden of the applicants never shifts unless the respondent admits the assertions made by the applicants. Such evidence is lacking in this case. Except the oral assertion of A.W.1, no evidence is forthcoming on behalf of the applicants. The court may presume that the evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it. The best evidence rule, which governs the production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. Section 114(g) of the Indian Evidence Act, 1872 enables the court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such an evidence. The Claims Tribunal, upon considering the material on record, rightly dismissed the claim of the applicants and there are no grounds in this appeal to interfere with the order of the Tribunal.” 17.3 In *Kamrunnissa* (supra), from the circumstances appearing in that case it was held that there was no evidence that the deceased had purchased the ticket. In the given fact situation of that case, this Court inferred that it was not a case of ‘untoward incident’ but a case of run over. It was observed : “7. The aforesaid report also reveals, that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates, that the intestine of the deceased had come out of the body. The above factual position reveals, that the body was cut into two pieces from the stomach.

This can be inferred from the facts expressed in the inquest report, that the intestines of the deceased had come out of the body. It is not possible for us to accept, that such an accident could have taken place while boarding a train.

8. In addition to the factual position emerging out of a perusal of paragraphs 7 & 8 extracted hereinabove, the report also reveals, that besides a pocket diary having been found from the person of the deceased a few telephone numbers were also found, but importantly, the deceased was not in possession of any other article. This further clears the position adopted by the railway authorities, namely, that the deceased Gafoor Sab, was not in possession of a ticket, for boarding the train at the Devangere railway station.” 17.4 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 bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide 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. Re: (iv) Rate of Interest

18. As already observed, though this Court in Thazhathe Purayil Sarabi (supra) held that rate of interest has to be at the rate of 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in Mohamadi (supra), rate of interest has to be reasonable rate at par with accident claim cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises upto the date of payment, without any difference in the stages. Legal position in this regard is at par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner. The appeal will stand disposed of accordingly.”

16. Therefore, even in absence of railway ticket it does not make any difference unless burden is discharged by the railway authority while dead body was found on the railway

track. In our case, evidence of AW-1 was duly corroborated by the eye-witness AW-2.

17. In **keshu Shankarlal Giri** (supra) it was held as follows:-

“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 it's 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; 6 of 8 3-FA-529-2018.doc "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. Here in this case also report under Section 174 of Cr.P.C (exhibit-A4) was filed in support of an ‘untoward incident’ as defined in Section 123 (c)(2) of the Railways Act and in this case principle of strict liability applies and naturally, proof of negligence is not required. In our case, from the Police Reports, I find that no foul play was detected and accordingly final report was submitted.
19. In ***Suchitra*** (supra) Hon’ble Division Bench our Court also relied on that ratio of ***Rina Devi*** (supra).
20. Gamut of aforesaid discussion boils down to the conclusion that Nitya Gopal Kurmi died in an accident by the involvement of 103 Up Lalgola train which is an ‘untoward incident’ within the meaning of Section 123 (C)(2) of the Railways Act, 1989 and therefore claimant is entitled to compensation in terms of ratio of ***Rina Devi*** (supra).

21. Accordingly, claimant/appellant is entitled to compensation to the tune of Rs. 4,00,000/- along with interest @ 6% per annum from the date of accident till the deposit of compensation amount subject to maximum of Rs. 8,00,000/-.
22. Respondent/Railway Authority is directed to deposit the said amount of compensation before the office of the Learned Registrar General within 8 (eight) weeks from date, failing which appellants/claimant would be at liberty to put the award into execution.
23. Appeal succeeds.
24. All pending applications, if any, stand disposed of.
25. Let a copy of this judgement along with the Tribunal record be transmitted back at once.
26. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]