
(2015) 07 BOM CK 0069
In the Bombay High Court
Case No : First Appeal No. 829 of 2014

Pooja and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Evidence Act, 1872 — Section 114

Railways Act, 1989 — Section 123(c)(2), 124, 124-A, 68

Citation : (2015) 07 BOM CK 0069

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : A. Bambal, for the Appellant; N.P. Lambat, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.P. Bhangale, J—Heard.

2. Admit. Mr.N.P. Lambat, learned Counsel waives service on behalf of the respondent.

3. This appeal is directed against the Judgment and Order dt. 23-07-2012 passed in Claim Application No. OA(IIu)/NGP/2011/0015 whereby the Member (Technical), Railway Claims Tribunal, Nagpur Bench who heard the case, refused to grant compensation in respect of death of late Shri Vinod Purushottam Zambre to his dependants (appellants herein). The questions that arise are as to :

I) Whether the Tribunal committed an error while shifting the burden on the appellants to prove that the deceased was a bona fide passenger?

II) Whether the Tribunal has committed an error while holding that the deceased has not met death due to the untoward incident?

My answers to both the questions are in the affirmative for the following reasons.

4. Brief facts are as under :-

According to the claimant Smt. Pooja w/o Vinod Zambre, her husband had left home early on 27-04-2010 to go to Mumbai by a train from Bhusawal travelling in unreserved class. He had carried his attachee containing his two dresses and his mobile phone. While the train was between Bhusawal to Jalgaon, near Bhadli Station, he fell down from the train and lost his life at the spot near overhead traction pole No. 434/04. Police had investigated the case. The death was caused on account of accidental fall of the passenger from the running train at the spot within the jurisdiction of Nashirabad Police Station. Police were informed and they had inquired by drawing Spot Panchnama in respect of spot of the untoward incident. The incident occurred at the spot near overhead traction pole No. 434/04 of Up Railway line of the Central Railway between Bhusawal and Bhadli Railway Stations in the area of Railways known as "Jalgaon Shivar". The dead body was identified by son of the deceased. Postmortem examination of the dead body was done at the Civil Hospital at Jalgaon. According to the Spot and Inquest Panchnamas, there was no mention in them of the valid train ticket with the passenger; but, at the time of postmortem, it is claimed by the claimant that the train ticket and notes of Rs. 500/- were totally soaked in blood and mutilated when shown to them. The dead body with mobile phone and two dresses of deceased Vinod were handed over to claimant no.2 -son of the deceased. The train number was not known to the appellants.

5. The appellants had examined five witnesses including claimant Pooja and her Son Dhanraj, Gullu Buddhu Gawali, who was friend of appellant no.2, Sukhlal Hatila Karosiya, Supervisor in postmortem room at Jalgaon and Dinesh Digambar Patil, a Police Constable from Nashirabad Police Station. Their evidence read together do indicate that deceased Vinod Zambre met with an untoward incident. Steps were taken to inquire into the incident. The information in respect of train name and number because of which the untoward incident happened, the ticket issued for unreserved class from Bhusawal and defences, if any, available to the Railway Administration was within the special knowledge of the Railway administration. It was obligatory for the Railway Administration, in view of the strict liability for the untoward incidents, to come forward with all explanatory facts and circumstances to properly assist the Tribunal so that proper judicial findings can be recorded as to whether the presumption arising from the evidence record favoring the claimants stood rebutted according to law. The Tribunal in the facts and circumstances erred to discard evidence led creating adequate presumption in favour of the claimants.

6. Claimant Pooja Vinod Zambre came to know about the incident on 27-04-2010 itself as one of the residents in the area namely Vinod -a tailor living nearby, who came to know from the police, informed Dhanraj, son of Pooja and deceased Vinod.

7. As against this, the Railways have examined only one witness namely Manoj Kumar Nathuram Verma, Deputy Station Superintendent of Bhadali Railway Station. The evidence led by the Railway Administration was not enough to

disbelieve the case of the claimants.

8. Learned Advocate for the appellants argued that the Tribunal overlooked important evidence that, on 27-04-2010, in the morning, deceased Vinod had left home for Mumbai with his attachee containing two dresses and his mobile phone which were handed over to the claimants. Police papers of the untoward incident were tell a tale effect of investigation done which were completely neglected by the Tribunal. It was revealed that deceased Vinod had brought the passenger ticket from Bhusawal while boarding the train. It was found blood stained and mutilated as per the evidence of attendant Sukhlal Karosiya of Postmortem room at Jalgaon. Though same was offered to be handed over to claimant Dhanraj, he had refused to accept it as it was mutilated and blood stained. It is submitted that the learned Tribunal unreasonably discarded important evidence of untoward incident of independent evidence of Sukhlal Hatila Karosiya (AW-4) indicating that the deceased was a bona fide passenger of the train, which was also unreasonably overlooked. It is urged that the burden of proof in cases of the untoward incidents was on the Railways under the circumstances to establish that deceased Vinod, on the fateful day, was not a bona fide passenger. Railways had not defended on the ground that no ticket was issued on the day of untoward incident from Bhusawal Railway Station for unreserved class to Mumbai.

9. Learned Advocate submitted that the Railway Administration had failed to discharge the burden upon it to prove that Vinod Purushottam Zambre was not a bona fide passenger on the day of untoward incident and that he was not issued passenger ticket of unreserved class on the fateful day from the Bhusawal Railway Station and to prove furthermore that he did not meet with an untoward incident. The impugned judgment is criticized on the ground that the Tribunal was not careful to apply its mind to the legal aspects of the case i.e. Section 124-A of the Railways Act before recording its findings. No any evidence was led by the Railways to bring its case within any exception recognized by law to escape the strict liability to pay statutory compensation in such cases. It is urged that, therefore, the findings recorded by the Tribunal were erroneous and must be quashed and set aside.

10. On the other hand, learned advocate Mr.N.P. Lambat painstakingly supported the impugned Judgment and Order.

11. Let us examine the legal position as to liability of the Railway Administration in the event of a consequential train accident attended with casualties, which has been defined in Section 124 of the Railways Act, 1989. It is as under :-

"When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident".

12. The Legislature intended to extend the benefit of compensation to the Railway servants on duty as well as the definition of "Passenger" is widened to include any Railway Servant on duty with effect from 1.8.1994 under Section 124-A of the Railways Act, 1989. The Railway Administration has also become liable to pay compensation for loss of life or injury to bona fide rail passengers, who become victims of untoward incidents such as terrorist acts, violent attack, robbery, dacoity, rioting, shoot-out or arson by any persons in or on any train carrying passengers, waiting hall, cloak room, reservation or booking office, platform, any place within the precincts of a railway station or the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act, 1989 reads as under :-

"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.

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 purpose of this section, "passengers" 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.

Railway Claims Tribunal procedure Rules, 1989 require brief particulars of the untoward incident indicating the date and place of the untoward incident.

Untoward Incidents (Compensation) Amendment Rules, 1997.

Under these Rules, the amount of compensation payable in case of death is Rs. 4 lakhs.

Compensation payable for death and injuries :- PART -I of Schedule

AMOUNT OF COMPENSATION (Rs.):

For death 4.00 lakhs

For injuries the amount varies from Rs. 32,000/- to Rs. 4,00,000/- depending on the nature of injury sustained.

LIMIT OF COMPENSATION IN ACCIDENTS :-

Notwithstanding anything contained in Rule 3, the total compensation payable under that rule, shall in no case exceed rupees two lakhs in respect of any one person.

Compensation is payable to the dependents of the victim of an untoward fatal incident whose family has lost forever an earning member of the family. If he was only earning member of the family, the hardship is more acute when the deceased had left minor children who need care and attention for their upbringing and education, because the compensation payable by the Railway Administration under Section 124 of the Railways Act, 1989 is liability to the prescribed extent only and not more. Under Section 124-A, Railway Administration is made liable for loss occasioned by an untoward incident occurring in the course of working of Railway.

13. After considering this evidence and the ruling in the case of *Rathi Menon Vs. Union of India*, (2001) 1 ACC 453 : (2001) ACJ 721 : AIR 2001 SC 1333 : (2001) 3 JT 457 : (2001) 2 SCALE 432 : (2001) 3 SCC 714 : (2001) 2 SCR 365 : (2001) 2 UJ 1053 : (2001) AIRSCW 1074 : (2001) 2 Supreme 314 , in which case, a lady passenger was thrown off a running train as a consequence of sudden jerk while she was washing her face at wash basin situated next to the door of the compartment, compensation was awarded by final order passed by the Apex Court after considering Section 123(c)(2) as well as Section 124-A of the Railways Act, 1989. Reference is also made to ruling in the case of *Jameela and Others Vs. Union of India (UOI)*, (2010) ACJ 2453 : AIR 2010 SC 3705 : (2010) 9 JT 138 : (2010) 12 SCC 443 : (2010) 10 SCR 523 : (2011) 1 TAC 10 : (2010) AIRSCW 5625 by learned Advocate for the appellants to argue that accidental fall of a passenger from train is actionable as an untoward incident, even in the absence of any eye witness to the incident. The Apex Court observed that even if

the deceased fell down from the train due to his own negligence, it is not a criminal act so as to attract clause (c) of proviso to Section 124-A of the Railways Act. Thus, the order of compensation awarded by the Tribunal was restored by the Hon'ble Supreme Court of India after considering the nature of liability of Railway Administration for the death of passenger due to accident.

14. Learned Advocate for the respondent also made reference to the ruling in the case of Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others, (2008) ACJ 1895 : (2008) 4 JT 598 : (2008) 9 SCALE 182 : (2008) 9 SCC 527 to argue that the claimants are entitled for benefit of social welfare legislation. Thus, according to learned Advocate for the appellants, when death occurs as a result of accidental falling of a passenger from a train, Railway Administration is liable to compensate the claimants/ dependents of the deceased.

15. Regarding exceptions mentioned in the proviso contained in Section 124-A of the Railways Act, it is submitted that the facts must be specifically pleaded to claim benefit of exceptions from liability to compensate the claimants/ dependents. It is contended that the Railway Administration has strict liability in case of untoward incident as Railways undertake hazardous activity to carry passengers from one place to another which may constitute likelihood of danger to any person using the train. Therefore, one who undertakes such hazardous activity has to compensate if any damage occurs irrespective of fault on its part. Furthermore, Railway Administration is a public body. It is for the benefit of the community functioning in a welfare State. Hence, it is made liable statutorily to compensate for death or injury to a person, who may be victim of an untoward incident while using train for journey.

16. In the ruling in the case of Raj Kumari and Another Vs. Union of India (UOI), (1993) ACJ 846 , the Division Bench of this Court emphasized that burden lies upon the Railway Administration to plead and prove exceptional facts, if it wants to avoid its liability because, in such cases, for claimants, it may be impossible to prove that the deceased had valid ticket, pass or permission from the Railway Authorities, when he was traveling. In Raj Kumari's case, the Court had considered Section 68 of the Railways Act along with Section 114 of the Evidence Act and held that to prove that deceased was a ticketless traveller and was not a bona fide passenger, is a fact which should be proved by the Railway Administration, which has special means of knowledge as to whether any ticket was issued to the deceased or whether at any point before or at the end of journey, he was checked and detected by staff of the Railways as an unauthorized person without valid ticket, pass or permission. The Tribunal has to start with presumption that the deceased was a bona fide passenger, who lost his life in the railway accident. Thus, in Rajkumari's case, the appeal was allowed and compensation was awarded.

17. The principle that presumption ought to be drawn in favour of victim was also considered in the ruling of Godisela Rajamma and Others Vs. Union of India (UOI), (2003) ACJ 1404 : (2002) 4 ALD 632 : (2002) 4 ALT 370 . Andhra

Pradesh High Court considered the definition "Untoward Incident" and held that presumption is in favour of the deceased that he was traveling with a valid ticket for journey, till contrary is proved by the Railway Administration. Thus, in the absence of contrary evidence, the Railway Administration is liable to pay statutory compensation.

18. In Union of India (UOI) Vs. Hari Narayan Gupta and Another, (2008) ACJ 822 : AIR 2007 Raj 38 , it was held that the fact that, deceased was not a bona fide passenger ought to be proved by railway administration. In other words, if railway failed to adduce evidence to discharge the burden, it is liable to pay compensation for untoward incident. Thus, perusal of these rulings would indicate 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 injuries or because of his own criminal act or that death had occurred as a result of natural or medical or surgical reason. Thus, if Railways failed to plead and establish any exception, it cannot avoid a liability to pay compensation to the claimant/dependent for untoward incident causing death of a person who was traveling by a train and died as a result of any untoward accident. Reliance is also placed upon ruling in Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, (2009) ACJ 2444 : AIR 2009 SC 3098 : (2009) 8 JT 515 : (2009) 8 SCALE 545 : (2009) 7 SCC 372 : (2009) 11 SCR 70 : (2009) AIRSCW 4984 to argue that reasonable amount of interest is payable upon the amount of compensation which was allowed at the rate of 6.5 percent per annum from the date of application till the date of award and thereafter at 9% per annum till realization of the amount.

19. Under these circumstances and legal position, in my opinion, the Tribunal erred to reject the Claim Application in view of the enough evidence on record to raise presumption in favour of the claimants in this case and hence, statutory compensation must be awarded in the sum of Rs. 4,00,000/- along with interest at the rate of 6% per annum from the date of the Claim Application till the award and thereafter, 9% per annum till realization as logical outcome of this appeal in the present case. Dependents of any bona fide passenger of the train or even holder of valid platform ticket, upon entering into Railway premises, if such bona fide user becomes victim of an untoward fatal incident, must be compensated, even assuming for the sake of argument that such user was knocked down by the train. In such cases, the liability of the Railway administration is strict, irrespective of proof of any wrongful act, neglect or default on the part of the Railway Administration. Railway Administration has undertaken hazardous occupation to carry passengers safely from place to place and it must have all security arrangements in order to carry bona fide passengers safely to their destination chosen. In the facts and circumstances of the present case, the Railway Tribunal clearly erred in law and facts to dismiss the claim of accidental death of Vinod Zambre due to untoward fatal incident.

20. For the aforesaid reasons, the impugned Judgment and order is indefensible,

unsustainable and must be set aside. Hence, the appeal is allowed with costs.

The Railway Administration is liable to pay compensation in the sum of Rs. 4,00,000/- (Four lakhs) to the claimants with reasonable interest @ 6% p.a. from the date of the claim application till the date of the award and further interest @ 9% p.a. till realization of the entire amount.