

(2023) 02 BOM CK 0111
In the Bombay High Court
Case No : First Appeal No. 1450 Of 20 19

Nirmala And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 22-02-2023

Acts Referred:

Railways Act, 1989 — Section 2(c), 123, 123(c), 124A
Terrorist And Disruptive Activities (Prevention) Act, 1987 — Section 3(1)
Motor Vehicles Act, 1988 — Section 163A

Citation : (2023) 02 BOM CK 0111

Hon'ble Judges : Urmila Joshi-Phalke, J

Bench : Single Bench

Advocate : R.S. Suryawanshi, Neerja Chaubey

Final Decision : Disposed Of

Judgement

Urmila Joshi-Phalke, J

1. The present appeal has been filed by the original claimants challenging the judgment and award passed by the Railway Claims Tribunal in Claim Application No. OA(IIu)/NGP/ 2015/0282 dated 03/05/2018 at Nagpur.

2. The facts giving rise to the present appeal can be summarized as under:

On 09/05/2015, the deceased was purchased a valid ticket No. Y-27654952 and was traveling from Warud to Benoda by Train No. 51184 Narkhed-Bhusawal Passenger. The deceased was standing near the door inside the train. Due to heavy rush and sudden jerk to the said train, he fell down from the running train and died on the spot. The incident had taken place on UpLoop Line of Railway Station Warud. As the death of the deceased was caused in an untoward incident, the applicants, who are the wife and sons of the deceased claimed compensation.

3. The respondent/railway has contested the claim application by filing the written statement. As per the contention of the railway, no such incident causing

death of the deceased within the meaning of the provision of Section 123(c) read with Section 124-A of the Railway Act has taken place and as such, the claim application is not maintainable. It is further contended that the deceased was not a bonafide passenger of any train and therefore the claimants are not entitled for any compensation.

4. After considering the rival submissions of the parties, the Railway Claims Tribunal framed necessary issues. On behalf of claimants/applicant No.2 – Sachin s/o Nagorao Gadling stepped into the witness box and filed affidavit of examination-in-chief. Besides his oral evidence, he placed reliance on the police papers including Spot panchanama etc. The respondent/Railway has also examined the Deputy Station Master – Shri Praresh Ranjan Samal and relied upon the DRM report.

5. After hearing both the sides, the Railway Claims Tribunal rejected the claim of the claimants by observing that the dead body of the deceased cut from chest as found by Police. The claimants cannot make out the case of compensation because when a person falling from the compartment of the running train will have to go inside the railway track, so as to be subjected for cutting of his body into two parts from the chest and therefore, the case put up by the claimants is unacceptable. The tribunal had not accepted that deceased Nagorao had met with an accident which can be held an untoward incident and therefore is not liable to pay compensation.

6. Being aggrieved and dissatisfied with the judgment and award passed by the Railway Claims Tribunal, the present appeal is preferred by the original claimants, on the ground that the observations of the tribunal that as the body of the deceased was cut into two pieces, the claimants are not entitled to claim compensation as the claimants failed to prove that the death of the deceased occurred in an untoward incident. It is the contention of the claimants that the deceased was having valid ticket. The DRM report also shows that the death of the deceased is caused as he was cut down as he came underneath the train i.e. Warud to Benoda. The observation of the Railway Claims Tribunal is erroneous and liable to be set aside.

7. Heard learned Advocate Shri Roshan S. Suryawanshi for the claimants. He reiterated the contention and submitted that there is no dispute that the deceased died in an accident on 09/05/2015. He was traveling from Warud to Benoda by obtaining a valid ticket. The DRM report also shows that the deceased was having valid ticket. Due to the rush in the train, deceased was thrown out and came underneath train and train run over on the body of the deceased. Thus, the death of the deceased has taken place in an untoward incident, the claimants are entitled for compensation.

8. In support of his contention, he placed reliance on Union of India V/s Godawaribai and another 2013 SCC OnLine Bom 950. Wherein it is held that, it is obligatory for the railway administration to lead evidence to prove that the

deceased died, because of suicide or attempt to commit suicide or as a result of self inflicted injury or because of his own negligence.

9. He further placed reliance on Giridhar Natthu Deshbhratar and others V/s Union of India 2020 SCC OnLine Bom 253 . Wherein it is held that untoward incident-death of bonafide railway passenger due to falling down from running train due to sudden jerk-defence by railway that victim committed suicide by jumping from train is not established. The claimants are entitled for compensation.

10. He further relied upon the judgment of Mohd. Saber s/o Mohd. Illyas Vs Union of India 2019 SCC OnLine Bom 1236 . Wherein it is held that in absence of proof that it is not a genuine ticket, tribunal ought to have held that he is a bonafide passenger.

11. He further placed reliance upon the judgment of Ranjan wd/o Santosh Devtale and others Vs Union of India 2020(4) Mh.L.J.253. Wherein it is held that, wife of the deceased stated in affidavit that her husband purchased ticket from Nagpur Railway Station and returning to Wardha by train. The burden is discharged by wife of the deceased. Lastly, he placed reliance on Megha Vijay Thakur and another v/s Union of India 2020 (5) Mh.LJ 144 . Wherein it is held that the death due to falling down from the running train due to jerk. The Tribunal rejected the claim on the ground that, the deceased was bonafide passenger and there was no untoward incident as the body of the deceased was cut into two pieces which shows that he was run over by train. The investigation report and the written statement on record also show that the deceased fell down from the train, due to his own negligence therefore the Railway Department is not liable to pay compensation.

12. Per contra, the learned advocate Ms Neerja Choubey for the respondent vehemently argued that Railway Claims Tribunal has minutely verified the documents and has come to a proper conclusion that the claimants are not entitled for compensation as the story narrated by the claimants that due to jerk, deceased fell down from train and came underneath the train and train run over him is not acceptable. Moreover, he was not a bonafide passenger and therefore, claimants are not entitled for the compensation.

13. After hearing both the sides and perusal of the evidence on record, the following point arise for my consideration :

a) Whether the Railway Claims Tribunal is justified in rejecting the application of the claimants for compensation ?

14. To substantiate the claim, claimant no.2-Sachin Nagorao Gadling stepped into the witness box and testified that on 09/05/2015 in the morning Nagorao by informing his mother left the house on the pretext that he was proceeding to Benoda for some work. The deceased/Nagorao had purchased the Railway Ticket from Warud to Benoda of Rs. 5/- vide ticket No. Y-27654952 from Warud railway

station and put the said railway journey ticket in the pocket of his pant and boarded in the train i.e. Narkhed-Bhusaval passenger train. His father was travelling as bonafide passenger. His father was standing at the door, there was heavy crowd in the compartment. Due to the jerk his father fell down from the running train and the said train had run over from his body. Thus, as per his evidence, his father has died in an untoward incident while he was travelling in the Narkhed-Bhusaval Passenger train to reach at Benoda.

15. He was cross-examined at length and during the cross-examination he admitted that he was not travelling with deceased. He had not personally witness that the deceased had purchased the ticket. He further admitted that the body was cut down and separated into two pieces. Thus, it is attempted to eliciate from the cross-examination that the deceased not died in an untoward incident but he died due to dash by train and therefore, the claimants are not entitled for compensation.

16. Besides the oral evidence of the claimant, claimant relied upon the Police Papers i.e. Marg Khabri registered at Warud Police Station and spot panchanama drawn by Warud Police. As per the spot panchanama, dead body of the deceased was found on railway track cut into two pieces. Thus, as per the evidence of the claimants, deceased was travelling by Narkhed-Bhusaval passenger and due to jerk, he fell down on the track and died on the spot.

17. To resist the claim of the claimants, railway has examined Prasesh Ranjan Samal, who was working as a Station Master at Warud Railway Station. As per his evidence, he was on duty on 09/05/2015, he received the information that one unknown person has been cut down of train No.51184 Narkhed Bhusawal Passenger. After receiving the information, he had issued written memo to city police, Warud for necessary action. During his cross-examination, he admitted that he had not gathered any information that how the deceased had died. The place of incident is loop line no.1 of the Warud Yard.

18. He further admitted that it cannot be ascertained in absence of stationed train which can be the place of the incident. He did not received any information to cut down or dash of any person before arrival of train No. 51184. He further admitted that, he had received the information about cut down of unknown person after departure of train No. 51184. Thus, the evidence of Prasesh Ranjan Samal shows that the death of the deceased was caused as he came underneath the train named as Narkhed-Bhusaval passenger.

19. Thus, as per the evidence of the claimant, the deceased died in an untoward incident. Whereas, as per the contention of the railway, the deceased has not died while he was travelling in the said Narkhed Bhusaval express but he died as he came underneath of the train.

20. Before entering into the merits of the case, it is necessary to see the definition of untoward incident defined in Section 123(c) of the Railways Act, 1989 which reads as under :

Section 123

(c) "untoward incident" means—

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

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

21. Now, by considering the definition of the untoward incident it is to be seen whether the deceased was travelling by the train which was carrying the passenger and whether he was holding valid ticket and therefore he was a bonafide passenger. As regards the contention of the Railway is concerned, that the train ticket was seized from the body of the deceased. The said train ticket was verified by the investigating agency of the Railway Administration. The DRM Report is filed on record which shows that staff from the Rural Police, Warud attended the place of the occurrence and prepared the spot panchanama. As per the inquest panchanama the railway ticket bearing No. Y-27654952, dated 09/05/2015 Warud to Benoda was found with the dead body of the deceased. The said railway ticket was verified from Station Master Warud and found to be authentic. This observation of the Railway Administration while conducting the inquiry is sufficient to show that the deceased has obtained the ticket to travel from Warud to Benoda on 09/05/2015. The said railway ticket was verified and found to be authentic. In view of this report. the contention of the railway that the deceased was not holding valid ticket is not sustainable. The oral evidence of the claimant supported by the DMR report that the deceased was having ticket is sufficient to hold that the deceased was a bonafide passenger.

22. So far as the issue regarding untoward incident is concerned, the DRM report also shows that the death of the deceased is caused as the train was run over on him. As per the contention of the claimants, the deceased was travelling by Narkhed Bhusaval Passenger, due to the jerk, he fallen down from the train and came underneath the train and train run over him. The evidence of railway witness namely Prasesh Ranjan Samal also shows that he received the information regarding unknown person has been cut down by train No. 51184 i.e. Narkhed Bhusaval express. He specifically admitted that he did not receive any information that the dead body of a person who was found on the track was before arrival of train number 51184. He specifically admitted that he had received the information about cut down of unknown person after departure of train number 51184. Thus, it is crystal clear that the death of the deceased is

caused due to train bearing No. 51184 run over him. The Railway Claims Tribunal disbelieved the evidence by observing that if the person fell down from running train, he would not come underneath of the train and considering the injuries that the deceased cut into two pieces, it cannot be said that the deceased died as he fell down from the train.

23. In the present case, there was no any eye witness of the incident. The deceased was resident of Tiwasa. The ticket found along with deceased shows that he has obtained a ticket to proceed towards Benoda. The railway has not adduced any evidence to show that the deceased has attempted to commit suicide. The railway has not adduced the evidence to show that while crossing the track, he was dashed by the train and sustained injuries and cut into the pieces. Therefore, the conclusion of the tribunal that the nature of injuries shows that it is the case of the deceased coming under the wheels of the train is once again misconceived conclusion because the types of injuries along with other facts pertain to decide whether the accident is of a fall from the train or injuries were on account of a person being run over by the train. It is not unknown that a body may badly cut up and crush up after falling from the train either on account of bonafide passenger getting entangled in the place of the train and thereafter in the wheels or the other equipment of the train in which he was travelling or that the deceased on account of fall from the train dashed by the various equipment of the railways which are joined to the tracks, such as polls, singles, wires etc. Therefore, in the facts of the present case, the observation of the tribunal that the death of the deceased is not possible by felling from the train merely because he was cut into pieces, is completely unjustified.

24. As observed in the present case, there is no evidence to show that the deceased was crossing the railway track and therefore, he was run over by coming train. Here, in the present case, there is no evidence that the deceased has attempted to commit suicide and therefore, he was run over by coming train. On the contrary, the evidence that the railway ticket found while drawing inquest panchanama shows that the deceased has obtained the railway ticket to travel from Warud to Benoda. Therefore, the contention of the claimants is supported by the fact that the deceased has obtained the ticket to proceed towards the Benoda. Thus the evidence of the claimant is supported by the circumstances that the deceased has to travel towards Benoda. Therefore, he obtained the ticket and he was travelling by the said train. Not only, the evidence of the claimant but the evidence of the railway witness also shows that the death of the deceased is caused as the train Narkhed- Bhusaval Passenger run over him. Thus, this evidence is also sufficiently shows that the deceased died due to the injury sustained by him as he came underneath of the train.

25. It cannot be said that the deceased has committed suicide and was run over by train. The railway ticket found on the person of the deceased sufficiently shows that the deceased was travelling in the train and he fell down from the running train. Thus it is an untoward incident as defined in Section 2 (c) of the

Railway Act.

26. The Hon'ble Supreme Court of India in the case of Union of India vs Prabhakaran Vijaya Kumar and others 2008 ACJ 1895 has held thus:-

13. In Hindustan Lever Ltd. v. Ashok Vinshu Kate this Court observed:

41 "In this connection, we may usefully turn to the decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations: (SCC p.76)

'4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*¹⁰). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court* we had occasion to say: (SCC p.447, para 6)

"6. ... Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions."

42. Francis Bennion in his *Statutory Interpretation*, 2nd Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

At p. 661 of the same book, the author has considered the topic of 'Purposive Construction' in contrast with literal construction. The learned author has observed as under:

'Contrast with literal construction - Although the term "purposive construction" is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: "If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions". The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.'" (emphasis supplied)

27. In the light of the above principles, the evidence in the present case is to be appreciated. There is no dispute that deceased was travelling in a train by holding a valid ticket. The claimants have proved that the deceased fell from the train while travelling, sustained injuries and succumbed to the death. The burden of the claimants to prove that the deceased died in an untoward incident and said burden can be discharged by the claimants by filing an affidavit of the relevant facts. Thereafter, burden will shift on the railways and the issue can be decided on the facts shown or the attending the circumstances.

28. The Hon'ble Supreme Court of India in the case of Union of India vs Rina Devi 2018 (3) T.A.C. 26 (S.C.) held that: 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.

29. The next contention raised by the railway is that the act of the deceased standing on the entrance covered under the self inflicted injury. It is settled by the Hon'ble Apex Court in the case of Union of India vs Rina Devi (supra) that for attracting the provisions of Section 124-A of the Railways Act, intention of the person who had sustained a self inflicted injury is to be proved. It is further held that self inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault' theory. The Hon'ble Apex Court has referred the earlier decision in Union of India vs Sunil Kumar⁸. Wherein it is held that the plea of negligence of the victim cannot be allowed wherein the claim based on 'no fault theory' under Section 163 A of the Motor Vehicle Act, 1988 and it is held that death or injury in the course of boarding or de-boarding a train will be an untoward incident entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributory factor.

30. Here, in the present case, admittedly initially the onus which is discharged by the claimant by adducing reliable evidence, whereas Railway fails to prove that the deceased either sustained injury while crossing track or he has attempted to commit suicide. Therefore, I have no hesitation to hold that the burden shifted on the railway is not discharged by them. The claimants have proved that the deceased was a bonafide passenger and his death was caused in an untoward incident.

31. Learned Advocate Ms Choubey vehemently submitted that the claimants are not entitled for any interest on the compensation amount. The Hon'ble Apex Court in the case of Union of India V/s Rina Devi (supra) has dealt the said aspect of interest and observed as follows :-

"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 the 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(AIR 2001 SC 1333) (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (AIR 1976 SC 222) (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."

32. Thus, the Hon'ble Apex Court has held that the compensation as applicable on the date of incident 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 the award of the Tribunal is higher than revised amount with interest the higher of the two amounts has to be given.

33. The alleged incident occurred on 09/05/2015. The Railway Administration issued a notification dated 22/12/2016. In view of that notification the claimants are entitled for compensation of Rs. 8,00,000/- with interest @ 7.5% per annum. In the decision of the Calcutta High Court in Bandana Mishra vs Union of India⁹. Wherein, relying upon the said notification dated 22/02/2016, held that claimants are entitled to get the compensation of Rs. 8,00,000/-with interest 7.5% per annum from the date of lodging of claim till payment. This Court has also in First Appeal 878/2009 decided on 17/02/2020 and in First Appeal 924/2010 decided on 06/08/2019 granted the compensation of Rs. 8,00,000/- along with interest. In view of the above discussion, I pass the following order:-

a) The judgment and order passed by the learned Railway Claims Tribunal,

Nagpur dated 03/05/2018 is quashed and set aside.

b) The respondent is directed to pay compensation of Rs.8,00,000/-to the claimants within a period of 60 days from the date of receipt of copy of the judgment along with interest at the rate of 7.5% per annum.

The First Appeal is disposed of accordingly.