

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

FIRST APPEAL NO.1057 OF 2010

The Union of India,
General Manager,
South Central Railway,
Secunderabad (A.P.) **Appellant..**

:: V E R S U S ::

Kerbaji s/o Purbhaji Khandare,
Aged about 55 years,
Occupation:Labour,
R/o Sodegaon, Taluka-Kalamnuri,
District Hingoli. **Respondent.**

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Ms Neerja Chaubey, Counsel for the Appellant.
Shri R.G.Bagul, Counsel for the Respondent.

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CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **06/02/2023**

ORAL JUDGMENT

1. By this appeal, the appellant/The Union of India, General Manager, South Central Railway, Secunderabad challenges judgment and award dated 7.6.2010 passed by learned Member, Railway Claims Tribunal, Nagpur (for short, "**learned Member of the Tribunal**") in Claim Application No.OA(IIu) No.196/RCT/NGP/2008 whereby learned Member of the Tribunal awarded compensation Rs.4.00 lacs to the respondent (claimant).

2. Facts giving rise to file the appeal are as under:

Purbhaji alias Prabhakar (deceased), aged about 30 years, is son of the claimant. On 9.2.2007, he was travelling by

2

passenger train No.584 from Hingoli to Washim. His brother-in-law purchased a railway ticket and handed it over to him. He boarded the train. When the train reached near kilometer No.867/5 – 867/6 at Andharwadi Shivar, district Hingoli, due to heavy rush in bogie of the train, he fell down from the train and sustained injuries and died on the spot. A report with the Railway Authority was lodged regarding the said accident. As he died in an “untoward incident”, the claimant claimed compensation.

3. The said claim application is strongly opposed by the Railway on ground that the deceased was not a passenger of the train and no passenger train No.584 runs between Hingoli to Washim and it never passed through Hingoli to Washim track on 9.2.2007. It is further contention of the Railway that the claimant is not entitled for any compensation as the deceased died due to “self inflicted injuries” and, therefore, the claim of the claimant deserves to be rejected.

4. Learned counsel Ms Neerja Chaubey for the appellant/Railway submitted that learned Member of the Tribunal had not considered evidence that the claimant failed to prove that the deceased was a *bona fide* passenger. Learned Member of the Tribunal also failed to consider that Train No.584 never passes through Hingoli to Washim and, therefore, no question arises

3

regarding the "untoward incident" of the deceased who according to the claimant was travelling by the said train and, therefore, the railway is not liable to pay any compensation to the claimant.

5. *Per contra*, learned counsel Shri R.G.Bagul for the claimant submitted that merely because the claimant mentioned wrong train number, he cannot be deprived from getting compensation. He further submitted that the claimant has proved the fact that the deceased died in an "untoward incident". He submitted that the claimant was holding a valid railway ticket with him and, therefore, the railway is liable to pay compensation to the claimant.

6. After hearing both sides, point arises for my determination is, as follows:

Whether learned Member of the Tribunal was legally justified in allowing the claim of the claimant for compensation.

7. I have considered respective submissions and gone through record of the case.

8. In support of the claim, the claimant (AW1), who is the father of the deceased, had filed his affidavit of evidence and

4

reiterated contentions raised by him. He testified that on 9.2.2007 his son, the deceased, came at Hingoli Railway Station along with his son-in-law Mukund on his motorcycle and his son-in-law Mukund purchased a railway ticket of passenger train from Hingoli to Washim and handed it over to the deceased. The passenger train Hingoli-Mahu came at station Hingoli and the deceased boarded the train and as there was heavy rush in the train and due to sudden push by passengers, the deceased fell down from the train and died on the spot.

9. The claimant examined his son-in-law Mukund Salve (AW2) who has also supported contentions of the claimant that he obtained a railway ticket for the deceased and, thereafter, the deceased boarded the train i.e. Hingoli-Mahu. But, due to heavy rush in bogie of the train, the deceased was pushed by passengers in the train and he fell on the ground and sustained injuries. This witness was cross-examined at length. The entire cross-examination is in denial form. During cross-examination also, the claimant stated that his son was going to Washim from Hingoli by passenger train No.584.

10. As per submissions of learned counsel Ms Neerja Chaubey for the appellant/Railway, train No.584 never passes

5

through Hingoli to Mahu and train passes through Hingoli to Mahu is train No.498.

11. Thus, it appears that the Railway is challenging the award by learned Member of the Tribunal mainly on the ground that train No.584 mentioned by the claimant is incorrect and the said train never passes through Hingoli to Mahu.

12. On behalf of the Railway, Balasaheb Patange (RW1) is also examined. As per his evidence, he was on duty at Hingoli Railway Station. He produced station diary. According to him, none of Guards or Loco Pilots had informed him about the "untoward incident". Admittedly, this witness is not cross-examined by the claimant and his evidence remained unchallenged.

13. Regarding the accident or "untoward incident" in question, an enquiry report was filed by the Railway. As per the enquiry report, during investigation it revealed to them that Shri Pandu Limbaji Khilare, keyman of gang No.03 of SSE/SE/Hingoli, was performing his duty from kilometer Nos.868/0 to 866/4 between stations Navalgaon and Hingoli. On reaching kilometer No.867/5-6, he noticed a male dead body lying on the track cut into two pieces at the waist level and the flesh lying scattered around. He suspected the case to be a run over by any train and, therefore,

6

he reported the matter to the Station Master on duty at Railway Station Hingoli. Accordingly, an inquest was conducted and the police sent the dead body of the deceased to the City Hospital, Hingoli for postmortem examination. The deceased had sustained crush injury. It is further mentioned in the report that no passenger train No.584 ran between Hingoli and Akola on 9.2.2007. Therefore, the enquiry report shows that the deceased was not a passenger within the meaning of Section 124-A of the Railways Act, 1989 (for short, "**the said Act**") and that there was no passenger train No.584 between stations Hingoli and Washim/Akola on 9.2.2007 and, therefore, the Railway Administration is not liable to pay compensation.

14. In support of contentions, the claimant relied upon police papers. The report filed by Police Inspector, Railway Protection Force, Purna Police Station, South-Central Railway, shows that the deceased died in an "untoward incident" when he was travelling by the train.

15. Now, issue raised before this Court is that the deceased has not died in an "untoward incident" as no eyewitness is available to prove the same and burden is on the claimant to prove that the deceased was travelling by the train and he was not a *bona fide* passenger.

7

16. The Honourable Apex Court in the case of Union of India vs. Rina Devi, reported in 2018(3) TAC 26 has held 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. This will have to be dealt with from case to case on the basis of facts found.*

17. It is apparent that as per contentions of the claimant, the deceased travelled by train Hingoli-Mahu. There is every possibility that the claimant may have mistakenly mentioned incorrect train number. However, this fact itself is not sufficient to deprive the claimant from getting compensation. The claimant has specifically mentioned the name of the train as Hingoli-Mahu and the accident occurred at kilometer Nos.868/0 to 866/4 between stations Navalgaon and Hingoli. Learned Member of the Tribunal has also observed that interpretation of provisions of the said Act should be liberal and no strict interpretation to be given. The alleged incident comes under the purview of Section 123(c)(2) "untoward incident" and the claimant is the only dependent of the deceased and, therefore, the claimant is entitled to get compensation.

8

18. Admittedly, in the present case, no ticket is found with the deceased. However, the evidence of claimant's son-in-law Mukund Salve (AW2) is sufficient to show that Mukund has obtained a railway ticket for the deceased and he handed it over to him and, thereafter, the deceased boarded the train i.e. Hingoli-Mahu. He disclosed the said fact on oath before learned Member of the Tribunal. Merely because the train ticket was not found with the deceased, that by itself is not sufficient to hold that he was not a *bona fide* passenger.

19. The Honourable Apex in the case of Union of India vs. Rina Devi cited *supra* observed that initial onus is always lies with claimants to show that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of affidavit and depending on facts of a particular case that initial onus can be a light onus which can shift on the Railways. It is further held that merely because ticket was not found with the deceased, that by itself is not sufficient to prove that the deceased was not a *bona fide* passenger.

20. Here, in the present case, the evidence of claimant's son-in-law Mukund Salve (AW2) is sufficient to show that the deceased was having a valid railway ticket and was travelling from stations Hingoli to Washim in train Hingoli-Mahu.

9

21. Admittedly, no eyewitness is available in the present case. As per contention of the Railway, the present case covers under Section 124-A of the said Act. Section 123(c) of the said Act defines "untoward incident" as follows:

"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."

22. Now, considering merits of the matter, it is revealed that the claimant has discharged his burden by proving that the deceased was a *bona fide* passenger by filing the affidavit stating in it, *inter alia*, relevant facts about the incident in question. As such, the burden is on the Railway to rebut the case of the claimant that the deceased was not a *bona fide* passenger.

10

23. If injuries sustained by the deceased are "self inflicted", the incident in question does not fall within the purview of "untoward incident". To discharge the burden, the Railway has examined Balasaheb Patange (RW1). However, from his deposition nothing has been brought on record by the Railway to establish and prove that the deceased was not a *bona fide* passenger and the injuries sustained were "self inflicted". The Railway has also not proved that the present case falls under Section 124-A of the said Act.

24. It is to be noted that police documents viz. spot panchanama as well as injuries sustained by the deceased and oral evidence of the claimant's son-in-law Mukund Salve (AW2) sufficiently show that the deceased was travelling by the train and met with an "untoward incident". Mere non-recovery of the railway ticket with the deceased is not sufficient to infer that the deceased was not a *bona fide* passenger. While boarding the train even when there is heavy rush in bogie of the train or while falling from the train, there is every possibility of misplacing of the railway ticket by the deceased. The said issue has been dealt with by this Court in the case of Dalit s/o Tukaram Mudkhede vs. Union of India, Through General Manager, South Central Railway, Secunderabad (Andhra Pradesh) reported in 2019(6) BCR 444 wherein after referring

11

several decisions of the Honourable Apex Court it is held that merely because railway ticket was not recovered from dead body, it cannot be said that deceased was travelling without ticket.

25. The another contention of the Railway that the deceased died due to the "self inflicted injuries". As already observed, no evidence is adduced by the Railway to show that the deceased sustained injuries which are "self inflicted injuries". To prove the "self inflicted injuries", intention of the deceased to cause "self inflicted injuries" is to be proved. The Honourable Apex Court in the case of Union of India vs. Rina Devi cited *supra* held that to prove self inflicted injuries, there should be an intention to cause the self inflicted injuries. The concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so, it would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. A considerable significance is given to submissions of learned counsel appearing for respective parties as well as principle laid down by the Honourable Apex Court in the case of Union of India vs. Prabhakaran Vijaya Kumar and others, reported in 2008 ACJ 1895 wherein it is held that if words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object

12

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. It is further 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 (in this Code called a purposive-and-literal construction), or by applying a strained meaning where the literal meaning is not in accordance with the legislative purpose. It is further observed 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 said 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 traveling 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 said 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

13

passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process.

26. Here, in the present, the claimant has proved through evidence of Mukund Salve (AW2) that on 9.2.2007 the deceased was travelling by passenger train Hingoli-Mahu No.584 to Washim and Mukund purchased railway ticket and handed it over to the deceased. The deceased boarded the train. When the train reached near KM No.867/5 – 867/6 at Andharwadi Shivar, district Hingoli, due to heavy rush in bogie of the train, the deceased fell down from the train and sustained injuries and died on the spot. The dead body of the deceased was found on the railway track. The Railway has not adduced any evidence to show that the deceased was not a *bona fide* passenger. The affidavits filed by the claimant and Mukund Salve (AW2), the son-in-law of the claimant, sufficiently show that the deceased was travelling by the train and while travelling by the train, he met with an “untoward incident”. The Railway has also failed to prove that the deceased died due to the “self inflicted injuries”.

27. In this view of the matter and in view of law laid down by the Honourable Apex Court in cases cited *supra*, the claimant is entitled for compensation. Learned Member of the Tribunal has rightly observed that the Railway failed to prove that the deceased

14

was not a *bona fide* passenger as well as failed to prove that the deceased died due to the "self inflicted injuries" and rightly granted compensation to the claimant.

28. In view of the discussion above, I find no reason to interfere with findings recorded by learned Member of the Tribunal in the light of fact that the claimant has discharged his burden. As such, I answer the point accordingly. Thus, since the appeal has no merit and is liable to dismissed, the appeal is **dismissed**.

The first appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

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