



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

FIRST APPEAL NO.852/2019

1. ~~Khushal S/o Nilkanthrao Barahate,~~
~~aged about 66 Yrs., Occ. Labour.~~ (Deleted as per Court's
order dated 13.10.2023)
2. Smt. Chandrakala W/o Khushal Barahate,
aged 61 Yrs., Occ. Household.

Both R/o Jagjai, Post Undari,
Tah. Ralegaon, District Yavatmal. ... Appellants

- Versus -

Union of India,
through The General Manager,
Central Railway C.S.T. Mumbai. ... Respondent

Mr. R.G. Bagul, Advocate for the Appellants.
Ms. Neerja G. Chaubey, Advocate for the Respondent.

CORAM :- MRS. VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT :- 6.11.2023
DATE OF PRONOUNCING THE JUDGMENT :- 12.1.2024

JUDGMENT

Being aggrieved by the judgment and order passed by
the Railway Claims Tribunal, Nagpur in O.A. No.(IIu)/No.RCT/
NGP/377/2012 dated 22.7.2016 dismissing the death claim of
the deceased Prashant in railway accident, the claimants have filed
the present appeal.

2. Appellants are the parents of the deceased Prashant who died in railway accident on 20.4.2012 while returning to Nagpur from Warora by Express Train. He was having a valid ticket from Warora to Nagpur. As the train was overcrowded with passengers and he was standing near the door of the bogie and due to jerk of train and push of passengers he fell down from the running train at Jaipur Shiwar 5 KM South, Tahsil Seloo, District Wardha and died due to fatal injuries.

3. The respondent Railway has contested the claim contending that the deceased was not a bona fide passenger and he has not died in an “untoward incident”. Only because the body was lying on the track, the claimants cannot claim the compensation from the Railway without any proof of travelling of deceased by said train.

4. The Railway Tribunal has rejected the claim on the basis of postmortem report as the body of the deceased was cut into two pieces from the neck which indicates that the deceased must have been run over by the train as otherwise the body of deceased could not have been cut into two parts from the neck.

The nature of injuries sustained by the deceased and the manner in which two pieces of dead body of the deceased were lying will not be suggestive of the fact that he would have fallen from the running train and the claim was rejected.

5. I have heard both the counsel. Perused the record.

6. Following points fall for my determination:-

(i) *Whether the deceased died due to fall from running train and as such the death was in an "untoward incident"?*

(ii) *Whether the deceased was a bona fide passenger of the relevant train with a valid journey ticket?*

7. In this case, in the inquest and spot panchanama one ticket is seized from the pocket of the deceased which shows that the deceased was travelling from Warora to Nagpur. The claimant has examined one witness Khushal Barahate (A.W.1). From the evidence it be gathered that the deceased was travelling from said train and he fell down from said train at KM No.773/01 between Seloo Road to Tuljapur. From the evidence of this witness it is brought on record that the deceased was working in B.S.F. but was removed from service because he fired

20 rounds under the influence of liquor. His married life was also not successful and divorce petition is also pending. Though the claimants have stated that the deceased was travelling from Warora to Nagpur the description of the ticket is given as from Wardha to Nagpur.

8. As per the Station Master's memo message on 20.4.12. about at 21.50 Hrs. received that one dead body is lying at KM No.773/01 between up and down track. The evidence of Virendra Gulabrao Kadu (R.W.1) who was working as Deputy Station Master at Sewagram Railway Station shows that on 20.4.2012 at 22.40 Hrs. Deputy Station Master Seloo Road informed on phone that a body of a person is lying between up and down track of KM 773/01 inside of two poles of Home Signal as informed by PWS/Selu Road to him. The spot-panchanama shows that the body was lying there. The neck is seen half broken, jaw and tongue had emerged out and injuries are seen on back and other parts of the body. In postmortem report it is mentioned that the head is completely severed from the body and the injuries are ante-mortem. As per the

inquest-panchanama and postmortem report the body of deceased is cut into two pieces. The head has been amputated from neck. The railway ticket is there and it is found that the railway ticket was from Warora to Nagpur. Admittedly, there was no occasion for this witness to notice as to how the deceased died, meaning thereby, he had no occasion to see whether the deceased was cut into two pieces while crossing the track or fell down from a running train and subsequently came underneath the wheels of another train. The postmortem report confirms the fact that cause of death was haemorrhage shock due to polytrauma, his body was cut into pieces. The Tribunal appears to have ignored the fact that the deceased was holding a valid travelling ticket and therefore, it cannot be lost sight that the deceased was a *bona fide* passenger at the relevant time. The respondent has failed to discharge its burden under Section 123(c)(2) of Railways Act to prove that it was not an “untoward incident”.

9. Now it has been argued on behalf of the Railways administration that since the body was cut into two halves, it

cannot be a case of accidental falling down, but it would be a case of run over. In this regard, the decisions given by this Court in many cases become pertinent. In those cases also, the body was cut into two halves but this Court held that, the condition of the body cannot, in any way, be used to deny that the incident was an untoward incident.

10. Paragraph 23 of the decision of this Court in the case of Megha w/o Vijay Thakur and Another vs. Union of India¹ is relevant and is quoted as under:

“23. It cannot be said that the deceased has committed suicide or was ran over by the train. Once it is held that the deceased was travelling in the train and he fell down from the running train, it is untoward incident as defined in Section 123(c) of Railways Act, 1989. In para 6 of the Judgment in the case of SH. Surai Besra (*supra*), it is observed that it is not unknown that a body may be badly cut up and crushed after falling from the train either on account of the bonafide passenger getting entangled in the steps of the train and thereafter in the wheels or the other equipments of the train in which he was travelling or that the deceased on account of the fall from the train gets hit by the various equipments of the Railways which are adjoining to the tracks such as poles, signals, wires, junction boxes etc. Therefore, in the facts of the present case, in my opinion, the Tribunal was wholly unjustified in giving a finding of death of the deceased on account of

1 2020(5) Mh.L.J. (Bombay High Court)

being run over simply because of the condition of the body of the deceased." In the present case, the Railway Claims Tribunal has wrongly not considered the Investigation Report submitted by the respondent. Those documents show that deceased fell down from running train.

(emphasis supplied)

11. Paragraph Nos.15 and 16 of the decision of this Court in the case of Mr. Sadashiv Ramappa Kotiyan vs. Union of India¹ are relevant and are quoted as under:

"15. As already observed, there was no occasion for the Motorman to actually witness the incident as to how it had occurred, meaning thereby, there was no eye witness. Secondly, how can opinion of the Police and the witnesses of inquest panchanama be accepted and relied upon by holding that;

"death may have come to the said deceased as to body cut into two pieces and due to excess bleeding due to railway accident".

These observations are not only improper, incorrect but also perverse and are required to be set aside. Rather, the so-called opinion of the Police and Panchas of inquest panchanama does not indicate that, they had, in fact, seen the deceased crossing the track and hit by the local train, resulting into cutting his body into two pieces. This is something ridiculous.

16.

There was no evidence of an expert before the Tribunal to opine as to under what circumstances a person's body would cut into two pieces and when it

1 First Appeal No.658/2018, decided on 15.3.2021 (Bombay High Court)

would not. The Tribunal should not have rendered it's personal opinion while adjudicating the claim under the present Statute. Since the provision for compensation in the Railways Act is a beneficial piece of Legislation, it should receive liberal and wider interpretation and not narrow and technical one. It should advance the object of the Statute.”

(emphasis supplied)

12. Paragraph No.7 of the decision of the Delhi High Court in the case of SH. Prempal Singh and Another vs. Union of India¹ is also relevant and is quoted as under:

“7. The reasoning in the impugned order that because the deceased was cut into halves: one part found inside the railway tracks and the other outside, the death could not have been caused due to accidental falling from a moving train, is flawed. The impossibility of a passenger being so crushed after a fall from a moving train has not been conclusively established in law, so as to obviate all such claims for compensation. It is possible that the deceased while standing near the overcrowded passenger compartment door, slipped down while holding on to the door railing, and frantically tried to recover and re-board the train with his legs flailing violently, and in the valiant and violent melee his legs or his body could have unfortunately come under the wheels of the train leading to his being consumed in the fatal accident. As long as such possibility exists, the claim cannot be ousted or denied on technical assumptions. There is not a divine camera which could replay the actual manner of the fatality, but all factors lead to the inexorable conclusion that a bonafide passenger died in an untoward train accident. There is also

1 FAO 211/2014, decided on 24.4.2018 (Delhi High Court)

no reason why the deceased would be walking the railway tracks in an odd place en-route his destination - his home. It is not that he lived near the site of the accident or that he had any regular business anywhere near the place of the accident. Thus the inference that he died while crossing the tracks, is unwarranted and untenable.”

(emphasis supplied)

13. The circumstantial evidence suggests that Prashant fell down from a train carrying passengers and was hit/dashed by a running train resulting in the ghastly accident leading to his death. The Apex Court in the case of Union of India vs. Prabhakaran Vijaya Kumar¹ while considering the definition of ‘untoward incident’ with respect to the expression ‘accidental falling of a passenger from a train carrying passengers’ in Section 123(c) of the Railways Act, has observed that if we attach a restrictive meaning to the said expression, we will be depriving a large number of railway passengers from getting compensation in railway accidents, and therefore, a purposive and not literal interpretation should be given to the said expression. Paragraph 14 of the said decision is usefully quoted as under:

1 2008(2) T.A.C. 777 (SC)

“14 In our opinion, 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 travelling 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 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 travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.”

(emphasis supplied)

14. Therefore, in my view, Prashant’s death, as can be seen from the police papers and the postmortem report is an “untoward incident”, resulting from a railway accident, involving a train by which he was travelling. Even if deceased Prashant may have been negligent, as observed by the Apex Court in the case of *Jameela and Others vs. Union of India*¹, that an act may be negligent or even rash, but it certainly is not a criminal act; negligence of a passenger does not have effect on liability of

1 AIR 2010 SC 3705

Railways and the claimants would be entitled to compensation. Therefore, in this case as well, although deceased Prashant may have been negligent, however, that cannot affect the compensation that would be payable to the appellants under Section 124A of the Railways Act.

15. The respondent has brought on record the conduct of deceased while he was in service which makes no difference and because of said incident and his unsuccessful married life inference about suicidal death cannot be drawn. The appellants are the parents of deceased. The Tribunal has observed that the divorce petition was pending at the time of accident and the appellant has not made party to wife and son of deceased as dependents.

16. After going through the record of the Tribunal it appears that during the cross-examination of A.W.1 he has admitted about the pendency of divorce petition. The petition was decided after the death of the deceased, it means at the time of accident marriage was subsisting. The wife of the deceased is not made party in claim petition. During cross-examination

A.W.1 has requested for time to take steps to add her as party. From the Roznama of the Claims Tribunal it appears that the case was adjourned for taking steps by the applicant to add the party. The note is taken in Roznama by the Tribunal on 28.1.2016 and 22.04.2016 as under:-

“28.01.2016 Applicants by None.

Respondent by Adv. V. Bais.

On 10.4.2013, the respondent had filed the reply alongwith statutory report and the issues were framed and accordingly the matter was posted for A/evidence on 29.7.2013. On 29.7.2013, 30.10.2013 & 4.3.2014 neither the applicant nor his counsel was present. But however, the opportunities were afforded to adduce the A/evidence. On 23.11.2015 the evidence of Khushal s/o Nilkantrao Barahate was adduced as AW-1 wherein the applicant has admitted that the deceased was married and his marriage was dissolved by way of decree of Divorce under Section 13(1)(1a) of Hindu Marriage Act vide order dt.18.2.2013 passed by the Joint Civil Judge, Sr. Dn., Wardha. From the perusal of the judgment, the order was passed Ex-parte on 18.2.2013 after the death of deceased. It is pertinent to mention here that the Court of Civil Judge, Wardha was not apprised with the death of the deceased by any of the party. The applicant was directed to take necessary steps i.e. impleadment of the wife of the deceased as necessary party and the case was posted for A/evidence on 28.1.2016.

Today on 28.1.2016, neither the applicant nor his counsel is present. The applicant's counsel has not taken necessary steps as directed by the Tribunal so

the A/evidence is closed and the case is posted for R/evidence on 22.4.2016.

The case is posted for R/Evi. on 22.4.2016.”

“22.4.2016 Applicants by Adv. Sable.

Respondent by Adv. B. Bais.

R.W.-1 is examined, cross-examined and discharged.

The applicant, Khushal Barahate is present in person before the Tribunal.

The counsel for applicant asked to how many children the applicant is having? He replied that he has only two sons & two daughters namely;

1) Prashant (deceased) and 2) Rahul (30 yrs) and two daughters namely Rupali (27 yrs) and one daughter is married, who is elder than the deceased.

It has been observed that younger brother and sisters have not been impleaded as Parties.

The applicant also stated that the deceased was married and from the said wedlock, there was one son but daughter-in-law has taken the divorce, copy placed on record, and has remarried & son is also living with her mother. The issue from the said wedlock has also not been impleaded as party.

The counsel for applicants is directed to implead them as parties.

Posted for steps/Arguments on 24.06.2016.”

17. The directions were not complied by the parties. Though the statement is made that the deceased was having son but in the judgment of divorce petition reference of issue out of said wedlock is not there. The direction was given by

the Tribunal to add the parties i.e. dependents and it was not complied.

18. In the light of the above discussion, I am of the view that the deceased being a *bona fide* passenger, died in an untoward incident and therefore, the appellants would be entitled to compensation under Section 124A of the Railways Act.

19. In the circumstances, the impugned judgment dated 22.7.2016, passed by the Railway Claims Tribunal, Nagpur in Case No.OA(IIu)/RCT/NGP/377/2012 deserves to be set aside and is hereby set aside.

During the pendency of appeal appellant No.1 died on 12.2.2021 and as per order dated 13.10.2023 his name is deleted.

20. Though I have come to conclusion that the appellant No.2 is entitled for compensation and compensation is allowed of Rs.8,00,000/- (Rs. Eight Lakhs Only), for apportionment of the claim the matter is remanded back to the Tribunal with direction to appellant No.2 to add wife and the son of the deceased as necessary party by filing affidavit before the Tribunal and Tribunal to decide the apportionment after considering the age and dependency of the wife and the son.

21. The appellant No.2 to appear before the Tribunal on 1.2.2024 at 11 a.m.

22. The appeal is allowed in above terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

Tambaskar.