



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3545 OF 2018

1. Ashok s/o Sahebrao Ughade
2. Bhagyashri d/o Ashok Ughade
3. Mayuri d/o Ashok Ughade

... APPELLANTS
(Orig. Claimants)

VERSUS

Union of India
Through General Manager,
South Central Railway,
Secunderabad (Andra Pradesh)

... RESPONDENT

Mr. P. S. Agrawal, Advocate for the appellants
Mr. S. S. Rathi, Advocate for respondent

CORAM : R. M. JOSHI, J.
RESERVED ON : 14th FEBRUARY, 2024
PRONOUNCED on : 23rd FEBRUARY, 2024

P.C. :-

1. This appeal is filed under Section 23 of the Railways Claims Tribunal Act, 1987 raising objection to the judgment and award dated 08/06/2018 passed in claim application No. OA(IIu)/NGP/2016/0017 passed by Railway Claims Tribunal, Nagpur dismissing the claim of the appellants under Section 124(C) of Railways Act.

2. Facts which led to the filing of present appeal can be narrated in brief as under:

(i) As per case of claimants, Rekha, wife of claimant No.1 was travelling from Bhusawal railway station to Solapur by New Delhi Bangalore Karnataka Express train No. 12628. She was standing near the door of the compartment and when the train reached near Kopergaon railway station she fell down and came under the wheels of the train and died. Appellants as legal heirs of deceased, filed claim petition for seeking compensation claiming that deceased was a bonafide passenger and died in untoward incident. Respondent-railways by filing reply denied the claim it is specifically claimed that no untoward incident as contemplated by Section 123 read with Section 124(A) of the Railway Act has occurred. There is further specific plea about the deceased not being a bonafide passenger.

(ii) The Tribunal rejected the claim by discarding the case of the claimants that the deceased was a bonafide passenger. Hence this appeal.

3. Learned counsel for the claimants submits that the Tribunal has committed error in not considering the evidence on record in proper perspective. It is stated that the Tribunal has wrongly held that within half an hour of the occurrence of the accident husband of the deceased was present at the spot and he was signatory to the panchanama is

drawn by the concerned Authority. It is his submission that once accident has occurred in the railway premises, burden is on the railway administration to prove that the deceased was not holding valid ticket and therefore is not bonafide passenger. To support his submission he placed reliance on the judgment of Rajasthan High Court in case of ***Union of India Versus Hari Narayan Gupta, 2007 STPL 1616 Rajasthan.***

4. Learned counsel for the respondent opposed the said contentions by stating that in view of the judgment in case of ***Union of India (UOI) Versus Rina Devi, MANU/SC/0522/2018*** the initial burden is always on the claimant to prove that the deceased/injured was a bonafide passenger as contemplated by Section 2(29) of the Act. It is his submission that claimant No.1 is not disputed having made statement to the railway police during inquiry of the incident in question. It is stated that in the said statement contradictory stand is taken than the one taken in the claim petition. According to him findings recorded by the Tribunal are in consonance with evidence on record and hence deserve no interference.

5. Hon'ble Apex Court in case of ***Rina Devi*** (supra) by taking into consideration law on the point of burden of proof where body is found in railway premises has held in para 17.4:

"17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, 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 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. The legal position in this regard will stand explained accordingly."

6. Thus, it is trite that the initial burden is on the claimants to prove death or causing of injury to a bonafide passenger in an untoward incident as contemplated by Section 123 of Act. Section 101 of Evidence Act, provides that burden would be on person who asserts the existence of a fact. Thus, onus shifts upon railway only when the initial burden is discharged by leading evidence on affidavit or relying upon documentary evidence. Similarly, factum of the deceased being a bonafide passengers need not be proved by producing a valid ticket only but it can be done on the basis of evidence indicating the purchase of ticket or it's loss. Needless to say that whether the burden is discharged by the claimants or not would depend upon the facts of each case and in this regard no straight jacket formula can be applied. It is therefore necessary to see as to whether the claimants have discharged the initial burden on them to prove that the deceased was bonafide passenger and died in untoward

incident.

7. Claimants in the petition before the Tribunal have come out with the case that on 23/05/2015 deceased in presence of her husband boarded New Delhi Bangalore Karnataka Express. In the affidavit of evidence claimant No.1 Ashok states about he having purchased railway ticket of Rs.195/- for travelling by said train. He further claims to have given the said ticket to his wife and asked her to alight at Shrirampur railway station. He thereafter went for his work at Bhusawal city and later on came to know about the accident and death of his wife. During his evidence, however, he has admitted about having made statement before the police authority on 24/05/2015 to the effect that on 23/05/2015 when he was working he received information from his mother-in-law about death of deceased. He after receiving the said information along with his family left Shrirampur for proceeding to Kopergaon by bus. He also claimed therein that as usual deceased had gone to Manmad railway station by a passenger train for her business work and while returning to Shrirampur she fell down from the train which ran over her. This statement was brought to the notice of claimant No.1 he, however, does not offer any explanation thereto. The said statement recorded by the police authorities has not been disputed by him. The statement made on in evidence before the Tribunal is totally

inconsistent with the facts recorded by him while giving statement to the police authority. Serious doubt therefore is created as to whether he was accompanying deceased and bought ticket for her as claimed.

8. At this stage it would be relevant to take note of the provisions of Section 2(29) defence passenger as under-

“(29) “Passanger” means a person travelling with a valid pass or ticket”.

9. Section 123 defence untoward incident. According to Section 124(C) of the Act a person would not be entitled for the compensation unless he is a bonafide passenger and had died for sustained injury in untoward incident. Perusal of the evidence led before the Tribunal does not show that the claimants have discharged initial burden on them to prove that the deceased was a bonafide passenger. Except for the evidence of claimant No.1 which is wholly unreliable, there is absolutely no evidence on record to hold that the deceased was a bonafide passenger. Claimants were not able to prove that the ticket was purchased by claimant No.1 and it was lost. There was an opportunity available for him to explain the previous statement as the same was referred to him in the cross examination. He, however, did not offer any explanation of whatsoever nature in this regard. The contradictions in the statement made by him to the police authority and statement on

affidavit are vital and have material bearing on the case.

10. Unless, admitted by the respondent the initial burden to prove the claim is on the claimants which in the present case they have not succeeded to discharge. The onus therefore did not shift on otherside, to prove its case. The Tribunal after taking into consideration the material evidence on record has refused to accept the case of the claimants. The reasons recorded by the Tribunal are in consonance with the relevant material placed on record as such no perversity is found therein. This Court finds no reason or justification to take any different view than the one taken by the Tribunal while rejecting the claim. Hence, no case is made out for causing interference in the impugned judgment and award passed by the Tribunal. Hence, appeal stands dismissed.

(R. M. JOSHI, J.)

ssp