



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

FIRST APPEAL NO. 858 OF 2019

APPELLANTS:

On R.A.

Ori. Applicants

- 1] Smt. Anu @ Kalpana wd/o Rakesh Arkhel,
Aged 34 years, Occupation : Household.
 - 2] Rupesh s/o Rakesh Arkhel,
Aged 13 years, Occupation : Education.
 - 3] Ku. Rakhi d/o Rakesh Arkhel,
Aged about 11 years, Occupation : Nil.
 - 4] Nitu d/o Rakesh Arkhel,
Aged 9 years, Occupation : Nil.
- Appellant Nos. 2 to 4 being minor through their Mother Appellant No.1 - All appellant Nos. 1 to 4 R/o Telephone Exchange Road, Narkhed District Nagpur.

...VERSUS...

RESPONDENTS

On R.A.

Ori. Res.

- 1] Union of India,
through its General Manager,
Central Railway, Shivaji Terminal
Mumbai.
- 2] Ku. Nilu D/o Bharat Arkhel,
Aged 21 years, Occupation : Education.
- 3] Smt. Paro wd/o Bharat Arkhel,
Aged 50 years, Occupation: Service.
Res. Nos. 2 and 3 r/o Tele Phone, Exh.
Road, Narkhed, District Nagpur.
- 4] ~~Collector, Nagpur,
Office at Civil Lines, Nagpur.~~

Res. No.4 deleted from array of
respondents as per Court's order
dated 10/09/2018.

Sd/-

S.R. Charpe
dt.10.09.2018

Mr S.R. Charpe, advocate for the appellants.

Ms Neerja Chaubey, advocate for the respondent No.1.

Ms S.G. Barbate, advocate for the respondent Nos. 2 and 3..

CORAM : URMILA JOSHI-PHALKE, J. .

DATE : 13/03/2023

ORAL JUDGMENT :

1. The present appeal is preferred by the appellant under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment and award passed by the Railway Claims Tribunal, Nagpur in Case No. O.A. (IIV) /NGP /2011/0235, dated 30/11/2016, by which the claim of the claimant was dismissed by the Railway Claims Tribunal. (The parties are here-in-after referred as per their original nomenclature.)

The brief facts, which are necessary to decide the dispute as under.

2. On 07/12/2010, the deceased was travelling by Itarsi Nagpur passenger train from Padhurna to Katol by purchasing valid Railway Ticket bearing No. J33642355 dated 07/12/2010. During journey, the deceased was standing in the compartment near the entry gate of boggy of the said train. As the train was over crowded, and when it reached near Tinkheda Railway Station, due to the crowd in the train, the deceased fell down from the running train and received grievous injuries on his person. After the untoward incident immediately, he was shifted to the Government Medical

College and Hospital, Nagpur and he was treated there till 28/12/2010. After discharged from the said hospital, he was admitted in Railway Hospital, Narkhed, wherein he succumbed to the death on 24/12/2010. The claimant No.1 is the wife, the claimant Nos. 2 to 4 are the children and claimant No.5 is the sister.

3. As per contention of the claimants due to the death of the deceased in an untoward incident, they have lost their support and earning member of the family and therefore, they are claiming compensation.

4. The claim petition was resisted by the Railway by filing written statement. The railway has denied the entire contention of the claimants and raised a defence that the deceased was not bonafide passenger but he was unauthorized vendor. Therefore, he is not entitled to claim any compensation. The deceased died due to his negligent act and on that count also, the claimants are not entitled for any compensation.

5. Heard learned advocate Mr R.S. Charpe for the appellants. He submitted that, the tribunal had not considered that the claimants have produced the valid ticket which was purchased by the deceased, prior to the untoward incident. The claimants have proved that deceased was travelling by the train namely Itarsi Nagpur, and he met with an untoward incident. Though the Railway has claimed that he was an authorized vendor, no evidence is adduced by the Railway. The tribunal had not considered these aspects and erroneously dismissed the claim of the claimants. The

claimants are entitled for compensation as it is sufficiently proved that the deceased died due to the accidental injuries which he had sustained in an untoward incident. Therefore, the observation of the tribunal deserves to be set aside by quashing the judgment of the tribunal.

6. On the other hand, Ms Choubey, learned advocate for the respondent No.1 submitted that the DRM Report which is filed on record sufficiently shows that the deceased was unauthorized vendor. This opinion is expressed by the Officials of the Railway after due investigation. Therefore, Railway Claims Tribunal rightly considered the evidence on record and dismissed the claim, therefore, no interference is called for in the impugned judgment and award in this appeal.

7. Heard rival submissions of the parties. Perused the evidence on record.

8. On perusal of the evidence, the following points arise for my consideration:

a) Whether the Railway Claims Tribunal is justified in dismissing the claim of the claimants for grant of compensation?

b) Whether the claimants have made out the case that they are entitled to receive the compensation as the deceased died in an untoward incident?

9. So far as the contention of the claimants is concerned, that the deceased was travelling by Itarsi Nagpur Passenger train, on 07/12/2010 by purchasing the valid ticket from Padhurna to Katol bearing No. J33642355, the claimants have adduced the evidence by examining the claimant No.1 Smt. Anu @ Kalpana wd/o Rakesh Arkhel. She testified that the deceased was her husband. On 07/12/2010, her husband was travelling by Itarsi Nagpur Passenger train from Pandhurna to Katol by purchasing valid railway ticket. He was travelling by standing in the compartment near the gate. The train was over crowded and due to push by crowd, the deceased fell down and sustained injuries. He was under treatment in Government Medical College and Hospital, Nagpur till 20/12/2010. She had also produced on record discharge card to show that the deceased was under treatment. Thereafter, the deceased was admitted in Rural Hospital Narkhed, wherein he died due to accidental injuries on 24/12/2010. To show that, the deceased was bonafide passenger, she produced on record the Railway Ticket. The said railway ticket is at Exhibit No. A-39. The said railway ticket bearing No. 33642355 shows the date 07/12/2010 from Padhurna to Katol.

10. PW-1 is cross-examined at length. During her cross-examination, it was suggested that the deceased was unauthorized vendor and was selling the food stuff in the train and while alighting from the train he fell down. The said suggestion is flatly denied by PW-1. To rebut the evidence of the claimants, no evidence is adduced by the Railway to show that he was unauthorized vendor

and while alighting from the train and while selling the food items, he fell down and sustained injuries.

11. On the other hand, the Railway Ticket produced by the claimant sufficiently shows that he was travelling by Itarsi -Nagpur passenger and obtained the ticket from Pandhurna to Katol. The said railway ticket is produced by the claimants. No contrary evidence is adduced to show that this ticket was managed by the claimants or it was a bogus ticket. The D.R.M Report is also on record but the same do not speaks about anything that the ticket was a bogus ticket or it was managed. No attempt, was made by the Railway to verify the said ticket by their authorities to show that it was bogus ticket. Thus, the contention of the railway that the ticket which was produced on record was the bogus ticket, has no substance in absence of the evidence.

12. The next contention raised by the railway is that deceased was unauthorized vendor and he was not a bonafide passenger and therefore, he is not entitled for any compensation. As it is already observed that, the deceased was travelling by the train and no evidence is adduced contrary to show that he was unauthorized vendor entered into the train to sell the food stuff.

13. Learned advocate Ms Choubey vehemently submitted that the Railway Administration has recorded the statements of the witnesses. However, these witnesses are not examined by the Railway to substantiate the said contention. Merely recording of the statement of these witnesses will not help the railway to discharge

their liability.

14. Whether the claimants are entitled to receive the compensation or not is to be ascertained after considering the definition of untoward incident given in Section 123 (c) of the Railways Act, 1989, which reads as under.

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 (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. The Hon’ble Supreme Court of India in the case of *Union of India vs Prabhakaran Vijaya Kumar and others*¹ has held as:-

1 2008 ACJ 1895

13. In *Hindustan Lever Ltd. v. Ashok Vinshu Kate* this Court observed:

41 "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: (SCC p.76)

'4. 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*¹⁰). 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: (SCC p.447, para 6)

"6. ... 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."

42. Francis Bennion in his *Statutory Interpretation*, 2nd 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)

16. In the light of the above principles, the evidence in the present case is to be appreciated. There is no dispute that the deceased was travelling in a train by holding a valid ticket. The claimants have proved that deceased fell from the train while travelling. Admittedly, no eye-witnesses are there but the injured

was taken to the hospital by the officials of the Railway and he was admitted in a Government Hospital at Narkhed. The discharge card is filed on record. The PM report is also on record at Exhibit No. A-45. The P.M. Report, as per Column-17, shows the cause of death as both the legs of the deceased were amputated, right leg was amputated at the knee level and left leg was amputated at the ankle level.

17. The evidence on record sufficiently shows that after the untoward incident, the deceased was consistently under treatment and while admitting in the hospital at Narkhed, he succumbed to death, due to the said injuries.

18. Perused the record. It appears that the evidence on record sufficiently shows that deceased was holding a valid ticket and was travelling by Itarsi Nagpur Passenger train. He started his journey from Pandhurna to Katol and when the train reached near Tinkheda Railway Station, he fell down due to the crowd in the train. He immediately shifted to the hospital, and during his treatment he succumbed to the said injuries.

19. Thus, it is apparent that while travelling in the train, he fell down from the running train, this particular evidence is not shattered during the cross-examination by the railway. The purchase of ticket is proved by the claimants by producing the said ticket on record. Thus, the burden in respect of the bonafide passenger is discharged by the claimants by filing affidavit as well as by producing the said ticket on record.

20. It is observed by the Hon'ble Apex Court in the case of *Union of India vs Rina Devi*², that 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. In addition to the oral evidence and to substantiate the contention that, the deceased was bonafide passenger she also filed on record the ticket to show that deceased was bonafide passenger.

21. Though it is submitted by learned counsel for the railways that the ticket is bogus one but mere statement of the railways is not sufficient to show that the ticket was bogus one. No inquiry was carried out by the Railway or no evidence is adduced by the Railway to show that the ticket which was produced on record was not the valid ticket and it was the bogus ticket. The verification of the ticket could have been done by the Railway, but this exercise was not carried out by the Railway to ascertain whether the ticket is genuine one or valid one?. Thus, it appears from the record that the burden is not discharged by the respondent/Railway.

22. So far as the contention of the railway is concerned, that the deceased was unauthorized vendor and therefore, he is not covered under the provisions of Railway Claims Act, learned advocate Mr Charpe, placed his reliance on the judgment of this Court reported in *Vilash Rajendra Meshram Vs Union of India*³,

² 2018 (3) T.A.C. 26 (S.C.)

³ 2019 DGLS (Bom.)1527

wherein in para-6 of the judgment, it is held that even, it is assumed that the appellant was selling fruits in the running train, then also he is entitled for compensation. This observation was made by this Court on the basis of another judgment of this Court in the case of *Union of India vs Dhrupatabai w/o Kondiba Gomsale*, decided on 01/07/2017.

23. As it is already observed that in the present case, the claimants have proved that deceased was a bonafide passenger and while travelling in the train- Itarsi Nagpur Passenger, due to the heavy crowd, he was fell down on the track and sustained injuries, and subsequently died due to the said injuries. When the evidence on record of the claimants proves that, deceased had accidentally fallen from the train which resulted into his death then the burden shifts on the railway administration which is not discharged by the Railway.

24. In the present case, evidence on record sufficiently shows that the deceased sustained injuries in an untoward incident, and he succumbed to the said injuries while he was under treatment. The claimant further proved that one leg of the deceased was amputated from knee level and another leg was amputated from the ankle level. The discharge card is issued by the Government Hospital. The Post Mortem Report is also on record which also shows that both the legs were amputated. Thus, the evidence on record sufficiently shows that the deceased sustained accidental injuries in an untoward incident and succumbed to the death, due to the said injuries.

25. The railway also raised the issue that he has sustained the injuries due to his own negligence and therefore also he is not liable to claim the compensation. This aspect is also dealt by the Hon'ble Apex Court in the case of *Union of India vs Rina Devi*(supra) and it is held by the Hon'ble Apex Court that, mere statement that deceased died due to his own negligence or due to self inflicted injuries is not sufficient and the concept self inflicted injury would required intention to inflict such injury and not mere negligence of any particular decree.

26. It is further observed that, mere invoking the principles of contributory negligence which cannot be done in the case of liability based on no fault claim. The Hon'ble Apex Court has referred the judgment in the case of *Union of India vs Sunil Kumar*⁴, wherein it is held that the plea of negligence of the victim cannot be allowed wherein the claim based on 'no fault theory' under Section 163 A of the Motor Vehicle Act, 1988. Thus Hon'ble Apex Court held that death or injury in the course of boarding or de-boarding in a train will be an untoward incident entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributory factor.

27. Learned Advocate Ms Choubey vehemently submitted that the claimants are not entitled for any interest on the compensation amount. The Hon'ble Apex Court in the case of *Union of India V/s Rina Devi* (supra) has dealt with the said aspect

4 2017(13) scale 652

of interest and observed as follows :-

“15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon*(AIR 2001 SC 1333) (supra) and *Kalandi Charan Sahoo* (supra) stands explained accordingly. The 4-Judge Bench judgment in *Pratap Narain Singh Deo* (AIR 1976 SC 222) (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

28. As observed in the present case, there is no evidence to show that the deceased was negligent as he was travelling without ticket. On the other hand, the evidence that the ticket which was produced on record shows that the deceased was travelling by holding a valid ticket from Pandhurna to Katol and while travelling in the train, he fell down and sustained the injuries. Thus, the evidence of the claimant is supported by the circumstances that the deceased was travelling by the train and met with an untoward incident and died due to the injuries sustained by him. Therefore,

the claimants are entitled to claim compensation.

29. The alleged incident as occurred on 07/12/2010. The Railway Claims Tribunal has not awarded the compensation and therefore, this appeal filed. During the pendency of the appeal, the Railway Administration issued a notification dated 22/12/2016. In view of that notification, the claimants are entitled for compensation Rs. 8,00,000/-with interest at the rate of Rs. 6%per annum. This Court in First appeal No. 878/2009 decided on 17/02/2020 and in First Appeal 924/2010 decided on 06/08/2019 by referring the judgment of Calcutta High Court in ***Bandana Mishra vs Union of India***⁵, while relying upon the notification dated 22/12/2016 came into effect from 01/01/2017 held that the claimants are entitled to the compensation of Rs. 8,00,000/-, in view of the judgment of the ***Union of India Vs Radha Yadav (2019) 3 SCC 410*** the claimants are entitled to receive the compensation of Rs. 8,00,000/-. In view of above discussion, I find merit in the appeal. Hence, I pass the following order :

Corrected as per
Court's order
dt. 26/04/2024

a) The judgment and order passed by the learned Railway Claims Tribunal, Nagpur dated 30/11/2016 is quashed and set aside.

b) The respondent/railway is directed to pay compensation of Rs.8,00,000/-to the claimants within a period of 60 days from the date of receipt of copy of the judgment.

Corrected as per
Court's order
dt. 26/04/2024

The First Appeal is **disposed of** accordingly.

JUDGE

RKN