
(2017) 06 BOM CK 0193
In the Bombay High Court
Case No : 145 of 2010

Dilip s/o Madhukar Ogle, & Ors.

APPELLANT

Vs

Union of India Thr. The General Manager, South Eastern
Central Railway, Bilaspur

RESPONDENT

Date of Decision : 20-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 174](#) - Police to enquire and report on suicide, etc
[Railways Act, 1989](#), [Section 124A](#), [Section 123\(c\)](#) - <B

Citation : (2017) 06 BOM CK 0193

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : S. K. Sable, N. P. Lambat

Judgement

1. The appellants are the original claimants whose Claim Application No.45/OA-II/ RCT/NGP/2006 for compensation came to be dismissed by the Railway Claims Tribunal, Nagpur, vide its judgment and order dated 10/09/2009. Brief facts of the appeal can be stated as follows :

On 04/02/2006 deceased Ravi, the son of appellant Nos.1 and 2 and brother of appellant No.3 left the house in order to proceed to Itwari for purchase of material, along with his sister Jyoti. He went to Dongri railway stand and purchased railway ticket from Dongri to Itwari. Thereafter he boarded train No. 4TT Tirodi - Itwari at Dongri railway station. Due to heavy rush in the train, he was required to stand in the door of the train compartment and as a result he fell down from running train, near pole No.1087/36-37. He died on the spot. When Gangman by name Soma Kakde informed about the incident to Railway Station Master, he sent a stretcher to bring the injured but he was dead. The Station Master accordingly informed about the accident to the Kamptee GRP and they conducted spot and inquest panchanama. The statements of witnesses were also recorded. As per the appellants as the death of Ravi is clearly covered by

definition of "untoward incident", as laid down in Section 124A of the Railway Act, they filed claim petition before the Tribunal, seeking compensation of Rs.4,00,000/.

2. This claim petition came to be resisted by the respondent vide its written statement, contending inter alia that as no ticket was issued from Dongri railway station to Itwari on the relevant date, deceased Ravi was not bonafide passenger of the said train. Moreover, there was no evidence to show that his death was on account of fall from the running train. Hence it was submitted that respondent is not liable to pay any amount of compensation to the appellants.

3. On the rival pleading of the parties, the Tribunal framed necessary issues for its determination. In support of their case, appellant No.2 Ganga examined herself and her daughter Jyoti. Whereas respondent examined two witnesses viz. RWHansraj, Guard of 4 TT train and RW2 Maheshkumar Meena, Assistant Station Master. The learned Tribunal in order to verify the correct facts, on suo moto issued summons to the Gangman Soma Kakde and he is examined as a Court's witness.

4. On appreciation of oral evidence and other documentary evidence produced on record by both the parties, learned Tribunal was pleased to hold that appellants have failed to prove that the deceased Ravi was bonafide passenger travelling in the said train and his death had occurred due to fall from the running train. Resultantly, claim application of the appellants came to be dismissed and hence the instant appeal.

5. I have heard learned counsel for appellants and respondent at length and on the basis of rival submissions advanced by them following two points arise for my determination : (i) Whether the appellants prove that deceased Ravi was bonafide passenger travelling in 4 TT train at the relevant time ?

(ii) Whether the death of Ravi was on account of "untoward incident" as contemplated under Section 124A of the Railway Act, 1989 ?

6. In order to understand and appreciate properly the controversy involved in this appeal, it would be necessary to re visit at the definition of the term "untoward incident" as defined in Section 123 (c) which is as follows:

123(c) "untoward incident" means

(1) ... not relevant.

(2) the accidental falling of any passenger from a train carrying passengers.

7. Section 124A speaks about the compensation on account of untoward incident which reads as follows : Compensation on account of untoward incidents :

When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been

injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident :

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation :For the purposes of this section "passenger" includes :

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.

8. Thus two aspects necessarily emerge from the definition of the term "untoward incident" is that it covers the accidental falling of any passenger from a train carrying passengers and so far as the definition of passenger is concerned, in view of the Explanation given in Section 124A of the Act, passenger includes a person who has purchased a valid ticket for travelling, by a train carrying passengers, and becomes a victim of an "untoward incident".

9. The reading of Section 124A makes it further clear that when in a course of working a railway an untoward incident occurs, then whether or not, there has been any wrongful act, neglect or default on the part of the railway administration, it would entitle a passenger, who has been injured or the dependents of a passenger who has been killed, to maintain an action and recover damages. The said Section further makes it clear that the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation for such untoward incident. In order to escape from this liability, it will be for the railway administration to prove that the death of the passenger was either on account of suicide or attempted suicide or on account of selfinflicted injury or by his own criminal act, or any act committed by him in a state of intoxication or insanity or by any natural cause or disease or medical or surgical treatment. Thus once it is proved that the death has occurred in the course of working of railway and such death has occurred in an untoward

incident, then there is absolute liability on railway administration to pay compensation in such matters.

10. In the backdrop of this legal position, if this Court reappreciates the evidence on record, then it has to be held that in the instant case, the initial burden was on the appellants to prove that the death of Ravi was on account of such untoward incident or he has succumbed to death on account of the fall from the running train. In addition to that, the appellants also have to prove that Ravi was bonafide passenger of the said train having purchased the valid ticket as contemplated under Section 124A.

11. To prove that Ravi has purchased the ticket and he was travelling in the said train, appellant No.2 Ganga has examined herself and also lead evidence of her daughter, Jyoti. Admittedly, when the dead body of Ravi was found by the police, no railway ticket was found on his person or in his possession and hence evidence of these witnesses becomes relevant. It is deposed by Ganga that on that day her son Ravi was going by train from Dongri to Itwari. Her daughter Jyoti gave amount of Rs.200/to Ravi and accompanied Ravi to Dongri railway station. However Ravi fell down from the running train and railway police informed her about the death of her son. In cross examination she has admitted that she was not an eyewitness to the fact of Ravi purchasing ticket or sitting in the train. According to her, it was Jyoti who had accompanied Ravi.

12. Her daughter Jyoti has stated in her evidence that she came to Dongri railway station to see off her brother Ravi. Her brother Ravi boarded the train for proceeding to Nagpur after purchasing the ticket. In cross examination, she had stated that she saw while Ravi was purchasing ticket. It was cardboard ticket purchased at Dongri station. She had denied the suggestion that she had not seen Ravi boarding the train.

13. Learned counsel for respondent has challenged Jyoti's evidence on account that her mother Ganga has admitted that Jyoti was residing at Bilaspur and she came to Nagpur after the incident. Hence it is urged that, if she was not present at all in Dongri, there is no question of her seeing Ravi purchasing the ticket. However, evidence of Jyoti reveals that on the day of incident she was very much present in the house of her mother. Her mother gave Rs.200/to Ravi and Jyoti accompanied Ravi to Dongri railway station. Thereafter on the very day, she went to Bilaspur. She got phone call from police about death of her brother on the next day and she returned back to Dongri. There is no searching cross examination of this witness on this aspect to disbelieve her in any way. No doubt there may be minor inconsistency in the evidence of appellant No.1 Ganga and Jyoti like Ganga has stated that Jyoti gave amount of Rs.200/to Ravi for purchasing ticket, while Jyoti has stated that her mother gave Rs.200/to Ravi for purchasing ticket. In my opinion if one has regard to the benevolent object of this legislation which needs to be taken into consideration, then such minor inconsistencies cannot be magnified so as to disbelieve the evidence of claimant, who had already undergone a mental shock on account of death of her near and dear one.

Therefore there is no reason to disbelieve the evidence of these two witnesses, when they are making positive assertions since beginning that Ravi has left the house along with Jyoti and Jyoti has seen him purchasing the ticket and also boarding the train.

14. Much reliance is placed by learned counsel for respondent and also by the Tribunal on the evidence of ASM Maheshkumar Meena who at the relevant time was on duty at Dongri railway station and according to him on that day not a single ticket for Itwari station was sold from Dongri. To support this submission, he has also produced the railway register of that day. Learned Tribunal has attached much emphasis and importance to the evidence of this witness and disbelieved the evidence of Ganga and Jyoti. However, in my considered opinion, this defence that Ravi was travelling without purchasing ticket, was taken by the respondent, by way of amendment in written statement, four months after filing of the same. Hence there is positive evidence of appellant No.2 Ganga and Jyoti that Ravi had purchased the ticket, it would not be proper to disbelieve their evidence and give all the credence to the evidence of this witness. From the very fact that there is no entry of issuance of such ticket in his register, it cannot be accepted that Ravi was not bonafide passenger of the said train.

15. As held by the Orissa High Court in case of Sakhia Naik and anr v. Union of India 2006(1) T.A.C.29, even in absence of a ticket, question as to whether or not deceased was a bona fide passenger can be proved by oral evidence. In that case on behalf of the Railways, the Chief Booking Supervisor was examined and he has stated that on that particular day there was no sell of any ticket for the train in question from Titilagarh to Kantabanjhi. Despite that, it was held that there is evidence of an eyewitness proving that such ticket was purchased by the deceased, and that can be sufficient evidence to prove that the deceased was a bonafide passenger. It was held that, considering the nature of the case, when a passenger dies in an accident by falling from the train, it is not possible for the legal representatives to produce the ticket or other authorities for travelling in the train and in absence of the production of the ticket also, it can be held that deceased was a bonafide passenger.

16. In this judgment, reliance was placed on the reported decision of Andhra Pradesh High Court in Union of India, Secunderabad v. B. Kodderkar and ors 2002 (3) TAC 320 (AP) wherein it was held that the burden does not lie on the dependents to prove bona fide of the passenger but the burden is on the Railways to prove that the deceased was a ticketless traveller or was not a bona fide passenger.

17. In the case of Gullipalli Lashmikanthamma v. General Manager, South Central Railway, 2003 ACJ 1582, in a similar situation, the High Court Andhra Pradesh was pleased to observe in para 12 of its judgment as follows :

" 12. After considering the same, I am of the opinion that an inference can be drawn to the effect that the deceased is a bona fide passenger having regard to

the realities and realistic and pragmatic approach of the question involved. It cannot invariably be conceived or comprehended that always ticket should be traced. One has to imagine the circumstances that will prevail at the relevant time and whether keeping of the ticket should be given that much of importance at the crucial time when the deceased was suffering from fatal injuries and died; ticket could have been missing. So from the material on record it must be held that deceased is a bona fide passenger."

18. On consideration of the principles therefore, laid down in these cases by Orissa High Court and also by Andhra Pradesh High Court, it has to be held that in this case also on the question as to whether Ravi was bonafide passenger of the said train, there is ample evidence on record of appellant No.2 Ganga, the mother and witness Jyoti who has personally seen, with her own eyes, deceased purchasing ticket from ticket counter. In my considered opinion therefore, learned Tribunal has taken too technical a view of the matter, overlooking very object of this beneficial statute and therefore said finding of the Tribunal being as against the purport and object of the legislation, needs to be set aside.

19. The next question arising for consideration is whether the death of Ravi was on account of fall from the running train. On this aspect, the evidence adduced on record by the appellant clearly goes to show that the cause of his death was fall from the running train. It is pertinent to note that information of the accident was given to the Station Master by the Gangman Soma K. Kakde. On the basis of this information, Marg information was given by the Station Master to SDO stating that one person had fallen from the running train No. 4 TT while he was travelling in the said train. Since he had succumbed to head injury, this information was given by Railway Station Master under Section 174 of CrPC. Copy of said Marg Information is produced at page No.829. There is also spot panchanama carried out immediately on the very date and in that panchanama there are recitals to the effect that Gangman Soma Kakde has given information that one person fell from the running train No.4 TT near Rewral railway station and his dead body was found near pole No.1087/36-37. Even the Inquest panchanama and PM report which are contemporaneous documents state that the death of the deceased was on account of fall from 4 TT train.

20. Learned Tribunal has however not relied upon this contemporaneous documentary evidence, merely on the basis of evidence of the guard Hansraj Santosh, who had stated that he had not received any information from the Station Master or passengers, about happening of any untoward incident. However in crossexamination this witness has admitted that if a passenger falls down by opposite side of train, he could not see it. Therefore, merely because he has not seen or not received any intimation, does not mean that no such incident or accident has taken place, especially when the immediate information of the accident as recorded by the Station Master and as can be seen from spot panchanama, the inquest panchanama and PM report clearly indicate that death of Ravi was on account of fall from the running train.

21. Much reliance is placed by the Tribunal on the evidence of Gangman Soma also. The Tribunal examined him as Court's witness and he has stated before the Tribunal that he did not see any passenger falling from train No.4 TT at pole No. 1087/36-37 at Revral railway station at relevant time. In his crossexamination he has stated that police has prepared inquest panchanama and spot panchanama and asked him to sign on them. It is clear that the evidence of this witness is in the nature of an afterthought. He is stating something which is against the contemporaneous documentary evidence on record and that too on the basis of information given by him to Railway Station Master. Hence, needless to state that his evidence cannot be accepted as gospel true closing the eyes to the reality of life that he being the employee of the Railway administration is bound to support the case of respondent.

22. Admittedly the dead body of Ravi was found at Pole No.1087/3637 at Revral Railway Station. If no one seen him falling from the train then how he succumbed to death is also not explained. As stated above and in view of Section 124A of the Railways Act, 1989, in order to escape from the liability of paying compensation to the dependents of the deceased, it was incumbent upon the respondent to prove that the death of Ravi was either on account of suicide or attempted suicide or selfinflicted injury or on account of his own criminal act or by any act committed by him in a state of intoxication or insanity or by any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Respondent Railways has not led any evidence to bring the death of Ravi within any of the exceptions provided in Section 124A of the Railways Act, 1989. In such situation, when the death of the passenger is proved to have occurred and that too in an untoward incident of falling from the train carrying passengers, then the respondent cannot absolve itself from the liability of paying compensation amount to the appellants.

23. In the case of Union of India v. Prabhakaran Vijaya Kumar and ors. 2008 ACJ 1895 relied upon by the appellants, it was found that Passenger fell on railway track and was run over by the train. Eyewitness stated that deceased fell down from the train when the train was moving. Hence it was contended by Railway Administration that there was no fault on the part of Railways and it was a case of contributory negligence of the deceased. This contention was however rejected by the Honourable Apex Court, by holding that legally it will not make any difference whether the deceased was actually inside the train or she was trying to get into the train when she fell down, iff the accident did not occur because of any of the exceptions mentioned in clauses (a) to (e) of the proviso to Section 124A. It was held that this section lays down strict liability or no fault liability in case of railway accidents. Hence if the deceased has died due to accidental falling from the train it is covered within the definition of "untoward incident." It was observed by the Apex Court in paragraph 14 of its judgment as follows :

" 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 wellknown 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 victim 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."

24. In the instant case also, therefore considering the legal provision contained in Section 124A, the respondent Railways cannot escape from its liability to pay compensation to the appellants. Honourable Supreme Court has in case of Jameela and ors v. Union India 2010 ACJ 2453 relied upon by learned counsel for appellants, also held that when admittedly there was no eye witness to the incident and case of Railways that deceased was standing at open door of train compartment in a negligent manner from where he fell down is entirely based on speculation. Moreover, assuming that deceased fell from the train due to his own negligence, it is not a criminal act so as to attract clause (c) of proviso to section 124A. Hence the railway administration was held liable to compensate the dependents of the deceased.

25. Having regard to this legal position in the instant case also, if one considers the documentary evidence on record, proving the fact that deceased Ravi has died due to accidental fall from running train while travelling therein, in absence of railway administration bringing the case within any of the exceptions of clauses (a) to (e) of the proviso to section 124A of the Railways Act, the appellants become entitled to get compensation from the respondent.

26. What remains now to be considered is the quantum of compensation payable to the appellants. Learned counsel for appellants has brought to the notice of this Court the Notification dated 22/12/2016 issued by Ministry of Railways making amendment in Rule 3(2) of the Railway Rules, 1990 with effect from 1st January 2017, by which the amount of compensation in case of death is enhanced to Rs.8,00,000/from Rs.4,00,000/. Learned counsel for appellants has also relied upon the judgment of the Apex Court in Rathin Menon v. Union of India 2001 ACJ 721 wherein the benefit of amendment in the then existing Rules was given to the claimants by holding that " Suppose a Tribunal wrongly dismissed a claim after a few years of filing the application and the claimant approaches the High Court in appeal. As it happens quite often now, some High Courts could take up such an appeal only after the lapse of many years and if the appeal is decided in favour of the claimant after so many years, what a pity if the amount awarded is

only in terms of the figure indicated on the date of the accident. In paragraph 30 it was held thus :

" 30. From all these, we are of the definite opinion that the Claims Tribunal must consider what the Rules prescribed at the time of making the order for payment of the compensation."

27. It is pointed out by learned counsel for appellants that in the reported decision of *Bandana Mishra vs. Union of India II* (2017) ACC 484 (Cal.) decided on 12/05/2017, the Division Bench of Calcutta High Court, relying on the judgment of Apex Court in *Rathi Menon vs. Union of India, I* (2001) ACC 453 has granted compensation of Rs.8,00,000/to the claimants with interest at the rate of 7.5% per annum from the date of lodging of the claim application before the Tribunal till date of payment in respect of the death that has occurred on 21/07/2005. In view thereof, applying the aforesaid ratio laid down by the Apex Court in case of *Rathi Menon* (supra) to the instant case, it has to be held that in view of Amendment in the Railway Rules with effect from 01/01/2017 vide Notification issued by Ministry of Railways on 22/12/2016, the appellants become entitled to get compensation in the sum of Rs.8,00,000/with interest at the rate of 7.5% p.a. from the date of lodging of the claim petition before the Tribunal till the date of realization.

28. To sum up, therefore appeal is allowed with no order as to costs. The impugned judgment and order of the Tribunal is set aside.

The claim petition of the appellants is allowed and the respondent is directed to pay compensation in a sum of Rs.8,00,000/to the appellants with interest at the rate of 7.5% p.a. from the date of lodging of claim application i.e. 28/04/2006 till the date of realization.

The amount of compensation together with interest shall be paid by the respondent by issuing an account payee cheque in favour of appellant Nos.1 to 3 in equal proportion within period of three months from today.