

(2020) 01 BOM CK 0093
In the Bombay High Court
Case No : First Appeal No. 2 Of 2019

Bhamhadeo Tukaram Haryan And Anr	APPELLANT
Vs	
Union Of India	RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 16(1), 23
Railways Act, 1989 — Section 123, 124, 123(c), 123(1)(2), 123(c)(2), 123(b)(i),
123(b)(ii), 124(A)
Railway Accidents & Untoward Incidents (Compensation) Rules, 1990 — Rule 3(2)

Citation : (2020) 01 BOM CK 0093

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : Mahendra Agavekar, Shraddha Chavan, T.J. Pandian, T.C. Subramanian

Final Decision : Allowed

Judgement

1. By this appeal filed under section 23 of the Railway Claims Tribunal Act, 1987 the appellants (original applicants) have impugned the judgment dated 18th April, 2016 delivered by the Railway Claims Tribunal, Mumbai Bench, dismissing the Application No. OA (IIU) MCC 2010/0749 filed by the appellants. By consent of parties, this first appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this appeal are as under:

2. The appellants herein were the original applicants before the Tribunal. It was the case of the applicants that on 8th January, 2010, Motiram Bramhadeo Haryan had purchased valid second class railway coupon tickets bearing Nos.13123298-07, 13123298-01 and 13123298-10 respectively worth Rs.2/-, Rs.1/- and Rs.4/-respectively for his travel from Bandra to Borivali stations in local train that was going towards Borivali. At about 14:56 hours when the said train reached Khar Railway Station at KM No.16/3-A and 16/4-A, the said Motiram Bramhadeo Haryan (hereinafter referred to as "the said deceased") fell down from the running train, sustained serious injuries and died on the spot,

leaving behind the appellants who are the parents of the said deceased as the only dependents.

3. On 30th August, 2010, the appellants filed claim application under section 16(1) of the Railway Claims Tribunal Act, 1987 inter-alia praying for compensation of Rs.4,00,000/- from the respondent on account of death of their unmarried son in the said untoward incident occurred on 8th January, 2010. It was the case of the appellants that they were financially dependent on the said deceased and there was no other dependent on the said deceased. As per the Charge Book extract of Khar Police Station, the said deceased was found lying dead at KM No.16/3-A and 16/4-A. The said application was resisted by the respondent by filing a written statement. It was the case of the respondent that the said deceased was neither a bonafide passenger nor fell down from the running train in question and thus the incident was not covered under the provisions of section 123(1)(2) of the Railway Claims Tribunal Act, 1989. The Railway administration was thus exempted in law under section 124(A) of the Railways Act, 1989.

4. The Tribunal framed four issues for determination. The appellant no.2 entered the witness box to prove the case of the appellants and filed her affidavit. She was cross-examined by the respondent's counsel. The witness had also produced railway coupon tickets of the said deceased, photocopies of the Station Master Memo, inquest panchanama, postmortem report, death certificate and ration card which were marked Exhibits A-2 to A-6 respectively. The respondent did not lead any evidence and filed D.R.M. report along with annexure marked as R-1 collectively.

5. The Tribunal delivered a judgment dated 18th April, 2016, dismissing the said claim application filed by the appellants. It is held by the Tribunal that there was no mention of recovery of any travelling authority or ticket from the possession of the said deceased though from the panchanama it was noticed that the clothes of the deceased, one mobile of Classic Company, red color wallet and inside Rs.100 x 1, Rs.50x 1, totalling to Rs.150/- cash, chits and other miscellaneous documents were found. The Tribunal after considering the injuries which had been inflicted on the deceased especially on "Decapitation of head, face, neck from body exposing muscles of neck, trachea, oesophagus, vessels, bones" and "Right Upper limb crushed cut and separated at the middle of right forearm exposing bones, vessels, muscles, red colour" held that it can be concluded that the deceased had fallen down from the train. Such grievous injuries can only be inflicted on a person, who has either been knocked down or run over by some train. The Tribunal however held that the incident took place due to the deceased being run over / knocked down by unknown train, while crossing the railway lines at 16/3-A and 16/4-A near Khar Road Railway Station and died on the spot. There was no evidence that he had fallen from any train. It is held that DRM report also stated that the deceased was not a bonafide passenger since no Railway ticket or travelling authority were recovered from his body by the police

as per recordings in Inquest panchanama. The Tribunal accordingly concluded that the said deceased was not a bonafide passenger and was knocked down by unknown train while crossing the railway track and died on the spot.

6. Insofar as issue no.2 is concerned, it is held by the Tribunal that it was nowhere mentioned in the record that the said deceased had fallen from the train and thus it was not the case of fallen down from the train. The Tribunal accordingly held that the said incident was not covered within the term "untoward incident" defined under section 123(c)(2) of the Railways Act, 1989.

7. Insofar as issue nos.3 and 4 are concerned, it is held by the Tribunal that the being the father and mother of the said deceased are the legal dependents of the said deceased under section 123(b)(i) and (ii) of the Railways Act, 1989. It is however, held that the appellants were not entitled to any compensation or relief.

8. Mr.Mahendra Agavekar, learned counsel appearing for the appellants invited my attention to various exhibits annexed to the first appeal and also evidence led by the appellant no.2 from the record and proceedings transmitted to this Court by the Tribunal and more particularly the cross-examination of the appellant no.2 and would submit that the said witness in her cross-examination had deposed that the police had recovered railway coupon ticket of the said deceased and handed over to her.

9. Learned counsel also placed reliance on various documents forming part of evidence before the Tribunal and would submit that the finding of the Tribunal that the said deceased was not a bonafide passenger and had not fallen from the train is contrary to the evidence produced on record. There was hardly any cross-examination of the appellant no.2 by the respondent. The said deceased was a bonafide passenger. Various documents produced were not challenged by the respondent before the Tribunal to prove the case of the appellants and were proved by the appellants. The said deceased had fallen down from the train and thus the provisions of sections 123, 124, 124(A) of the Railways Act, 1989 were attracted.

10. Learned counsel appearing for the appellants placed reliance on the following judgments :-

1) Judgment of the Supreme Court in case of Rathi Menon vs. Union of India, (2001) 3 SCC 714,

2). Judgment of the Supreme Court in case of Union of India vs. Prabhakaran Vijaya Kumar & Ors., (2008) 9 SCC 527,

3). Judgment of the Supreme Court in case of Union of India vs. Rina Devi, AIR 2018 SC 2362,

4). Judgment of the Supreme Court in case of Union of India General Manager, South Central Railway Secunderabad vs. Dhruvabai w/o Kondiba Gomsale, 2017 Supreme (Mah) 814,

5). Unreported judgment of this Court in case of Kavita wd/o Sanjay Awachare & Ors. vs. Union of India, Through General Manager Central, Mumbai in First Appeal No.307 of 2010 decided on 9th February, 2018 and

6). Unreported judgment of this Court in case of Union of India, General Manager Central Railway, CST, Mumbai vs. Madhukar Ganpatrao Patode & Anr. In First Appeal No.1092 of 2009 decided on 4th February, 2019.

11. Learned counsel for the appellants submits that though the appellants had examined the appellant no.2 and had proved that the said deceased had purchased railway coupons and was a bonafide passenger and was cross-examined by the respondent, no evidence was led by the respondent. The burden of proof was shifted to the respondent to prove that the said deceased was not a bonafide passenger and was travelling without valid ticket.

12. Mr.Pandian, learned counsel for the respondent on the other hand submits that the appellants could not prove before the Tribunal that the said deceased was a bonafide passenger and had purchased the railway ticket or that he had fallen down from the train. He submits that though the respondent had not examined any witness, the onus to prove was upon the appellants which was not discharged.

13. Learned counsel for the respondent submits that if this Court comes to the conclusion that the finding rendered by the Tribunal that the said deceased was not a bonafide passenger or that he had not fallen from any train are perverse and warrant interference of this Court, the Tribunal in that case could not have granted more than Rs.4.00 lakhs plus interest in accordance with Rule 3(2) of Railway Accidents & Untoward Incidents (Compensation) Rules, 1990, applicable on the date of accident. It is submitted by the learned counsel that the words "rupees four lakhs" were substituted by the words "rupees eight lakhs" by a notification dated 22nd December, 2016. The said notification would not apply to the the incident in question since the said incident in this case had occurred on 8th January, 2010 i.e. much prior to the date of notification dated 22nd December, 2016 which came into force only on 1st January, 2017.

14. Learned counsel distinguished the judgment of this Court in case of Kavita w/o Sanjay Awachare & Ors. (supra) and the judgment of the Supreme Court in case of Union of India vs. Madhukar G. Patode & Anr. (supra) and strongly placed reliance on the judgment of the Supreme Court delivered on 29th November, 2019 in case Union of India vs. Dilip & Ors. in Civil Appeal No.9124 of 2019. He submits that the Supreme Court in the said judgment has clearly held that in case of death due to accident which occurred before amendment i.e. by a notification dated 22nd December, 2016 base figure would be as per schedule as was in existence before the amendment and on such figure reasonable rate of interest would be calculated. He submits that the basic figure as per schedule at the time of incident was Rs.4.00 lakhs which may carry interest at the rate of 7.5% p.a. and not Rs.8.00 lakhs as canvassed by the learned counsel for the

appellants.

15. Learned counsel for the appellants could not distinguish the judgment of the Supreme Court in case of Union of India vs. Dilip & Ors. (supra). He also did not dispute that the incident in this case had occurred much prior to the date of notification dated 22nd December, 2016. The questions that arise for consideration of this Court is (i) whether the appellants had discharged initial burden that the said deceased was a bonafide passenger and had purchased the railway coupons for travelling in the train or not. (ii) If the said deceased was a bonafide passenger, whether he had met with an untoward incident by falling from the train or not and thus whether such incident was occurred within the meaning of section 123(c)(2) of the Railways Act, 1989 or not.

REASONS & CONCLUSION:

16. I shall first decide whether the original applicants who are the parents of the said deceased Motiram Bramhadeo Haryan had discharged initial onus that the said deceased was holding a valid railway coupon tickets for travelling from Bandra railway station to Borivali railway station at the time of incident or not.

17. A perusal of the claim filed by the appellants indicates that in paragraph 7 of the claim filed by the appellants, it was averred that the said deceased was holding valid coupon tickets dated 8th January, 2010 for travelling from Bandra station to Borivali station and was a bonafide passenger at the time of untoward incident. The appellant no.2 had also filed an affidavit of evidence before the Tribunal and produced punched / stamp coupon ticket bearing Nos.13123298-07, 13123298-01 and 13123298-10 respectively worth Rs.2/-, Rs.1/- and Rs.4/- respectively dated 8th January, 2010 for travelling from Bandra railway station to Borivali railway station to prove that the said deceased was a bonafide passenger at the time of untoward incident. The said witness was cross-examined by the respondent's advocate. The said witness in her cross-examination deposed that police had recovered the said coupon tickets and handed over the said coupon tickets of the said deceased to her after the said untoward incident. Admittedly the respondent did not examine any witness before the Tribunal. The onus of proof that the said deceased was a bonafide passenger and was holding coupon tickets at the time of untoward incident was thus discharged by the appellants.

18. The Supreme Court in case of Union of India vs. Rina Devi (supra) has held that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bonafide 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 bonafide 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. In my view, the principles of law laid down by the Supreme Court in case of Union of India vs.

Rina Devi (supra) would clearly apply to the facts of this case.

19. In this case, the respondents (original applicants) had pleaded in the claim application that the said deceased was holding valid coupon tickets at the time of untoward incident and was a bonafide passenger. The appellant no.2 herself had entered the witness box and had produced the said three coupon tickets to prove that the said deceased was a bonafide passenger at the time of untoward incident. In her cross-examination the said witness clearly deposed that the said railway tickets were returned to her by the police after such untoward incident had taken place. The appellants (original claimants) in my view have thus discharged initial onus of proof that the said deceased was a bonafide passenger and was holding the valid tickets at the time of untoward incident. The onus of proof was thus shifted upon the respondent to prove that the said deceased was not a bonafide passenger and did not possess the valid ticket at the time of untoward incident. The respondent has failed to discharge such onus shifted upon it. There is thus no substance in the submission made by he learned counsel for the respondent that the said deceased was not a bonafide passenger at the time of untoward incident and did not possess any valid ticket when the said incident took place.

20. Insofar as the judgment of this Court in case of Shobhabai & Ors. vs. Union of India (supra) relied upon by Mr.Pandian, learned counsel for the appellant is concerned, this Court in the said judgment has held that the burden lies on the appellant that the deceased was travelling without ticket and he was not a bonafide passenger. The question is whether in absence of evidence to show that the death was resulted in an untoward incident, onus would shift on the railway to establish that the said passenger was without the ticket. In that case the Tribunal had rendered a finding that the ticket for travelling was not recovered from the body of the deceased. In this case, the witness examined by the appellants had in her cross-examination deposed that the railway tickets which were possessed by the said deceased were recovered by the police and were returned to the appellants. The judgment of this Court in case of Shobhabai & Ors. vs. Union of India (supra) relied upon by Mr.Pandian, learned counsel for the respondent thus would not assist the case of the respondent.

21. During the course of argument, learned counsel for the respondent also urged that the said deceased had not fallen from any train and thus the said claim made by the appellants was not maintainable on this ground itself. The appellant no.2 however who had entered the witness box had produced several documents in her evidence such as Station Master Memo, Inquest panchanama, Postmortem report, death certificate, railway ticket coupons, ration card and photographs of the applicants. None of those documents were disputed by the appellant before the Tribunal. The statements of the panchas recorded by the Railway Police Station was also produced before the Tribunal. A perusal of the finding recorded in paragraph 6 of the impugned judgment indicates that according to the Inquest panchanama, the said deceased was standing near the

door and fallen from train at the time of untoward incident. It is also mentioned that after considering the nature of injuries suffered by the said deceased, it could be said or concluded that the deceased had fallen down from the train. The respondent did not lead any evidence before the Tribunal to prove its case. On the other hand, the documents produced by the appellants no.2 clearly proved that the said deceased had died due to untoward incident and that such incident was occurred within the meaning of section 123(c) of the Railways Act. In my view, the findings rendered by the Tribunal that the said deceased did not expire due to fall from the train is contrary to the evidence produced by the appellants on record and is inconsistent with the finding rendered in paragraph 10 of the impugned judgment and ignoring the documents produced by the appellants in evidence.

22. The next question that arises for consideration of this Court is whether the appellants (original claimants) would be entitled to recover compensation or Rs.4.00 lakhs or Rs.8.00 lakhs with interest. A perusal of the notification dated 22nd December, 2016 issued by the Ministry of Railway thereby amending sub rule (2) of rule (3) of the Railway Accidents & Untoward Incidents (Compensation) Rules, 1990 indicates that the compensation of Rs.4.00 lakhs was substituted by Rs.8.00 lakhs. The said notification came into effect on 1st January, 2017. In this case, the incident had occurred on 8th January, 2010. Supreme Court in a judgment delivered on 29th November, 2019 in case of Union of India vs. Dilip & Ors. in Civil Appeal No.9124 of 2019 after considering the said notification dated 22nd December, 1996 has held that if the death has occurred in an incident before amendment carried out pursuant to the said notification dated 22nd December, 2016, compensation would be Rs.4.00 lakhs. Learned counsel for the appellants could not distinguish the said judgment delivered by the Supreme Court in case of Union of India vs. Dilip & Ors. (supra). The said judgment squarely applies to the facts of this case. I am respectively bound by the said judgment.

23. In view of the fact that the untoward incident of the said deceased had occurred prior to the date of the said notification dated 22nd December, 2016, Rule 3(2) of the Railway Accidents & Untoward Incidents (Compensation) Rules, 1990 prevailing on the date of incident would apply. The said notification dated 22nd December, 2016 came into force only on 1st January, 2017 i.e. much later than the said accident occurred. In my view, Mr.Pandian, learned counsel for the respondent is thus right in his submission that the amended provision of Rule 3(2) of the Railway Accidents & Untoward Incidents (Compensation) Rules, 1990 would not apply to the facts of this case. In my view, the appellants thus would be entitled to recover Rs.4.00 lakhs plus interest at the rate of 7.5% p.a. from the date of application till realization.

24. I therefore, pass the following order:-

a). The judgment and order dated 18th April, 2016 passed by the Railway Claims Tribunal, Mumbai Bench in Application No.OA (IIU) MCC 2010/0749 is set aside.

The Application No. OA (IIU) MCC 2010/0749 is allowed. The appellants are entitled to recover a sum of Rs.4.00 lakhs plus interest at the rate of 7.5% from the date of application till realization. The respondent is directed to pay the said amount of compensation to the appellants within four weeks from today.

b). First Appeal No.2 of 2019 is allowed in aforesaid terms.

There shall be no order as to costs.

c). In view of disposal of the First Appeal, pending civil application, if any, stands disposed of.

d). Parties to act on the authenticated copy of this judgment.