

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 878 OF 2012

1. Shri Devnath Desai Sonkar
Age 60 years,
Occupation: Chaukidar
2. Sau. Taradevi Devnath Sonkar ... **Appellants**
Age 55 years, Occ: Household (Org.Claimants)
Both R/o Shri Anil Chaudhari,
521, Vitthal Peth
Old Nashirabad Road, Jalgaon,
District Jalgaon.

VERSUS

1. The Union of India ... **Respondent**
Through the General Manager,
Centrail Railway, C.S.T. Mumbai

Shri M. M. Bhokarikar, Advocate for appellants/claimants.
Shri M. N.Navandar, Advocate for respondent

CORAM : A. M. BADAR, J.

RESERVED ON : 9th December, 2015.

PRONOUNCED ON : 23rd December, 2015

J U D G M E N T:

1. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987, challenging the judgment and award passed by the learned Railway Claims Tribunal, Mumbai in case No. OA 41/2011 on 13.02.20012 thereby rejecting the claim preferred by present appellants under section 16 of the Railway Claims Tribunal Act, 1987 on account of death of their son Ashokkumar Deonath Sonkar.

2. Brief facts leading to the institution of appeal can be summarized thus:-

i. Claimants are parents of deceased Ashokkumar Deonath Sonkar. According to claimants, on 10.11.2010, Ashokkumar Sonkar was travelling from Varanasi to Nashik Road by Mahanagari Express. He fell down from the said running train on Platform No.2 towards Mumbai end of Railway Station Manmad and sustained injuries causing his death instantaneously. Ashokkumar was accompanied by his friend Irfan in the said journey. Deceased Ashokkumar was travelling with a valid second class ticket purchased by him from Varanasi railway station. Alongwith claim petition, claimants have also placed on record the said second class journey ticket dated 09.11.2010 for journey from Varanasi to Nasik Road.

ii. With these averments, claimants prayed for awarding prescribed compensation on account of death of Ashokkumar caused because of untoward incident of falling down from passenger train resulting in death of Ashokkumar.

iii. Respondent- Railway opposed the claim by filing written statement. According to respondent, deceased

Ashokkumar was crossing the railway line and in that process he was dashed by the running train causing his death. Respondent contended that Ashokkumar got down from Train No. 1094 Up Mahanagari Express which had stopped at Platform No.3. Thereafter he got down from off side of Platform No.3. He then went to Platform No.2 for filling the water bottle. While he was filling the water bottle, the train started. As such, Ashokkumar ran back to catch the train without noticing passing Gitanjali Express from Platform No.2. As such, while crossing the railway Platform No.2, he was ran over by Gitanjali Express. As such, according to respondent, Ashokkumar did not die because of an untoward incident and therefore it is not liable to pay compensation.

iv. On the basis of rial pleadings, the learned Tribunal framed issues and parties went for trial.

v. Claimant No.1- Deonath- father of deceased Ashokkumar examined himself as AW-1 and also relied on documentary evidence. On behalf of respondent, Surendra Bhakare, driver of the Gitanjali Express which knocked down the deceased, came to be examined. After hearing the parties, the learned Tribunal came to the conclusion that Ashokkumar died while he was crossing the railway

track of Platform No.2 because of dash of Gitanjali Express passing through railway track. The claim petition as such was dismissed by the learned railway Tribunal by the impugned judgment and order dated 13.02.2012.

3. Heard Shri Bhokarikar, learned counsel for appellants extensively. By pointing out Rule 3 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (for the sake of brevity, hereinafter referred to as 'the Rules, 2003'), Shri Bhokarikar, the learned counsel, argued that driver of Gitanjali express was expected to lodge report of this incident immediately at the next station. This was not done and therefore the learned Tribunal ought to have granted the claim. Shri Bhokarikar, the learned counsel further argued that the learned Tribunal has relied on the Memo at Exh.02 as well as report of D.R.M. for rejecting the claim without proof of these documents. He further argued that no eye witnesses or officers who had prepared those documents as well as statutory reports are examined by respondent. There is no evidence on record as to when Mahanagari express and Gitanjali Express came at Manmad Railway station. There is no

evidence on record to show that those trains were late due to the accident in question.

4. Shri Bhokarikar, learned counsel further argued that no effective opportunity of cross examination is granted to claimants and therefore the impugned judgment and order needs to be set aside. Shri Bhokarikar, by relying on the judgment in of the Honble Supreme Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar & Ors., AIR 2009 S.C. (Supp.) 383,** argued that liability under section 124A of the Railways Act 1989 is a strict liability and provisions thereof being welfare legislation needs to be interpreted liberally. Shri Bhokarikar further relied on the judgment of the Hon'ble Supreme Court in the case of **Asharani Das Vs. Union of India, AIR 2009 Kolkata 205** and contended that burden is not on the claimants in cases in respect of compensation on account of death when the dead person is proved to have died in course of traveling in railway. Reliance is also placed on the judgment in the case of **Union of India Vs. Leelamma and others, AIR 2009 KERALA 134** for contending that burden is on the Railway to prove that a person who died in an untoward incident was travelling without ticket.

Reliance is also placed on the judgment in the case of Harvinder Kaur and ors. Vs. Union of India, AIR 2011 DELHI 115 for contending that in case of accidental fall of bona fide passenger from the train, dependents of such passenger are entitled for compensation. Shri Bhokarikar, learned counsel argued that respondent Railway failed to discharge the burden casted on it and has not proved its case. As such, it needs to be held that claimants have proved that deceased Ashokkumar died in an untoward incident and therefore the claim as made needs to be allowed. As against this, Shri Navandar, learned counsel appearing for respondent supports the impugned judgment.

5. With the assistance of the learned counsel appearing for the parties, I have carefully gone through the oral evidence adduced by the parties as well documentary evidence placed on record. I have perused the impugned judgment and order passed by the learned Railway Claim Tribunal, Mumbai

6. Undisputedly, section 124A of the Railways Act, 1989 provides for compensation to the victims of untoward incident and it is a piece of social welfare legislation. Mr. Bhokarikar, learned Counsel for appellant rightly

placed reliance on judgment of the Supreme Court in **Prabhakaran** (Supra) for contending that approach of the learned Tribunal in such cases should be to liberally interpret the provisions of welfare legislation. Bare perusal of scheme of section 124A of the Railways Act, 1989 makes it clear that injured bonafide passenger or his legal representative, in the event of his death are entitled for compensation from railways irrespective of the fact as to whether there exists any negligence or default on the part of railways. Thus, section 124A provides for strict liability or no fault liability in the event of injury or death of bonafide passengers. A person resorting to the scheme of this welfare legislation is entitled for compensation even if he has contributed to any happening of untoward incident of accidental falling from the train. Injury caused to himself because of his own negligence is not covered by the proviso to section 124A of the Railways Act, 1989, so as to disentitle him from claiming compensation. In other words, if bona fide passenger suffers from injury or dies in the course of his travel, presumption can be drawn that he suffered injury in an untoward incident.

7. Keeping in mind this principle, let us now examine

the evidence on record in order to ascertain whether deceased Ashokkumar died in an untoward incident.

8. Rule 3 of the Rules, 2003 provides that on coming to know the occurrence of an untoward incident, any railway servant, including the guard and driver of the train should report the incident immediately to the nearest Station Superintendent. Accidental falling of any passenger from a train carrying passengers comes under definition of 'untoward incident' found in section 123 (c) of the Railways Act, 1989. According to provisions of Section 124-A of the said Act, when during the course of working of the Railway an untoward incident occur, the injured passengers or dependents of a passenger killed in such incident are entitled for prescribed compensation.

9. It is case of claimants that the deceased suffered a fall from Mahanagari Express at Manmad Railway station and thereafter he was ran over by the passing Gitanjali express causing his instantaneous death. In order to prove this case, claimants have examined claimant No.1 Deonath Sonkar- father of the deceased. It is in his evidence that on 10.11.2010, deceased Ashokkumar was travelling from Varanasi Junction to Nasik Road and

because of rush in the train, he fell down from running train and came under the Gitanjali Express causing his death. Cross examination of this witness reveals that he is not an eye witness to the incident in question.

10. Pleadings of claimants and particularly para 18 (A) shows that during journey from Varanasi junction to Nasik Road, Ashokkumar was accompanied by his friend Irfan. Strangely enough, claimants have failed to adduce evidence of said Irfan who was travelling with the deceased in order to establish that because of rush in the train, deceased Ashokkumar suffered a fall from running Mahanagari express and came under Gitanjali Express. Thus evidence of claimants is of no assistance to arrive at a finding of fact that deceased had a fall from the passenger train which has caused his death. As against this, respondent had adduced evidence of driver of Gitanjali Express namely Surendra Bhakare. It is in his evidence that on 10.11.2010, he was on a duty to drive train No.2859 from Igatpuri to Bhusawal and when that train was passing through Manmad Railway Station, at about 10.30 hours on 10.11.2010, he saw unknown passenger crossing the railway track. Witness Surendra Bhakare further deposed that he immediately blew horn

and applied the emergency brake to save the life of that unknown trespasser. Witness Surendra Bhakare further deposed that because of speed of the train, said trespasser came under the train. His evidence further shows that thereafter he immediately informed about the incident to the guard of the train and to the Deputy Station Manager, Manmad through walkie-talky. This witness has recorded the incident in his diary and has proved the contents of diary, extract of which is at Exhibit 2. Opportunity to cross examine this witness is availed by claimants. Their learned counsel cross examined Surendra Bhakare. However, nothing could be elicited from the cross examination of witness Surendra Bhakare in order to disbelieve his version about the incident in question. Evidence of Witness Surendra Bhakare is duly corroborated by contemporaneous documentary evidence in the form of entry in driver's notebook at Exh.2. It is seen from the perusal of extract of driver's notebook at Exh.2 that one boy holding bottles of water in his hand jumped from Platform to the railway track without paying attention to the passing train and while crossing the track, he came under the train.

11. Evidence of respondent was believed by the learned

Tribunal in order to hold that deceased Ashokkumar did not die because of an untoward incident of falling down from the passenger train. Finding of fact arrived at by the learned Tribunal on this count is well supported by the evidence on record and as such cannot be disturbed. Therefore, even if other documentary evidence like memo at Exh. 02 and report of D.R.M. are kept away from the zone of consideration, still the fact remains that claimants have failed to prove that Ashokkumar died because of untoward incident while travelling in 1094 UP Mahanagari Express.

12. As finding of fact arrived at by the learned Tribunal is well supported by the evidence on record, the rulings cited by the claimants are of no assistance. Even there is compliance of Rule 3 of the Rules, 2003 as seen from the evidence of witness Surendra Bhakare-driver of Gitanjali Express.

13. In this view of the matter, the appeal is devoid of merit and the same is dismissed with no order as to costs.

(**A. M. BADAR, J.**)

True Copy

J. P. Chavah, P. A. To Hon'ble Judge.