

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 742 OF 2006.

1] Nitabai @ Rajeshwari w/o. Rajeshsinh Thakur,
Age 28 years, Occ. Household,
R/o. H.No. 4-4-256, Chakrawar Bldg.,
Bhoi Galli, Gadipura, Nanded.

2] Padminibai w/o. Gulabsinh Thakur (dead)

through LR's.

a] Rameshsing s/o. Gulabsing Thakur (Bais)
Age 56 years, Occ. Nil
R/o. H.No. 4-4-256, Chakrawar Bldg.,
Gadipura, Nanded.

b] Kanhaising S/. Gulabsing Thakur (Bais)
Age 46 years, Occ. Agri.
R/o. Gadipura, Nanded.

3] Durga D/o. Rajeshsinh Thakur,
Age 5 years, Occ. Nil - Minor,

4] Vaishnavi D/o. Rajeshsinh Thakur

APPELLANTS

VERSUS

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

RESPONDENT.

Mr. P.S. Agrawal, Advocate for the appellants
Mr. M.N. Navandar, Advocate for respondent.

CORAM : A.M. BADAR, J.
DATE : 1ST DECEMBER, 2015.

JUDGMENT :-

1] By this appeal under Section 23 of the Railways Claims Tribunal Act, 1987, the original applicants are challenging the judgment and order passed by the learned Railway Claims Tribunal, Nagpur on 16.3.2006 thereby rejecting their claim for compensation under Section 123(C)(2) or of the Railways Act, 1989 on account of death of Rajeshsinh Thakur, due to an untoward incident occurred at Manmad Railway station on 3/10/2002.

2] For the sake of convenience, parties would be referred to in their original capacity. Brief facts are thus :-

[a] Applicants claimed compensation of Rs. 4 Lakhs on account of death of Rajeshsinh Gulabsingh Thakur with an averment that after taking Darshan at Shirdi on 3/10/2002, he alongwith his relative Pratapsinh Chavan, had been to Manmad railway station, for undertaking their return journey. According to claimants, Rajeshsinh Gulabsingh Thakur purchased one ticket for himself for his journey from Manmad to Nanded and another ticket for journey of his friend Pratapsinh from Manmad to Aurangabad. Those tickets were or Train No. 1003 Deogiri Express. After purchasing tickets, Rajeshsinh and his relative Pratapsinh boarded Deogiri Express at about 2.00 a.m. on 3/10/2002 and because of heavy rush in the said train, both of them were standing at the door of the train. After some time, the train started and due to sudden jerk, Rajeshsinh had suffered accidental death from the running train and died on the spot. It is case of claimants that after fall of

Rajeshsinh, alarm chain was pulled and train was stopped. Co-passengers of the train got down and rushed to the spot of incident. Pratapsinh informed the relatives of deceased by telephonic call. With these averments, the applicants/claimants prayed for award of compensation of Rs. 4 Lakhs on account of death of Rajeshsinh in an untoward incident.

[b] Respondent opposed the claim by filing written statement by contending that there is no cause of action for the applicants to lodge the claim. According to respondent, it was at about 2.40 hours of 3.10.2012 one Bandu pointsman reported that one dead body is lying near fueling point and informed the on duty Railway police. The dead body of unknown person was found lying near the fueling point at 2.40 hours of 3.10.2002 by the pointsman. The accident was not reported by any of the relatives of deceased. So called relative of the deceased had not travelled with the deceased. The respondent denied the averment that alarm chain was pulled and Deogiri Express was stopped. Respondent further pleaded that Train No. 1003 Deogiri Express was scheduled to arrive at 2.50 hours and departure was at 3.00 hours. However, dead body of Rajeshsinh was found prior to arrival of the said train at 2.40 hours. According to respondents, there was no incidental fall on 3.10.2002. As such, according to respondents, neither the deceased was bonafide passenger nor he died because of untoward incident.

[c] In support of their claim, claimant No.1 examined Nitabai @

Rajeshwari, widow of Rajeshsinh Thakur and also examined Pratapsinh Gangaram Chauhan. Reliance was placed on police papers. In rebuttal, no evidence was adduced by the respondents. After hearing the parties, learned Tribunal, came to the conclusion tht the deceased was not bonafide passenger and he did not die because of untoward incident in terms of Section 123(C) of the Railways Act, 1988. Consequently, the application for compensation was rejected.

3] Shri Agrawal, learned counsel for the appellants submitted that Spot Panchanama shows that the body of the deceased was lying just 25 feet away from platform No.4 with both feet amputated. He further submitted that as the dead body was found within the railway premises, the learned Tribunal ought to have concluded that the deceased was bonafide passenger. As his death is required to be established by running over by railway train, the presumption that death was because of untoward incident ought to have been drawn by the Tribunal. In his submission, the evidence of Pratapsingh Chauhan, an eye witness to the incident ought to have been accepted by the learned Tribunal for establishing death of Rajeshsinh in an untoward incident. Shri Agrawal learned counsel relied upon judgments of the Delhi High Court in ***Sudha Chaudhari and others Vs. Union of India III (2014) ACC 281*** and ***Surendra Prasad and another Vs. Union of India II (2014) ACC 932*** as well as judgment of Rajasthan High court, in the matter of ***Union of India Vs. Harinarayan, AIR 2007 Rajasthan 13***, while arguing that burden to prove that the deceased was not bonafide passenger was on

the respondent. According to learned counsel for the applicant, so far as train timings are concerned, exactitude can not be demanded. What is relevant is the death in an untoward incident. By relying on the judgment of the Supreme court in *Union of India Vs. Prabhakaran Vijay Kumar AIR 2009 (Supp) 383* he argued that provisions of a welfare legislation needs to be construed liberally in order to advance justice.

4] Shri Navandar, learned counsel for the respondents justified the impugned judgment and order of the learned Tribunal by contending that the same is in consonance with the evidence on record.

5] With the assistance of learned counsel appearing for the parties, I have carefully perused the record and proceedings including the documentary evidence as well as oral evidence adduced by the parties.

6] So far as the evidence of claimant Nitabai is concerned, she is undisputedly not an eye witness to the incident in question. She is the widow of deceased Rajeshsinh and as such, her evidence is of no assistance in order to establish the incident resulting in death of Rajeshsinh Thakur.

7] The next witness examined by claimant is Pratapsinh Gangaram Chauhan. According to pleading of applicant, he is relative of deceased Rajeshsinh and he had been to Shirdi for Darshan with the deceased on 30.09.2002. It is in evidence of Pratapsinh Chauhan that he alongwith his relative Rajeshsingh (deceased) went to Shirdi for Darshan on 30.09.2002. He

further deposed that on 3.10.2002, he alongwith Rajeshsinh (since deceased) returned from Shirdi and came to Manmad railway station at about 1.00 a.m. According to this witness, Rajeshsinh purchased one ticket for himself for his journey from Manmad to Nanded. Pratapsinh further deposed that Rajeshsinh (deceased) purchased another ticket for Manmad to Aurangabad as Pratapsinh was to take journey from Manmad to Aurangabad. Evidence of Pratapsinh further shows that after purchasing tickets, both of them came on the platform for boarding train No. 1003 Deogiri Express for which the tickets were purchased. According to version of Pratapsinh Chauhan, they both boarded Deogiri express at about 2.00 a.m. on 3.10.2002 and due to heavy rush in the said train, they stood near the door of the train. After some time of start of their journey by the said train, there was a sudden jerk and Rajeshsinh accidentally fell from the running train near Platform No.5. Co-passengers pulled alarm chain. The train was stopped. Co-passengers and other persons rushed to the spot of accident and he immediately telephoned the relatives of deceased and informed the incident. In cross-examination, this witness has stated that he had last meeting with deceased Rajeshsinh on 30.9.2002.

8] This evidence of Pratapsinh was found to be untrustworthy by the learned Tribunal in order to arrive at the conclusion that the death of Rajeshsinh was due to untoward incident. Similarly, his evidence was acted upon in order to come to the conclusion that the respondent established that deceased was not bonafide passenger of the train in question. At page A-29

there is report of accidental death of Rajeshsinh. This report shows that the incident of accidental death of Rajeshsinh occurred on 3.10.2002 prior to 2.40 hours. Report further shows that Rajeshsinh died because of running over by the railway train.

9] Police authorities have conducted enquiry of this Accidental Death case No. 66/2002 and accordingly, spot panchanama came to be recorded. The dead body was examined and inquest panchanama was prepared and subsequently, it was sent for autopsy. The applicants have produced on record spot panchanama (Page A-32) inquest panchanama (Page A-35) and Post Mortem report (page A-36). These are contemporaneous documents recorded by police on 3.10.2002. These documents show that panchas were called while preparing them but name of witness Pratapsinh is conspicuously absent in them.

10] Report of Accidental Death case shows that it was reported by Deputy S.S. Of Railway Station Manmad (on duty). By calling 2 panch witnesses , namely, Vinod Patil and Raju Patil, the dead body was inspected on 3.10.2002 itself. Upon inspection of the dead body, Identity card was found disclosing name Rajeshsinh Gulabsinh Thakur. Spot panchanama at page A-32 was recorded in presence of 2 panch witnesses. During the course of recording of spot panchanama, deceased was referred to as an unidentified person. The spot panchanama was recorded at 8.00 a.m. and it's recording was completed at 9.00 a.m.. Inquest panchanama was recorded at 6.30 a.m. and its recording was completed at 7.00 a.m. Two panchas were

there while inspecting the spot. If really deceased was accompanied by Pratap Singh Chauhan, then, at the time of recording of inquest and spot panchanamas, identity of the deceased could have been well established. Being relative, by no stretch of imagination it can be inferred that Pratap Singh Chauhan will leave the dead body and will remain at some other place. To crown this all, Pratapsinh Chavan has not even produced the journey ticket in order to substantiate his evidence that he was travelling with deceased Rajeshsinh Thakur on 3.10.2002 in Train No. 1003 Deogiri Express. Apart from this, even contemporaneous documents recorded by police during enquiry of A.D. Case, nowhere reflects name of Pratapsinh Chavan though he allegedly accompanied the deceased.

11] In the wake of this evidence, the learned Tribunal has recorded the conclusion that it is not proved that deceased Rajeshsinh died in an untoward incident. Similarly, considering the admission of Pratapsinh in his cross examination and non-production of journey ticket of Pratapsinh on record, learned Tribunal concluded that the deceased Rajeshsinh Thakur was not a bonafide passenger. Both these findings are perfectly in tune with the evidence on record and as such, learned Tribunal has rightly rejected the claim. No infirmity could be found with the impugned judgment and order rejecting the claim of applicants for compensation. As such, the appeal is devoid of merit. Same is dismissed with no orders as to costs.