

Bhola vs.union of India

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Court : Delhi

Decided On : Feb-27-2018

Appellant : Bhola

Respondent : Union of India

Judgement :

\$~15 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

27. 02.2018 FAO612017 Through: Mr. Ajit Rajput, Advocate. Appellant BHOLA
CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI UNION OF INDIA versus
Through: Mr. Amitava Poddar, Advocate. Respondent NAJMI WAZIRI, J (Oral)

1. This appeal impugns an order dated 04.08.2015 passed by the Railway Claims Tribunal, Principal Bench, Delhi, dismissing the appellants claim for compensation for injury sustained in a railway accident. It is the appellants case that on 08.10.2012, he boarded the Ala Hazarat Express train from Old Delhi Railway Station to Hapur (UP). En-route near the Lal Qila, he fell down from the said train due to a jerk in the train and push from inside the compartment; his left leg came under the wheels of the train leading to its amputation. He stated the same to the Railway Authorities.

2. There is a delay of 14 months in submitting the DRM Report. It states that in his statement to the Police, the claimant had stated that he was travelling in 14312- Ala Hazarat Express whereas in the statement before the Railway authorities, he

had stated that it was 13111-Lal Qila Express. The FAO612017 Page 1 of 15 report recorded that the appellant Bholu had been injured in an accident near Lal Qila. Evidently, this recording of an accident near Lal Qila led to the confusion that the accident happened while travelling in Lal Qila Express. The appellant requested for an amendment of his claim petition, for correction of this error but his request was declined. The claim was disallowed on the ground that neither a ticket was found on the claimant at the time of the accident nor was the claim petition supported by a railway ticket to prove his being a bona fide passenger.

3. Apropos the fact that the appellant had suffered the injury in a train accident, there is no dispute. But whether it was a self-inflicted injury thereby leading to the exceptions to strict liability of the Railways under the proviso to section 124 A of the Act or it was on account of his having fallen from the train, is to be determined.

4. The claim petition was filed on 27.07.2014, the DRM Inquiry was initiated thereafter and a report was filed 7 months later. The delay in initiating an inquiry is fatal to the facts of the case because what essentially needs to be gathered is what happened on the date of accident. The medical reports and the police records show that an accident happened on 08.10.2012 and the cause of the accident was, the appellant having been fallen from a moving train. The DRM Report does not address any of these aspects. On the contrary it says that since no ticket was produced to support the claim of the appellant, of him being a bona fide passenger, therefore by conjecture, he could have well suffered a self-inflicted injury while crossing the railway tracks. Reliance was placed upon the judgment of the Supreme Court in Kalandi Charan Sahoo and Anr. vs. General Manager, South-East Central Railways, Bilaspur in Civil Appeal No.5608/2017. FAO612017 Page 2 of 15 5. The delay in intimation of the DRM Inquiry, the silence about the specifics of the accident makes the DRM Report of no consequence. The conjecture that the loss of the appellants limb was because he was crossing the railway line is untenable. It is a bland statement without any corroborative evidence, whereas the police report and the medical reports, made in the immediate aftermath of the unfortunate accident, record that it was on account of his fall from the Ala-Hazrat Express Train. Therefore, the claim of the appellant will have to be accepted to the extent that he suffered an injury on account of having

been fallen from the moving train. Apropos, non-availability of the railway ticket, the Madras High Court in Maurice K. Lai and anr. vs. Union of India decided on 31.01.2018, held that restrictive meaning of the expression accidental falling of a passenger from a train carrying passengers would deprive a large number of railway passengers from getting compensation in railway accidents. It held:-

" 15. Section 2(29) of the Railways Act defines 'passenger' to mean a person travelling 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:

"124 A. 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 FAO612017 Page 3 of 15 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 travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident". (ii) MANU/TN/0354/20

2012 (3) CTC (Civil) 741 [The Union of India owning Southern Railway by its General Manager, Chennai v. G. Jayalakshmi and others]. wherein, this Court, in

paragraph Nos. 13 and 17, held as follows:-

""13. The further dispute of the Appellant is based on the plea that the deceased was not a bona fide passenger. The only ground, on which the contention is based, is that the train ticket was not produced in evidence and no ticket was found in possession of the deceased. The claimants had a specific case pleaded FAO612017 Page 4 of 15 that the deceased was holding a journey ticket, but the same was lost in the accident. The burden is on the Railways to prove that the deceased is not a bona fide passenger. The normal presumption is that a passenger in a train holds a valid ticket.

17. It is no doubt true that the position of law as provided in Section 106 of the Evidence Act is that if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in illustration (b) of that section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But, such principle is not applicable to a case of a dead person, who was proved to have died in the course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the railway authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the claimants to prove that he was a bona fide passenger having a valid ticket. In this case, as no person on behalf of the Railways has given any such evidence nor as any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of providing the said fact had not been discharged. In such circumstances, in the absence of any evidence of the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the claimants. Therefore, the Tribunal is perfectly justified in rejecting the contention of the Appellant that the deceased was not a bona fide passenger. The Tribunal is perfectly justified in holding that the deceased died on account of the accidental falling from the train and therefore, I do not find any warrant for interference with the said findings. FAO612017 Page 5 of 15 (iii) An unreported judgment of this Court made in C.M.A. No.2049 of 2008 [P. Rosi v. Union of India, Owing Southern Railway, Rep. by General Manager, Chennai - 600 003]. dated 01.02.2013, wherein this

Court, in paragraph No.19 held as follows:-

"the whether

"19. As per the above decisions, the burden lies upon the Railway Authorities to prove that the deceased is not a bona fide passenger. Now this Court has to decide Respondent/Railway Administration has proved that the deceased is not a bona fide passenger. Perusal of Ex. A.2-inquest report reveals that nothing has been seized from the body of the deceased Rajan. It is pertinent to note that there is no contra evidence on the part of the respondent. This Court has already discarded Ex. R.1-attendance Register, since it is not a genuine document. It is not the case of the respondent that the belongings of the deceased has been recovered, except the ticket and pass. Hence the decision of this Court rendered on 13.8.2012 in CMA. No.1685 of 2009 (The Union of India V. The Addl. Registrar, Railway Claims and another), is squarely applicable to the facts of the present case."

(iv) 2010 (5) ML J676[General Manager, Union of India owning Southern Railway, owning South Central Railway Secunderabad v. V. Lakshmana Rao and others]. wherein, this Court held as follows:

"As per Section 124-A of the Railways Act, 1989, a passenger to be treated as a bona fide passenger need not possess a valid ticket for the same train in which he had an accidental fall, therefore, the liability to pay compensation by the Railways in FAO612017 Page 6 of 15 case of an untoward accident cannot be disputed in such case and the dependants of the victim are entitled to compensation."

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2016. (v) MANU/TN/0977/2016 (6) CTC820[A. Thanikachalam and others v. The Union of India, owning Southern Railway, Rep. by its General Manager, Chennai]. wherein, this Court, in paragraph Nos. 13 to 16 held as follows:-

"13. It is no doubt true that the parents of the deceased-T. Jagan laid the claim before the Railway Claims Tribunal on the ground that the deceased- Jagan, while travelling in a EMU train between Chengalpattu and Singaperumal Koil stations on

10.4.2006, was hit by an electric post, as a result, he sustained injuries on the back side of his head and died on the spot after falling down. Upon consideration of the evidence let in by the parties, both oral and documentary, more particularly, Ex. A2-Inquest report and Ex. A3- final report, the Tribunal categorically held that the deceased on 10.4.2006 prior to 9.15 AM while travelling by EMU train between Chengalpattu and Singaperumal Koil Railway stations at KM/B- was accidentally hit by electric post, sustained grievous injuries and died at the spot and that the police have concluded the case as accidental death and accordingly closed their case. The Tribunal also held that the respondent have not adduced any evidence to establish that the incident would not come under Section 123(c)(2) of the Railways Act, 1989 and the respondent is not liable under Section 124A of the said Act. Moreover, the Tribunal went on to hold that the applicants, the appellants herein have proved that the deceased died in an untoward incident on 10.4.2006 while travelling by the train. After holding so, the Tribunal has clearly erred in dismissing the claim petition only on the ground that the deceased was not a bona fide passenger. When the inquest report filed by the Chengalpattu Railway Police Station in Crime No.79 of 2006 under Section 174 Cr.P.C., dated 10.4.2006 itself clearly revealed that the deceased- Jagan, while travelling in a EMU train had dashed against a post, sustained grievous head injuries and died on the spot and that there were no other reasons for his death, since he had fallen down from the UP train, the burden lies upon the Railways to prove that the deceased was not a bona fide passenger. Similarly, in the case of the deceased-Ekambaram is concerned, when the claim petition was filed by the wife and minor children of the deceased on the ground that the deceased while travelling in a train plying between Beach and Tambaram had fallen down in between Chetpet and Nungambakkam railway stations on 28.5.2002 and died due to the injury to the chest and abdomen, the respondent resisted the said claim also on the ground that the deceased was not a bona fide passenger, when the inquest report shows that the incident had actually taken place on the said date. Moreover, the Tribunal also discarded the evidence of one R. Murugan, an eye-witness, who was examined as A.W. 2, on the ground that his statement was contradictory to the materials available on record. In my view, the Tribunal miserably failed to consider the judgments of the various High Courts,

holding that the benefit of doubt that the deceased could have been a bona fide passenger should be given, while dealing with a FAO612017 Page 8 of 15 is more the one which beneficial piece of legislation. In this context, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of Union of India v. Prabhakaran Vijaya Kumar and others, MANU/SC/7608/20

(2008) 4 ML J323(SC), wherein the Apex Court, while interpreting the expression accidental falling of a passenger from a train carrying passengers which is an untoward incident under Section 123(c)(2) of the Railways Act and the consequential payment of compensation under Section 124A for such untoward incident, has held that it is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, 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. In the said judgment, the Apex Court has further held as follows:-

""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 travelling 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 FAO612017 Page 9 of 15 expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e., a passenger travelling 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."

14 . In the cases on hand, as mentioned already, when it is an admitted fact that both the deceased died in an untoward incident on the respective dates while

travelling in the train, the onus is on the Railways to prove that the deceased were not bona fide passengers, since the normal presumption is that a passenger in a train holds a valid ticket. In fact, under similar circumstances, this Court in the case of The Union of India owning Southern Railway by its General Manager, Chennai v. G. Jayalakshmi and others, MANU/TN/0354/20

2012 (3) CTC741 while considering an identical issue, has held as follows:-

"15. This Court in similar circumstances in the case of S. Poonkodi and others v. The Union of India, Southern Railway, CDJ 2007 MHC3784 observed as hereunder:-

"16. ...Moreover, if the deceased had travelled as a ticketless traveller, one would normally expect the Railway Authorities to have detected such ticketless travelling. When a person dies in an accident by falling down from train, it is not possible for the legal representatives to produce the ticket or valid authority to travel in the train. Depending upon the facts and circumstances of a given case, the Tribunal/the Appellate Court infer about the deceased being a bona fide passenger. In the present case, facts and circumstances FAO612017 Page 10 of 15 prima facie indicate that the deceased was a bona fide passenger, who lost his life in the railway accident.

15. At this juncture, it is also relevant to point to the observation made by the Honourable Supreme Court reported in Bimla Devi and others v. Himachal Road Transport Corporation and others, MANU/SC/0577/20

2009 (1) TN MAC700(SC) : AIR 2009 SC2819 wherein while dealing with a claim arising under the Motor Vehicles Act, the Honourable Supreme Court observed that it was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the Claimants and the Claimants were merely to establish their case on the touchstone of preponderance of probability. It went on to observe that the standard of proof beyond reasonable doubt could not be applied in the case of Claim Petitions.

16. It is no doubt true that the position of law as provided in Section 106 of the Evidence Act is that if a fact is within the special knowledge of a person, the burden of proving such fact is on that person and as provided in Illustration (b) of that Section, if a person is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is upon him. But, such principle is not applicable to a case of a dead person, who was proved to have died in the course of railway travel and whose body was taken in custody of the Railway Police. In such a situation, it is the duty of the Railway Authority to first give evidence that he was without a valid ticket and if such evidence is given, the onus shifts upon the Claimants to prove that he was a bona fide passenger having a valid ticket. In this case, as no person on behalf of the Railways has given any such evidence nor as any person come forward to disclose as to what articles were found with the victim, I am of the considered view that the initial burden of proving the said fact had not been discharged. In such circumstances, in the absence of any evidence of the Railway Authorities asserting absence of valid ticket, I am of the opinion that there is no just reason to discard the evidence of the Claimants."

(vi) MANU/KE/0415/20

AIR2009 Kerala 134 [Union of India v. Leelamma & Ors.]. wherein Kerala High Court, in paragraph No.9 held as follows:-

"9. The question mooted for consideration is whether due to mere non-production of the ticket, an adverse inference can be drawn by the Tribunal that the person got injured and succumbed to death was travelling without a valid journey ticket and that he was not a bona fide passenger. According to the claimants the deceased was holding journey ticket and the same was lost in the accident. The normal presumption is that a passenger in a Railway holds a valid ticket. When the appellant/respondent contends that the deceased was a passenger who fell down while attempting to board a train, the burden is heavily upon them to prove that he attempted such Journey without purchasing a ticket. Since that burden is not discharged by the Railway, the Tribunal is perfectly justified in rejecting the contention that the deceased was not a bona fide passenger. The Railway

Tribunal in such cases are perfectly Justified in drawing a presumption that the person concerned was travelling or attempting to travel with a valid ticket and in such case the passenger cannot be termed as "not a bona fide passenger".
FAO612017 Page 12 of 15 9. Countering the submissions made by the learned counsel appearing for the appellants, Mr. M.T. Arunan, learned Standing Counsel appearing for the respondent submitted that the only issue involved in the present appeal is whether the nonproduction of the ticket by the claimant is fatal to their case. In support of his contention, the learned counsel relied upon a judgment of the Karnataka High Court reported in MANU/KA/0705/20

2014 ACJ2505[Union of India v. Lakshmi and others]. wherein, in paragraph No.6, the Karnataka High Court held as follows:-

""6. The relevant provisions of Railways Act are very clear, in that, if a person suffers injury or death in an untoward incident as contemplated under section 123(c)(2) of the Railways Act, 1989, he/his family members is/are entitled to seek compensation provided he is a bona fide passenger with valid ticket. That means, either on his body or in his possession such ticket should be found at the time of accident, which is valid for journey in that particular train for that particular day. If that is not found, then the reasonable presumption is that he was travelling without valid ticket. Assuming for a moment, he has travelled with other passengers and if a valid ticket is produced from the possession of another person travelling along with him also would suffice to show that he was a bona fide passenger with valid ticket."

Further, the learned Standing Counsel appearing for the respondent submitted that since the claimants have not produced the train ticket of the deceased, the Tribunal has rightly dismissed their claim petition.

10. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the claimants have filed the FAO612017 Page 13 of 15 claim petition without producing the ticket purchased by the victim. In the judgments relied upon by the learned counsel appearing for the appellants it has been held that it is not possible for the legal representatives to produce the ticket or valid authority, who travelled

in the train, and the burden of proving that the deceased/victim was not a bona fide passenger is on the Railways and not on the claimants 6. The logical corollary to the aforesaid is that the appellant would be deemed to be a bona fide passenger, unless rebutted by the Railways. There is no such rebuttal, therefore, there would be no doubt that he was a bona fide passenger. This Court is of the view that the ticket could have popped out of the pocket of the passenger or otherwise was lost after he fell down from the train. In terms of the reasoning in Maurice K. Lai (supra), rejection of the claim on the ground of non availability of the passenger ticket is not sustainable, because a lighter object would always fly-off from a pocket if the unfortunate body is violently tossed about at immense velocity in a gruesome and fatal train accident. A heavier object, like a cell phone being better ensconced deeper in the pocket, is likely to stay in the pocket. Additionally, the ticket could have been lost during the efforts of chance good Samaritans or the Railway or police officials or hospital authorities trying to ascertain the identity of the injured person by looking into the contents of the clothes/ pockets of the deceased/unconscious persons.

7. In view of the above, the appellant would be considered as a bona fide passenger. The injury to his body having been caused on account of a railway accident near Lal Qila, Delhi, while he was travelling in the Ala Hazarat Express train on 08.10.2012, too has not been rebutted. FAO612017 Page 14 of 15 8. The exception under section 124A of the Act would not be available to the Railways, instead strict liability as stipulated in the preceding section would apply. Therefore, the claim ought to be and is allowed. For amputation of leg, the appellant is entitled to compensation of Rs. 8 lacs, in terms of the Notification dated 27.12.2016 amending The Railway Accidents and Untoward Incidents (Compensation) Rules, 1990. Accordingly, an amount Rs. 8 lacs shall be paid to the appellant by the Respondent/ Railways with interest on Rs. 4 lacs @ 9% from the date of filing of the claim petition till 26.12.2016 and @ 9% on Rs. 8 lacs w.e.f. 27.12.2016. In addition Rs. 25,000/- expenses towards litigation shall be paid to the appellant. The aforesaid amount shall be deposited within four weeks, from the date of receipt of this order, in the UCO Bank, Delhi High Court Branch and shall be kept in an interest bearing FDR to enure to the benefit of the appellant/beneficiary. From the amounts so deposited, Rs. 2 lacs and Rs. 25,000/-

shall be released to the appellant. The remaining amount shall be kept in interest bearing FDRs of Rs. 1 lac each to mature every successive year. Upon maturity, the FDR amount alongwith interest thereon, shall be directly transferred into the bank account of the appellant, which shall be maintained in a bank near his place in Hapur (Uttar Pradesh). In case of exigency, the appellant may move the Court for directions.

9. The appeal stands disposed-off in the above terms. NAJMI WAZIRI, J
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