

(2017) 07 BOM CK 0094
In the Bombay High Court
Case No : 1147 of 2016

Shankar s/o Narayan Rathod Since dead through his legal heirs Smt. Gangabai wd/o Shankar Rathod APPELLANT

Vs

Union of India, Through the General Manager Central Railway RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

Railway Claims Tribunal Act, 1987, Section 16 -
Railways Act, 1980, Section 123(c)(2), Section 124(a)

Citation : (2017) 07 BOM CK 0094

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

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

Final Decision : Allowed

Judgement

1. This appeal is preferred by the original petitioner whose application for compensation filed under Section 16 of the Railway Claims Tribunal Act, 1987 came to be dismissed by the Railway Claims Tribunal, Nagpur vide its Judgment and order dated 13.8.2015.

2. Brief facts of the appeal can be stated as follows: On 29.7.2012 applicant's mother Smt. Premibai Narayan Rathod purchased a general ticket from Kalyan to Nagpur and boarded Sevagram Express along with relative, who had also purchased a separate ticket. When their train halted at Ajni Railway Station, her relative alighted first and thereafter applicant's mother, while alighting from the train, due to the jerk and rush of the passengers, fell down from the running train and died on the spot. The appellant, therefore, claiming it to be a case of an "untoward incident", filed the petition before the Railway Claims Tribunal, Nagpur, claiming compensation of Rs.4,00,000/.

3. This petition came to be resisted by the respondent, herein denying that the cause of accident was the "untoward incident" within the meaning of Section

123(c)(2) of the Railways Act. It was submitted that in the inquiry conducted by the statutory authority, it was found that the applicant's mother got herself injured due to her negligence and hence, railway administration is not responsible for the said accident, therefore, the petition needs to be dismissed.

4. In support of his case, appellant examined himself and relied upon the various documentary evidence produced on record including Marg information, spot panchnama, inquest panchnama, post mortem report etc.

5. On the basis of this evidence, the learned trial Court was pleased to hold that, as the death of appellant's mother was on account of her own negligence, the appellant cannot be held entitled for the compensation, as the said incident is not covered within the definition of "untoward incident" given in section 123(c)(2) of the Railways Act. The learned Tribunal accordingly dismissed the petition. Hence, the instant appeal.

6. In this appeal, I heard learned counsel for appellant and respondent, perused the impugned judgment of the Tribunal and also the documentary evidence produced on record. The evidence in this case is more than sufficient to show that the appellant's mother had purchased the ticket and boarded the Sevagram Express at Kalyan on that particular day i.e. 29.7.2012. However, while alighting at Ajni on account of the rush of the passengers and as the train suddenly started, she fell down from the running train and died on the spot. There is evidence to that effect of the Marg Khabri which was sent by Dy. S. S. Central Railway by way of written memo to police station incharge railway police. The spot panchnama is also sufficient to prove it; even the report of statutory inquiry also goes to show that she was a bona fide passenger of the railways and while she was trying to get down from the moving train, she slipped, got injured and died. However, it is concluded that she got injured due to her own negligence and hence, railway administration is not responsible for the incident.

7. In view of this report which is admitted, the learned Tribunal held that as the cause of her death was her own negligence it does not come within definition of "untoward incident" and accordingly absolved the respondent from paying compensation to the applicant.

8. However, as rightly submitted by learned counsel for the appellant death on account of negligence of the passenger himself does not absolve the railway administration from the liability of paying compensation to the legal heirs of deceased. The provisions of Section 123(c)(2) and section 124(A) of the Railways Act, 1980 are very relevant to that effect. Section 123(2) defines "untowards incident" to mean accident falling of any passenger from the train carrying passengers; whereas section 124(A) imposes liability of paying compensation to the injured or to the legal heirs of the deceased on account of death, due to untoward incident. As per the said Section, the liability of the railways in case of such untoward incident is absolute, except in the five eventualities provided in the Proviso. Those five eventualities are from (a) to (e). As stated in the proviso,

unless and until railway administration succeeds in bringing its case in any of those eventualities, railway administration cannot be exempted from the liability to compensate the appellant. Those eventualities are; (a) suicide or attempted suicide; or

(b) self-inflicted injury;

(c) own criminal act, or

(d) any act committed by passenger in a state of intoxication or insanity; lastly

(e) any natural cause or disease or medical or surgical treatment.

9. In the instant case, none of these exceptions can be said to be attracted. Neither it was a case of suicide or attempted suicide nor it can be the case of selfinflicted injury; nor it can be called as own criminal act of deceased because the criminal act invites the mens rea or guilty intention which is conspicuously absent in such accidental or negligent death. Even the statutory report also concludes that it was a case of negligence on the part of deceased herself. However, even in the case of negligence of a bona fide passenger, the liability of railway administration is not absolved or exonerated. Here, in the case therefore, appellant is entitled to get compensation from the respondent, as the death of his mother fall was accidental and hence within the definition of "untoward incident" as laid down in section 123(c)(2) of the Railways Act.

10. As to what can be the amount of compensation, for that learned counsel for the appellant has relied upon the Notification issued by Ministry of Railway on 22.12.2016 making certain Amendment and changes in the Rules framed under the Railway Claims Tribunal Act, 1987. As per the said change, the compensation amount in case of death of a bona fide passenger in untoward incident is enhanced from Rs.4,00,000/to Rs.8,00,000/with effect from 1.7.2017. According to learned counsel for appellant, the appellant is now entitled to get the benefit of this amendment. To substantiate this submission, learned counsel for appellant has relied upon the judgment of Apex Court in the case of Rathi Menon Vs Union of India 2001 ACJ 721, wherein, having regard to the beneficial object of the legislation, it was held that the injured or the legal heirs of the deceased are entitled to compensation "as prescribed" under the Rules at the time of determination of compensation. In this judgment, the Hon'ble Apex Court has considered the words "as may be prescribed" and held that these words are required to be understood as to mean "as may be prescribed from time to time". It was further held that, merely because the claim petition remains pending before the Tribunal or in the Court for years together it will not deprive the applicant from getting benefit of the amended legislation to have an enhanced amount of compensation.

11. Learned counsel for appellant has also placed reliance upon the judgment of Calcutta High Court in the case of Bandana Mishra Vs. Union of India II (2017) ACC 484 (Cal.), wherein relying on this judgment of Hon'ble Apex Court in the

case of Rathi Menon, the benefit of the recent Amendment made in Rule 4 of 1990 Rules with effect from 1.1.2017, was extended to the applicant and the compensation was enhanced from Rs.4,00,000/to Rs.8,00,000/.

12. In the instant case, therefore, having regard to this Amendment and also the legal position as laid down by the Apex Court in the case of Rathi Menon, the amount of compensation to which appellant becomes entitled is required to be held as Rs.8,00,000/as per the amended provision. The appeal is therefore, allowed.

The impugned Judgment and order passed by learned Railway Tribunal Claims stands quashed and set aside.

In consequence the application filed by the appellant before the Tribunal for compensation is allowed.

Respondent is directed to pay compensation of Rs.8,00,000/to the appellant within three months with interest @ 7.5 per annum from the date of claim application filed before the Tribunal, till the date of the payment.