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Court : Allahabad Lucknow

Decided On : Dec-10-2014

Judge : Anil Kumar

Appeal No. : First Appeal From Order No. 301 of 2011

Appellant : Sundari Devi and Others

Respondent : Union of India Thru General Manager Northern Eastern Railway

Advocate for Def. : Sri. Ved Prakash

Advocate for Pet/Ap. : Sri. Jaspreet Singh, Sri. Jaspreeet Singh

Judgement :

Anil Kumar, J.

Heard Sri Jaspreet Singh, learned counsel for the appellants, Sri Ved Prakash, learned counsel for the respondent and perused the record.

2. By means of present appeal under Section 23 of the Railway Claim Tribunal Act, 1989, claimants/ appellants have challenged the judgment dated 24.12.2010 passed by Railway Claims Tribunal Lucknow Bench at Lucknow, dismissing the Claim Petition No. OA 0600676 (Smt. Sundari Devi and others v. Union of India) .

3. Facts, in brief, as submitted by Sri Jaspreet Singh, learned counsel for the appellants are that on 10.11.2005 Sri Hardwari Lal Gupta, husband of the claimant no.1, after purchasing second class railway ticket no.00664 from Bhira Kheri railway station boarded Century Express to go to Lucknow. While he was on the way , thrown out from the said train by dacoits after looting him beyond Bhira towards Mailani as a result of which he went to coma due to anti-mortem head injury and died.

4. In view of the said factual background, a claim petition has been filed by Smt. Sundari Devi wife of deceased Hardwari Lal Guta, registered as Case No. 0A 0600676 before the Railway Claims Tribunal, Lucknow Bench, Lucknow in which a written statement has been filed on behalf of the railway authorities inter alia taking a defence that deceased was not a bona fide passenger of the Century Express train, so the case/ claim petition is not covered under Section 123(C) (2) read with Section 124-A of the Railway Act, 1989 (herein after referred to as an 'Act'), liable to be dismissed.

5. The Railway Claims Tribunal in order to decide the controversy involved framed the following issues:-

"(1) Whether the deceased was a bona fide passenger of the train in question?

(2) Whether incident of death of the deceased falls under the ambit of an untoward incident as defined u/s 123 (C) (2) read with Section 124-A of the Railway Act, 1989?

(3) Who are the dependents of the deceased?

(4) To what relief?"

6. The Tribunal had decided issue no.1 against the claimant holding that Sri Hardwari Lal Gupat (Deceased) is not a bone fide passenger, the relevant finding in this regard reads as under:-

"I agree with the contention of the learned counsel for the respondent that in the absence of any cogent evidence, the applicant has failed to prove that the said

journey ticket was recovered from the person of the deceased and also the applicant has failed to clarify as to how the alleged journey ticket no. 00664 was found/ recovered from the possession of the deceased . In my opinion, the journey ticket produced by the applicant is a planted one, as such the applicant has not come with clean hands and , therefore, the said ticket cannot be considered to be the ticket meant for the alleged rail journey of the deceased by the subject train.

Thus, on the basis of evidence on record and attending circumstances of the case, I find and hold that the deceased was not a bone fide passenger of the subject train . This issue , is thus , decided against the applicants and in favour of the respondent."

7. And by means of judgment dated 24.12.2010 the claim petition has been dismissed.

8. Sri Jaspreet Singh, learned counsel for the appellants while challenging the impugned order submits that the findings given by the Tribunal that Hardwari Lal Gupta(deceased) was not bona fide passenger, is totally incorrect and wrong, contrary to material evidence on record. In this regard he relied on the evidence given by Sri Suresh Kumar Gupta (P.W.2), son of the deceased Hardwari Lal Gupta, who has categorically stated that he alongwith his father on 10.11.2005 had came to railway station Bhira Khiri where his father purchased second class railway ticket thereafter boarded on train (Century Exp.) .

9. Sri Jaspreeet Singh, learned counsel for the appellants further submits that Suresh Kumar Gupta has categorically stated in his evidence that the police authorities has handed over the original second class railway ticket no. 00664 to him, brought on record, filed as evidence in the present case, so there is no justification or reason on the part of the Tribunal to hold that deceased was not bone fide passenger so the findings given by the Tribunal that the ticket is a planted one and the same cannot be considered to be a ticket meant for alleged railway journey of the deceased by the subject train as the ticket was handed over to him by the police authorities is a theory , contrary to facts on record when there is no other cogent evidence is available in this regard by the railway authorities.

10. Sri Ved Prakash, learned counsel for the respondent, in rebuttal, submits that claimant by way of any cogent evidence does not able to prove and establish that second class railway ticket no. 00664 has been purchased by Sri Hardwari Lal Gupta(deceased) ,so there is no illegality or infirmity in the findings given by the Tribunal that in the F.I.R., lodged on 11.11.2005 by applicant's witness Sri Suresh Kumar Gupta it was not mention that the railway ticket was handed over to him by the police authorities as such the testimony of the applicant's witness that the ticket was handed over to him by the police authorities during 'Jamatalashi' of his father, is a finding based on the fact on record, so there is no illegality or infirmity done by the Tribunal in holding that the deceased Hardwari Lal Gupta was not a bona fide passenger and the claim petition was rightly dismissed.

11. Sri Jaspreet Singh, learned counsel for the appellants, in rebuttal, submits that by not merely mentioning in 'Jamatalashi' in respect to ticket, does not prove the fact that the deceased Hardwari Lal Gupta has not purchased the same when his son Sri Suresh Chandra Gupta(P.W.2) has categorically stated that his father Hardwari Lal Gupta has purchased second class ticket in his presence. He further stated that so far as 'Jamatalashi' is concerned, it is a public document and its contents can only be proved by producing a person, who has written the same. However, the said exercise has not been done in the present case, so on the said basis of contents, the findings given by the Tribunal that Hardwari Lal Gupta (deceased) is not a bona fide passenger , so the argument made on the basis of same by the railway authorities has got no force.

12. Sri Jaspreet Singh, learned counsel for the appellants further submits that so far as 'Panchayatnama' is concerned, it is a public document as per the provisions under Section 74 of the Indian Evidence Act , the validity of the said documents can be taken to true but its contents can only be verified and proved by way of cogent evidence, hence the findings given by the Tribunal that appellant and her witness has failed to clarify as to how the journey ticket has come in the possession of the applicant is correct , therefore, deceased was not a bona fide passenger of the train is incorrect finding taking into consideration the the evidence given by P.W.2 Sri Suresh Kumar Gupta wherein the witness in his evidence has categorically stated that police authorities during 'Jamatalashi' has

found second class railway ticket no. 00664 from the deceased and handed over to him but to contradict the same, no evidence has been led on behalf of the respondent in this regard. Further the finding given by the Tribunal that in the F.I.R. , it was not mentioned that second class railway ticket has been handed over to him, the same is not a necessary fact to be mentioned in F.I.R. and on the basis F.I.R., it cannot be presumed or hold that the railway ticket was not handed over by the police authority which was found with Sri Suresh Kumar Gupta, son of Sri Hardwari Lal Gupta(deceased). Accordingly, Sri Jaspreet Singh, learned counsel for the appellants submits that impugned judgment passed by the Tribunal is contrary to facts and evidence on record, liable to be set aside.

13. I have heard learned counsel for the parties and gone through the record.

14. Section 123(c)(2) defines the accidental falling of any passenger from a train carrying passengers as one of the untoward incidents referred to in the said provision. If literal meaning is given to such provision, it may result in holding that only when a passenger falls down from a train, the same can be termed as untoward incident. If it is considered in the light of exemption provided under Section 124-A of the Railways Act, such an interpretation shall not be desirable. The following alone are the exemptions provided therein:

(a) suicide or attempted suicide,

(b) self-inflicted injury,

(c) injury caused by his own criminal act,

(d) any act committed by the passenger in a state of intoxication or insanity, and

(e) any natural cause or disease or medical or surgical treatment provided such treatment has not become necessary due to injury caused by the said untoward incident.

15. For better appreciation entire Section 124-A is reproduced hereunder:

"Compensation on account of untoward incidents: 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 any thing 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 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 purposes 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".

16. In the case of Union of India v. Prabhakaran Vijaya Kumar and others, (2008) 9 SCC 527 Hon'ble the Apex Court has held as under:-

"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 v. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty v. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India v. 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. v. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. v. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others v. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar v. Telecom Distt. Manager (2003) 4 SCC 27(para 12) etc.

13. In Hindustan Lever Ltd. v. Ashok Vishnu Kate and others 1995(6) SCC 326 (vide para 42) this Court observed:

"In this connection, we may usefully turn to the decision of this Court in Workmen v. American Express International Banking Corporation wherein Chinnappa Reddy, J. 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 recognised 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)."

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it"

14. In our opinion, if we adopt a restrictive meaning to the expression accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

15. Section 2 (29) of the Railways Act defines 'passenger' to mean a person traveling with a valid pass or ticket. Section 123(c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act with which we are concerned states :

"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 purposes of this section, "passenger" includes -

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".

17. In the case of Smt. Akhtari v. Union of India, 2009(27) LCD 240 , this Court has held as under:-

"Section 124-A categorically provides that " whether or not, there has been any wrongful act, neglect or default on the part of the railway administration", the injured or the dependent of a passenger who has been killed shall be entitled for damages in respect thereof. Accordingly, the passenger travelling on the train shall be entitled for damages or compensation. In the event of accident or untoward incident the presumption shall always be in favour of the passenger with regards to bona fide unless rebutted by the material and cogent evidence. In the present cae, driver and guard in ordinary course cannot be the eye-witnesses to establish that the deceased was at fault. Moreover, keeping the provisions contained in Section 50,51,57,58,59 of the Act, since the respondent has failed to

discharge statutory obligation to regulate the passengers in the compartment of the train and because of necessity the deceased or the people are even in over-crowded train generally used to travel in second class, their bona fide may not be doubted.

The provisions contained in Chapter VIII and Chapter XV of the Act give ample power to the Railway to check the unauthorized travelers. Unless and until the passenger is caught hold by the railway authorities or is charged of travelling without ticket. It shall be presumed that person travalling in the train having valid ticket .However, such presumption is rebuttable. In the present case , since clothes were torn and the body of the deceased was dragged for about 100 meters or more, the presumption lies in favour of the deceased that he was possessing valid ticket while travelling from Hargaon Railway Station to Lakhimpur Railway Station.

The expression "untoward incident" as defined in Section 123(c) of the Act enumerates categories of meanings and in a restrictive and exclusionary sense as already notices. Each of the enumerated meanings clearly exclude the violation and participation of the victim in the act which denotes and " Untoward incident". From the structure of clause (c) an " Untoward incident" has been defined also to mean the accidental falling of any passenger from a train carrying passengers. Three classes of occurrences viz. Commission of a terrorist act, or the indulging in rioting, shoot-out or arson, have been included in sub-clause(1) and exemplified as events consequent on the act by any person in or on any train carrying passengers or in the enumerated premises."

18. In the instant matter following documents have been brought on record by the parties in order to prove their case:-

(1) Photocopy of the Panchayatnama

(2) Photocopy of Post-Mortem Report

(3) Carbon copy of the F.I.R.

(4) Photocopy of Pariwar register.

(5) Original second class railway ticket no.00664

19. And from the side of the claimant, Smt. Sundari Devi (P.W.1) and Sri Suresh Kumar Gupta (P.W.2), wife and son of Sri Hardwari Lal Gupta(deceased) respectively have been produced whereas from the side of railway authority, Sri Mohd. Roshan Ali, Claims Tracer has filed an affidavit.

20. From the perusal of the statement given by Sri Suresh Kumar Gupta (P.W.-2) , the position which emerge out that he has categorically stated that on 10.11.2005 , he alongwith his father went to railway station Bhira Kheri and his father purchased second class railway ticket boarded to Century Express to go to Lucknow.

21. Moreover, in the statement, he has also stated that police authorities at the time of 'Jamatalashi' of the deceased, have found second class railway ticket, handed over the same to him. The said evidence has been disbelieved by the Tribunal on the ground that claimants were not able to prove by way of cogent evidence rather failed to prove that the said ticket was recovered from the possession of the deceased and also the claimant has failed to clarify the position as to how the alleged journey second class railway ticket no.00664 was found/ recovered from the person of the deceased, is not a correct finding specially when Sri Suresh Kumar Gupta (P.W.2) in his statement has categorically sated that second class railway ticket was found in his presence from his father during 'Jamatalashi' and has been handed over to him and no contrary evidence has been brought on record by the railway authorities in respect to the said fact and only the statement given by Sri Mohd. Roshan Ali, Claims Tracer has been brought on record by way of affidavit, who has reiterated the facts, as stated in the written statement, specially the plea taken in paras 20 and 21 of the written statement.

22. Further from the perusal of the written statement filed by the railway authorities , it is evident that railway authority has nowhere stated that Sri Hardwari Lal Gupta (deceasd) has not purchased ticket from railway station Bhira Kheri, so keeping in view the said fact, findings given by the Tribunal that the deceased was not bona fide passenger, does not possess second class railway ticket as the same is not

mentioned in 'Panchayatnama', is not a correct finding because merely not mentioning in the 'Panchayatnama' it cannot be presumed that Sri Hardwari Lal Gupta has not purchased the ticket unless the contents of 'Panchayatnama' has been proved by producing the person/ authority, who has written the said documents, and examined as per the provisions of Indian Evidence Act in order to prove the contents of the said documents the said act has not been done in the present case, thus keeping in view the said position the finding given by the Tribunal while deciding the issue no.1 that the deceased was not bona fide passenger , is contrary to law as laid down by Hon'ble Supreme Court in the cases of Union of India v. Prabhakaran Vijaya Kumar and others, (2008) 9SCC 527 and Jameela and others v. Union of India (2010) 12 SCC 443, wherein it has been held that once the deceased got a valid train ticket, onus of proof has shifted to the Railway to show that he has not having valid ticket but in the matter railway fails to discharge said onus of prove by way of any cogent evidence that the deceased is not a bona fide passenger having valid ticket it cannot be said that deceased is not a bona fide passenger .

23. In addition to above said fact, the findings given by the Tribunal that deceased was not a bone fide passenger, as the said fact has not been mentioned in the F.I.R., lodged on 11.11.2005 is also not a correct finding as it is not mandatory to mention in the F.I.R. in respect to the recovery of the item from the deceased while lodging the F.I.R. because as per settle proposition of law F.I.R. is not a encyclopedia.

24. For the foregoing reason, the appeal is allowed. The impugned order dated 24.12.2010 passed by Railway Claims Tribunal Lucknow Bench at Lucknow in Claim Petition No. OA 0600676 (Smt. Sundari Devi and others v. Union of India) is set aside and a compensation of L 4,00,000/- (rupees four lakh only) is awarded to the appellants with 6% interest per annum from the date of filing of the claim petition which shall be paid by respondent/ Union of India through General Manager, Northern Eastern Railway, Gorakhpur within a period of sixty days from the date a certified copy of this order is produced before it.

25. No order as to cost.

Appeal Allowed.

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