

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

FIRST APPEAL NO.886 OF 2019

1. Smt. Chandrakala wd/o Krushna Bhujade,
Aged about 37 Years,
Occupation : Nil.
2. Ku. Arti D/o Krushna Bhujade,
Aged about 16 Years,
Occupation : Student.
3. Ku. Pooja D/o Krushna Bhujade,
Aged about 14 Years,
Occupation : Student,
All R/o. Kohala, Post: Dhawalapur,
Tah.: Katol, District : Nagpur

APPELLANTS

// VERSUS //

1. Union of India,
Through its General Manager,
Central Railway, C.S.T. Mumbai.

RESPONDENT

Mrs. H. S. Dhande, Advocate for appellants.
Mr. V. M. Gadkari, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/04/2023

ORAL JUDGMENT

1. Present appeal is preferred against the Judgment and Award passed by the Railway Claims Tribunal, Nagpur in Case No. OA(IIu)/NGP/2015/0151 dated 2nd February, 2018 by which the claim of the claimants was dismissed by the learned Tribunal.

2. Brief facts which are necessary for the disposal of the appeal are as under:

On 30.04.2014, the deceased was travelling from Kalmeshwar to Metpanjara by boarding in passenger train. As per contention of the claimants, the deceased had purchased ticket and he boarded in the passenger train when the train approached at Sonkhamb Railway Gate No.286 to 999/0 Km at Kalmeshwar to Metpanjara. The deceased fell down from the running train due to jolt and jerk to the train as well as due to the push by the crowd and thereby sustained crush injury and died in the accident. As per contention of the claimants, as the death of the deceased was caused in an untoward incident and therefore, claimants are entitled for the compensation in view of Section 123(c) of the Railways Act.

3. The respondent – Railway in response to the notice contested the claim on the ground that deceased was not a *bona fide* passenger. Moreover, the death of the deceased is not caused in an untoward incident, but he died due to the dash by the another train when he was crossing the track and, therefore, the claimants are not entitled for any compensation.

4. The claimants have adduced the evidence before the learned Tribunal. The respondent – Railway had also examined the witness in support of the contention besides the oral evidence, claimants placed reliance on DRM Report, Merg Report, Spot Panchnama and Inquest Panchnama. On the basis of oral as well as documentary evidence the contention of the claimants is that the railway ticket is found along with the deceased sufficiently shows that deceased was travelling by the passenger train and while travelling he fell down from the train and sustained the injuries and succumbed to the death.

5. It is contention of the Railway that deceased was crossing the track and due to his own negligence he was dashed by the another train, sustained injuries and died therefore, death of the deceased is not caused in an untoward incident and hence, Railway is not liable to pay compensation.

6. Heard learned Advocate Mrs. H. S. Dhande for the claimants. She reiterated the contentions and submitted that the evidence on record sufficiently shows that the death of the deceased is caused in an untoward incident. Only burden on the

claimants is to prove the facts by narrating the relevant facts on the basis of the affidavit. The fact that deceased was a *bona fide* passenger is proved by the claimants by producing the ticket on record. As far as the defence of the Railway that deceased died due to self-inflicted injuries as he was crossing the track is not supported by any evidence. However, learned Tribunal had not considered the same and erroneously dismissed the claim therefore, the Judgment and Award passed by the Railway Claims Tribunal deserves to be quashed and set aside.

7. Per contra, learned Advocate Mr. V. M. Gadkari, for the Railway supported the Judgment passed by the Railway Claims Tribunal and submitted that Railway Claims Tribunal rightly came to the conclusion that deceased died due to the self-inflicted injuries and not a *bona fide* passenger and rightly dismissed the claim, therefore, no interference is called for.

8. After hearing both the sides, the following point arise for my consideration is that:

- (i) Whether the Claim Tribunal is justified in dismissing the claim of the claimants for compensation?

9. To substantiate the contention, claimant No.1 stepped into the witness box and filed affidavit of examination-in-chief and adduced the evidence. She reiterated the contentions regarding the occurrence of the untoward incident. She stated that on 30.04.2014 deceased husband – Krushna Bhujade started his journey on 30.04.2014, after purchasing the ticket of the passenger. When the train reached in the area of Sonkhamb Shivar Railway Gate No.276 in between pole No.998/31 to 998/34 and due to the jerk to the train and due to the rush of the passengers in the train deceased was pushed and fell down and sustained the injuries. Her evidence is that as the death of the deceased is caused in an untoward incident therefore, the claimants are entitled to receive the compensation on account of accidental death in an untoward incident.

10. On behalf of Railway Smt. Sunita Moreshwar Dudhe was examined, who was working as a Deputy Station Master of Godhani Railway Station. She reiterated that the death of the deceased is caused due to self-inflicted injuries and death is not in an untoward incident. However, her evidence shows that she has not received any information whether any train has given dash to

the deceased while deceased was crossing the track. She is specifically stated that neither Loco Pilot nor Guard or any passengers have informed her about any accident due to the dash by the train. She further submitted that neither Loco Pilot nor Guard or any passengers have informed to her about the accidental fell down of any passenger from the passenger train.

11. Admittedly, the claimant Smt. Chandrakala Krushna Bhujade is not the eye witness of the incident likewise Railway witness Sunita Moreshwar Dudhe is also not an eye witness. Before entering merits of the case, it is necessary to see the definition of an untoward incident. Section 123(c) of the Railways Act defines the untoward incident which is reproduced hereinafter.

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.]

12. In view of the definition of the passenger given under the Railways Act, passenger includes a railway servant on duty and a person who has purchased a valid ticket for travelling by a train carrying passengers on any date or valid platform ticket and becomes a victim of an untoward incident. So far as the defence of the railway is concerned that deceased was not a *bona fide* passenger is not supported by any evidence. The railway ticket which is produced on record at Exh.A35 shows that ticket which was found with the deceased was dated 30.04.2014 from Kalmeshwar to Metpanjara of a passenger train. The DRM report of railway is also placed on record which also shows that the valid ticket was found along with the deceased. The DRM report clearly shows that the deceased person was having railway ticket with him. The ticket was seized from his person when the dead body was found. The Merg report, Spot panchnama and Inquest panchnama are on record which shows that dead body of the

deceased was found on the track at Pole No.990 to 998. The cause of the death as per the postmortem report is death due to the injuries on vital organs. Thus, the defence raised by the Railway that deceased was not having valid ticket is not supported by any material. On the contrary the claimants have proved that deceased has purchased a valid ticket and was travelling by the passenger train. Thus, the contention of the Railway which is accepted by the Railway Claims Tribunal that deceased was not having valid railway ticket is erroneous and said finding is liable to be set aside and quashed.

13. It is well settled in **Union of India Vs. Prabhakaran Vijaya Kumar and others** reported in **2008 ACJ 1895** 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. It is further observed by the Hon'ble Apex Court that, 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 the railway trains since everybody cannot afford traveling by air or in a private car. By giving 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 traveling with a valid ticket or pass is trying to enter into a railway train and falls during the process. In other words, a purposive and not literal, interpretation should be given to the expression.

14. In view of the above well settled legal position whether death of the deceased is caused in an untoward incident or not is to be seen from attending circumstances. The railway ticket which is produced on record sufficiently shows that deceased was travelling by passenger train from Kalmeshwar to

Metpanjara by purchasing a valid ticket. The said valid ticket was verified by the Railway Authority also and certified that it was a genuine ticket. As far as the defence of the Railway is concerned that deceased was dashed by train while he was crossing the train no supportive evidence is adduced by the Railway. It is settled law that the initial burden will be on the claimants to prove that death of the deceased is caused in an untoward incident. But said burden is to be discharged on the basis of affidavit of relevant facts, when the claimants discharged the burden by filing an affidavit stating the relevant facts the onus can shift on railways. Admittedly, 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. Here the ticket was found with the deceased the relevant facts are already narrated by the claimants. No evidence is adduced by the Railway Administration to show that deceased was travelling and crossing the track and he was dashed by the other train. The evidence of railway witness specifically states that she was not informed by any Loco Pilot or Guard that somebody else dashed by the train while crossing the track. Thus,

the contention of the railway that deceased died as he was dashed by some other train and, therefore, the act of the deceased was covered under the self-inflicted injury is also not proved. So far as, the contention of the railway that the self-inflicted injury is concerned, the Hon'ble Apex Court in **Union of India Vs Rina Devi** reported in **2018 (3) T.A.C. 26 (S.C.)** has settled the issue and held that the concept of "self-inflicted injury" would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking to the principle of contributory negligence which cannot be done in the case of liability based on "no fault theory". The Hon'ble Apex Court has referred the Judgment of **United India Insurance Co. Ltd. Vs. Sunil Kumar** reported in **2017(13) SCALE 652** laying down that plea of negligence of the victim cannot be allowed in claim based on "no fault theory" under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, it is held that death or injury in the course of boarding or de-boarding 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 contributory factor.

15. Here in the present case, admittedly no evidence is adduced by the Railway to show that deceased sustained the injuries due to his own negligence. Even for the sake of argument, the contention of the railway is accepted that deceased died due to the self-inflicted injuries, to attract the self-inflicted injuries which would require intention to inflict such injuries and mere negligence of any particular degree is not sufficient.

16. Here the evidence of the claimants supported by the Merg report, Spot panchnama, Inquest panchnama and the DRM report which is on the basis of investigation carried out by the Railway Administration shows that deceased was travelling by passenger train from Kalmeshwar to Metpanjara and while journey, he fell down from train, sustained injury and succumbed to the death. Thus, the death of the deceased is caused in an untoward incident therefore, the claimants are entitled for the compensation. In the present matter, there is no dispute that the oral evidence of the claimants supported by the spot panchnama and inquest panchnama sufficiently shows that deceased who was travelling by the train, fell down from the running train and died in an untoward incident. Hence, the submission by the learned

Advocate for the respondent – Railway that deceased died due to the self-inflicted injuries is not acceptable. The observation of the Railway Claims Tribunal that deceased died due to the self-inflicted injuries while crossing the track is also erroneous and misconceived facts.

17. In the result of the above said discussion, I have no hesitation to hold that there is merit in the present appeal. The observation of the learned Railway Claims Tribunal is erroneous and liable to be set aside. It is held that the death of the deceased is caused in an untoward incident and therefore, claimants are entitled to receive the compensation.

18. As the alleged incident has taken place on 30.04.2014 i.e. prior to the issuance of the notification. The Railway Administration has issued the revised notification dated 22.12.2016 and compensation amount was revised from Rs.4,00,000/- to Rs.8,00,000/-. The said notification came into effect from 01.01.2017. In view of the said notification the claimants are entitled to receive the highest amount of compensation. It is held by the Hon'ble Apex Court in **Union of**

India Vs. Radha Yadav reported in (2019) 3 SCC 410 that the issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in *Rina Devi* is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. After calculating the interest amount the highest amount is of Rs.8,00,000/- which is payable under the revised notification. The claimant is entitled to receive the amount of Rs.8,00,000/- without any interest.

19. Accordingly, the Judgment and Award passed by the Railway Claims Tribunal, Nagpur dated 2nd February, 2018 is hereby quashed and set aside.

20. The appellants/claimants are entitled to receive the compensation of Rs.8,00,000/- from the respondent. In view of that, I proceed to pass following order.

(i) Appeal is allowed.

- (ii) The respondent – Railway is directed to pay the amount of compensation of Rs.8,00,000/- by depositing the same within 60 days from date of the receipt of the copy of the Judgment.
- (iii) The amount of compensation be distributed between the appellant Nos. 1 to 3 equally.

(URMILA JOSHI-PHALKE, J.)

Sarkate.