

(2012) 02 BOM CK 0203**Bombay High Court (Nagpur Bench)****Case No:** First Appeal No. 473 of 2010

The Union of India, General
Manager, Central Railways, CST
Mumbai

APPELLANT

Vs

Bimala Tudu and Others

RESPONDENT**Date of Decision:** Feb. 28, 2012**Acts Referred:**

- Railway Claims Tribunal Act, 1987 - Section 23
- Railways Act, 1989 - Section 123, 2(29)

Citation: (2013) ACJ 225 : (2012) 3 ALLMR 230 : (2012) 3 MhLJ 883**Hon'ble Judges:** M.N. Gilani, J**Bench:** Single Bench**Advocate:** N.P. Lambat, for the Appellant; M.H. Pathade, Advocate for Respondents No. 1 to 5, for the Respondent**Final Decision:** Dismissed

Judgement

M.N. Gilani, J.

The appellant/General Manager, Central Railways, filed this appeal u/s 23 of the Railway Claims Tribunal Act, 1987 (in short the Act, 1987) questioning the award dated 17.11.2009 passed by the Railway Claims Tribunal, Nagpur bench, Nagpur whereby the appellant was directed to pay compensation of Rs. 4,00,000/- in equal share to the respondents Nos. 1 to 5 (original applicants Nos. 1 to 5).

2. Facts are thus : On 29.3.2004 while travelling by train No. 2151 Pune-Howrah Express, Pintoo Tudu met with an accident by falling from the running train. The dead body was seen in between Parsodi♦Nagpur Railway Line in Jamtha Shivar near Pole No. 821/28. It was alleged that he was holding valid ticket. The applicant No. 1 widow and applicant Nos. 2 to 5♦children, filed the claim petition for award of compensation of Rs. 4,00,000/-.

3. The appellant resisted the petition. It is disputed that the death of Pintho Tudu was on account of untoward incident. It was further alleged that the deceased was not holding a valid ticket and therefore, not entitled to any amount of compensation.

4. The learned Tribunal framed as many as five issues for its determination. On behalf of the respondents, two witnesses were examined. The appellant examined one witness. After considering the evidence brought on record, the learned Tribunal held that, while travelling by Pune-Howrah Express the deceased met with an accident and died. The evidence adduced by the appellant, to the effect that the deceased was not holding valid ticket, was disbelieved by the learned Tribunal.

5. Mr. Lambat, the learned counsel appearing for the appellant took me through the evidence brought on record. It is his contention that the four tickets produced by the respondents and the endorsement of break-journey thereon, point out in all probability that none of those tickets was purchased by or for the deceased. Further, he invited this Court's attention to the evidence of Pravin Patre (R.W.1) to point out that Train No. 2151 did not pass through the track where the dead bound was found. Therefore, his contention is that the Tribunal committed serious error of facts in allowing the claim petition.

6. Mrs. Pathade, the learned counsel appearing for the respondents contended that there is overwhelming evidence to prove that deceased died in an untoward incident and dead body was found lying near Railway Track. In that light of the matter, the appellants are bound to pay the compensation under the principles of strict liability. According to her the learned Tribunal was right in relying upon the four passenger tickets produced on record. She therefore, claimed for dismissal of the appeal.

7. The points arise for my consideration are as under:

- 1] Whether the deceased died in an untoward incident?
- 2] Whether the deceased was authorized Railway passenger?
- 3] Whether the order granting compensation passed by the Tribunal calls for any interference?

8. The Merg Report D-32 available on record reveals that on 30.3.2004 at about 1045 hours, Rambhau Raut while discharging his duty as an employee of the Railways, saw a dead body of unknown person. It was lying by the side of the Railway-line. He therefore, submitted Merg Report. The Spot Panchnama at D-34, speaks that in Railway accident one passenger had died and his dead body was lying by the side of Railway Line. Accordingly, inquest was conducted over the dead body and D-36 is the inquest report. At the end the report recites that an unknown person aged 25 years was cut by train. The Postmortem note points out number of surface wounds, in the nature of lacerated wounds, fracture of bones of arms and joints. Injuries

were antemortem. The cause of death is due to shock and haemorrhage due to head injuries and crush injuries over left elbow joint and upper 1/3rd both bone of left forearm.

9. u/s 123(c)(2) of the Railways Act, 1989, the "untoward incident" means the accidental falling of any passenger from a train carrying passengers. The reading of section 124 and 124A makes it clear that issues like wrongful act, neglect or default on the part of Railways Administration are irrelevant.

10. Mrs. Pathade, the learned counsel appearing for the respondent placed reliance upon the decision in case of Union of India vs. Prabhakaran Vijaya Kumar [2008 (2) T.A.C. 777 (S.C.)]. wherein, dealing with Similar issue, their Lordships held that:

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.

Thus the defence set by the appellant that the deceased was leaning outside and was dashed against the pol and fell down, is not of much significance. The evidence brought on record clearly suggests that the death of the deceased was due to accidental falling from train which is an untoward incident as defined in section 123(c) of the Railways Act, 1989.

11. The next submission of Mr. Lambat is about the deceased not holding the valid ticket. The section 2(29) of the Railways Act, defines passenger to mean "a person travelling with a valid pass or ticket." Mr. Lambat, learned counsel for the appellant is right in contending that none of the four tickets produced and marked D-68 and D-84 was purchased by the deceased. One Abraham Tudu is examined as A.W.2. According to him, at Pune Railway Station they had purchased four tickets, however, deceased was sitting in other compartment, whereas he and two others were sitting in different compartment. It was suggested to him that the train no 2151♦Pune-Howrah Express did not pass through Ajni Station. Presumably, the suggestion was given to point out that the Railway track where the dead body was found is not falling within the Pune-Howrah Line. For that the appellant examined one Pravin Patre (R.W.1). He produced extract of Signal Register to show as to which trains passed through Khapri Railway Station on relevant day. However, he did not speak a word that the Khapri Railway Station does not fall on the Pune♦Howrah railway track. It is a known fact that the trains coming from Pune and Bombay before they enter the Nagpur Railway Station, have to come via Khapri Station. Thus there appears, no substance in plea raised by the appellant that the train originated at Pune and reaching to Nagpur, did not at all pass through Khapri Railway Station. Thus on probability factor the case of the respondent that the deceased was travelling by Pune-Howrah Express and there was untoward incident in between the

Khapri and Gumgaon and his dead body was located on this Railway Track, appears to be acceptable and has been rightly believed by the learned Tribunal.

12. The appellant has seriously disputed respondent's case that ticket marked D-68 was purchased by or for the deceased. Mr. Lambat, the learned counsel for the appellant invited my attention to the endorsement of "break journey" appearing on this ticket. On three tickets D-84, the date of endorsement is 29.3.2003. Mr. Lambat is right in contending that, these tickets were purchased on 29.3.2004 at Pune Station. The train which originates at Pune reaches Nagpur on the next day. Surprisingly, the endorsement on ticket D-68 bears the date 30.3.2004. Admittedly, the respondents did not explain this anomaly. The other glaring defect is when the deceased had not got down, at Nagpur Railway Station, in absence of him i.e. concerned passenger, how the endorsement of "break journey" was made. The cumulative reading of the evidence, particularly touching to the story of purchase of D-68 by the deceased or for the deceased at Pune Junction, is shrouded with suspicion.

13. Now, the question that crops for consideration is whether failure of the claimant/passenger to produce valid ticket would lead to a presumption that the passenger met with untoward incident and died was not an authorized passenger or was not holding a valid pass or ticket. To draw such inference, would be to expect from the dependents of the deceased to prove impossible. It is known fact that in such a long journey which consumes more than 15-16 hours, passengers are checked by ticket checkers and certainly more than once. In such circumstance, the fact that the deceased was not detected as passenger travelling without ticket, would give rise to an inference that he was travelling with valid ticket. Whether the deceased had purchased a valid ticket and what happened to that was a fact within his personal knowledge. Having regard to the fact that the provision for compensation in the Railways Act, is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one. This has been observed by their Lordships in case of Union of India ..vs.. Prabhakaran Vijaya Kumar, cited supra.

14. Therefore, unless the negative is proved or there is evidence, may be, circumstantial in nature, that the deceased was not holding valid ticket, it would be desirable, and particularly in keeping with the object of provision of compensation in the Railways Act, to presume that the deceased was not the passenger travelling without a ticket. In view of the above, no fault can be found with the award passed by the learned Tribunal, although I do not agree with the reasoning recorded by it that the ticket D-68 was purchased for or by the deceased. In the result, the appeal fails.

15. The appeal is dismissed. The parties are left to bear their own costs. As regards the tickets at Exhibit 68, which was allegedly produced for the deceased and D-84 the tickets, allegedly in possession of his companions, there is substance in the

contention of learned counsel for the appellant that atleast any of these tickets possessed, not purchased by the deceased. This is for the reason that there are entries of break journey. These entries are taken on 29.3.2004 at Nagpur. According to learned counsel for the appellant the train No. 2151 which started on 29.3.2004 reached Nagpur on the next day. In the circumstances, the entries of break journey bearing the date 29.3.2004 appears to be suspicious. It is strange to observe that entry of break journey on ticket at D-68 (allegedly purchased for deceased) bear a different date and endorsement i.e. 30.3.2004. If all the four persons dropped at Nagpur and reported the break journey, how it has happened that on one ticket entry of break journey was made on 30.3.2004 and on 3 other tickets entry of break journey was made on 29.3.2004. In that light of the matter, learned Tribunal seems to have committed an error in relying upon such tickets i.e. D-68 and D-84.

16. There is failure on the part of the applicant/claimants to produce the valid ticket.