

(2024) 02 GAU CK 0025

Gauhati High Court

Case No: MFA No. 231 Of 2019

Union Of India

APPELLANT

Vs

Lakhi Prava Sonowal Keot

RESPONDENT

Date of Decision: Feb. 2, 2024

Acts Referred:

- Railways Act, 1989 - Section 2(29), 123C, 123C(2), 124A

Hon'ble Judges: Malasri Nandi, J

Bench: Single Bench

Advocate: G Goswami, K Goswami

Final Decision: Allowed

Judgement

1. Heard Mr. G Goswami, learned counsel for the appellant. Also heard Mr. S.K. Das, learned counsel for the sole respondent.

2. Aggrieved by the judgment and order dated 21.06.2019 passed by the learned Member (Technical) RCT/GB in connection with OA IIu/06/2018 (Old), "OA IIuGHY/06/2018 (New), the appellant, NF Railway has preferred this appeal whereby the Railway Claims Tribunal Guwahati Bench (for short, the Tribunal) allowed the compensation in favour of the claimant.

3. The case of the claimant is that the sole respondent/claimant filed a claim application before the Tribunal claiming compensation of Rs.10 lakhs on account of death of her husband Late Jitu Sonowal due to untoward incident. The contention of the respondent claimant is that the deceased was travelling from Dhemaji to North Lakhimpur in a train DN 15614 Intercity Express (Lachit Express) with a valid journey ticket and he accidentally fell down from the running train and his body was recovered three meters away from the railway track. Thereafter, the dead body was sent for post mortem

examination and a case was registered vide NLP/GRPS UD Case No.17/2017 dated 25.06.2017.

4. The appellant as respondent contested the case before the Tribunal by filing written statement denying the allegation of the claimant. The appellant denied the fact that the deceased was a bona fide passenger in terms of the definition under Section 2(29) of the Railways Act, 1989 (for short, the Act of 1989) and as such the question of journey ticket having lost during the incident does not arise. From the inquest report, enquiry report and seizure list, it was revealed that the deceased was not carrying any valid journey ticket for the purported travel from Dhemaji Railway Station to North Lakhimpur Railway Station on 25.06.2017 in Intercity Express. It is also alleged that the death was not due to any accident as per the mandate of Section 123(C) of the Act of 1989.

5. After hearing the parties and on perusal of the documents on record, learned Tribunal delivered the judgment directing the appellant to make payment of Rs.8 Lakhs to the respondent/claimant together with interest of 6% per annum from the date of accident till realization.

6. Learned counsel for the appellant has argued that the learned Tribunal has acted illegally by not considering the fact that there is no eye witness to the incident of falling of the deceased from the Intercity Express in between Baginadi Railway Station and Gogamukh Railway Station. It is also submitted that no journey ticket was found with the dead body. There is no eye witness to the incident as per the report of the Divisional Security Commissioner, RPF, Rangiya. As per the statement of one Santiram Kalita who was the guard of the Train No.Dn 15614 Lachit Express on 23.06.2017, he received no information about falling down of any person from the train in between Baginadi Railway Station and Gogamukh Railway Station. But the learned Tribunal whimsically passed the judgment and order dated 21.06.2019 without appreciating the report of the Divisional Security Commissioner, RPF, Rangiya.

7. Leaned counsel for the appellant also pointed out that the Tribunal failed to consider the fact that the claimant while filing the claim petition had mentioned that the incident occurred on 23.06.2017. Subsequently, she filed an amendment petition, whereby they claimed that the incident occurred on 25.06.2017. The said petition was allowed by the learned Tribunal. The post mortem was done on 26.06.2017 and as per the post mortem report, the approximate time since death was 72 hours. But as per the claim of the claimant/respondent, the incident occurred on 25.06.2017 which makes the claim of the respondent redundant because as per her claim, the death of her deceased husband should have occurred within 24 hours and not 72 hours. It is also to be noted that as per the post mortem report, the dead body was in early stage of decomposition.

8. Learned counsel for the appellant also contended that in her evidence, the claimant stated that on 23.06.2017 her husband while coming from Dhemaji to North Lakhimpur by Dn. 15614 Intercity Express, fell down from the said train in between Baginadi Railway Station and Gogamukh Railway Station and died. According to learned counsel for the appellant, there is a huge contradiction which was ignored by the learned Tribunal and as such the judgment and order dated 21.06.2019 is liable to be set aside. In support of his submission, the learned counsel for the appellant has relied upon the following case laws:

1.(2019) 3 SCC 572 (Union of India Vs. Rina Devi);

2. GHC MFA 11/2018 (Kaliram Konwar Vs. Union of India).

9. In response, the learned counsel for the respondent/claimant submits that the claimant is the wife of the deceased. The deceased was working as Forest Guard under Government of Assam. On the date of incident, the deceased was on leave and he was travelling from Dhemaji to North Lakhimpur. His dead body was recovered near railway track in between Baginadi and Gogamukh Railway Station. One xerox copy of the leave application was seized in connection with the accident of the deceased, but the same was not exhibited in the case. However, the initial burden to prove about the accident is on the claimant which is apparently proved by adducing evidence of the claimant and other witnesses. Hence, the appellant is to prove as to whether the deceased was travelling without any valid journey ticket and the accident did not occur by falling from the train in which he was travelling i.e. Dn. Intercity Express.

10. To prove the case, the claimant has examined herself as PW-1 and along with one witness and exhibited some documents. In her statement before the Tribunal, the claimant stated that she is the legally married wife of the deceased. Out of their wedlock, two children were born who are minors. On 25.06.2017, she was informed by the Forest Range Office, Dhemaji over telephone that her husband had died by falling accidentally from a running train in between Baginadi Railway Station and Subansiri Railway Station, when he was travelling from Dhemaji to North Lakhimpur. On receipt of the information, she along with her brothers and other relatives went to the NLP GRPS.

11. The other witness is Chonchal Keot, brother-in-law of the deceased. He stated in his affidavit that his sister Lakhi Prabha Sonowal Keot has filed a claim petition before the Tribunal in connection with death of her husband who has fallen down from the Dn. 15614 Intercity Express on 25.06.2017. He was informed by the Forest Range Office, Dhemaji over telephone that the husband of his sister died by falling from a running train in between Baginadi Railway Station and Subansiri Railway Station, when he was travelling from Dhemaji to North Lakhimpur and during that period he was on leave.

12. After going through the evidence of the aforesaid two witnesses, it reveals that they were not present when the incident occurred. It is also not disclosed in the affidavit on evidence that on 23.06.2017, the deceased was travelling in Dn. 15614 Intercity Express from Dhemaji to North Lakhimpur. Admittedly, the journey ticket was not exhibited before the Tribunal. No independent witnesses was examined to prove the fact that the deceased had purchased any journey ticket from any Railway Station for his journey from Dhemaji to North Lakhimpur. None of the witnesses had stated that they had seen the deceased had died due to a fall from the said Dn. 15614 Intercity Express in between the Baginadi and Subansiri Railway Station.

13. One investigation report of the Divisional Security Commissioner/RPF NF Railway, Rangiya is available on record, which reveals that on enquiry it was confirmed that one person died. On 25.06.2017, the SS/Baginadi issued a memo to RPF/GRPS that a male person, aged about 47 years, was lying about three meters away from the railway line in between Baginadi and Gogamukh Railway Station and found to be dead. The Station Master received the information from on-duty gateman of LC Gate No.RM-282. In this connection, one case was registered vide OC/GRPS/NLP UD Case No.17/2017 dated 25.06.2017 in connection with recovery of one dead body of a male person. The dead body was identified as Jitu Sonowal working as LNK of Assam Forest Protection Force. As per inquest report, no journey ticket was found from the possession of the deceased. Only his identity card was found and the person was wearing uniform.

14. According to the claimant, the wife of the deceased, on 23.06.2017, her husband was coming from Dhemaji to North Lakhimpur by Train No. 15614 Dn. Intercity Express and he fell down from the said train in between Baginadi and Gogomukh Railway Station and died. However, as per statement of Santiram Kalita, Male Guard on 23.06.2017, he was the guard of Train No.15614 Dn. Intercity Express and during his duty period, he did not receive any information about falling down of any person in between Baginadi and Gogamukh Railway Station. After scheduled stoppage of the train at Gogamukh Railway Station, the Train No.15614 passed directly up to North Lakhimpur Railway Station.

15. As per statement of other staff namely, Dulu Dutta, R Narah and S Boro, they were on duty in the said train of 15614 Dn Intercity Express and during their duty period, no such incident as alleged was reported to them. The track maintainer in his statement also disclosed that while he was performing duty in LC Gate in between Baginadi and Gogomukh Railway Station on 25.06.2017 at about 10.00 Hours, some local person informed him that a dead body of a male person was lying near Railway track towards the Baginadi Railway Station wearing Khaki Uniform and accordingly he informed the matter to the higher officials.

16. After completion of the enquiry, it was reported that it was not in dispute that the deceased was found dead around three meters away from the Railway Track in between Baginadi and Gogamukh Railway Stations, but no evidence was found which shows that the death of the deceased Jitu Sonowal was in any way connected with the Railways. It was not a case of falling down nor knocking down or running over case of any train. The person was found dead due to other reasons.

17. As per inquest report, vide NLP/GRPS UD Case No.17/2017, the inquest on the dead body of the deceased Jitu Sonowal was conducted on 25.06.2017. At the time of the inquest, the person who conducted inquest on the dead body of the deceased, noticed injury marks on the forehead and backside of his head. As per statement of officials from the Forest Department, on 23.06.2017 the deceased after taking leave from the office, he proceeded towards his house from Dhemaji to North Lakhimpur in Intercity Express Train No.15614. It was presumed that he sustained injuries on his head on falling from the said train in which he was travelling.

18. It is the case of the claimant that on 23.06.2017, the deceased was on leave and he was travelling in the Dn. Intercity Express Train No.15615 from Dhemaji to North Lakhimpur, but no leave application or journey ticket was exhibited or proved in the case. It was suspected that the victim had fallen down from the said train and sustained injuries on his head. His dead body was recovered from the railway track on 25.06.2017 i.e., after two days of the projected incident. The Railway staff who were on duty on 23.06.2017 in the Dn. Train No.15614 did not support the claim of the claimant. According to them, they did not receive any information regarding falling down of any person from the Dn. Train No.15614 in between Baginadi and Gogamukh Railway Station.

19. Upon considering the oral and documentary evidence before the Tribunal, the Tribunal allowed the claim petition of the following reasons which is reproduced as below:

“After perusal of pleadings of both made by the parties and the evidence on record, even though, the bonafide of the deceased as a passenger as well as his accidental fall has not been proved as there was no ticket and no eye witness of his falling down, the fact remains that his body was found almost three meters away from the track and remained at that location for more than 48 hours. The corroborative evidence of his leave application and the fact that he was posted at Dhemaji at that time and was travelling on leave for coming to Lakhimpur, shows that he would have been travelling by train for his journey. Thus, even though there is no direct evidence, the position of the body far away from the residence near the railway track and the nature of injuries are clearly indicative of his falling down as the body might have been rolled down to a distance of three

meters. With the jungle area in that section, the body remained unnoticed and was not seen by loco pilot guard of subsequent trains.

In view of all the above and on the strength of the corroborative evidence and the person being State government employee and also considering the fact that RCT Act, a benevolent legislation where the benefit of doubt is given to the claimant. The claim is as such allowed".

20. I have considered the submissions made by the learned counsel for the parties and also perused the materials available on record. Section 123 (C) of the Railways Act, 1989 reads thus:

"123(C)-"Untoward incident" means

– (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of sec. 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), or

(ii) the making of violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson. By any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station: or

(2) the accidental falling of any passenger from a train carrying passengers."

21. It is true that the definition of the word 'untoward incident' in Section 123 (C) (2) of the Act is exhaustive. It can only be construed having regard to the further consideration that the scheme of the Act appears to be that the legislature has mulcted the railway with the liability to pay compensation without reference to there being any need to prove wrongful act, neglect or default on the part of the railway administration. The liability imposed on the railway can therefore be held to be not a tortious liability as understood in law.

22. It is also true that the provision should receive a liberal construction but we cannot carry the matter to the point where if the facts as established would show that the incident cannot be brought under untoward incident. If there is accidental falling of any passenger from a train carrying passenger, it would be an untoward incident. In the instant case, admittedly there is no eye witness to the incident that anybody had seen the deceased falling down from the train in which he was allegedly travelling on the date of accident. It is also admitted that no journey ticket was found from the dead body of the deceased. Nobody had seen the deceased person had purchased any ticket for his journey from Dhemaji to North Lakhimpur. Two witnesses examined by the claimant were not present when the accident occurred. Therefore, it is not proved that the deceased died due to falling from the train of Intercity Express, Down 15614 while

he was travelling from Dhemaji to North Lakhimpur. The only fact is that the dead body was recovered near railway track in between Baginadi and Gogamuk railway station. Except the recovery of the dead body near the railway track, there is nothing on the record to show that the case of the deceased falls under the purview of Section 123 (C) (2) of the Railways Act i.e. untoward incident.

23. In the case of Union of India –vs- Prabhakaran Vijaya Kumar & Ors reported in 2008 4 MLJ 323 SC, the Hon'ble Supreme Court while interpreting expression accidental falling of a passenger from a train carrying passenger, which is an 'untoward incident' under Section 123(C) (2) of the Act and the consequential payment of compensation under Section 124 (A) for such untoward incident has held that it is well settled that if the words used in a beneficial or welfare statute under Section 124 (A) for such 'untoward incident' has held that it is well settled that if the words used in a beneficial or welfare statutes are capable of two construction, 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 liberal and not literal or strict interpretation. In the said decision, the Apex Court has held as follows-

"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, Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842, Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27 etc.

13. In Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others 1995(6) SCC 326 this Court observed:

"In this connection, we may usefully turn to the decision of this Court in Workmen vs. American Express International Banking Corporation wherein in para 4 of the Report has made the following observations:

The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some

island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court* we had occasion to say:

"Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Francis Bennion in his *Statutory Interpretation* Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus: "A purposive construction of an enactment is one which gives effect to the legislative purpose by-

- (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
- (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

24. To claim compensation under Section 123 (C) (2) of the act, 1989, the claimants have to satisfy two main ingredients i.e. the accidental falling of any passenger from a train carrying passenger and he must have purchased a valid tickets for travelling in the train carrying passenger and the explanation to Section 124 (A) of the Railways Act 1989. In the case in hand, admittedly it is not proved that victim had purchased any ticket for his journey in the alleged train from Dhemaji to North Lakhimpur and the accidental fall resulting in death of the victim is also not established. Thus, we hold that this is not a fit case for claiming compensation under section 123 (C) (2) of the Act, 1989 and the issues are answered in favour of the appellant.

25. The legal position with respect to the 'untoward incident' inside the railway station is well settled. Section 124 (A) of the Railways Act is based on the principle of no fault liability and the compensation cannot be denied to the appellants on the ground that the deceased was negligent and it is wholly irrelevant as to who was at fault. Section 123 (C) (2) of the Railway Act defines 'untoward incident' to include the accidental falling of any passengers from a train carrying passengers.

26. The word 'passenger' has been defined under Section 2 (29) of the Railways Act, 1989 as a person travelling with a valid pass or ticket.

27. The Explanation to Section 124 (A) clarifies that the word 'passenger' includes a railway servant on duty and the person who has purchased a valid ticket for travelling

in a train or platform ticket and becomes a victim of an untoward incident. As such, there are three categories of persons who are defined as passenger – i) a person with a valid ticket to travel, ii) a person who holds a railway pass to travel and iii) a person who holds a platform ticket. In each of the category so long as the person is in railway Premises or a train, is taken as a passenger. His or her presence in the railway premises or a train is taken as authorized. However, it does not amount to become a victim of an untoward incident .

28. On a reading of the definition as aforesaid, still the word 'untoward incident' would mean only that there must be an accidental falling of the passenger as aforesaid from a train carrying passengers.

29. In the present case, the admitted position of the case is that the body of the deceased was recovered near the railway track. Nobody has seen the deceased falling from any train and no valid ticket or railway pass or platform ticket was found from the dead body of the deceased.

30. It is true that Section 123 (C) of the Railways Act should receive liberal construction. But we cannot carry that matter to the point where if the facts as established would show that the incident cannot be brought under 'untoward incident'. The law requires the accidental falling of a passenger from a train carrying passengers. Even then this is not a case where a passenger was trying to board a train and he falls by way of an accidental fall from the train. In the facts of the case, even accepting all that has been stated by the respondent claimant, in spite of that we cannot bring the case of the deceased as ill-fated passenger who fell down from the train.

30.1. In the case in hand, as I have already stated that the deceased was not having a valid ticket for travelling on the fateful day. It is also not proved that there was any accidental falling of the deceased from a train carrying passengers, no eye witness was examined by the respondent claimant to prove that they had seen the deceased had purchased any ticket from his journey from Dhemaaji to North Lakhimpur in Inter City Express DN 15164 and he had accidentally fell down from the said train in between Baginadi and Gogamuk railway station. Under such backdrop, this court is of the opinion that this is not a fit case for compensation under Section 123 (C) (2) of the Railways Act, 1989.

31. In the result, the appeal is allowed.

32. The Judgment and Order, dated 21.06.2019 passed by the learned Member (Technical) RCT/GB in connection with OA IIu/06/2018 (Old), OA IIuGHY/06/2018 (New) is hereby set aside.

33. There is no order as to cost.

34. Appeal stands disposed of.

Send back the LCR.