

(2024) 01 BOM CK 0110
In the Bombay High Court
Case No : First Appeal No. 252 Of 201 8

Vandana And Others

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 30-01-2024

Acts Referred:

Railway Claims Tribunal Act, 1987 — Section 23, 123(c), 123(c)(2), 124A
Motor Vehicles Act, 1988 — Section 163A

Citation : (2024) 01 BOM CK 0110

Hon'ble Judges : G. A. Sanap, J

Bench : Single Bench

Advocate : Kunal P. Mirache, Neerja G. Choube

Final Decision : Disposed Of

Judgement

G. A. Sanap, J

1. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as "the Act of 1987" for short), challenge is to the judgment and order dated 30.03.2016 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim for compensation filed by the appellants came to be dismissed.

2. Background facts :-

Appellant no.1 is the wife of the deceased and appellant nos.2 to 4 are the children of the deceased. The appellants claim that deceased Gautam and his family members had gone to Tuljapur. On 10.06.2011, the deceased was travelling by Train No. 51285 i.e. Bhusaval – Nagpur passenger from Tuljapur to Ajni Nagpur with his relatives. They claim that when the train reached Butibori Railway Station, the deceased got down from the train to purchase snacks. Before the deceased came back, the train started. The deceased tried to board the train and in the process, he fell down. He was crushed under the wheel of the train and died on the spot. It is stated that the deceased was a bona fide

passenger travelling with a valid journey ticket. The death was in an untoward incident.

3. The respondent-Railway filed written statement and opposed the claim. In sum and substance, the respondent-Railway denied the material facts pleaded in the claim petition. It was contended that the death was due to the negligence of the deceased and as such the death was not in an untoward incident. It was further contended that the deceased was negligent and responsible for the accident.

4. The parties have adduced evidence before the Tribunal. The Tribunal, on consideration of evidence, found that there was no substance in the claim and dismissed the claim. Being aggrieved by this judgment and order, the appellants have come before this Court in appeal.

5. I have heard Mr. Kunal Mirache, learned advocate for the appellants and Ms. Neerja Choube, learned advocate for the respondent. Perused the record and proceedings.

6. In the facts and circumstances, following points fall for my determination :-

i] Whether the deceased was a bona fide passenger travelling by the train in question with a valid journey ticket ?

ii] Whether the deceased died in an untoward incident within the meaning of Section 123(c) of the Railways Act, 1989 ?

7. Learned advocate Mr. Kunal Mirache for the appellants submitted that the respondent-Railway has admitted that the deceased was a bona fide passenger travelling with a valid journey ticket. Learned advocate submitted that even if the defence of respondent-Railway is accepted as it is, even then the claim could not have been rejected on the ground of negligence on the part of the deceased. Learned advocate submitted that in this case, the deceased fell while boarding the moving train at Butibori Railway Station. Learned advocate submitted that the injuries sustained by the deceased while boarding the train would fall within the expression "accidental falling of a passenger from train carrying passengers", which is an "untoward incident" as defined under Section 123(c)(2) of the Railways Act, 1989 (hereinafter referred to as "the Act of 1989"). Learned advocate, in order to seek support to this submission, has relied on the decision of the Hon'ble Apex Court in Union of India vs. Prabhakaran Vijaya Kumar and others, reported at AIR 2009 SC (Supp) 383. Learned advocate submitted that the death would fall in the first part of Section 124-A of the Act of 1989. Learned advocate submitted that the act of the deceased could not be said to be intentional and as such the injuries sustained by the deceased could not be said to be self-inflicted injuries. Learned advocate submitted that the defence of negligence or contributory negligence will not be available to the respondent-Railway inasmuch as the liability is based on the principle of "no fault theory". Learned advocate submitted that the case on hand will not fall within any of the

clauses under the Proviso to Section 124-A. Learned advocate submitted that in the factual situation, on the basis of the plea of contributory negligence of the deceased, the claim could not have been rejected. In order to seek support to this submission, learned advocate has relied on a decision of the Hon'ble Apex Court in Union of India vs. Rina Devi, reported at AIR 2018 SC 2362.

8. Learned advocate Ms. Neerja Choube for the respondent-Railway, submitted that the Guard of the train has been examined to prove that after crossing half of the platform by the train, the deceased tried to board the running train and in the process, fell down, sustained injuries and died. Learned advocate submitted that the deceased in the first instance, would not have got down from the train at the Railway Station. Learned advocate submitted that after departure of the train, when the deceased realized that he would miss the train, he tried to catch the running train and in the process, fell down and died. Learned advocate submitted that this intentional act on the part of the deceased would be a criminal negligence. Learned advocate submitted that the injuries sustained in this process would be self-inflicted injuries, as understood by the Proviso to Section 124-A of the Act of 1989. Learned advocate submitted that learned Member of the Tribunal has properly appreciated the evidence and has rightly rejected the claim application.

9. In order to appreciate the rival submissions, I have minutely perused the record and proceedings. The deceased was travelling with his family members with valid journey ticket. The accidental death of the deceased is not in dispute at Butibori Railway Station. Undisputedly, the train in question arrived at Butibori Railway Station at 8.00 a.m. The train halted at Butibori Railway Station for about an hour. The train departed at 8.58 a.m. This fact would, undisputedly, show that all the passengers in the morning hours were stranded at the railway station without any information or intimation. It is not the case of the Railway that the scheduled halt of the train at Butibori Railway Station was for one hour. The delay of one hour, as can be seen from the record, occurred for the lack of green signal to the train for the onward journey. It is not the case of the Railway that during this period of one hour, the passengers were informed by public announcement about the reason for delay as well as the scheduled time of departure of the train. The evidence adduced by RW1 and RW2 is conspicuously silent on this aspect. RW2, the Guard of the train, has stated that before departure of the train, he blew whistle to warn the passengers to get inside the train and thereafter, he gave a signal to the Loco Pilot to start the train. It has come on record that the deceased had gone out to bring snacks for his family members, who were inside the train and waiting for departure for almost an hour. All the above facts are required to be borne in mind while appreciating the contentions raised by the parties. RW2 has stated that when the deceased was trying to board the moving train, he warned him not to chase and board the moving train, but the deceased did not pay any heed to his suggestion. He has stated that the deceased in the process of boarding the moving train, slipped from the staircase and was crushed under the wheel and died. The question is

whether this act of the deceased, while boarding a moving train in the above-stated factual situation, could be said to be an intentional act, amounting to criminal negligence. Similarly, whether the injuries sustained by the deceased in the accident, could be said to be self-inflicted injuries ?

10. In my view, the issue raised in this case has been covered by the decision of the Hon'ble Apex Court in Prabhakaran's case (supra). The relevant observations of the Hon'ble Apex Court are in paragraphs 9 to 12. The same are extracted below :

"9. In appeal, the 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 'accidental 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 a 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 abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh vs. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty vs. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 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. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc."

11. The facts of Prabhakaran's case (supra) and the facts of the case on hand are similar. In Prabhakaran's case (supra), the deceased attempted to board the moving train. In the process, she fell down and died due to the injuries sustained in the accident. The question was whether it would be an untoward incident. The Hon'ble Apex Court has held that the death or injury would come within the expression "accidental falling of a passenger from a train carrying passengers" which is an "untoward incident", as defined under Section 123(c) of the Act of 1989. The Apex Court has observed that it will not make any difference whether the deceased was actually inside the train when she fell or she tried to get into the train when she fell. It is held that in either case, it amounts to accidental falling of a passenger from a train carrying passengers. The Hon'ble Apex Court has held that since this legislation being a beneficial piece of legislation, it should receive liberal and wider interpretation. In my view, on this point, the case of the appellants would be fully covered by the decision in Prabhakaran's case (supra).

12. The question of negligence or contributory negligence of a passenger has been dealt with by the Hon'ble Apex Court in Rina Devi (supra). Paragraph 16.6 of the decision would be relevant for addressing this issue. It is extracted below :-

"16.6 We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar (2017 (13) SCALE 652) laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

13. In Rina Devi (supra), the Hon'ble Apex Court has held that the principle of contributory negligence cannot be invoked in case of liability based on 'no fault theory'. It is held that the liability to pay compensation under the Act of 1989 is based on 'no fault theory'. It is held that death or injury in the course of boarding or de-boarding train will be an untoward incident entitling the victim to compensation and will not fall under the Proviso to Section 124A, merely on the plea of negligence of the victim as a contributing factor. In my view, the law laid down in Rina Devi (supra), supports the contention of the appellants/claimants.

14. In this case, at the most, the act could be said to be a negligent act on the part of the deceased. It needs to be stated that the deceased and his family members were travelling from Tuljapur to Ajni. The train halted at Butibori Railway Station for about an hour. The scheduled halt was not more than 4-5 minutes. The deceased, in this situation, was bound to search for snacks for his family members. He got down at the railway station to bring the snacks. The

Railway did not make any public announcement about the reason for such a long halt. Similarly, it is not the case of the Railway that public announcement was made for the information of the passengers about the reason for the delay in scheduled departure of the train. It was the duty of the Railway to take care of the situation. The Railway would not have left the passengers in the lurch. There was nothing wrong on the part of the deceased to go and fetch snacks for his family members. If the announcement was made, then the deceased would have made a timely entry into the train. Without any public announcement, the train started after one hour. The deceased, in his anxiety to get into the train, which was moving, tried to catch the train and in the process his hand slipped from the handle and he fell down. In my view, therefore, this would amount to accidental falling of a passenger from a train carrying passengers and as such, it would be an untoward incident. The problem of the passengers, due to halt of the train at Butibori Railway Station, had been compounded by the Railway. The Railway was equally responsible for this incident.

15. In the facts and circumstances, I conclude that the accidental falling of the deceased from a running train in this manner and his death in the incident, would be an untoward incident. A wider interpretation has to be accorded to the provisions of this Act. The claimants, who are not otherwise at fault, cannot be denied the benefit by adopting the interpretation, which is not consistent with the intention of the legislature. Accordingly, I conclude that learned Member of the Tribunal was not right in rejecting the claim application. The deceased was a bona fide passenger. The death was in an untoward incident. As such, I record my finding on both the points in affirmative. The impugned judgment and order deserves to be set aside.

16. In this case, the accident had occurred on 10.06.2011. In view of the Notification issued by the Ministry of Railways (Railway Board) dated 22.12.2016, came into effect from 01.01.2017, in case of death claim, the claimant/s is/are entitled to get compensation of Rs.8,00,000/- (Rupees Eight lakhs only). In view of the decision of the Hon'ble Apex Court in Union of India vs. Radha Yadav, reported at (2019) 3 SCC 410, in case of old claim after this notification, the claimants/appellants would be entitled to get compensation of Rs.8,00,000/-, without interest, if the compensation provided earlier with interest is less than Rs.8,00,000/-. Learned advocate submitted that the compensation provided earlier i.e. Rs.4,00,000/- with interest would not be more than Rs.8,00,000/-. Therefore, in this case, the appellants/ claimants would be entitled to get Rs.8,00,000/- (Rupees Eight Lakhs only), without interest.

17. Accordingly, the First Appeal is allowed.

i] The judgment and order dated 30.03.2016, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, in case No. OA(IIu)/ NGP/2011/0266, is set aside. The claim petition is allowed.

ii] Respondent - Central Railway is directed to pay Rs. 8,00,000/- (Rupees Eight

Lakhs only) towards compensation to the appellants within four months from the date of this judgment.

iii] The amount be deposited directly in the bank accounts of the appellants. The appellants are directed to provide their bank account details to the respondent-Railway.

iv] The appellants will not be entitled to get any interest on the amount of compensation to be paid by the respondent. However, the appellants would be entitled to get interest @ 6% per annum from the date of this judgment till realization of the amount, if the amount is not deposited within the said period.

v] Out of total compensation, appellant no.1 shall be entitled to get 70% share and appellant nos.2 to 4 shall be entitled to get 10% share each.

vi] The First Appeal stands disposed of in the aforesaid terms.

No order as to costs. Decree be drawn up accordingly.