

(2016) 06 GUJ CK 0078
In the Gujarat High Court
Case No : First Appeal No. 3484 of 2009

Agneshben Johnbhai Kristi	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 27-06-2016

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3
Railways Act, 1989 — Section 123(b), Section 123(c)(2), Section 124A

Citation : (2017) 1 ACC 632 : (2017) 2 TAC 257

Hon'ble Judges : Rajesh H. Shukla, J.

Bench : Single Bench

Advocate : Mr P.J. Mehta, Advocate, for the Appellant Nos. 1 - 1.1 , 2 - 3.3; Mr. Ravi Karnavat, Advocate, for the Defendant No. 1

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.—The present Appeal is filed under Section 23 of the Railway Claims Tribunal Act, 1987 being aggrieved with the judgment and order rendered in Case No. OA 0100021 by the Railway Claims Tribunal, Ahmedabad Bench dated 13.7.2009, on the grounds stated in the Appeal.

The facts of the case briefly summarised are as follows.

2. The deceased Denial Johnbhai Khristi had met with an untoward incident while he was traveling with a second class ticket from Nadiad railway station for going to Ahmedabad and boarded Train No. 9019 DN - Valsad - Ahmedabad Gujarat Queen. The deceased was standing near the door of the bogie, and when there was a pressure of passengers for getting down while approaching the station of Mehamadabad railway station, the deceased fell down from the train at Platform no. 2 & 3, which was in motion. Therefore, the deceased received severe injuries on the head and succumbed to death. Therefore, the claim petition has been filed for claiming compensation of Rs. 4 lacs.

3. The aforesaid case was filed by Agneshben Johnbhai Khristi-Mother of the deceased Denial Johnbhai Khristi, who met with an untoward incident on 5.3.2000.

4. After the filing of the Application, as the Mother - Agneshben Johnbhai Khristi - Original Applicant died, the Applicants have been joined as her legal heirs.

5. The Railway has resisted the claim petition by filing written statement contending that the deceased Danial Johnbhai Khristi was not a bona fide passenger traveling with legal, valid and proper ticket of Train No. 9019 DN - Valsad - Ahmedabad Gujarat Queen. It is also contended that the incident as described in paragraph 6 of the application is an untoward incident as provided under Section 123 (c) (2) of the Railways Act, 1989.

6. Heard learned Advocate Shri P.J. Mehta for the Appellants and learned Advocate Shri Ravi Karnavat for the Respondent - Railways.

7. Learned Advocate Shri P.J. Mehta for the Appellants referred to the papers and submitted that the Tribunal has committed grave error in not accepting that the deceased was a bona fide passenger in Train No.9010 DN - Valsad - Ahmedabad Gujarat Queen. He submitted that in fact that the affidavit has been filed by the petitioner of one witness Jignesh Parmar. He pointedly referred to this evidence of Jignesh Parmar and submitted that the said Jignesh Parmar had met the deceased in railway station near the ticket window before the arrival of the train. Learned Advocate Shri Mehta submitted that he is the direct witness and his evidence would not have been ignored, and therefore, the conclusion that the deceased Denial Johnbhai Khristi was not a bona fide passenger for not having produced the ticket initially, is erroneous. Learned Advocate Shri Mehta also referred to the other evidence like Exh. A-2 - panchnama of the injured and the inquest panchnama at Exh.A-3. He submitted that this would establish that the deceased died due to the injury sustained while he fell down from the train near Mehamedabad railway station. He submitted that he fell down on Platform no.2 and 3 of Mehamedabad railway station, and therefore, it cannot be said that he was alighting from the running train. Learned Advocate Shri Mehta submitted that he was a passenger and due to heavy rush of the passengers, he was standing near the exit of the bogie, and when the passengers rushed to get down, he fell down, for which he cannot be blamed and there cannot be said to be any negligence on his part. Learned Advocate Shri Mehta has also referred to Exh.A-6, which is a final report of SDM regarding the death of the deceased, which confirms about the injuries received in the incident.

8. Learned Advocate Shri Mehta submitted that the observations made in the judgment that there is no evidence produced by the deceased Appellant - Agneshben Johnbhai Khristi (Mother) for proving that she was depending on the deceased and therefore as she has not proved herself to be the dependent of deceased Denial Johnbhai Khristi as required under Section 123 (b) of the Railways Act, 1989, the claim has been denied. He therefore submitted that the

Tribunal has proceeded on a wrong premises and therefore the present Appeal may be allowed.

9. Learned Advocate Shri Ravi Karnavat for the Respondent - Railways submitted that the contentions raised by the Railways is twofold that he was not a bona fide passenger. Further, even if it is assumed that he was a bona fide passenger, the Original Applicant - Agneshben Johnbhai Khristi (deceased Mother) would not be covered as dependent. He pointedly referred to Section 123 of the Railways Act, 1989, which provides for the definition and Section 123 (b) defines the "dependant" as follows:

"(b) "dependent" means any of the following relatives of a deceased passenger, namely:-

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a predeceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grandparent wholly dependant on the deceased passenger."

Learned Advocate Shri Ravi Karnavat therefore submitted that the mother is not included under Section 123(b)(i) and therefore the claim has been dismissed.

10. Learned Advocate Shri Ravi Karnavat referred to the observations made in the judgment of the Tribunal:

"Further, there is no evidence on record to establish that the mother was dependant on the deceased Danial. As discussed above, the Danial's name is shown in the ration card of his brother Joseph wherein the name of the petitioner mother of the deceased is not shown. Even the petitioner in the petition as well as affidavit has shown her residing address at Sarita Park Society, Tal. Vatva, Dist. Ahmedabad whereas in the panchnama of physical condition exh.A-2, the deceased Danial has shown his residential address at Gomtipur."

Further, learned Advocate Shri Ravi Karnavat emphasized the observation;

"Thus, as per the evidence adduced on record, the deceased is not proved to be unmarried son nor the petitioner Agneshben is proved to be dependent on the deceased Danial and therefore, the petitioner is not proved to be dependent has contemplated by provisions of Section 123(i) and (ii) of the Railway Act."

Learned Advocate Shri Ravi Karnavat therefore submitted that the judgment and order is just and proper.

11. In view of these rival submissions, it is required to be considered whether

the present Appeal deserve consideration.

12. As could be seen from the background of the facts as well as the material and evidence, the Tribunal has not believed the contention of the Railways that the deceased Denial Johnbhai Khristi was not a bona fide passenger. Similarly, the Tribunal has also accepted that the incident has occurred in which the deceased succumbed to death. The only aspect is that the original Applicant-Agneshben Johnbhai Khristi (Mother) who filed the claim petition is not believed to be dependant as provided under Section 123 (b) (i) and (ii) of the Railways Act. The observations which have been emphasized by learned Advocate Shri Ravi Karnavat is required to be read in background of the material and evidence on record. It has been observed in the judgment referring to the material and evidence:

"To establish the relations with the petitioner Agneshben, Pedinama at exh. C-7 is produced in the said Pedinama Francis, Paul and Joseph are shown to be sons of Agneshben. The ration card exh. C-6 is in the name of Josephbhai. In the said ration card the deceased Vaghela Danialbhai is shown to be his brother and therefore, by reasing these two documents together the petitioner Agneshben stands to be proved mother of the deceased Danial."

Therefore, the observations which have been emphasized are inconsistent with the observations made by the Tribunal itself in the same paragraph.

13. Again, a close look at the provisions of Section 123(b) which define the "dependant" is required to be considered. Section 123(b) (ii) clearly provide:

"the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;"

Thus, the word "dependant" would include "mother" and the emphasis given by learned Advocate Shri Ravi Karnavat referring to Section 123(b)(i) that the "Mother" is not included, is misconceived.

14. It is well settled that the provisions of the statute or the law has to be read as a whole, and while reading Section 123, it has to be read along with Section 123 (b) (ii) also, which provide and define the "dependant". Thus, the "dependant" also includes the parent, which in turn would include the "Mother". Therefore, the observations made by the Tribunal observing that the original claimant Agneshben Johnbhai Khristi (Mother) is not proved to be dependant of the deceased is thoroughly misconceived and the Tribunal has totally misdirected in reaching to this conclusion. The present First Appeal therefore deserve to be allowed and accordingly stands allowed. The impugned judgment and order in Case No. OA 0100021 by the Railway Claims Tribunal, Ahmedabad Bench dated 13.7.2009, dismissing the claim petition is hereby quashed and set aside.

15. Therefore, the Applicants, who are the heirs of the deceased would be entitled to claim compensation as provided in Rule 3 of the Railway Accidents and

Untoward Incidents (Compensation) Rules, 1990. Rule 3 of the said Rules referred to the Claims for Compensation and the Schedule provides for compensation of Rs. 4 lacs for the death. Therefore, the Applicants, who are the heirs, would be entitled for compensation of Rs. 4 lacs for the death of Denial Johnbhai Khristi. Therefore, the Respondent - Railways is directed to make the payment of Rs. 4 lacs along with interest @ 6% p.a. from the date of the Application to the Applicants - heirs of deceased Agneshben Johnbhai Kristi, within a period of 3 months.