IN THE HIGH COURT OF JUDICATURE AT PATNA

Smt. Geeta Devi

vs.

Union of India and Another

Miscellaneous Appeal No. 43 of 2015

3 January, 2023

(Hon'ble Mr. Justice Rajeev Ranjan Prasad)

Issue for Consideration

Whether the substituted legal heirs of the original claimant, who failed to prove dependency on the deceased or establish their identity, could maintain a compensation claim under the Railways Act solely by virtue of substitution under Rule 26 of the Railway Claims Tribunal Rule.?

Headnotes

Railways Act, 1989—Sections 123(b), 124-A, 125—Railway Claims Tribunal (Procedure) Rules, 1989—Rule 26—claim for compensation—dependant—death of unmarried passenger in alleged untoward incident—original claimant (mother) died during pendency—legal heirs substituted under Rule 26—no proof of dependency on deceased—identity of substituted claimants not established—no evidence of deceased being bona fide passenger—documents relied upon (FIR, inquest, post-mortem) held to be uncertified and unreliable—Tribunal dismissed claim—appeal filed by substituted heirs.

Held: substitution under Rule 26 does not confer substantive right to claim compensation—only "dependants" under Section 123(b) eligible—where the deceased passenger is unmarried or is a minor, his parents only have been kept within the meaning of the word dependant—appellants failed to prove dependency or identity—no evidence of ticket or place of accident—claim rightly rejected—impugned order of Tribunal upheld—appeal dismissed.

(Paras 3, 4, 15, 19, 28 to 38)

Case Law Cited

Turtan Samad vs. Union of India, ***2021 Accident Claim Journal (ACJ) 2042;*** Ajay Kumar Pandit and Others vs. Union of India, ***2020 SCC Online Jharkhand 1660: (2021) ACJ 1628;*** Krishnakumar. G. vs. Union of India, ***2011 SCC Online Kerela 4231: 2013 ACJ 1068;*** Arthamudi Ramu and Others vs. Union of India, ***2007 (1) Transport and Accident Cases 948 (A.P.)***; M. Veerappa versus Evelyn Sequeria reported in ***AIR 1988 SC 506***; Union of India vs. Kumari Diptee (Minor), ***AIR 2000 Punjab and Haryana 105*—Distinguished.**

List of Acts

Service Law; Constitution of India, 1950; Bihar Reservation of Vacancies in Posts and Service (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991; The Rights of Persons with Disabilities (RPWD) Act of 2016.

List of Keywords

actio personalis moritur cum persona, claim, dependant, where the deceased passenger is unmarried or is a minor, his parents only have been kept within the meaning of the word dependant.

Case Arising From

From a compensation claim filed by Teeja Devi under the Railways Act for the death of her son, Sanjay Khatik, who allegedly died in an untoward incident while traveling by train on 11.03.2002. After her death, her legal heirs sought to continue the claim.

Appearances for Parties

For the Appellant: Mr. Krishna Mohan Murari, Advocate.

For the Union of India: Mr. Awadhesh Kumar Pandey, Sr. CGC; Mr. Lokesh, AC to Sr. CGC.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.43 of 2015

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Smt. Geeta Devi d/o Late Teeja Devi and w/o Sri Tulsi Prasad, resident of village- Takiya Bazar, PO Takiya Bazar, PS Sasaram, Distt RohtasBihar

... ... Appellant

Versus

1. The Union of India through the General Manager, Eastern Railway, 3-Koelaghat Street, Kolkata-700001.
2. Ramu @ Ramu Khatik s/o Late Mohan Khatik, resident of village- Takiya Bazar, PO Takiya Baazar, PS SasaraamM, Distt Rohtas, Bihar.

... ... Respondents

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Appearance :
For the Appellant : Mr.Krishna Mohan Murari, Advocate
For the Union of India : Mr.Awadhesh Kumar Pandey, Sr. CGC
Mr. Lokesh, AC to Sr. CGC

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 03-01-2023

Heard Mr. Krishna Mohan Murari, learned counsel for the appellants and Sri Awadhesh Kumar Pandey, learned senior panel counsel for the Railways assisted by Mr. Lokesh, Advocate for the Union of India (Eastern Railways). Respondent no. 2 is also represented by learned counsel for the sole appellant.

2. The appellant is aggrieved by and dissatisfied with the impugned order dated 24.04.2013 passed in Claim Application No. OA000177/2002 by learned Member (Technical) of the Railway Claims Tribunal, Patna Bench, Patna (hereinafter referred to as "Tribunal") whereby and whereunder the learned Tribunal has been pleased to dismiss the claim

application on the ground that :- (i) The applicants failed to establish that late Sanjay was either a bonafide passenger of train no. 054EMU on 11.03.2002 or he died in any untoward incident on that day, as claimed, (ii) the identification of Smt. Geeta Devi and Ramu were not established. Smt. Geeta Devi had not signed the substitution petition filed on 16.07.2012. Further the voter card of Geeta Devi was showing that she was 22 years old when Sanjay died, (iii) Even the age of the deceased remains doubtful; and (iv) Teeja Devi never made Geeta Devi and Ramu a co-applicant in her claim application. She filed no dependency certificate at the time of filing her claim.

Brief facts of the case

3. It appears from the records that one Teeja Devi filed the original application dated 09.07.2002 before learned Tribunal claiming that on 11.03.2002 her son Late Sanjay Khatik (hereinafter referred to as the 'deceased') while travelling by 054EMU passenger from Mughalsarai to Sasaram died in an untoward incident. In her application she made a specific statement that she was the only legal heir for the compensation. The deceased was unmarried. She, therefore, claimed a compensation of Rs. 4,00,000/- (Four Lakhs) by

filing an application under Section 125 of the Railways Act, 1989 (hereinafter referred as the "Act of 1989").

4. It further transpires from the record that one order dated 09.07.2002 is written showing filing of an application. Order is written to register it and copy of the application be given to the respondents and let the reply be filed by 05.09.2002. There is, however, no signature of the Additional/Assistant Registrar. Thereafter, again in a peculiar manner there is an order "Put up before Bench on 26.03.2012". What happened during almost ten (10) years period in & between 09.07.2002 and 26.03.2012 is not known. Thereafter, on 04.04.2012 the issues were framed. On 15.05.2012. Learned counsel for the applicant informed the Tribunal that Teeja Devi is no more. She expired on 14.01.2011.

After more than one year one substitution petition with an application for condonation of delay was filed on 02.07.2012 with a prayer to expunge the name of late Teeja Devi and to substitute her married daughter Smt. Geeta Devi and unmarried son Ramu who were said to be legal heirs/ legal representatives of the original applicant. The substitution application was admitted vide order dated 16.07.2012 and both

the applicants were directed to depose as A.W.1 and A.W.2. They were directed to file affidavits of proposed witnesses.

5. The substitution petition was signed only by Ramu. The Tribunal directed learned counsel for the applicants on 13.08.2012 to produce Ramu for cross-examination on 03.09.2012. Ramu failed to turn-up on that day, and despite three other dates fixed for his appearance by the learned Tribunal Ramu did not turn up.

6. As regards Geeta Devi, it has transpired that she appeared as applicant witness no. 1, identified herself as wife of one Tulsi Prasad and made statement that one '*parosi mama*' had got the rail ticket for Sanjay on the fateful day and put him on train no. 054EMU Passenger at Mughalsarai. She claimed that Sanjay fell down from the train but she could not mention about the place of accident. In her cross-examination, she has admitted that she did not know the date of incident and has no first hand knowledge of the same. The learned Tribunal has recorded in the impugned order that the identity of Smt. Geeta Devi was also not conclusively proved. The original family certificate issued by AO/ Sasaram was not produced and the photocopy did not indicate her husband's name. It is further

recorded that the age of Geeta Devi also differs from her Voter I. Card.

7. In the aforementioned background, learned Tribunal has rejected the claim for the reasons already indicated at the top of this judgment.

Submission on behalf of the appellant

8. Learned counsel for the appellant has assailed the impugned order of the learned Tribunal on the ground that the sole appellant as well as respondent no. 2 happen to be the legal heirs of late Teeja Devi, therefore, they were substituted in terms of Rule 26 of the Railways Claims Tribunal (Procedure) Rules, 1989 (hereinafter referred to as the "Rules of 1989"). It is submitted that the appellant as well as respondent no. 2 would be covered within the meaning of the word "dependant" as envisaged under Section 123(b) of the Act of 1989. Learned counsel has relied upon the judgments of the Hon'ble Jharkhand High Court in the case of **Turtan Samad vs. Union of India** reported in **2021 Accident Claim Journal(ACJ) 2042** and in the case of **Ajay Kumar Pandit and Others vs. Union of India** reported in **2020 SCC Online Jhar 1660 : (2021) ACJ 1628**. Learned counsel has further relied upon the judgment of Hon'ble Kerala High Court in the case of

Krishnakumar.G. vs. Union of India reported in **2011 SCC Online Ker 4231 : 2013 ACJ 1068** to submit that in these judgments the Hon'ble Jharkhand High Court as well as the Kerala High Court have taken a view that the legal heir of the original claimants would be liable to be substituted as legal representatives in terms of rule 26 of the Rules of 1989.

9. Learned counsel has further relied upon a judgment of Hon'ble High Court of Andhra Pradesh in the case of **Arthamudi Ramu and Others vs. Union of India** reported in **2007 (1) Transport and Accident Cases 948 (A.P.)** to submit that in the matter of compensation for injuries upon death of the claimant right of legal representatives to be substituted in the original proceeding would exist.

Submission on behalf of the Railways

10. On the other hand, learned counsel for the Railways has submitted that on a bare perusal of the order of the learned Tribunal, it would appear that it was in the nature of a fake and bogus claim by and on behalf of the appellant as well as respondent no. 2. It is submitted that on a bare reading of the order it would appear that the R-2 did not appear to testify himself despite several opportunities granted to him by the learned Tribunal and so far as the appellant is concerned, she

could not establish her identity.

11. Learned counsel further submits that on a bare reading of the scheme of the Act of 1989, it would appear that an application for compensation under Section 124 or Section 124-A may be made to the Claims Tribunal only by the given kind of persons enumerated under Clause (a), (b), (c) and (d) of sub-Section (1) of Section 125 of the Act of 1989.

12. Attention of this Court has been drawn towards Clause (c) of sub-section (1) of Section 125 which specifically deals with the case of a minor and according to this provision where such person is a minor, an application for compensation may be filed by his guardian. Further as per Clause (d) of Section 125 where death has resulted from the accident or untoward incident, an application for compensation may be filed by any dependant of the deceased or where such a dependant is a minor, by his guardian. Learned counsel submits that on a bare perusal of the application seeking substitution of the appellant and respondent no. 2, it would appear that they nowhere claim themselves dependant upon the deceased. They claimed their substitution only on the ground that they were the legal heirs/legal representatives of Late Teeja Devi.

13. Learned counsel, further by way of elaborations

submits that sub-section (2) of Section 125 provides that every application by a dependent for compensation under the sections shall be for the benefit of every other dependent. Therefore, according to him, the intention of the legislatures is to provide compensation only to the ‘dependent’ or ‘dependents’ of the deceased. It is his submission that merely because the appellant and respondent no. 2 claimed that they happened to be the legal heir of Late Teeja Devi, it cannot be said that they were dependent on the deceased and in absence of any proof of their being dependent upon the deceased, they cannot seek any compensation even if they claim to be the legal heirs of Late Teeja Devi. They had failed to establish their identity. It is submitted that the facts of this case would suggest that the compensation amount was not determined and allowed to Late Teeja Devi who was the original applicant, therefore no right in respect of any compensation amount had vested in her.

14. The judgments of the Hon’ble Jharkhand High Court, Hon’ble Kerala High Court and Hon’ble Andhra Pradesh High Court have been distinguished with reference to the facts of those cases and the issues involved therein. This Court would deal with those judgments hereinafter.

Consideration

15. This Court has heard learned counsel for the parties and perused the records. The facts of the case would suggest that Late Teeja Devi claimed herself the mother of the deceased, she filed an original application being covered under the meaning of the word "dependent" under sub-clause (i) of clause (b) of Section 123 of the Act of 1989.

16. In her application, she asserted that the deceased was unmarried and she was the only legal heir. The manner in which the ordersheets of the Tribunal are written has already been indicated hereinabove. How the Claim Petition was registered and remained without any progress for ten (10) years is not known. The case proceeded after 26.03.2012 whereas Teeja Devi died on 14.01.2011.

17. At this stage, it would be important to take note of the relevant provisions of the Act of 1989 so as to fully appreciate the scheme of the Act and intention of the legislatures behind providing such provisions under the statute. For a ready reference Section 123 to Section 125 of the Act of 1989 falling under Chapter XIII of the Act of 1989 are quoted hereunder for a ready reference:-

"CHAPTER XIII
LIABILITY OF RAILWAY ADMINISTRATION FOR

DEATH AND INJURY TO PASSENGERS DUE TO ACCIDENTS

123. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) "accident" means an accident of the nature described in section 124;

(b) "dependant" means any of the following relatives of a deceased passenger, namely:—

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grand parent wholly dependant on the deceased passenger;

[(c) "untoward incident" means—

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

(ii) the making of a 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.]

124. Extent of liability.—When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train

or any part of a train carrying passengers, 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 has suffered a loss 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.—For the purposes of this section "passenger" includes a railway servant on duty.

[**124-A. 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 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 travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]

125. Application for compensation.—(1) An application for compensation under section 124 [or section 124-A] may be made to the Claims Tribunal—

(a) by the person who has sustained the injury or suffered any loss, or

(b) by any agent duly authorised by such person in this behalf, or

(c) where such person is a minor, by his guardian, or

(d) where death has resulted from the accident, [or the untoward incident], by any dependant of the deceased or where such a dependant is a minor, by his guardian.

(2) Every application by a dependant for compensation under this section shall be for the benefit of every other dependant."

18. Since learned counsel for the appellant has relied upon Rule 26 of the Rules of 1989, this Court would extract the said Rule 26 hereunder:-

"26. Substitution of legal representatives - (1) In the case of death of a party during the pendency of the proceedings before Tribunal, the legal representatives of the deceased party may apply within ninety days of the

> date of such death for being brought on record.
> (2) Where no application is received from the legal representatives within the period specified in sub-rule (1), the proceedings shall abate:
> Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased."

19. On bare perusal of the aforesaid provisions, it would appear that the scheme of the Act of 1989 is to provide compensation to the "dependant" and the word "dependant" has been defined whereunder in terms of sub-clause (i) of clause (b) of section 123 in case of a deceased passenger who is unmarried or is a minor, his parent would only be covered under the definition. To understand the legislative intent when sub-clause (ii) of clause (b) of Section 123 of the Act of 1989 is gone into, it may be easily found that according to this provision the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son would be covered within the meaning of the word "dependant", if they are dependant wholly or partly on the deceased passenger. The distinction between sub-clause (i) and sub-clause (ii) of Clause (b) of Section 123 of the Act of 1989 is crystal clear. Where the deceased passenger is unmarried or is a minor, his parent only have been kept within the meaning of the word "dependant".

20. Admittedly during lifetime of Teeja Devi the

original application did not proceed. She had never been examined before the Tribunal. According to the claimant, the deceased was aged about 18 years and unmarried but the Tribunal has recorded a finding that no proof as regards the age was brought on the record by the applicants. Geeta Devi (the appellant) who deposed as legal heir of Late Teeja Devi, could not establish her identity as daughter of Late Teeja Devi. The learned Tribunal has recorded that she had no knowledge about the place of accident of the deceased. On record this Court finds no error with these findings of the learned Tribunal.

21. In this case, the case of the original applicant as well as the present appellant and respondent no. 2 is that deceased Sanjay was unmarried, though he was said to be 18 years old. As regards the age of the deceased again the Tribunal has recorded a finding that his age could not be established and this finding has not been assailed on any ground.

22. A reading of Section 124-A with it's explanation would suggest that the word "passenger" for the purpose of Section 124-A would include:

> "(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."

23. On facts, in this case, even this could not be proved before the learned Tribunal that the deceased was carrying a valid ticket for travelling. A.W.1 had not mentioned even the place of accident, therefore even on this score the finding recorded by the Tribunal cannot be disturbed.

24. A joint reading of Section 123 and 125 of the Act of 1989 would show that an application for compensation may be made to the claims tribunal by the person enumerated under sub-clause (ii) of clause (b) of section 123 if they happens to be dependant wholly or partly upon the deceased passenger and where such a dependant is a minor, by his guardian. In case of an unmarried or minor deceased passenger, his parent would be the dependant. In this case, neither the appellant nor respondent no. 2 claim to be dependant of the deceased, therefore, they could not have maintained an application for compensation in terms of Section 125 of the Act of 1989, situated thus, a question arises as to whether something which the appellant and respondent no. 2 could not have done as per legislative intent, may be allowed to be inferred in their favour by virtue of the admission of their substitution application on the strength of Rule 26 of the Rules of 1989.

25. To this Court, it appears that the rules are meant to facilitate the workings and implementation of the Act and they are procedural laws. The legislative intent has to be inferred from the Act of 1989 and not from the rules alone which are a piece of subordinate legislation.

26. Coming to the judgments of the Hon'ble Jharkhand High Court, this Court is of the considered opinion that those judgments are clearly distinguishable on their own facts. In case of **Turtan Samad** (supra) the Railways Claims Tribunal had decided the issues in favour of the claimants Fulmani Samad, mother of the deceased Nelson Samad and brother Turtan Samad but did not allow the fruits of the compensation in favour of the claimants because during the pendency of the claim application, the mother of the deceased died and the Tribunal considered brother not to be the dependent on the deceased though deceased was elder unmarried brother. The argument was that the compensation would have been awarded considering the dependency on the date of incident dated 26.05.1999 and when the claim application was filed on 18.11.1999. In the said context, the Hon'ble Jharkhand High Court recorded in paragraph '13' of the judgment as under:-

"13. Under the aforesaid circumstance, this court is of

> the opinion that it was incumbent upon the learned Tribunal to decide the issue within 90 days in such beneficial legislation, but the delay has been caused by the Railway Claims Tribunal in deciding the issues, by that time old and helpless mother died, as such, debarring the applicant from fruits of the benefit is not justified in view of the technical plea taken under Section 123(b)(ii) of the Act."

27. It appears that the Hon'ble Jharkhand High Court has not declared a statement of law on interpreting said Section 123(b)(ii) of the Act of 1989. The Court has not considered the statutory scheme and, therefore, this Court is not persuaded to take a similar view.

28. In the another judgment of the Hon'ble Jharkhand High Court in the case of **Ajay Kumar Pandit** (supra) the fact of the case was that the father of the deceased passenger had filed the original claim but he died during pendency of the claim petition. The mother of the deceased was substituted who persuaded the claim application but the same was dismissed on 23.04.2013 by the learned Tribunal Court on the ground that the deceased was not a bonafide passenger and the incident was not an untoward incident as defined under Section 123(c)(ii) of the Railways Act. The mother of the deceased carried an appeal to the High Court but during pendency of the said appeal, she died on 25.08.2016. Under

these circumstances, Ajay Kumar Pandit and others who were legal heirs of late Prabhawati Devi (mother of the deceased) filed an application seeking substitution of their names. The Railways did not object to the substitution petition and in absence of any objection the substitution was allowed. The order by which substitution was allowed had attained finality as the same was not assailed before the Hon'ble Apex Court. Under these circumstances, in course of final hearing of the appeal after more than one year when the Railways sought to raise an objection with regard to the substitution of the legal heirs of the Prabhawati Devi, the Hon'ble Court rejected the same and held that in this case the court has to only consider whether the findings recorded by the learned Tribunal on the two scores are tenable in law on the basis of the evidences adduced by the claimants. This Court finds that the judgment in the case of **Ajay Kumar Pandit** (supra) has been rendered in a completely different set of facts and circumstances. In this case, the substitution petition has been though admitted but simultaneously the learned Tribunal called upon the appellant an R-2 to depose and finally the Tribunal found that the appellant and R-2 had failed to establish their identity. In the application filed before the Tribunal seeking substitution, or in

the deposition of A.W.1 there is no whisper that they happened to be dependant upon the deceased.

29. In the case of **Krishnakumar.G.** (supra) decided by the Hon'ble Kerala High Court, the father of the deceased had filed the original application under Section 124 of the Act of 1989 the claim was allowed vide order dated 24.02.2010. Prior to that order, the mother of the deceased who was the only other dependant, had expired on 06.04.2009. Later on, the claimant who was the father of the deceased also expired on 09.04.2010. By this time, the amount due under the order dated 24.02.2010 had not been paid to the deceased claimant. In these circumstances, the appellant who was the only legal heir of his deceased father wanted the award to be executed in his favour. He, therefore, filed an application before the learned Tribunal claiming execution of the order and release of the amounts but the Tribunal rejected the same by taking a view that only a dependant can seek an execution of an order directing payment of the amount under Section 124-A of the Act of 1989.

30. In the case of **Krishnakumar.G.** (supra) the facts were totally different. In the said case, the claim had been allowed and a right to receive the money had already been vested in the father of the applicant who sought to execute the

order. Thus, the fact situation in the **Krishnakumar.G.** (supra) case was also different from the present case.

31. In the matter of **Arthamudi Ramu** (supra) the Kerala High Court was considering a question as to whether the proceeding instituted before the Tribunal by individual, claiming damages for the injuries received by him in an untoward incident or accident, would survive his death during pendency of the proceeding. In the said case, the deceased had prior to his death submitted a claim before the Tribunal. During the pendency of the claim petition he died, thereafter his wife and minor daughter came on the record as legal representatives. The tribunal dismissed the claim petition by applying the maxim '*actio personalis moritur cum persona'* and upon relying upon the judgment of the Hon'ble Supreme Court in **M. Veerappa versus Evelyn Sequeria** reported in **AIR 1988 SC 506** held that no relief may be granted to the legal heirs and representatives of the deceased claimant.

32. On going through the judgment of the Hon'ble Supreme Court in **M. Veerappa** (supra) it would appear that in the said case the Hon'ble Apex Court was considering a question as to whether the suit filed by the plaintiff was founded on torts or on contract. The Hon'ble Court observed

that in the nature of the claim the trial court or the High Court could not have proceeded without any enquiry and recording of evidence to take a view that the suit claim is based on tortious liability and suit had abated. The Apex Court observed "*We leave the matter open for the Trial Court to decide whether the suit is founded entirely on torts or on contract or partly on torts and partly on contract and deal with the matter according to law. If the entire suit claim is founded on torts the suit would undoubtedly abate. If the action is founded partly on torts and partly on contract then such part of the claim as relates to torts would stand abated and the other part would survive. If the suit claim is founded entirely on contract then the suit has to proceed to trial in its entirety and be adjudicated upon.*"

33. In the aforementioned background, the Hon'ble Andhra Pradesh High Court considered the case of the appellants, went through the provisions of Section 306 of Indian Succession Act and ultimately allowed the appeal and remanded the matter to the Tribunal for consideration on merits without taking any objection on the claim of the appellants as legal representatives of the deceased claimant. The case before the Hon'ble Andhra Pradesh High Court is, thus, on a completely different fact situation. In the said case, the wife and

minor daughter of the deceased had come on the record but they were defeated by applying the maxim '*actio personalis moritur cum persona'*. The issues which have been raised in the present case were not subject matter of discussion in the Andhra Pradesh judgment.

34. At this stage, this Court would also discuss the judgment of the Hon'ble Punjab and Haryana High Court in the case of **Union of India versus Kumari Diptee (Minor)** reported in **AIR 2000 Punjab and Haryana 105.** In the said case, the accident had taken place on 26.11.1998 near Khanna in Punjab between the golden Temple Express and Sealdah Express in which Kailash and Krishna, parents of the claimant-respondent and Nitin and Lokesh, minor brothers of the claimant respondent had died. The respondent Kumari Diptee had filed four claim petitions before the learned Tribunal which were allowed. The Union of India preferred appeal only against the two awards in regard to the death of Nitin aged 8 years and Lokesh aged 5 years who were the brothers of the respondent-claimant. In this case, an argument was raised that the learned Tribunal had wrongly awarded for the death of Nitin and Lokesh because the respondent could not have been considered as dependant on the minor brothers. The Hon'ble Court went

through the scheme of Section 123 to 125 of the Act of 1989, formulated a question as to whether the respondent in this case can be treated as dependant of the deceased and finally answered the same holding that under the provision of Section 123(b) of the Act, the case of the respondent-claimant cannot come under clause (i) of the said Section.

35. In paragraph '10' of the judgment, the Hon'ble Court held as under:-

> "**10.** So far as these two appeals are concerned respondent has not shown that she was dependent on the deceased. It is not argued by the learned counsel for the respondent that respondent was actually dependent on the deceased. This point also does not appear to have been argued before the Tribunal. Therefore, it will not be possible to hold the respondent to be dependent on the deceased as in the case of other categories mentioned in Sec. 123(b) of the Act, reproduced above, and these appeals pertain to the death of Nitin aged 9 years and Lokesh aged 5 years, who were the brothers of the respondent and unless it shown that the respondent was actually dependent on the deceased, it will not be proper or legal to draw presumption of dependent. As mentioned above, the word " dependent" has been defined in Sec. 123(b) of the Act and if actual dependency is not shown, the respondent cannot be covered under the definition of "dependent"."

36. Learned counsel for the appellant and respondent no. 2 has though gone through this judgment of the Hon'ble Punjab and Haryana High Court but could not satisfy this Court as to why the legal interpretation of Section 123(b) as held by the Hon'ble Punjab and Haryana High Court cannot be applied in this case.

37. In the light of the discussions made hereinabove when this Court goes through the impugned judgment of the learned Tribunal, this Court finds that the learned Tribunal has considered the documents filed in support of the claim, such as (i) the FIR cum final report of Railways Police, Sasaram (ii) the inquest report and (iii) the post-mortem report of sadar Hospital, Sasaram. The Tribunal has recorded the finding that none of these handwritten copies/ photocopies are attested/certified by any legal practitioner/ competent authority and the final report bears only a rubber stamp of the P.S., therefore considering the nature of the case the learned Tribunal did not rely upon these documents. This Court has already noticed the other findings hereinabove as regards the identity of the appellant and respondent no. 2 and the age of the deceased.

38. In the opinion of this Court, the Tribunal has

committed no error so as to invite any interference by this Court. This appeal is, therefore, dismissed. There will, however, be no order to costs.

(Rajeev Ranjan Prasad, J)

Rajeev/Tusharika-

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CAV DATE	
Uploading Date	06.01.2023
Transmission Date	