



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3542 OF 2018

1. Beba wd/o Pandurang Pawar
2. Aarti d/o Pandurang Pawar
3. Vishal s/o Pandurang Pawar
4. Sahebrao s/o Manik Pawar

... 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. M. N. Navandar, Advocate for respondent

CORAM : R. M. JOSHI, J.
DATE : 14th 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 11/09/2018 passed in claim application No. OA(IIu)/NGP/93/2016 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 short as under:

(i) Pandurang Pawar was travelling from Nanded to Mudkhed railway station by Pandharpur-Nizamabad Passenger train No. 51434 on 21/12/2015. He said to have valid ticket of travel. Due to heavy rush in the train he was standing near the door of the compartment and due to jerk he fell down at KM 371/2-1 near Mudkhed railway station and came under the wheels and succumbed to the injuries and died. Appellants are claimants i.e. wife, children and father of deceased Pandurang. They claimed compensation of Rs.4 lakhs towards the death of deceased in untoward incident involving railway.

(ii) Respondent – railway administration by filing say denied the contentions of the claimants. It is alleged that the deceased was not a bonafide passenger and he died due to his own negligence and it cannot be termed as untoward incident as defined under Section 123(C) of the Act.

(iii) Tribunal framed issues casting burden on claimants to prove that deceased was bonafide passenger and died on untoward incident, as contemplated by Section 123(C) r/w 124(A) of Railways Act.

(iv) The widow of Pandurang examined herself. Report of enquiry is relied upon (documents Exhibits A-1 to A-17) on behalf of railways. Apart from this Railways examined Vissapragada Srinivasu s/o Shri Pallamraju-

RW-1 and U. Ramkumar s/o Yadaiah- RW-2.

(v) Learned Tribunal dismissed the claim on the ground that the deceased was not bonafide passenger and that he intentionally came under the wheels of the train. It is further observed that the ticket placed on record is bogus and procured one. With these findings claim was rejected. Hence this appeal.

3. Learned counsel for the claimants submits that the evidence on record clearly shows that a ticket was found with the deceased indicating that he was bonafide passenger as contemplated by Section 2(29) of the Railways Act. It is his submission that evidence of Loco Pilot of train No. 17687 shows that the deceased had fallen from one train and ran over by another. It is his submission that from cross examination of witness V. Srinivasu Loco Pilot it cannot be said that the deceased was alive and deliberately lied down on the railway track. It is admitted in the cross examination that there was no movement of the said person which clearly shows that the deceased was already dead and again ran over by another train.

4. Learned counsel for the respondent-railway opposed the said contentions that the evidence on record clearly indicates that the deceased did not fell from the railway rake/bogie. It is his submission

that if he would have fallen from the train it was not possible that he would not have been seen lying on the railway track by train passing thereafter. He further claimed that the nature of injuries caused to deceased are not possible by fall from the train. According to him the deceased died due to his own act of lying on the railway track. To support submission he sought to place reliance on the judgments of this Court in case of *Smt. Dropadibai @ Dhurpata and another Vs. Union of India* in *First Appeal No. 1169/2017*, dated 16/08/2018 and *Govind s/o Dattatraya Joshi and others Versus Union of India* in *First Appeal No. 2744/2018 dated 06/11/2023*. According to him findings recorded by Tribunal about deceased not being bonafide passenger also does not require interference as the same are in consonance with evidence on record.

5. In view of Section 101 of the Evidence Act the person who claims about the death of deceased in untoward incident and he being a bonafide passenger, initial burden is on the such person/claimants to prove the said facts. In case of *Union of India (UOI) Versus Rina Devi, MANU/SC/0522/2018*, Hon'ble Apex Court while deciding burden of proof, in para 17.4 has held that,

"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 inured 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."

. It is thus clear that there cannot be straight jacket formula applied to decide the issues. It would depend upon facts and circumstances of each case. Once initial burden is discharged by claimants onus would shift upon the respondent to prove otherwise.

6. Since the claimants did not accompany deceased at the time of incident, it is practically impossible for them to precisely state the manner in which incident in question has occurred. Only on the basis of available information claim can be filed. The claimants are also not required to prove their case beyond doubt but only on preponderance of probability. This could be done by examining himself on affidavit and/or relying upon documentary evidence.

7. In order to prove its case claimants examined widow of the deceased AW-1 and placed reliance on documents collected during the course of inquiry by Divisional Railway Manager. Inquest panchanama (Doc. A-85) conducted by ASI, Nanded Railway Police, indicates that the deceased was found carrying telephone diary in his pocket with valid

ticket kept in his diary. Undisputedly, seizure has been made by the Railway Police and not produced by the claimants. There is no allegation about the ticket being bogus/procured one or planted. Thus, there is absolutely no evidence on record in order to hold that the deceased was not a bonafide passenger as defined by Section 2(29) of the Act.

8. As far as the death of deceased is concerned, admittedly claimants were not witness to the said incident. In fact except for statement of Loco Pilot of train No. 17687 no one has seen the deceased being coming under the wheels of train. Even evidence of this witness indicates that when he saw a person lying on the railway track he blew horn. In the cross examination he accepts that he cannot say as to whether the said person was dead or alive at the relevant time. Post mortem notes (doc. A-87) indicates multiple causing of injuries to the deceased including crush injury to head and also amputation of lower limb. These injuries suggest that the possibility of deceased after falling down from train and thereafter being run over by the train which has resulted into his death, is not ruled out. Section 124(A) of the Act provides that whether or not by any wrongful act or negligence of railway the death or injuries caused to a bonafide passenger compensation is payable. It is therefore not necessary for claimants to prove that due to any wrongful act of railway death of deceased is caused.

9. Once the claimants have discharged initial burden on them of proving that the deceased was a bonafide passenger and had died in untoward incident as contemplated by Section 123(C) of the Act, the burden shifts on the respondent to prove that the case comes within the exception as provided under Section 124(a) to (e). There is absolutely no evidence on record to hold so. The Tribunal though has held that the deceased intentionally came under the wheels of the train, however, there is no evidence in order to justify such finding. By relying upon the evidence of V. Srinivasu Loco Pilot of Train No. 17687 it is observed by Tribunal that the deceased was lying between the track and therefore he has intentionally come under the wheels of the train. This finding is not supported by the evidence on record as the very same witness admits in the cross examination that he does not know whether the person who was lying on the track was dead or alive. Unless categorical finding is recorded by the Tribunal that it is a case of suicidal death, the Tribunal ought not to have rejected the claim. In the facts and circumstances of this case, it does not stand to any reason that the deceased wanted to commit suicide and still he purchases a valid ticket. This runs contrary to the normal human conduct.

10. The evidence on record sufficiently demonstrate that the deceased was a bonafide passenger. There is dispute about the fact that he died

due to coming under the wheels of the running train. The respondent has failed to show this case being covered by clauses (a) to (e) under Section 124(A) of the Act.

11. Notification dated 25th October, 1997, issued by Authority of Railways, in exercise of Section 129 of the Act, amended rules with effect from 1st November, 1997, whereby compensation for death is fixed at Rs.4 lakhs. This amount came to be further enhanced to Rs. 8 lakhs with effect from 1st January, 2017. In the instant case, incident has occurred on 21/12/2015. At this stage it would be relevant to refer to judgment of Hon'ble Apex Court in case of *Union of India (UOI) Versus Rina Devi*, **MANU/SC/0522/2018** wherein it is held thus:

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 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 (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (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.

12. Considering facts of the case and binding precedent, compensation payable on account of death of deceased would be Rs. 4 lakhs. The law on the point of payment of interest on such amount is also fairly settled by now to say 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 said amount would have been paid to the claimants immediately, at least they would have earned interest payable by the Nationalised Banks. Considering the average interest payable during the period from 2015 onward, this Court finds it appropriate to award simple interest at the rate of 7% per annum. The claimants therefore would be entitled to receive compensation of Rs. 4 lakhs along with interest at the rate of 7% per annum from the date of claim petition but not more than total sum of Rs.8 lakhs.

13. In such circumstances, judgment and award passed by Tribunal deserves to be set aside. Appeal is allowed in aforestated terms.

(R. M. JOSHI, J.)

ssp