

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

FIRST APPEAL NO.62 OF 2021

1. Smt. Sangeetha Bachad wd/o
Manoranjana Bachad,
Age about 28 years, Occ.- Labour Work,
2. Ku. Roshni Bachad d/o Manoranjan
Bachad
Age 06 years, Occu. Education.
3. Master Dhananjay Bachad s/o
Manoranjan Bachad,
(Appellant no.2 and 3 through applicant
no.1, mother the natural guardian)
R/o 12-77-6, Bengali Camp, Sirpur
Town, Dist. Adilabad (Telangana)
504299.

APPELLANTS

// VERSUS //

Union of India,
Through The General Manager,
South Central Railway,
Secunderabad.

RESPONDENT

Mr. R. G. Bagul, Advocate for the appellants.
Ms. Neerja G. Chaubey, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON 06/02/2023
PRONOUNCED ON 11/04/2023

JUDGMENT

1. This appeal has been filed under Section 23 of the Railway
Claims Tribunal Act, 1987 challenging the Judgment and Award dated

26.11.2019 passed by the Railway Claims Tribunal, Nagpur rejecting the compensation in favour of the appellants.

2. The facts giving rise to the present proceedings are that: The appellant No.1 is the wife and the appellant Nos.2 and 3 are the children of deceased Manoranjan Bachad. The said Manoranjan Bachad lost his life in an accidental fall from running train on 05.04.2017 near Sirpur Railway Station. An amount of compensation to the extent of Rs.8,00,000/- was claimed towards the compensation by the claimants/appellants.

3. As per the contention of the claimants, the deceased went to Secunderabad from Sirpur on 05.04.2017 for his medical checkup in Yeshoda Hospital. He had purchased the ticket for returning back to Sirpur and boarded in Bhagyanagar train. During the journey, he slept and could not alight from the train at Sirpur Railway Station and proceeded up to Balharshah. After acknowledging the fact that, he travelled ahead, he purchased the ticket at Balharshah to Sirpur and boarded in Bhagyanagar Express and when the train arrived at Sirpur Railway Station, while getting down from the train, he accidentally fell down from the train and sustained injury. He was shifted to Government Hospital, Sirpur, where the Medical Officer declared him dead.

Reference is made about loss of ticket in regarding the express Balharshah to Sirpur dated 06.04.2017 by the claimants.

4. The respondent - railway has contested the claim by filing the written statement. As per the contention for the railway, the claim of the claimant is not tenable. The statutory report shows that alleged incident has occurred due to negligence of the deceased only. Deceased was not travelling by train No.17234 i.e. Balharshah - Secunderabad Bhagyanagar Express and no untoward incident of accidentally fell down occurred from the said train. RPF Sirpur had recorded the statement of Guard of train No.17234 i.e. Balharshah - Secunderabad Bhagyanagar Express on 06.10.2018, wherein he stated that during his duty hours there was no jerk and no untoward incident took place. The Loco Pilot of the said train also confirmed the same in his statement dated 4.10.2018. It is further contended by the Railway that the statement of Deputy Station Master, Sirpur Town was recorded and he stated that at about 4.30 hours he received a telephonic information that one unknown male person aged about 35 years found injured in down Loop Line Sirpur Town Yard at Kilometer No.184/10-12. The Railway further came with a case that, there was no valid ticket found with the deceased, therefore he was not a *bona fide* passenger, and therefore he is not entitled for any compensation.

5. In support of the claim, claimant examined herself and adduced her evidence on affidavit. On behalf of Railway witness Hari Shankar Hari Satish Chandra Prasad, Deputy Station Superintendent, Sirpur Town Railway Station and MD Gouse Raj Mahamed working as Guard of Train No.17234 was examined as R1 – R2. After considering the entire evidence available on record, the Tribunal recorded finding that appellants have failed to prove that deceased was a *bona fide* passenger and he died in untoward incident and rejected the claim.

6. The claimants have preferred this appeal and challenged the award on the ground that the Railway Claims Tribunal had not considered the settled law and erroneously rejected the claim application. Dead body of the deceased was found on railway track merely because the Guard has not noted any untoward incident is not sufficient to rejected the claim. It is apparent from the record that after the train i.e. Balharshah – Secunderabad Bhagyanagar Express was passed, dead body of the deceased was found, which is sufficient to show that while getting down from the train said untoward incident happened and deceased died in that untoward incident.

7. Heard learned Advocate Mr. Bagul, for the appellants he submitted that merely because valid ticket is not found is not sufficient

to say that deceased had not a *bona fide* passenger. After train No.17234 Balharshah – Secunderabad Bhagyanagar Express was passed from Sirpur, the dead body of the deceased was found. Which sufficiently shows that deceased died in untoward incident, when he was alighting from the train. Therefore, the award passed by the learned Tribunal is erroneous, illegal and liable to be set aside.

8. Per contra, learned Advocate Ms. Neerja Chaubey for the respondent – Railway submitted that the evidence available on record clearly indicated that the deceased was residing at Sirpur where the alleged spot where the incident took place. There was no ticket found with the deceased and the same indicated the fact that deceased was not travelling by Train No.2655 down on 08.12.2010. She further submitted that the train in question had no halt at Sirpur Station and hence the case as made out that the deceased was travelling from Balharshah – Secunderabad - Bhagyanagar Express could not be accepted. She relied upon the depositions of the witnesses i.e. R-1 and R-2 as well as the D.R.M. report which was filed on record. She further submitted that Tribunal in its impugned Judgement itself had observed that deceased was not travelling in the said train and rightly rejected the claim, therefore respondent is not liable to satisfy the claim for compensation.

9. In support of the aforesaid submissions the learned Counsel for the appellant relied upon the decision in **Union of India Vs. Prabhakaran Vijaya Kumar and others** reported in 2008 (2) T.A.C. 777 (S.C.), the another judgment of this Court in **First Appeal No. 774 of 2012 the Union of India Vs. Kamla Ramdas Bhasme and another** decided on 22.04.2015 and **S. Vijaylakshmi and others Vs. Union of India** reported in 2019 ACJ 2137. Learned Counsel for the Railway placed reliance on the Judgment of this Court in **First Appeal No.347 of 2022 Ganesh s/o Waman Waghmare and another Vs. Union of India, Through The General Manager**, decided on 09.11.2022.

10. After hearing both the sides, the following points arise for my consideration in the appeal.

- (i) Whether the Tribunal was justified in rejecting the claim for compensation?

11. I have considered the respective submissions and I have gone through the record of the case. In support of claim, the appellant No.1 had filed her affidavit of evidence in which she had stated that on the day of incident her husband - deceased went to Secunderabad for medical checkup at Yashoda Hospital, as he was heart patient. After checkup, in evening at about 5.00 p.m., he informed to her that he is

coming to Sirpur and boarded in the Bhagyanagar Express train by purchasing the valid railway ticket for Secunderabad to Sirpur. During the course of journey, he slept and proceeds till Balharshah Railway Station. Thereafter, her husband informed her that he had purchased the railway ticket from Balharshah to Sirpur and returning by Bhagyanagar Express train at Sirpur. However, while getting down from the train, he fallen down from the moving train and sustained injuries and died on the spot.

12. She was cross-examined and during cross-examination she admitted that the incident occurred at Sirpur. She also admitted that her husband was suffering from heart disease. The place of incident is approximately four kilometers away from her residence. Thus, from cross-examination, it came on record that alleged spot incident was at Sirpur Railway Station.

13. On behalf of Railway, evidence of Shri Hari Shankar Hari Satish Chandra Prasad was adduced. As per his evidence, he was working as a Deputy Station Superintendent at Sirpur. On 06.04.2017 at about 3.50 hours he had received a telephonic information from mobile phone that one unknown male person aged about 35 years found in injured condition in down Loop Line, Sirpur Town Yard, Kagaznagar

end at kilometer No.184/10-12. He immediately, informed to Ambulance for medical aid. He further deposed that no untoward incident of accidental fell down of any passenger was either noticed or reported to him by Guard or Loco Pilot of any train or by any other person. He has not received any message about any rush, jerk from the Guard or Loco Pilot of any train.

14. R-2 MD. Gouse s/o Raj Mahamed is also examined by the Railway. As per his evidence, on 06.04.2017, he was working as a Guard of Train No.17234, Balharshah - Secunderabad Bhagyanagar from Balharshah to Khazipet. The said train departed from Balharshah at 2.15 hours and arrived at Sirpur Town Railway Station at 3.24 hours. That, the train departed from Sirpur Town at 3.26 hours and arrived Sirpur Kagaznagar at 3.40 hours. He stated that no untoward incident of accidental fell down of any passenger was either noticed or reported to him by Loco Pilot. Both the witnesses are not cross-examined by the claimant. Thus, as per the evidence of R-2 the Balharshah - Kazipeth train passed from the Sirpur Railway Station towards Kagaznagar at about 3.40 hours. Whereas, as per the evidence of R-1, he has received the message that one person is found injured condition at about 3.50 hours. Thus, it appears that after passing of the Balharshah – Secunderabad Bhagyanagar train passed from Sirpur Railway Station at

about 3.40 hours and immediately at about 3.50 hours the deceased was found in injured condition. The D.R.M. report is filed on record which shows that on 06.04.2017 at about 4.35 hours a message was received that one male person aged about 35 years is lying beside the DN Loop Sirpur Town Yard in injured condition. As per the reports, it is concluded that no untoward incident was reported and hence deceased has not died in an untoward incident. The Station House Officer of Police Inspector RPS shows that deceased was found injured and from the investigation it reveals to him that the deceased was accidentally fallen from the train and sustained severe injuries and died. There is no foul play as to suspected in the cause of death of the deceased and it is clear case of accidental death. The police papers are also placed on record. It is the case of the respondent that the deceased died due to his own negligence, and therefore railway is not liable to pay compensation which is accepted by the Railway Claims Tribunal. Whether deceased died in untoward incident or not is to be appreciated from the evidence on record. In this regard, it is useful to refer to Section 123(c) of the Railways Act, 1989 which defines the untoward incident.

Section 123(c)

[(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 (28 of 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, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on 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.]

15. In **Union of India Vs. Prabhakarn Vijaya Kumar and Others, 2008 (2) T.A.C. 777 (S.C.)** wherein the Hon'ble Apex Court while interpreting expression accidental falling of a passenger from a train carrying passengers which is an untoward incident under Section 123(c) (2) of the Act and the consequential payment of compensation under Section 124-A for such untoward incident, has held that "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, beneficial or welfare statutes should be given liberal and not literal or strict interpretation". In the said decision, the Hon'ble Apex Court in Para Nos.13 and 14 held as follows.

"13. In Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, 1995(6) SCC 326 (vide paras 42) this Court observed:

"In this connection, we may usefully turn to the decision of this Court in Workmen Vs. American Express International Banking Corporation, wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:

*The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, we had occasion to say:*

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Francis Bennion in his Statutory Interpretation Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate Courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a Court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."

(emphasis supplied)

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 large 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 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, a purposive, and not literal, interpretation should be given to the expression."

16. Another submission made by the Railway is that no valid ticket is found along with the deceased, therefore he is not a *bona fide* passenger. For the purposes of this section passenger includes a person who is holding a ticket and travelling by train. A person has purchased a valid ticket for travelling by a train carrying passenger on the date or valid platform ticket and becomes victim of an untoward incident. The Hon'ble Apex Court in **Union of India Vs. Rina Devi 2018 (3) T.A.C. 26 (S.C.)** has dealt with this issue and held that merely because railway ticket was not found or 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 him 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. The Hon'ble Apex Court in the case of **Rina Devi** (supra) also dealt with the issue regarding the burden to prove the fact of untoward incident and held that 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. It is held that the initial onus lies

with the claimants to show that there is a death due to untoward incident of *bona fide* passenger and that burden can be discharged on the basis of affidavit filed on record. Thus, in the present case also mere absence of the ticket with the deceased is not sufficient to held that he was not a *bona fide* passenger. The claimants have discharged their burden to prove that deceased was the *bona fide* passenger by filing an affidavit and stating *inter alia* the relevant facts about the incident in question. Therefore, the burden shifts on the Railway to rebut the case of the claimants that the deceased was not a *bona fide* passenger and since it is the case of the Railway that the injuries on the deceased were self-inflicted, therefore, the incident in question does not fall within the purview of expression untoward incident as defined under Section 123 (c) of the Railways Act. Moreover, the present case was within the exception of Section 124-A of the Railways Act, the burden will be on the Railway to prove its case. The evidence adduced by the Railway is only to the extent that no untoward incident or jerk to the Railway or any accident was noted by the Guard or Loco Pilot. Merely because they have not noticed the incident is not sufficient to held that no such incident has occurred. The report of Police Inspector filed on record which sufficiently shows that there was no foul play and on the basis of the statements recorded by him, he had submitted that it is a clear case of accidental death. The contention of the Railway that it is a

self-inflicted injury is also not proved by the Railway as the concept of self inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. Therefore, the plea of negligence of the victim cannot be allowed in claim based on no fault theory. The Railway failed to prove that deceased died due to the self inflicted injuries.

17. The another contention raised by the Railway is that deceased was residing in Sirpur, and hence the case as put forth could not be believed. This Court in **First Appeal No.774 of 2012** (supra) observed that merely because the deceased was residing near the railway line would not be a ground for holding against the appellants. The evidence on record indicates that there is no report given by any of the employees of the railway authorities of any accidental dash being given by the passing train to the deceased. The nature of injuries suffered by the deceased especially those on the head also lead to an inference that said injuries are possible due to fall from the train.

18. Here also the evidence of R-1 and R-2 shows that they have not received any information regarding untoward incident or no untoward incident was noticed, reported by Guard or Loco Pilot. But evidence of R-2 shows that on the day of incident, he was on duty as a

Guard of Train No.17234 Balharshah - Secunderbad Bhagyanagar Train which was proceeding from Balharsha to Kazipeth. The said train departed from Balharshah at about 2.15 hours and arrived at Sirpur Town Railway Station at about 3.24 hours. The train departed from Sirpur Town at about 3.26 hours. The R-1 Hari Shankar Hari Satish Chandra Prasad Deputy Station Superintendent had received the information at about 3.50 hours that one unknown male was found in injured condition in down Loop Line. Thus, the evidence of R-1 and R-2 show that deceased was found on railway track after passing of the said Train i.e.17234 Balharshah - Secunderbad Express. The evidence of the clamant is also to the extent that as deceased was sleeping, he could not alight at Sirpur Railway Station, he went ahead. After acknowledging this fact, he obtained the ticket from Balharshah to Secunderabad Express and he reached at Sirpur but while getting down from the running train, he fell down and sustained the injuries. Thus, the case of deceased covered under the untoward incident. The nature of injuries that lower limb of the deceased was cut also lead to an inference that said injuries are possible as deceased fell down while getting down from the train and train run over him. The Tribunal while considering aforesaid evidence had not considered this aspect. The appellants proved and discharged its burden in proving that deceased was a *bona fide* passenger and died in an untoward incident. Finding recorded by

the Tribunal are erroneous and liable to be set aside. The point as framed is therefore, answered by holding that Tribunal was not justified in rejecting the claim of the claimants. In view of the aforesaid discussion, the appeal deserves to be allowed, the same is therefore allowed.

19. At this juncture, learned Counsel for the appellants invited the attention towards the notification dated 22.12.2016 by which Railway has enhanced the amount of compensation from Rs.4,00,000/- to Rs. 8.00.000/-. In view of the said notification dated 22.12.2016 the appellants are held to entitle to get compensation of Rs. 8,00,000/- with interest at the rate of 6 % from the date of petition till the realization of the amount. The appellants are entitled for the amount of compensation as alleged accident occurred after the said notification.

20. Accordingly, the Judgment and order passed by the Railway Claims Tribunal, Nagpur dated 26.11.2019, is set aside.

21. The respondent - Railway is directed to pay compensation of Rs.8,00,000/- to the appellants within a period of 60 days from the date of receipt of copy of judgment along with the interest at the rate of 6 % per annum.

22. The appeal is accordingly disposed of.

The amount of compensation be apportioned equally between all the appellants.

23. No order as to costs.

(URMILA JOSHI-PHALKE, J.)

Sarkate.