
(2012) 07 MP CK 0031
In the Madhya Pradesh High Court
Case No : M.A. No. 617 of 2008

Smt. Shanti and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Constitution of India, 1950 — Article 38
Evidence Act, 1872 — Section 101
Railway Claims Tribunal Act, 1987 — Section 23
Railways Act, 1989 — Section 123(b)(i), 123(c), 124, 124A, 125

Citation : (2013) ILR (MP) 162

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Abhishek Arjaria, for the Appellant; Sameer Beohar for Insurance Company, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.—Claimants have filed this appeal u/s 23 of the Railway Claims Tribunal Act, 1987 being aggrieved by the judgment dated 24/10/2007 passed by Railway Claims Tribunal, Ghaziabad Bench, Bhopal in Original Application No. 168/2004, dismissing the claim application filed by the claimants. The claimants i.e. wife, three daughters and one son have filed claim petition u/s 125 of the Railways Act, 1989 (hereinafter referred to as "the Railways Act") seeking compensation for death of Rajesh aged 27 years doing job of labourer. It is averred that on 20/2/2001 deceased-Rajesh was travelling in Itarsi-Nagpur Passenger Train from Betul to Amla having the second class journey ticket. Due to heavy rush in the train, he could not find the seat and was standing near gate of the boggy. The deceased received some jerks of the train and push of by the co-passengers, however, fell down from the running train in between Km. 863/20-22 and received grievous injuries on various parts of body to which ultimately succumbed to death. It is stated that the journey ticket was lost in the incident, however, the compensation as prescribed under the law was prayed for.

2. The Railways by filing written statement have denied the averments of the claim application and contended that the deceased was not the bona fide passenger. It is said that on receiving message from Keyman Hari Ram Subedar laying a dead body of unknown person on the Down Track of Malkapur road and Barsili, the Panchnama of the spot was prepared, but, it is said that the deceased was not the bona fide passenger, therefore, compensation may not be awarded and the Claims Tribunal has rightly dismissed the application.

3. Learned Railway Claims Tribunal considering the Marg intimation Ex. A/7, inquest report Ex. A/8 and post-mortem report Ex. A/9, observed that body was found lying between down main line in a mutilated condition wearing underwear only. If a passenger falling down from a moving train, it cannot be presumed that he shall come between two rails of the same track. It can further not be presumed that he shall have a journey without wearing the cloth. It is further observed that Sub Inspector found that semen was discharged and mark of injuries was below the penis, however, in such circumstances, it cannot be held that the deceased died due to fall down from the running train. The Railway Claims Tribunal further recorded a finding that the claimants fall within the purview of definition of Section 123(b)(i) of the Railways Act and under the said Act, he would not be entitled to receive the compensation as prescribed therein because the accident has not been proved and the deceased was not a bona fide passenger and the he was not died due to an untoward incident, therefore, the claimants are not entitled to receive any compensation.

4. Shri Arjaria, learned counsel for the appellants, has strenuously urged that the finding recorded by the Railway Claims Tribunal holding that the deceased was not a bona fide passenger is illegal because the burden lays on railways who has failed to discharge such burden, by producing the material evidence before the Tribunal. On the contrary, as per the statement of Smt. Shanti Bai, it is apparent that the deceased was bearing valid ticket which may have lost in the incident. In support of such contention reliance has been placed on the Division Bench judgment of this Court in the case of Raj Kumari and Another Vs. Union of India (UOI), , whereby it is held that the burden lies on the railway administration to prove that the deceased was not possessing the valid ticket and such burden cannot be shifted on the claimants. In addition thereto, it is further contended that looking to the nature of the incident, it falls within the purview of an untoward incident specified u/s 123(c) of the Railways Act, however, compensation ought to be awarded. To buttress his submission, reliance has further been placed on the judgment of the Rajasthan High Court in the case of Union of India (UOI) Vs. Soram Bai and Others, .

5. Per contra, Shri Sameer Beohar, learned counsel for the respondent, placing reliance on the judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. Sunil Kumar Ghosh, , contended that when the passenger fall down from the boggy of the train in which he is travelling, while shunting, it cannot be said that an accident occurred to the train or a part of the train. In

such circumstances, looking to the facts of the case, the Claims Tribunal has not committed any error in dismissing the claim application filed by the appellants.

6. After hearing learned counsel for the parties, the moot questions for consideration arises in this case are; whether the burden to prove that deceased was a bona fide passenger lies with the claimants or with the railway administration? Whether the principle of the strict liability is applicable to the statutory authority like railway administration? Whether in the facts of the case the incident which has taken place, would fall within the purview of an untoward incident as specified in Section 123 (c) of the Railways Act?

7. After perusal of the impugned order and the judgments relied upon by the parties, in order to appreciate the controversy involved in the present case and to answer the said questions, it is imperative to refer the basic provisions of the Railways Act. The passenger has been defined u/s 2(29) of the Act thereby a person travelling with a valid pass or ticket would be called as passenger. Section 54 makes it clear that every passenger shall have to exhibit or present his pass or ticket on demand made by the railway servant authorised in this behalf for examination during the journey or at the end. Section 55 of the Act prohibits any person to enter or remain in any carriage on a railway for the purpose of travelling therein as a passenger unless possess a valid pass or ticket or obtained permission of a railway servant authorised in this behalf for such travel. If permission has been obtained under sub-section (1), it shall be in the form of a certificate issued by a authorised person subject to condition that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for he distance to be travelled. As per Chapter-XV of the Railways Act, on found fraudulently travelling or attempting to travel without proper pass or ticket shall have penal consequence and fall within the purview of offence. u/s 137, the Court has been empowered to imprison such person for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. The proviso makes it clear that such punishment shall not be less than a fine of five hundred rupees thereby it is clear that on found ticketless or without proper pass, a passenger may be imposed with a minimum penalty of Rs. 500/-. Section 138 of the Act, empowers the railway administration to levy excess charges and fare on those passengers who travel without ticket. Section 139 of the Act, further empowers the railway administration to remove the person in case found him travelling without ticket. As per Section 179 (2), is clear that if any person commits any offence mentioned in Section 137 to 139 may be arrested without warrant or without written authority, by an officer authorised and notified by the Central Government. In view of aforesaid provisions, it is clear that a passenger can undergo journey by a train with a valid ticket or pass and without such ticket the said journey is prohibited and it is the duty of the railway administration to punish the passenger travelling ticketless or without valid pass or levy excess charges or fare or to remove them.

8. As per Section 124 of the Railways Act, in a case when an accident has taken place, then for injuries or death compensation may be claimed which shall be the liability of the railway administration subject to condition as specified therein. Section 124A of the Railways Act, has been inserted by Act No. 28 of 1994 w.e.f. 1/9/1994 specifying that compensation shall be payable by the railway administration on account of untoward incident happened. Section 124 and 124A is relevant, however, it is reproduced as under:

124. Extent of liability When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train 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 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.

Explanation.- For the purpose of this section "passenger" includes a railway servant on duty.

124A. Compensation on account of untoward incident.- 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 dependant 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 incident:

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, "passenger" 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.

9. Bare reading of the aforesaid, it is apparent that in the course of working a railway if accident occurs either a collusion between trains of which one is passenger train or the derailment or other accident to a train or in part of a train carrying passengers, whether it is by any wrongful act, neglect or default on the part of the railway administration, it would entitle a passenger injured or legal heirs of the deceased to claim compensation and also for property damages due to accident as prescribed. Simultaneously, 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 dependant of the deceased passenger to maintain an action and recover damages in respect thereof. In case of untoward incident, five exceptions have been carved out thereby a death of passenger on account of suicide or attempt to commit suicide, self-inflicted injury, his own criminal act, any act committed by him in a state of intoxication or insanity or 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 of the word "passenger" includes railway servant on duty and person purchased a valid ticket or travelling by train carrying passenger on any date or a valid platform ticket and becomes a victim of an untoward incident.

10. In the said context, it is to be examined that the case of deceased passenger carrying in train and died due to accident and fall in any of the exception; or with the ticket to establish that he was a bona fide passenger, the burden lies on whom. As per Section 101 of the Evidence Act, the burden of proof places on a person whoever desires in any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, whether the said principle may be made applicable in the case of a railway accident, where passenger has died and the claimants have come to know about his death from the horses mouth and on receiving intimation, after enquiry should have reached on spot and found the dead body. In such a case it cannot be presumed from the claimants to search the ticket from the clothes of the deceased, and its belongings in place of going to fulfil the legal formalities to find out the dead body. It may be observed that the family members or the dependents would first identify the body and shall go for ritual or cremation of dead body without searching the ticket except making such averments. In such circumstances, it can safely be observed that it would be extremely difficult or impossible to the family members to prove that the deceased was possessing a valid ticket because it is beyond to their reach and control. It can safely be understood that the claimants may not be in a position to prove that the deceased had purchased a valid ticket and was a bona fide passenger. Since the railway administration appoints a ticket collector and also having a vigilance team to search the

ticketless passenger and can take recourse of the penal provisions as specified under Sections 137, 138, 139 and 179 of the Railways Act. In such circumstances since the railway administration having a mechanism to find out the passengers travelling without valid ticket or pass adopting the recourse as permissible. In such circumstances, presumption can be drawn in favour of the citizen of abiding the law while having journey through train with valid ticket being bona fide passenger. At this juncture the principle of common law can be noted that "every man is innocent till proved guilty". In the said sequel of facts it can safely be presumed that the ticket collector would have examined whether the deceased possess a valid ticket or not, however, the railway administration can easily prove that the deceased was not a bona fide passenger as the proof lies with them. At this stage, looking to the facts of the present case, it is apparent that the deceased was going from Betul to Amla which is a journey by passenger train of approximately 45 minutes. During such period, if a person has travelled without ticket the ticket collector checking the train must have checked the ticket of the deceased and if he was found without ticket must have collected the fare as specified u/s 138 or penalized as per Section 137 of the Railways Act. In such circumstances, the burden of proof shifts on the railway administration to lead evidence for proving that the deceased was not a bona fide passenger. The said material may be available with the railway administration which is not produced in this case. In the said context, it can safely be held that the burden of proof shifts on the railway administration in the railway accident claim cases.

11. The Apex Court in the case of *Rathi Menon Vs. Union of India*, , has observed that the Railways Act has been enacted as a beneficial piece of legislation to grant compensation took place in an accident and its interpretation ought to be done in favour of needy persons looking to the preamble and object of the said Act. In the said context, relying upon the Division Bench Judgment of this Court in the case of *Raj Kumari (supra)*, it is to be held that the burden to prove that the deceased was a ticketless traveller is on the railway administration and not on the claimants. The said judgment in the case of *Raj Kumari (supra)*, is based on the provisions of Railways Act, 1890 thereafter the Railways Act, 1989 has been enacted where under the *peri materia* provisions has been enumerated in Section 50, 54, 55, 137, 138, 139, 179 as aforementioned. The Rajasthan High Court in the case of *Soram Bai and others (supra)* and further in the case of *Union of India (UOI) Vs. Hari Narayan Gupta and Another*, has considered the Division Bench judgment of *Raj Kumari (supra)* of this Court and further followed by the Single Bench of this Court in the case of *Devkabai and Others Vs. Union of India (UOI)*, . The Orissa High Court in the case of *Union of India Vs. Smt. Namita Padni and others*, decided in F.A.O. No. 255 of 2006 on 03/03/2012 and also in the case of *Union of India (UOI) Vs. Smt. Jshna Kanhar*, has relied upon the same judgment. It has also been relied upon by the Andhra Pradesh High Court in the case of *Agam Shanthamma Vs. Union of India*, decided on 22/8/2002 in A.A.O. No. 977 of 1997. In view of forgoing, it is to be held that the burden of proof lies on the railway administration in a case of death where

passenger died in rail accident or due to untoward incident, however, whether he was having valid ticket or not, such burden is on the railway administration. In the facts of the present case, railway administration has not adduced any evidence to disprove the evidence of the claimants discharging their burden of not having valid ticket with the deceased. On facts of this case, the testimony of the claimant can be relied upon that the deceased was possessing valid ticket at the time of journey when he died in untoward incident. Thus, the findings of the Claims Tribunal is unsustainable in law.

12. Now to consider the issue of strict liability, this Court can profitably refer the provisions of Article 38 of the Constitution of India whereby it is the responsibility of the State to look after the welfare of its citizens in various social welfare statutes to which the principle of strict liability has been provided to give insurance to the people against death, injuries irrespective of fault. The judgment of the Constitution Bench of the Apex Court in the case of *M.C. Mehta and another Vs. Union of India and others*, , it is observed that strict liability is not subject to any of the exceptions to the rule in *Rylands case*, (1868) LR 3 HL 330 . In the said context, if the provisions of Section 124A of the Railways Act, quoted herein above, if looked into, then thereby it is clear that for untoward incident the State Government has taken liability to pay compensation to the members of the deceased family without having any wrongful act, neglect or default on the part of the railway administration. In this context, the judgment of the Apex Court in the case of *Union of India (UOI) Vs. Prabhakaran Vijaya Kumar and Others*, , can safely be relied upon. In such circumstances, it can, safely be held that in a case of accident or for untoward act, the principle of strict liability having its application, in case of statutory body like railway administration.

13. Now coming to the finding recorded by the Railway Claims Tribunal on issue No. 1 and 2 observing that in the circumstances where a person found only in undergarment on down main line in a mutilated condition, it cannot be presumed that he fell down from train while travelling. In the said context, the document Ex. A/8 is the inquest report is of much relevance, which was prepared in presence of various persons, out of them two are the Gangmen of Railway Department. As per their opinion recorded therein, deceased was died due to fall while travelling in a train, thus, clouds have been removed. In addition thereto the autopsy report is also relevant, by which the injuries so received on the body of deceased apparently indicates various contusions found over the chest, buttocks, ear, abdomen and leg along with other injuries and due to haemorrhage and shock, he died. In view of forgoing facts, if any accident has taken place to a train or any part of a train carrying passenger then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, the said passenger would be entitled to receive compensation and it is the liability of the railway administration to pay it. In any case if it is treated to be as untoward incident and the railway administration has not discharged their burden to prove that the deceased was not possessing a valid ticket and as per the inquest report as well as the autopsy report, it is apparent

that the deceased was died due to fall down from the train, however, the case would fall u/s 124A i.e. untoward even. On the basis of the material brought and the evidence so available, it is not reflected that the case of the deceased falls in any of the exceptions specified u/s 124A of the Railways Act. Thus, from the aforesaid, it cannot be presumed that the deceased had made the attempt of suicide or to commit suicide. The said injuries cannot be inflicted by himself or by his own criminal act. As per the autopsy report, it was not shown that the deceased was in a state of intoxication or insanity. It is also not the case of the railways that deceased was died due to natural cause or disease. In such circumstances, in the considered opinion of this Court, the finding so recorded by the Railway Claims Tribunal that the deceased was not having a valid ticket and not died due to untoward incident is palpably wrong in view of forgoing discussions, however, it is set aside.

14. In view of forgoing discussion, it is to be held that burden to prove that the deceased was not having valid ticket or pass and was not a bona fide passenger lies on the railway administration in a case of railways accident as well as also of untoward incident. The Claims Tribunal committed an error to shift the such burden on the claimants, therefore, the finding recorded by the Claims Tribunal on issue No. 1 and 2 is hereby set aside. As per the finding recorded on issue No. 3 and 4, it is held by the Tribunal that as per the prevalent rules at the time of deciding the claim petition, the claimants are entitled to receive compensation of Rs. 4,00,000/- under the law. Accordingly, the appeal filed by the claimants/appellants is hereby allowed. It is held that the deceased was died due to untoward events while having journey in train, however, the legal heirs of the deceased would be entitled to receive compensation from railway administration and is quantified Rs. 4,00,000/- along with interest at the rate of 12% from the date of order passed by the Claims Tribunal i.e. 24/10/2007. In the facts and circumstances of the case, the parties shall bear their own cost.