

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

FIRST APPEAL NO. 237 OF 2019

APPELLANTS:

Deleted as per Registrar (J)
order dated 28.6.22
Sd/- (R.M. Tiwari),
Adv.
dt. 2.7.22

- 1] Smt Chhabubai wd/o Laxman
Acharya, Aged about 78 years,
Occu: Labourer.
- 2] Nandlal s/o Laxman Acharya,
Aged about 56 years, Occu: Labourer,
Nos. 1 & 2 r/o Ambedkar Nagar, Pangaon,
Tq. Renapur, Dist. Latur.
- 3] Janardan s/o Laxman Acharya,
Aged about 49 years, Occu: Labourer,
R/o Presently at Milind Nagar, Parali,
Tq. Parali, Dist. Beed.

...VERSUS...

RESPONDENT

Union of India,
representing Railway Administration,
through: General Manager, South Central
Railway, Rail Neelam Secunderabad
(Telangana State).

Mr R.M. Tiwari, advocate holding for Mr C.A. Joshi, advocate for
the appellants.

Mr P.V. Navlani, advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 06/04/2023

ORAL JUDGMENT:

1. **Admit.**

2. Heard finally with the consent of both the parties.

3. The present appeal is preferred against the judgment passed by the Railway Claims Tribunal in the case of OA(IIu)/NGP/2015/0135 dated 22/03/2018 by which the claim of the claimant for grant of compensation was rejected.

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

On 01/07/2014, the deceased Laxman Jairam Acharya purchased a railway ticket for a journey from Parli to Latur road by obtaining ticket No. SI-939797. When he was travelling by the said train at Pangaon, he fell down from running train as he attempted to catch the train and sustained grievous injuries, and succumbed to death. As the death of the deceased was caused in an untoward incident, while he was attempting to catch the train, claimant No. 1 is the wife, claimant Nos.2 and 3 are the sons of the deceased, filed application for grant of compensation.

5. The said application is strongly opposed by the railway on the ground that the Act of the deceased covers under Section 124-A of the Railways Act. The death of the deceased is caused due to his negligence therefore, self-inflicted injuries caused is attributed against the deceased, and therefore, applicants are not entitled to claim compensation.

6. To substantiate the contention, the claimant No.2 stepped into the witnesses box and filed the affidavit of

examination-in-chief, he reiterated the contentions and adduced the evidence to the extent that the deceased has obtained a valid ticket to travel from Parli to Latur. When the train reached at Pangaon Station on 01/07/2014 at about 11.00 a.m., he attempted to catch the train, but he failed down and sustained injuries. Due to the accidental injuries sustained by him, he died on the spot. The deceased was the bonafide passenger and his death is caused in an untoward incident. Therefore, compensation is claimed by him on behalf of all other claimants. Besides his oral evidence, he placed reliance on DRM Report as well as Police papers including Marg Report, Spot Panchanama, inquest panchanama etc.

7. On behalf of the railway, witness - Kishan Ghaluba was examined, who was working as Guard on Parli-Miraj passenger. The railway administration also placed reliance on the DRM report and adduced the evidence to the extent that when the train departed from Parli Railway Station at 7.58 hrs and arrived at Pangaon Railway Station at about 08.43 hrs., at the relevant time, one person aged about 60-70 years came running towards off-side of the train and while trying to board the running train, he fell down and sustained injuries.

8. It is further contended by the Railway that, no untoward incident has happened. The death of the deceased do not cover the untoward incident and therefore, the claimants are not entitled to claim compensation. The learned member of the Tribunal appreciated the evidence and hold that as the deceased has attempted to board the train from offside and died due to his own

negligence, and therefore, claimants are not entitled for the compensation.

9. Heard advocate Mr.R.M. Tiwari holding for Mr C.A. Joshi, learned advocate for the claimants, who submitted that the alleged incident has taken place when the deceased was catching the train. If any person sustained injury or death of any person is caused while boarding or de-boarding the train, then it covers under the untoward incident, in view of the observations of the Hon'ble Apex Court in the case of *Union of India vs Prabhakaran Vijaya Kumar and others reported in 2008 ACJ 1895*. He submitted that there is no dispute about the fact that the deceased was a bonafide passenger as the ticket was found along with the deceased. The railway has also not raised the issue that the deceased was not a bonafide passenger. Thus, the only issue, arises whether the death of the deceased is in an untoward incident and whether he died due to his own negligence. He further submitted that in view of the observation of the Hon'ble Apex Court in the case of *Union of India vs Rina Devi reported (2018) 3 TAC 26* now, the earlier view in the case of *P.D. Joseph* is overruled, and the Hon'ble Apex Court held that the concept of self-inflicted injury would require the intention to inflict such injury and not mere negligence of any particular degree. In view of that, the case of the appellants is covered under the untoward incident therefore, the claimants are entitled to receive compensation.

10. Per contra, the learned advocate Mr Navlani for the railway submitted that, as the deceased attempted to board in the

train from the off-side, it is a clear case of self-negligence and covered the self-inflicted injury and claimants are not entitled to claim the compensation.

11. Heard both the sides. Perused the record. With the able assistance of learned advocates of both the sides and following points arise my determination:-

Whether the Railway Claims Tribunal is justified in rejecting the claim of compensation of the claimants?

12. It is not disputed that the deceased was travelling by Parli-Latur train by obtaining a valid ticket. The ticket was also produced on record. The railway administration has also not raised any dispute about the fact that the deceased was a bonafide passenger. Thus it is admitted position that the deceased was a bonafide passenger and a ticket was also found along with him. As per the case of the applicant, the deceased obtained the railway ticket and was catching the train to travel from Parli to Latur by Parli-Miraj Passenger Train. He attempted to board a train, but he fell down and sustained injuries, therefore he died on the spot. Whether the said incident covers under the definition of an untoward incident is required to be seen. The definition of an untoward incident is defined under Section 123 of the Railway Act, 1989.

13. Before entering into merits of the matter, it is necessary to see the definition of an untoward incident Section 123(c) of the Railways Act, 1989 defines the untoward incident as under:

“(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.”

14. There is no dispute that the deceased was attempting to board in the train from the off-side of the train, whether this Act of the deceased covers under the self-inflicted injuries. This issue is dealt by the Hon'ble Apex Court in the case of ***Union of India Vs Rina Devi reported in 2018 (3) TAC SC 26*** in para-25 of the Hon'ble Apex Court held that we are unable to uphold the above view as the concept of 'self-inflicted injury', which would require the intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the

principles of contributory negligence which cannot be done in the case of liability based on 'contributory negligence, which cannot be done in the case of liability based on 'no fault theory'. The Hon'ble Apex Court has referred its earlier judgment in ***United India Insurance Company V/s Sunil Kumar reported in 2017(12) SCC 398*** laying down that, the plea of the negligence of the victim, cannot be allowed in a claim based on no fault theory under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, held that death or injury while 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 the negligence of the victim as a contributory factor.

15. In the light of the above principles laid down by the Hon'ble Apex Court, the evidence of the claimant is appreciated, it shows that the death of the deceased is caused when he was attempting to board in the train. Admittedly, the claimant i.e PW-1 has not witnessed the alleged incident. Though he was cross-examined at length and he admitted during his cross-examination that he has not witnessed the incident, nothing incriminating is brought on record during his cross-examination. The evidence of witness of Railway -Shri Kishan Ghaluba also shows that when the train was proceeding from Pangaon Railway Station, one person aged about 60–70 running towards off-side of his train and was attempting to board the running train from off-side fell down and sustained the injuries. This witness is not cross-examined and the evidence remained unchallenged. The DRM Report is also on

record which is submitted by the administration of the railway on the basis of the inquiry conducted by them. The conclusion of the railway administration shows that during the inquiry it was revealed to them that the deceased person who was trying to board a running train from off-side at Pangaon Railway Station, sustained severe injury and died.

16. The Police Papers i.e. Marg report, Spot panchanama is also on record and supports the case of the claimant that, while attempting to board the train, the deceased fell down and sustained injuries. The cause of death as per the P.M. report is death is due to hemorrhage due to a crush-cut injury including all structures of the neck, the neck is separated from the body. Thus it is evident that the death of the deceased is caused in an untoward incident while he was attempting to board the train. In view of the observation of the Hon'ble Apex Court intention is required to attract the provision of Section 124-A Clause-b of the Railways Act to attract the self-inflicted injury against the deceased. The concept of self-inflicted injuries would require the intention to inflict such injury, and mere negligence is not sufficient to negate the claim of the claimants. In view of the said observations the contention of the railway that the deceased died due to his self negligence is not accepted.

17. The above principles are laid down by the Hon'ble Apex Court in the case of *Union of India vs Prabhakaran Vijaya Kumar and others cited (supra)* wherein it is held that a purposive construction of an enactment is one which gives effect to the

legislative purpose by following the literal meaning of the enactment, where that meaning is in accordance with the legislative purpose. The principles of statutory constructions are well settled. It is further held that if the words used enough 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 a liberal and not literal or strict interpretation.

18. In view of the above principles and in the light of the evidence discussed above, in the present case also, the claimants have proved that the death of the deceased is caused in an untoward incident, on the basis of evidence of affidavit. The only burden on the claimants is to discharge the burden on the basis of the affidavits by stating the facts which is discharged by the claimants, therefore, the claimants are entitled to receive the compensation. The alleged incident took place on 01/07/2014 subsequent to that, on 22/12/2016, the notification was issued which came into effect on 01/1/2017 by which the compensation amount was increased at the rate of Rs.8,00,000. The issue regarding the interest was considered by the Hon'ble Apex Court in the case of *Union of India V/s Rina Devi cited (supra)* and *Union of India V/s Radha Yadav reported in (2019) 3 SCC 410* wherein the Hon'ble Apex Court has held that during the pendency of the matter by way of amendment, the amount of compensation which was earlier at the level of Rs. 4,00,000/- in case of death was raised to Rs. 8,00,000/-, and in

that case, the highest amount, the claimant is entitled, in case of revised the amount, the High Court has committed an error in awarding the interest on the same of Rs. 8,00,000/- The Hon'ble Apex Court clarified that the compensation will be payable as applicable on the date of accident with interest as may be considered reasonable from time to time on the same pattern as in the 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 the higher of the two amounts.

In view of this, the claimants are entitled to receive the highest amount, either the amount of compensation of Rs. 4,00,000/- along with accrued interest or the lump sum amount of Rs. 8,00,000/- without the interest.

19. In view of the judgment of *Union of India V/s Radha Yadav cited (supra)*, the claimants are not entitled to receive the interest amount as during the pendency of the matter, by way of amendment, the amount of compensation which was earlier at the level of Rs. 4,00,000/- in case of death was raised to Rs. 8,00,000/-.In view of that, I pass the following order.

- a) The appeal is **allowed**.
- b) The judgment and award dated 22/03/2018 passed by Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA(IIu)/NGP/2015/0135 is hereby quashed and set aside.
- c) The respondent/Railway is directed to deposit the

amount of Rs. 8,00,000/- within 60 days from the date of the receipt of the copy of the judgment.

- d) The amount of compensation be apportioned equally between both the claimants.

JUDGE

RKN