

Surekha and Others Vs. Union of India

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Court : Karnataka Kalaburagi

Decided On : Feb-22-2016

Judge : B. Manohar

Appeal No. : MFA No. 30342 of 2010 (RCT)

Appellant : Surekha and Others

Respondent : Union of India

Advocate for Def. : Sri. Hule

Advocate for Pet/Ap. : Sri. Veeranagouda

Judgement :

B. Manohar, J.

1. Appellants in this appeal are challenging the judgment and order dated 23-01-2009 passed in OA (II-U) 31/2008 by the Railway Claims Tribunal, Bangalore Bench, (hereinafter referred to as 'the Tribunal' for short) dismissing the claim petition filed by the appellants.

2. The appellants filed the claim petition contending that husband of the first claimant, father of claimants 2 and 3 Sri. Annarao Bhujarke was working as an Assistant Engineer, APMC, Gulbarga. On 2-7-2007, in order to go to Bangalore, the deceased was proceeding to board Train No. 2628 on Platform No. 1. There

was heavy rush on the platform and also in the train. However, Annarao Bhujarke managed to board the train. Due to pushing and pulling of the passengers inside the compartment, he lost control and fell on the railway track. The train ran over the deceased, as a result of which the neck of deceased was separated from the body and other parts of body got crushed under the wheels. Immediately after the accident, the train was stopped, body was removed between the wheels of the train and shifted to Gulbarga General Hospital. The claimants claim that the accident occurred due to heavy rush in the compartment. He fell down from Coach No. S9 and died due to untoward incident. Hence, the claimants are entitled to compensation and sought for compensation of Rs. 30,00,000/-, subsequently, restricted their claim to Rs. 4,00,000/-.

3. In pursuance of the notice issued by the Tribunal, the respondent-Railways filed the written statement denying the entire averments made in the claim petition and contended that the deceased died due to negligence on his part since he tried to board the running train No. 2628 at Gulbarga Railway Station. Due to his own negligence, he had fallen down and train ran over him. Further, it was contended that the deceased was not a bona fide passenger. No document has been produced or tickets to show that he was a bona fide passenger, no ticket was found near the dead body. No valuables or money found near the dead body. The respondent/Railways is not responsible for the alleged death of the deceased. Further, no untoward incident in terms of Section 123(c)(2) of Railways Act had occurred on 2-7-2007. Hence, sought for dismissal of the claim petition.

4. On the basis of pleadings of the parties, Tribunal framed necessary issues. The first claimant got examined herself by filing an affidavit. The Deputy Station Master was examined as R.W.1 and Pointsman was examined as R.W.2.

5. The Tribunal, after considering the arguments addressed by the parties and taking into consideration the affidavit filed by the first claimant held that there is no untoward incident in terms of Section 123(c)(2) had occurred. When the deceased tried to board the running train at Gulbarga Station, he died. Hence, the claimants are not entitled for compensation and dismissed the claim petition by its judgment and order dated 23-01-2009. Being aggrieved by the said order, the claimants

have preferred this appeal.

6. I have carefully considered the arguments addressed by Sri. Veeranagouda, learned counsel for the appellants and Sri. Huleppa Heroor, learned counsel for the respondent and perused the judgment and order and oral and documentary evidence and other relevant records.

7. The case of the claimants is that the deceased was working as an Assistant Engineer, in APMC Gulbarga. He was having II Class ordinary ticket of Karnataka Express to go to Bangalore on 2-7-2007. On that day, the train was late and it reached Gulbarga Station at 10.39 a.m., left the Gulbarga Station at 10.42 a.m. In view of heavy rush on the railway platform and also in the compartment and on account of push and pull of the passengers from coach S9, the deceased fell down and died. However, defense of the respondents is that only after receiving signal from the authorised persons, train moved at about 10.42 a.m. from the Gulbarga Station. Thereafter, Pointsman noticed that one unknown person fell down from Coach S9. Immediately thereafter the train was stopped and dead body was removed moving the train backwards. It is only due to negligence on the part of the deceased while boarding the moving train, he had fallen down and died. Hence, the claimants are not entitled for compensation. One Harul Mashak, who was the Pointsman at the relevant point of time, noticed that after movement of the train, one person fell down from Coach S9. Hence it is clear that some unknown person fell down from Coach S9 and not while boarding the moving train. That apart, the deceased was an Assistant Engineer, APMC, Gulbarga. He was regularly moving to Bangalore from Gulbarga. He was having II Class ticket. On that day, the train was delayed and reached Gulbarga Station at 10.39 a.m. it left at 10.42 a.m., within 3 minutes break. In view of ran over of the train, neck of the deceased was separated from the body and other parts crushed between the wheels. The tickets and other valuable materials were not traced. Non availability of ticket cannot be a ground to hold that he was not a bona fide passenger and deny the compensation under Section 16 of the Railways Act. Because of crushing of the body under the wheels, the ticket and other valuables may not have been traced.

8. The Hon'ble Supreme Court had an occasion to examine the similar issue in a judgment reported in (2008) 9 SCC 527 in the case of Union of India v. Prabhakaran Vijaya Kumar and others. At paragraphs 10, 11 and 12, the 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.

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 fall 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 above mentioned 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 : (AIR 2003 SC 1623) (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 : (AIR 2000 SC 238) 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 other v. Laxmi Vishnu Textile Mills Ltd., AIR 1981 SC 852 (Para 13), S.M. Nilajkar v. Telecom Distt. Manager, (2003) 4 SCC 27 : (AIR 2003 SC 3553) (para 12) etc."

As held by the Hon'ble Supreme Court, it is a social piece of legislation. It must be liberally construed to compensate the accidental victims. On re-appreciation of oral and documentary evidence I am of the view that the order passed by the Tribunal cannot be sustained. The evidence of Pointsman clearly discloses the incident and fall of an unknown person from Coach S9. Hence, the claimants are entitled for compensation.

9. Accordingly, the appeal is allowed. The order dated 23-01-2009 is set aside. The appellants are entitled to compensation with interest as per the Indian Railways Act, 1989.

Appeal allowed.

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