

(2020) 03 BOM CK 0016
In the Bombay High Court
Case No : First Appeal No. 272 Of 2019

Ranjana And Ors

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123(c), 124A

Citation : (2020) 03 BOM CK 0016

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : A.B. Bambal, N.P. Lambat

Final Decision : Allowed

Judgement

1. This appeal is under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment of the Railway Claims Tribunal, Nagpur in Claim

Application No. OA(IIu)/NGP/187/2016 dated 31-12-2018.

2. The case of the appellants in short is as under :-

(i) One day prior to incident, deceased Santosh Dadarao Devtale had gone to Nagpur to meet his relative. On 15-8-2016 in the morning, deceased was

returning from Nagpur to Sewagram. He boarded the train. When the train reached near Sewagram Railway Station, deceased accidentally fell down

from the train and died on the spot. On the memo of Station Master, Sewagram, Police Station, Sewagram attended the spot and brought the deceased

in MGIMS and Kasturba Hospital, Sewagram, Wardha for postmortem. The GRP, Sewagram had given information of incident to the appellants.

Thereafter Sewagram Police Station has prepared the spot panchanama and inquest panchanama. Dead body was handed over to appellants after

conducting postmortem.

(ii) The appellants filed claim application before the Railway Claims Tribunal, Nagpur. The said claim was resisted by the respondent. The Railway

Claims Tribunal dismissed the claim application on the ground that deceased was not bona fide passenger and no untoward incident was taken place.

The defence of railway was that deceased was run over by unknown train when deceased was crossing the railway route. Hence, the present appeal

by the appellants.

3. Heard learned Advocate Shri Bambal for the appellants. He has submitted that the claim cannot be denied only on the ground that deceased was

not having journey ticket. In support of his submission, he has pointed out decision in the case of Union of India Vs. Rina Devi [2018 ACJ 1441].

Learned Advocate has submitted that evidence adduced by respondent is after thought. It is contradictory evidence and, therefore, it cannot be relied

on.

4. Learned Advocate Shri Bambal has pointed out decision in the case of Union of India Vs. Prabhakaran Vijaya Kumar and others [2008(2) T.A.C.

777 (S.C.)] and submitted that when two interpretations are possible, the one which advances the object of the statute and serves its purpose should

be preferred.

5. Learned Advocate Shri Bambal has further pointed out judgments of this Court in (1) First Appeal No. 774/2012 (The Union of India Vs. Kamla

Ramdas Bhasme and anr.) decided on 22-4-2015 and (2) First Appeal No. 305/2010 (The Union of India Vs. Dhurpatabai w/o Kondiba Gomsale and

anr.) decided on 1-7-2017.

6. Heard learned Advocate Shri N. P. Lambat for the respondent. He has submitted that there is no evidence to show that deceased was travelling

from Nagpur to Wardha by any train. Journey ticket was not found on the spot of incident, therefore, deceased was not bona fide passenger.

Deceased was crossing the railway route. That time, he was run over by unknown train. Therefore, Claim Tribunal has rightly rejected the claim.

Hence, the appeal is liable to be dismissed.

7. Evidence on record shows that appellant no. 1 was not eye witness of the incident. She could not state as to what happened. She has stated in her

affidavit that her husband had gone to Nagpur. He was returning by train by purchasing ticket. The ticket was lost in the accident. He died due to

accidental falling from the train. In her cross-examination, she has admitted that she was not eye witness of the incident. She was not knowing by

which train her husband was coming.

8. Learned Advocate Shri Lambat has submitted that the witness examined by the respondent, namely, Loco Pilot Shri Sanjay Sahu stated in his

evidence that one unknown person was runover between railway track at K.M. No. 765/17 at Seloo Road Sewagram. The said unknown person

came under the running train by his own act for suicide. Therefore, it is clear that the deceased was crossing the railway route and he died.

9. It is pertinent to note that the appellant no. 1 was not accompanying the deceased. Therefore, it cannot be expected from her to state as to how

deceased died. The evidence of Loco Pilot Shri Sanjay Sahu shows that deceased was runover by the train. The evidence is contradictory to

information given to the Station Master. As per the death information report submitted by Loco Pilot Shri Sanjay Sahu, it appears that he informed the

Station Master that one person was lying dead on railway track. He had not informed the Station Master that one unknown person was runover by the

train. Therefore, evidence of Loco Pilot Shri Sanjay Sahu is contradictory.

10. Evidence of Station Master Shri Prakash Mazumdar shows that he received information from Loco Pilot that one person was lying dead on the

railway track. This evidence of Station Master and the evidence of Loco Pilot Shri Sanjay Sahu are contradictory. Loco Pilot Shri Sanjay Sahu in the

information given to the Station Master has stated that one unknown person was lying on the railway track but Loco Pilot not stated that unknown

person was runover.

11. There is no dispute that deceased died in a railway accident. The facts in the present case and the facts of decided case in First Appeal No.

774/2012 (supra) are nearabout same. This Court has observed in paragraph nos. 7 and 8 as under :-

7] I have considered the respective submissions and I have gone through the records of the case. In support of the claim, the respondent no.1 had filed

his affidavit at Exh. AW-1 in which it is stated that his son was traveling from Wardha to Badnera on 08.12.2010 by train no. 2655-Down. During said

journey his son fell down near Pulgaon railway station and succumbed to the injuries. Said witness was cross-examined in which he admitted that he

was residing near Pulgaon railway station and the railway track was about 40 to 50 houses away from the railway line. He denied the suggestion that

deceased was travelling without any ticket. On behalf of the appellant, the Mail Guard was examined at Exh. RW-1 in which he stated that during his

duty hours there was no untoward incident of accidental fall of any passenger. In his cross examination he stated that unless said fact was informed,

he would not be aware of any passenger falling down. Another witness examined was the Deputy Station Superintendent at Exh. RW-2 who stated

that he was informed by the loco pilot of train No. 2140 about body of an unknown person lying between the tracks. Said witness was also cross

examined. The statutory report was duly submitted by the concerned authorities on 15.04.2011 in which it was stated that the victim died as a result of

untoward accident. The spot panchanama was also placed on record dated 09.12.2012. While it is the case of the respondents that the deceased died

as a result of accidental fall from the train while he was travelling from Badnera to Wardha. It is the case of the appellant that as the deceased was

residing near the railway line it was likely that he was hit by some train and hence the railways were not liable to satisfy the claim for compensation.

The provisions of Section 123(c) of the Railways Act, 1989 as considered by the Supreme Court in Union of India (supra) in which it was held that the

expression "accidental falling of a passenger from train" could not be given a restrictive meaning. In Union of India through General Manager

(supra) relying upon the decision of the Supreme Court aforesaid, it was held that where the railway administration seeks to avoid its liability it will

have to be proved by it that the deceased was a ticketless traveller and not a bonafide passenger.

8] Considerable importance is sought to be laid by the appellant on the fact that the deceased was residing near the railway line and hence the case as

put forth could not be believed. Merely because the deceased was residing near the railway line would not be a ground for holding against the

respondents. The evidence on record indicates that there is no report given by any of the employees of the railway authorities of any accidental dash

being given by the passing train to the deceased. The nature of injuries suffered by the deceased especially those on the head also lead to an inference

that said injuries are possible due to fall from the train. The Tribunal after considering aforesaid evidence was pleased to hold that the appellant had failed to discharge its burden of proving that the deceased was not a bona fide passenger.

12. This Court in First Appeal No. 305/2010 (supra) has observed in paragraph no. 20 as under:

20] Per contra, by relying upon the judgment of Rajasthan High Court in the case of Union of India Vs Hari Narayan Gupta and another, 2008 ACJ

822, it is submitted by learned counsel for respondents, that merely because the ticket was not found, it cannot be said that deceased was travelling

without valid ticket. In this judgment it was held that the normal presumption is that a passenger in a railway holds a valid ticket. Hence, the burden is

upon the railway administration to prove that he was not having a valid ticket. It was held that when a person dies in an accident by falling from

running train, it is not possible for the legal representatives to produce the ticket. Hence, in absence of production of ticket also it can be held that

deceased was a bona fide passenger. Thus, once evidence on record proves that deceased had accidentally fallen from the train which resulted into

his death, then the presumption will follow that he was travelling with valid ticket. Naturally the burden stands shifted on the railway administration to

prove otherwise.

13. In the cited decision in First Appeal No. 774/2012, it was the defence of the railway that deceased died due to his own negligence while crossing

the railway track. He was runover by the train when he was crossing the railway track. It was also the defence that he was not bona fide passenger

as he was not having railway ticket. In the present case also, the journey ticket was not found with the dead body. The Honâ??ble Apex Court in the

case of Union of India Vs. Rina Devi (supra) has held in case of compensation for death or injury to a passenger in rail accident or untoward incident

that â??passenger is a person travelling with a valid pass or ticket. Railway ticket not recovered from body of the deceased or from injured person.

Mere absence of ticket with victim of accident would not negate the claim that he was a bona fide passenger. Initial burden would be on the claimant

which can be discharged by filing an affidavit of the relevant facts and burden will then shift on to Railways and the issue can be decided on the facts

and attending circumstances.â??

14. In the present case, the appellant has stated in her affidavit that her husband had gone to Nagpur. He purchased ticket from Nagpur Railway

Station and was returning to Wardha by train. He fell down from running train and died. This particular evidence is to be rebutted by the Railway. The

witnesses examined by the Railway are not reliable. Evidence of Loco Pilot Shri Sanjay Sahu is contradictory to the evidence of Station Master. As

per the evidence of Station Master, Loco Pilot Shri Sanjay Sahu informed him that dead body of one unknown person was lying on the railway track.

But Loco Pilot, Shri Sanjay Sahu has stated that one unknown person was runover by the train. Therefore, their evidence are not reliable. Burden is

discharged by the appellant by filing affidavit. Railway not disproved the claim.

15. Statement of brother of deceased is on record. He has stated that his brother had gone to Nagpur. He was returning by train. He was informed by

some person that his brother fell down from the train.

16. Honâ??ble Apex Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar and others (supra) has held in paragraph nos. 11 and 12 as

under:

11. No doubt, it is possible that two interpretations can be given to the expression â??accidental falling of a passenger from a train carrying

passengersâ??, the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the

second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for

compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow

and technical one.

Hence, in our opinion the latter of the above mentioned two interpretations i.e. the one which advances the object of the statute and serves its purpose

should be preferred vide Kunal Singh V. Union of India, (2003) 4 S.C.C. 524 (Para 9), B.D. Shetty V. CEAT Ltd., (2002) 1 S.C.C. 193 (Para 12),

Transport Corporation of India V. ESI Corporation, (2000) 1 S.C.C. 332 etc.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance

with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare

statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. V. The Workmen*, A.I.R. 1961 S.C. 647

(Para 7), *Jeewanlal Ltd. V. Appellate Authority*, A.I.R. 1984 S.C. 1842 (para 11), *Lalappa Lingappa and others V. Laxmi Vishnu Textile Mills Ltd.*,

A.I.R. 1981 S.C. 852 (Para 13), *S.M. Nilajkar V. Telecom Distt. Manager*, (2003) 4 S.C.C. 27 (para 12) etc.

17. As per Section 124A of the Railways Act, the strict liability is on the Railway to disprove the claim. The Claims Tribunal rejected the claim only on

the ground that deceased was not a bona fide passenger. That cannot be a ground to reject the claim in view of the judgment of Honâ??ble Apex

Court in the case of *Union of India Vs. Rina Devi* (supra). The Tribunal has recorded its finding that deceased was runover by unknown train when

he was crossing the railway track.

There is no evidence on record to show that deceased was crossing the railway track. Same type of defence was raised in First Appeal No. 774/2012

(supra) and this Court has observed that the railway failed to prove such defence. In the present case also, there is nothing to show that deceased was

crossing the railway track and that time, he was runover by the train. It is a beneficial legislation and in view of the judgment of the Apex Court in the

case of *Union of India Vs. Prabhakaran Vijaya Kumar and others* (supra), the interpretation which is beneficial to the statute is to be taken into

consideration. In that view of the matter, the appeal is allowed.

18. The impugned judgment is hereby quashed and set aside.

The respondent is directed to pay amount of compensation of Rs. 8,00,000/- (Rupees Eight Lakhs Only) to the appellants/ claimants within a period of

three months.

JUDGE

19. Shri Bambal, learned Advocate has submitted that the amount of compensation be given to appellant nos. 1 to 4 in equal shares.

20. Amount of compensation be paid in equal shares to appellant nos. 1 to 4. The appellant nos. 2 and 3 are minors and therefore, the amount of

compensation of the shares of appellant nos. 2 and 3 be given to appellant no. 1 (mother).