

(2021) 03 BOM CK 0017

In the Bombay High Court

Case No : First Appeal No. 1097 Of 2017

Rekha Dilip Sapkale

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 23-03-2021

Acts Referred:

Railways Act, 1989 — Section 123(c), 123(c)(2), 124(A)(c), 147

Citation : (2021) 03 BOM CK 0017

Hon'ble Judges : Prithviraj K. Chavan, J

Bench : Single Bench

Advocate : Vasant N, T.J. Pandian, T.C. Subramanian

Final Decision : Allowed

Judgement

Prithviraj K. Chavan, J

1. This appeal takes an exception to the judgment and order dated 28th February, 2017 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai.

2. Facts in brief are as follows :-

3. On 12th January, 2010, one Akash Dilip Sapkale, aged about 18 years (for short 'deceased'), who was serving in Hawrah Company, Nerul, Dist. Thane was travelling from Turbhe to Thane by an unknown local train on the strength of IInd class railway ticket valid for his travel from Turbhe to Thane. When the train reached near Rabale Railway Station at K.M. 41/42, due to sudden push of the overcrowded passengers inside the compartment, he fell down from the running train, resulting into serious head injuries and subsequently succumbed to those fatal injuries, leaving behind his mother - Rekha Sapkale, the present appellant. It is contended that she is the sole dependant of the deceased.

4. A claim application was filed before the Railway Claims Tribunal, Mumbai seeking compensation. The Claims Tribunal, after going through the evidence of the appellant on affidavit and having considered the written statement and the

record of the respondent, arrived at a conclusion that the presence of the deceased in the Railway premises was unauthorized and consequently he was knocked down by an unknown local train while crossing the railway track, meaning thereby, the Tribunal held that it was the negligence of the deceased, which resulted into his death. As the said act was an offence, it does not fall within the ambit of "untoward incident" as defined in Section 123(c)(2) of the Railways Act, 1989 (for short "Railways Act"). The Tribunal specifically held that it was not a case of accidental fall of the deceased from the running train, for which it laid emphasis on the autopsy report vis-a-vis the inquest panchanama. The Tribunal has also concluded that since no ticket could be traced on the person of the deceased during inquest, he cannot be said to be a bona fide passenger, travelling in a train with a valid ticket or pass.

5. Aggrieved, the appellant has preferred the present appeal.

6. I heard Mr. More, learned Counsel for the appellant and Mr. Pandian, the learned standing Counsel for the respondent.

7. At the outset, Mr. More would argue that the Tribunal has committed a grave error in ignoring the fact that there was not a single eye-witness to the accident. Even the Station Master has not witnessed the accident. The evidence of appellant - Rekha Sakpale has not been rebutted in cross-examination, wherein she has deposed on oath that the deceased, on the day of incident, was travelling from Turbhe to Thane in a IIInd class compartment of the local train with a valid railway ticket.

8. He would further argue that the deceased was immediately shifted to the hospital without carrying out a spot panchanama. The Tribunal ought to have accepted that the deceased was a bona fide passenger and should not have jumped to a conclusion that he was travelling without valid ticket or pass. It is submitted that no evidence has been adduced by the respondent, much less, acceptable evidence to substantiate their case that the deceased was crossing the railway track, meaning thereby, he died because of his own criminal act and, therefore, the Tribunal ought to have awarded compensation to the dependant of the deceased. Mr. More has also laid emphasis on the fact that if it was a criminal act under Section 147 of the Railways Act, the Investigating Officer ought to have registered an FIR and charge-sheet should have been filed by the GRP. Thus, he urged to set aside the impugned judgment and order inter alia praying for grant of compensation.

9. Mr. Pandian, learned Counsel for the respondent, on the other hand, has supported the impugned judgment by contending that there is nothing in the impugned judgment by which it can be said that the evidence has not been properly assessed by the Tribunal. There was no reason for the Tribunal to accept the evidence of the appellant, who was not an eye-witness to the said incident. According to Mr. Pandian, the Tribunal has rightly placed reliance upon the copies of the inquest panchanama, post-mortem report, death certificate of the

deceased as well as DRM's report.

10. Affidavit in lieu of examination of the appellant, in sum and substance, indicates that the deceased was her unmarried son, who was travelling from Turbhe to Thane in a local train on 12th January, 2010 in a IInd class compartment, holding a valid railway ticket. He fell down from the running local train near Rabale station at K.M. 41/42 due to push by passengers in the compartment. He sustained head injuries and subsequently he died. In support of the same, the appellant has tendered certified copy of the Station Master's Memo, inquest panchanama and post-mortem report.

11. Interestingly, in her cross-examination, nothing has been brought out falsifying her evidence on oath in relation to travel of her son on that particular day in a IInd class compartment with a valid ticket from Turbhe to Thane. The cross-examination indicates that the deceased had come to Mumbai for work and was staying at Turbhe with her Aunt. If that be so, it is quite probable that he was travelling from Turbhe to Thane and met with an accident near Rabale station at K.M. 41/42. This is so because probably there seems to be no reason for him to cross the railway track at that place when he was going to Thane. This falsifies the respondent's contention that he was crossing the railway track. There is no suggestion in cross-examination that he was not travelling by the local train from Turbhe to Thane nor there is any suggestion that he was not possessing a valid IInd class ticket at the relevant time.

12. Undoubtedly, the deceased had died due to head injury as is evident from the post-mortem report. The post-mortem report does not indicate that the head injuries could have been sustained due to a dash given by a running train. No doubt, there were several injuries on the person of the deceased as depicted in the post-mortem report, however, it cannot be said that those injuries could be sustained only when a person is hit by a train while crossing the track. In the absence of any satisfactory evidence that the deceased was crossing the railway track, it will have to be presumed that he was a bona fide passenger, who met with an accident due to a fall from an unknown running train and, therefore, it can be said to be an "untoward incident" as defined in Section 123(c)(2) of the Railways Act. The question again arises as to why no offence came to be registered if the act of the deceased was falling under the proviso to Section 124(A), clause (c), meaning thereby, it was his own criminal act.

13. Merely because no ticket was recovered from the spot of incident nor from the person of the deceased during inquest panchanama, does not ipso facto mean that he was ticketless. It is significant in the light of the fact that there is no evidence forthcoming as to whether the respondent had searched the spot to find out if the deceased had a ticket. No spot panchanama was conducted by the respondent.

14. It is not the case of the respondent that the motorman or guard of any of the local train or, for that matter, the motorman of the train which hit the deceased,

had in fact, witnessed the incident as to how it had happened. Secondly, the findings of the Tribunal are quite perverse in the sense that it has relied upon the inquest panchanama wherein the panchas and police opined that the deceased was knocked down by an unknown local train. Such observations are not only improper, incorrect but also in total ignorance of the law of evidence. The police and pancha witnesses cannot be said to be experts to render their opinion, more so, when they are not eye-witnesses. Such observations by the Tribunal are required to be set aside.

15. Since the provisions for compensation in Railways Act is a beneficial piece of legislation and, therefore, it should receive a liberal and wider interpretation and not a narrow and technical one. The appellant being dependant of the deceased, should not be deprived of such benefit, which is bestowed by the legislation.

16. At this stage, it is apposite to mention the observations of the Hon'ble Supreme Court in case of Union of India Vs. Prabhakaran Vijaya Kumar & Ors. 2008 ACJ 1895. The salient features of the said judgment are reproduced as under :-

"8. However, the evidence of D. Sajja, DW-1, who was the Station - Master at the railway station corroborates the evidence of PW-2, DW-1 had deposed that he saw one girl running toward the train and trying to enter the train and she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. For this reason, the Tribunal held that this was not an 'untoward incident' within the meaning of the expression in Section 123(c) of the Railways Act, 1989, as it was an accidental falling of a passenger from a train carrying passengers.

9. In appeal, Kerala High Court was of the view that the deceased sustained injuries, even according to the respondents, in her anxiety to get into the train which was moving. Hence, the High Court held that the deceased came within the expression 'accident falling of a passenger from a train carrying passengers' which is an 'untoward incident', as defined in section 123(c) of the Railways Act, 1989.

10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an 'accidental falling of passenger from a train carrying passengers'. Hence, it is an 'untoward incident' as defined in Section 123(c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', 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. E.S.I. 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, the beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemicals Works Co. Ltd. V. 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 V. Laxmi Vishbnu Textile Mills Ltd.*, A.I.R. 1981 S.C. 852 (para 13), *S.M. Nilakjar V. Telecom Distt. Manager*, (2003) 4 S.C.C. 27 (para 12), etc.

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 larger number of railway passengers from getting compensation in railway accidents. It is well known 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 victims 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, purposive, and not literal, interpretation should be given to the expression."

17. The Tribunal has held that the appellant is the sole dependant of the deceased. Her husband pre-deceased the deceased. The relationship between the mother and the son (deceased) has been established and, therefore, the appellant is entitled for the relief, which she had claimed.

18. In view of the observations hereinabove, the appeal is allowed.

19. The impugned judgment and order dated 28th February, 2017 passed by the Railway Claims Tribunal, Mumbai is quashed and set aside.

20. The respondent - Railway shall deposit compensation of Rs. 8,00,000/- (Rupees Eight Lakhs only) in the Railway Claims Tribunal, Mumbai within a period of six weeks from today.

21. If the respondent fails to pay the compensation within six weeks, future

interest at the rate of 9% p.a. shall have to be paid on the amount of compensation, till the entire amount is realised.

22. The Record & Proceedings be remitted back to the Railway Claims Tribunal, Mumbai.