



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.23/2020

1. Parvati Manikrao Bomble,
Age about 38 years, Occ. Labour
2. Abhishekh s/o Manikrao Bomble,
Age about 15 years, occup. Student,
(Appellant No.2 being minor through
appellant No.1)
3. Kalavatibai wd/o Krishnarao Bomble,
Age about 58 years, Occ. Nil,

All R/o Rudhi, Tq. Manwat, Dist. Parbhani.

... **APPELLANTS**

...**VERSUS**...

The Union of India,
through the General Manager,
South Central Railway,
Secunderabad.

...**RESPONDENT**

Shri R.G. Bagul, Advocate for appellants
Ms Neerja G. Chaubey, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 25/07/2023

DATE OF PRONOUNCING THE JUDGMENT : 18/08/2023

JUDGMENT

Heard learned Counsel for both the parties.

2. The present appeal is filed by the appellant being aggrieved by the judgment dated 14/02/2018 passed by the Member, Railway Claims Tribunal, Nagpur in Claim Application No.OA(IIu)/NGP/2015/0322, thereby dismissed the claim of the claimants.

3. The facts of the present case are as under:

The Manik s/o Krishnuraao Bomble is deceased in the present matter. On 12/01/2015, the deceased was travelling from Partur to Manwat Road by train to meet his relatives. After meeting with his relatives, he came to Railway Station Partur and purchased a railway ticket of passenger train bearing No.C40771903 of Rs.10/- to go to Manwat Road Railway Station in the evening and boarded an unknown train at Partur Railway Station, as his village is nearby Manwat Road Railway Station. When the train was approaching Manwat Road Railway Station, the deceased came near the door of the train to alight at Manwat Road Station and fell down from running train at Km No.272/7-8 due to strong jerk and died on the spot. Therefore, the dependents of the deceased filed a claim petition for compensation for an untoward incident and

demand for Rs.4,00,000/- compensation is made against Railway as at the time of incident, the deceased was the bonafide passenger of the train.

4. The respondent/Railway Authority appeared in the matter and resisted the claim by filing written statement on the ground that it is not untoward incident and the deceased was not bonafide passenger of the train and therefore, prayed for rejection of claim application.

5. After considering the matter before it the learned Tribunal held that the deceased was moving near the scene of incident as he belongs to the same village and was run over by the alleged train while crossing the track/walking along the track, therefore, the deceased was neither a bonafide passenger nor was involved in an untoward incident as defined in Section 123(c)(2) of the Railway Act and therefore dismissed the claim of the claimant. The aforesaid judgment is the subject matter of challenge in the present appeal.

6. It is contention of the learned Counsel for the applicant that the learned Tribunal erred in not considering the fact that the railway has not lead any documentary evidence or any eye witness showing that the deceased was dashed by any train or there was any memo from any loco Pilot of any train that some person were dashed by his train or committed suicide. It is also contended that the learned Tribunal erred in not considering the fact that valid railway ticket from Partur to Manwat Road was recovered from the body of deceased which shows that deceased was bonafide passenger of the train. The learned Counsel further contended that this incident occurred due to the sole negligence of Railway and therefore, the railway is liable to pay the compensation for this untoward incident. Therefore, the judgment of the Tribunal needs interference of this Court.

7. The learned Counsel for appellants relied on *Union of India Vs. Prabhakaran Vijaya Kumar and Ors.* reported in *2008 ACJ 1895.*

8. The learned Counsel for the Respondent contended that the learned Tribunal has rightly considered this fact that the

appellant has failed to establish that the deceased was boarded on the train and the death of the deceased was occurred due to an accidental fall amounting to an untoward incident within the meaning of Section 123(c) of the Railway Act and it is also rightly taken into consideration that the place of residence of the deceased is not too far away from the place of incidence. There was every possibility that deceased was moving near the scene of incident at the time of occurrence of incidence and appropriately rejected the application of the appellants which needs no interference.

9. I have heard both the parties. From the record, it appears that there is railway ticket recovered from the deceased which was duly verified. It was from Partur to Manwat Road. As such, there is no dispute over the fact that the deceased was a bonafide passenger of the railway. The distance between Partur to Manwat Road is 45 km., therefore, by which train, he was travelling, is not clear from the evidence. However, it is certain that, he was boarded at Partur and accident occurred near Manwat road, where his residence is there. The witness of railway - Manoj Kumar has deposed that he was working as Dy SS at Manwat Road Railway

Station, on that day, he received the information that one unknown person is lying at km. no. 260/ 7-8 by the side of first loop line. He further deposited that the last train arrived at Manwat Road Railway Station is Train No. 17001 Sainagar-Secunderabad, which arrived at 23:53 hrs. on platform no. 01 second loop line whereas he noticed the unknown person on first loop line.

10. The claimants examined one Parvati Wd/o. Manikrao Bomble, however, she was neither the eye witness nor travelling along with the deceased. Once the deceased was possessing a valid railway ticket, there is no other inference can be drawn that he fell down from the train specifically when the said place is the last station for him to deboard. The railway has not established or proved that the deceased was not the bonafide passenger of railway nor any eye witness has been examined by the railway. Without there being any evidence, the benefit has to be given the claimants by holding that the deceased was travelling by railway and was a bonafide passenger. No other inference can be drawn that he sustained injury while deboarding the train.

11. My attention is drawn to the information given to Police Station wherein date and time of incident are shown as 13/01/2015 at 11:05 hrs. My attention is also drawn on Crime Details Report, wherein it is specifically mentioned that while travelling in railway, the deceased died due to falling from train and severe injury to his head. From map, it appears that the deceased was lying between platform no. 2 and loop line. The Crime Details Form shows reference of recovery of railway ticket dated 12/01/2015, from Partur to Manwat Road of Rs. 10/- which was purchased on 12/01/2015 at 17:50 hrs. It appears from the document that the Inspector, RPF Station Purna called for ticket verification and the ticket was duly verified. Considering all these aspects, there cannot be any doubt that the deceased had purchased a ticket at Partur for Manwat Road and died while deboarding or falling from the train.

12. Learned counsel for the appellants relied on ***Prabhakaran Vijaya Kumar*** (Supra) wherein the Hon'ble Apex Court has held as under:-

“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.

*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 ors. 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.*

16. The accident in which Abja died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault.”

13. As such, the judgment passed by learned Railway Claims Tribunal is patently erroneous and contrary to the provisions of Indian Railway Act. Accordingly, I am inclined to allow the first appeal and proceed to pass the following order:-

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment dated 14/02/2018 in Claim Application No.OA(IIu)/NGP/2015/0322 passed by the Railway Claims Tribunal, Nagpur is hereby quashed and set aside.
- iii) The claimants/appellants are entitled for the compensation of Rs. 8,00,000/-.
- iv) The respondent - Railway Authority is directed to deposit the amount of compensation with learned Railway Claims Tribunal within a period of four months.
- v) After depositing the amount, the amount shall be distributed to the appellant nos. 1, 2 and 3 in proportion of 4:4:2.
- vi) The amount in the share of appellant no. 2 be kept in any Nationalized Bank till he attains the age of majority.

The appeal stands disposed of accordingly.

(Smt. M.S. Jawalkar, J.)