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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.2480 OF 2011

Suresh Maruti Deungale

... Appellant

V/s.

Union of India, through General
Manager, Central Railways, C.S.T.
Mumbai.

... Respondent

Mr. Vaneet Khosla for the appellant.

Mr. T.J. Pandian and Dheer Sampat for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 1, 2023

PC.:

1. The appellant, the original claimant, has filed a present appeal challenging the Judgment and Order passed by the Railway Claims Tribunal Mumbai, bench Mumbai in case No.OA 080 of 2004 dismissing the claim.

2. The facts relevant to the adjudication of the issues involved are as under. On 30th December 2003, deceased Sakubai Maruti Deungale, while travelling by local train between Vashi to C.S.T., accidentally fell down from the local train between Vashi and Mankhurd railway station and died on the spot due to severe head injury. On 13th February 2004, the appellant being the dependent husband of the deceased, filed claim of compensation of Rs.4,00,000/- (Rupees Four Lakh Only) before the learned Tribunal. The respondent contested the application by filing a

written statement denying the fact of falling down from the train and raising the defence that the deceased was not a bona fide passenger and had not fallen down from the train. However, based on statements of the motorman and Guard, the Tribunal recorded a finding that the railways discharged the burden that the deceased was not a bonafide passenger with a valid ticket and the accident did not occur due to her falling down from the train. Aggrieved, thereby husband has filed the present appeal.

3. Learned advocate for the appellant invited my attention to the husband's evidence wherein he stated that he is the only legal representative of the deceased wife as they have no issues out of the marriage. It is stated that on inquiry with police informed him that his wife had fallen from an unknown local train. The said fact was recorded in First Information, Panchnama Report and Police Report. He stated that while handing over the ornaments of the deceased wife, a railway ticket purchased by his wife was also handed over to him by Railway Police. In his affidavit, he stated that the statements of the motorman and Guard were recorded after a gap of three years, i.e. on 23rd September 2006 and 25th September 2006.

4. He submitted that a relative of the deceased who accompanied her while purchasing the valid ticket and had seen from while her trains to C.S.T. proves that she was a bona fide passenger with a valid ticket. He also invited my attention to paragraph 14 of the written statement wherein it is admitted that the finding recorded in the impugned Judgment and Order is contrary to the well-settled principles of law.

5. *Per contra*, the learned advocate for the respondent Railways invited my attention to the memo prepared by Guard immediately after the incident, which stated that the accident resulted from the train's knocking down. He relied on the memo of the Station Master and the affidavit of the motorman and Guard in support of the finding recorded by the Tribunal. He submitted that the husband's evidence could not be relied upon as the statements made in the affidavit were not based on the personal knowledge of the husband. He, therefore, submitted that Tribunal has rightly recorded a finding that the respondent has discharged the burden to prove that the deceased was not a bona fide passenger with a valid ticket.

6. The contentions raised by both sides fall for consideration. However, before discussing the material on record, it would be useful to note relevant provisions of the Railways Act 1989.

Section 123(c) “untoward incident” means—

1 (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987; or

(ii) the making of a violent attack or the commission of robbery or dacoity ; or

(iii) the indulging in rioting, shoot-out or arson,

be any person in or on any train carrying passengers, or in a waiting hall, cloakroom or reservation or booking office or any platform or in any other place within the precincts of a railway station ; or

(2) the accidental falling of any passenger from a train carrying passengers.

Section 2(29) “passenger” means a person traveling with

a valid pass or ticket;

Section 124-A. Compensation on account of untoward incidents-- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation— for the purposes of this section, “passenger” includes—

- (i) a railway servant on duty; and

- (ii) a person who has purchased a valid ticket for traveling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

7. A conjoint reading of the aforementioned provisions makes it clear that the dependent is entitled to compensation on account of

an untoward incident when initially he discharges onus to prove that the claimant is dependent on the deceased; the deceased was travelling as a bonafide passenger possessing a valid ticket; death was due to the untoward incident.

8. The question of burden of proof is no longer res integra in view of the judgment of Apex Court in **Union of India Vs. Rina Devi**, reported in (2018) ACJ 1441, wherein the Apex Court held that the initial onus would be on the claimant to prove necessary facts which can be discharged by filing an affidavit of the relevant facts. The onus will then shift to the railways. The issues can be decided on the facts proved or the attending circumstances.

9. In the present case to discharge onus, the claimant examined himself by stating that he is the only legal representative of the deceased and that she died issueless. He also stated on oath that the information of the fact that he received information from railway police that the deceased fell down from an unknown local train. This fact was also recorded in First Information Report and Police Report. He stated that railway police, after the incident, handed over to him a valid railway return ticket purchased by the deceased bearing No.95842 dated 30th December 2003 from Vashi to C.S.T. He tendered said ticket before the Railway Tribunal.

10. To prove that the deceased was a bonafide passenger with a valid ticket, the applicant examined his relative Namdev Vithal Patil, who stated that the deceased being his relative, had come to his house to meet his family. While the deceased was returning to her home, he accompanied her as she was travelling alone by

railway. She purchased a second-class railway ticket for herself and purchased a platform ticket for him. He stated that he had seen her boarding a local train from Vashi railway station.

11. Evidence led by the claimant and Namdev Patil discharged the initial burden to prove the facts entitling the claimant to claim compensation.

12. To discharge the burden shifted, Railway/respondent examined the motorman and Guard. Motorman, in his evidence, stated that he noticed one unknown lady trespasser crossing the railway track. He applied emergency break; however, he could not save the lady. Such incident took place at 15:05 hours on 30th December 2003. He immediately informed the said fact to the Guard. Reliance is also placed on the memo of Guard. On perusal of the memo prepared by a guard, it appears it is in printed format. The contents were prepared beforehand, and the Guard inserted the name, date and approximate age of the deceased person in the said format. As rightly pointed out by the learned advocate for the appellant, the said memo does not provide for anything other than the eventuality of a 'person knocked down'. If this is so, such a memo, in the facts of the present case, cannot be relied on to prove the fact that the train knocked down the deceased. Reading the statement of the motorman and Guard makes it clear that the Guard stated facts based on information received from the motorman. Though the motorman has stated that the deceased was crossing the railway track at about 15:00 hrs, the said statement cannot be taken to be relied on in view of the following circumstances. i) Initial statement of the motorman

was recorded three and half years after the incident, i.e. on 15th September 2006. ii) The contemporaneous document in the form of panchnama, first information report and station master memo indicate the cause of the accident as falling down from the train.

13. The most crucial factor the Tribunal failed to consider was the respondent's admission in the written statement. The said admission is as under:-

“..... It is further stated that she was traveling on the part of the coach not intended for use of the passengers which is an offence U/S 156 pf the Railway Act....”

Reading of such admission makes it clear that the respondent made a categorical statement in the pleading that the deceased was travelling on the part of a coach not intended for the use of a passenger. The Hon'ble Apex Court considered the evidentiary value of admission in pleading in the case of **Nagindas Ramdas Vs. Dalpatram Ichharam**, reported in (1974) 1 SCC 242 : (1974). The Apex Court, in paragraph 58, observed that admission in pleading in comparison to judicial admission stands on a higher footing. The Apex Court compared admission in pleading with evidentiary admission by observing that in the case of the former class of admissions, they are fully binding on the party, which constitutes a waiver of proof. They, by themselves, can be made the foundation of the rights of the parties. However, evidentiary admission is admissible during the trial as evidence and is not conclusive by itself. In the facts of the case, the admission quoted above is sufficient to prove that the deceased was a bona fide passenger on the train. The evidence of the claimant's relative is

sufficient to prove that the deceased had purchased a valid ticket and boarded the train. There is no challenge to the fact that the appellant is dependent. In the result, necessary facts entitling the claimant to seek compensation stand proved. Therefore, in my opinion, the Railway Claims Tribunal bench Mumbai was not justified in dismissing the claim.

14. The appellant had filed a claim in the year 2004. On the date of filing of the claim, as per the existing policy, the claimants were entitled to compensation of Rs.4,00,000/- (Rupees Four Lakhs Only), as has been held by the Apex Court in the case of Rina Devi (supra). The claimant shall be entitled to the interest of 6% per annum. However, it is made clear that in case the total amount exceeds Rs.8,00,000/- (Rupees Eight Lakh Only), the claimant shall be entitled maximum compensation of Rs.8,00,000/- (Rupees Eight Lakh Only).

15. The impugned Judgment and Order passed by Railway Claims Tribunal, Mumbai bench Mumbai in Case No. OA 080 of 2004 is quashed and set aside.

16. The appeal stands disposed of in the above terms.

(AMIT BORKAR, J.)