

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1574 OF 2015

1. Smt. Latabai W/o Suresh Ghatge,
Age : 35 Years, Occu. : Household,
2. Akash S/o Suresh Ghatge,
Age : 17 Years, Occu. : Education,
3. Soni S/o Suresh Ghatge,
Age : 12 Years, Occu. : Education,
4. Bali S/o Suresh Ghatge,
Age : 11 years, Occu. : Education,
5. Mukesh S/o Suresh Ghatge,
Age : 9 years, Occu. : Education,

(Since appellant Nos. 3 to 5 are minor
u/g of respondent No. 1 i. e. mother
Latabai Ghatge)

All R/o Uttarapeth, Tq. Chikali,
Dist. Buldhana,
Presently residing at Parijat Nagar,
N-4, Cidco, Aurangabad.

6. Smt. Kaushalyabai Deorao Ghatge,
Age : 60 Years, Occu. : Household,
7. Deorao Laxman Ghatge,
Age : 65 Years, Occu. : Nil.,

(The appellant Nos. 6 and 7 were
parents of deceased, both of them have

expired during pendency of claim
application)

.. Appellants

Versus

Union of India
Through the General Manager,
South Central Railway,
Secunderabad.

.. Respondent

Shri Mohit R. Deshmukh, Advocate for Appellants.

Shri D. G. Nagode, Standing Counsel for the Respondent.

CORAM : S. V. GANGAPURWALA, J.

DATE : 30TH SEPTEMBER, 2015.

ORAL JUDGMENT :-

. The present appellants had filed application for compensation before the Railway Claims Tribunal on account of the death of one Suresh Ghatge. The said claim application is rejected. Aggrieved thereby the present appeal.

2. Mr. Deshmukh, the learned counsel for appellants strenuously contends that, the deceased and the claimants No. 1 were travelling by Deogiri Express from Nashik Road to Jalna bearing Train No. 7057 on 01st April, 2007. They were also accompanied by the family members and one Mr. Madan Gaikwad and Mr. Suresh Gawai. They were travelling to attend the Renuka Mata Yatra at Chikhali. The deceased had purchased a ticket of Second Class category bearing No. 2433.

When the said train was between Daulatabad and Aurangabad at K.M. No. 95/2-3 in the vicinity of the Kadim Takli, the deceased who was sitting near door of the train fell down due to the jerk. The said accident was reported to the police station by the co-passenger and the eye witness Mr. Madan Gaikwad to the police station Chavani immediately on the same day. The learned counsel submits that, the statutory report was also submitted by the authorities wherein it is concluded that, the deceased was sitting at the door and was having nap and fell down. The learned counsel submits that, the Tribunal failed to consider the provisions of Section 124-A of the Railways Act, in its correct perspective. The Railway Tribunal committed an error in concluding that, the deceased himself had fell because of his own negligence. Further a contrary finding is also given i. e. the accident itself is doubted by the Tribunal. It also held that it can not be proved that the deceased had fell from the train. Both these findings are contrary to each other. The learned counsel submits that, eye witness has been examined before the Tribunal who was a co-passenger. The ticket was found from the purse of the deceased. So also the wife had a ticket of the said train and was travelling along with deceased. There was no reason to disbelieve the said statement only because the guard had not reported the accident and stopped the train. The Tribunal came to the conclusion that, the accident itself is doubtful. The same is erroneous. Only because the

deceased was sitting near the door steps that itself is not sufficient to conclude that, it was not a case of an untoward accident. The learned counsel relies on the judgment of the Apex Court in the case of Jameela and others Vs. Union of India reported in *AIR 2010 SC 3705*. So also, the judgment in the case of Union of India Vs. Prabhakaran Vijaya Kumar and others reported in *AIR 2009 SC (Suppl.) 383*.

3. Mr. Nagode, the learned counsel for the respondent supports the judgment and submits that, if at all the train was required to be stopped then, the Guard would have reported said incident. No such report was made by the Guard. The learned counsel submits that, the statutory report cannot be accepted as gospel. The independent evidence has to be considered along with all corroborative factors. The learned counsel submits that, it is not proved by preponderance that, the deceased was travelling by the said train and died due to fall from the train. The Tribunal has rightly considered the evidence on record and rejected the claim application.

4. With the assistance of learned counsel I have gone through the judgment, the record and proceedings. I have also considered the submissions made.

5. The deceased was travelling with the valid ticket. Only

because the deceased was sitting at the door of the compartment of running train may be a negligent or rash act, but the same does not have effect on the liability of the Railways. The said proposition has been laid down by the Apex Court in the case of **Jameela and others Vs. Union of India** referred to supra. As such even assuming that, the deceased was sitting at the door of train and was having nap because of which he fell down, that would not affect the liability of the Railways as is held by the Apex Court in the case of **Jameela and others Vs. Union of India** referred to supra.

6. The ticket was found from the purse of the deceased. Even the wife of the deceased had accompanied the deceased who had independent ticket. Even the eye witness Mr. Madan Gaikwad had lodged a complaint to the police station, stating the said fact that the deceased had fall from the train. There is a specific evidence in this regard. As such, just because the guard of the train had not reported the said incident to the authorities that itself would not dispel the case put forth by the claimants. The evidence has been led by the witnesses before the Railways Tribunal. The same does not seem to have been impeached in the cross examination.

7. In view of that, it can safely be held that, the deceased was bonafide passenger and accident was due to the fall from the train.

8. In light of the above, the impugned judgment is quashed and set aside. The claim application is allowed. The respondent shall pay compensation of Rs. 4,00,000/- (Rs. Four Lacs only) to the claimants along with interest at a rate of Rs. 6% per annum from the date of application till realization. However, there shall be no order as to costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15