

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1350 OF 2012

1] Shri Dnyaneshwar (Budha) Pandurang Pawar
Age 40 years, Occupation Labour.

2] Sau. Sangitabai Dnyaneshwar (Budha) Pawar
Age 35 years, Occ. Househld
R/o. Both are residint at Tandawali,
Talulka Bhadgaon, Dist. Jalgaon.

.. APPELLANTS
(Original claimants)

VERSUS

The Union of India
Through the General Manger,
Central Railway, C.S.T. Mumbai.

.. RESPONDENT
(Original Respondent)

CORAM : A.M. BADAR, J.

DATE OF RESERVING JUDGMENT : 09th December, 2015
DATE OF PRONOUNCING JUDGMENT : 23rd December, 2015

ORAL JUDGMENT :

1] This appeal under Section 23 of the Rail Claims Tribunal Act, 1987, is filed by original claimants challenging the judgment and award passed by the learned Railway Claims Tribunal, Nagour in O.A. No. (liu)/NGP/2011/0111 between the parties, on 16.4.2012, thereby rejecting the claim petition filed by the present appellants under Section 16 of the Railway Claims Tribunal Act, 1987, on account of death of their son Kailash Dnyaneshwar (Budha) pawar. For the sake of convenience, parties shall be referred to in their original capacity.

2] Shri Bhokarika, learned counsel for the appellants/original claimants strenuously contended that deceased Kailash had left his house on 18.10.2010 and he was travelling from Kazgaon to Kalyan by an unknown train. Said Kailash fell down at Km. No. 343/6-8, between Kazgaon and Wagali railway station of Jalgaon District, with jurisdiction of Bhadgaon Police. Because of serious injuries Kailash died on the spot itself. He was travelling with Second Class Railway ticket, but the said ticket has been misplaced. Shri Bhokarika, learned counsel for the appellants, further argued that which train has given dash to deceased Kailash is not on record and as per Rule 3, of the Railway Passengers (manner of investigation of untoward incidents) Rules, 2003, it is the duty of the Railway servants including Guard and Driver to report the untoward incident to the nearest Station Superintendent. However, in absence of any such report, it needs to have been held by the learned Railway Claims Tribunal that deceased Kailash suffered fall from the passenger train and, therefore, burden of proving that he was not a passenger in the passenger train, was on the Railways. Similarly, according to Shri Bhokarika, Railway was duty bound to prove that deceased Kailash was not passenger of railway. Therefore, according to Shri Bhokarika, learned Railway Claims Tribunal has erred in holding that claimants have failed to prove that deceased Kailash had died in an untoward incident or that claimants have failed to prove that deceased Kailash was a bonafide passenger of some passenger train.

3] Shri Bhokarika, relied on judgment of the Rajasthan High Court in the case of ***Smt. Anokhi Devi Vs. Union of India AIR 2012 Rajasthan 46*** and submitted that when the involvement of a train is not disputed by the respondent, then, it becomes liability of the respondent to pay compensation on account of death of a passenger in an untoward incident. Shri Bhokarika, learned counsel for the appellants further relied on judgment of the Orissa High Court, in the matter of ***Union of India Vs. Ahilya Prushti and another” reported in AIR 2009 Orissa 68***, to argue that passenger or his dependents are entitled for compensation in case of injury or death claim arising out of an untoward incident. Reliance is also placed on judgment of the Supreme court in the case of ***Union of India Vs. Prabhakaran Vijay Kumar and others reported in AIR 2009 SC (supp.) 383***, to argue that the liability under Section 124 of the Railways Act 1989 is a strict liability and irrespective any wrongful act, neglect or default on the part of the Railways, injured passenger or dependents of passenger killed in an untoward incident, are entitled for compensation from the Railways. By relying on judgment of the Kerala High Court in the matter of ***Union of India Vs. Lilamma and others AIR 2009 Kerala 134***, Shri Bhokarika argued that non finding of passenger ticket on the dead body of Kailash is of no consequence as burden is on the respondent Railways to prove that journey of Kailash was without ticket.

4] As against this, Shri Navandar, learned counsel for the respondent supported the impugned judgment.

5] I have carefully considered the rival submissions and with the assistance of the learned counsel appearing for the parties, I have gone through the pleadings as well as evidence on record. I have also perused the impugned judgment delivered by the Railway Claims Tribunal. In the case in hand, it is claimed by claimants that deceased Kailash was travelling from Kazgaon to Kalyan after purchasing second class journey ticket of Railway by; unknown train and that he boarded the train at Jalgaon Railway Station. According to claimants, because of heavy rush in the said train, he fell down from the running train. In order to substantiate this pleading, claimants have examined claimant No.1 Dnyaneshwar Pandurang Pawar, father of deceased Kailash. As against this, for rebutting the claim, respondent Railways adduced evidence evidence of Vinod Sukhdeo Kedare, Deputy Station Superintendent, Bhusawal.

6] In tune with their pleadings, claimant Dnyaneshwar has deposed that on 18.10.2010, his son Kailash was travelling from Kazgaon to Kalyan for some personal work, after purchasing railway ticket from Kazgaon railway station and boarded the train at Kazgaon railway station for Kalyan. Dnyaneshwar further deposed that because of heavy rush in the train, Kailash fell down from the running train on up line between Km. No. 343-608, between Kazgaon-Waghli railway station and due to serious injuries, died on the spot. His cross examination reveals that he had not accompanied the deceased Kailash on 18.10.2010. Claimant Dnyaneshwar

admitted the fact that railway line is passing through his village Tandalwadi and that deceased went out from the house at about 19.30 hours. His cross-examination further reveals that after death of his son Kailash, the Police investigated the matter and his statement was recorded by the police. This witness denied the suggestion that Kailash had left the house for watering their agricultural field and during his journey to the field, at the time of crossing the railway line, he was dashed by the train causing his death.

7] As against this, it is in evidence of Vinod Sukhdeo Kedare, Deputy Station Superintendent, that he was never informed by any loco-pilot, guard or any passenger that there was accidental fall of a passenger from the passenger train. According to his version, one passenger Train No. 1354 - Bhusawal to Mumbai, arrived at Kazgaon railway station at 09.51 hours and another passenger train No. 1382 was also having a scheduled halt at Kazgaon railway station. His evidence shows that the said train is up to Nasik Road railway station. This witness has further deposed that Loco Pilot of Train No. 1382 had informed him about finding of dead body of an unknown person at about 19.30 hours on 18.10.2010.

8] It appears that in pursuance to the provisions of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003, investigation of the accident causing death of Kailash was carried out by Railway Protection Force and the report thereof was submitted through the Divisional Railway Manager, Bhusawal. The proceedings before the Railway Claims Tribunal are summary in nature and strict rules of evidence are not

applicable to these proceedings. Cross examination of claimant Dnyaneshwar reveals that police made investigation from him in respect of the accident in question. Said Dnyaneshwar is undisputedly not an eye witness to the incident in question. His statement came to be recorded by Police from Bhadgaon Police station on 20.10.2010, i.e. prior to filing of this claim petition by claimant - Dnyaneshwar. This police statement of Dnyaneshwar is bearing his signature and considering the summary nature of proceedings, it can certainly be looked into in order to ascertain, whether, deceased Kailash was a passenger travelling in the passenger train and met with an untoward accident. Even otherwise, claimants are not in a position to show as to by which train deceased Kailash was travelling or whether, he boarded the train while in possession of a valid pass or ticket. At this juncture, it worthwhile to note that no passenger ticket was found on the dead body of the deceased Kailash. It is also needs to be noted that dead body of Kailash was not found at platform or the premises of any railway station. It was found at Km.No. 343/6-8 between Kazgaon and Waghli railway stations of Jalgaon District. As such, there is no evidence on record even to remotely suggest that death of Kailash was due to fall from the passenger train so as to bring the case within the meaning of "untoward incident" defined in Section 123(C) of the Railways Act, 1989.

9] Accidental death of Kailash has resulted in registration of accidental death case No. 70/2010 under Section 174(1) of the Code of Criminal Procedure at Bhadgaon Police Station, Bhadgaon. Papers of enquiry

of this accidental death case, or evidence of claimant Dnyaneshwar before the Railway Claims Tribunal does not help the claimants to prove that deceased Kailash was a passenger in the passenger train and he suffered fall from the train causing his death. On the contrary, police statement of claimant Dnyeneshwar goes to show that when his son Kailash was crossing the railway track for going to his field situated on the other side of the track, he was dashed by a running train causing his death. Similar are the statements of relatives of claimants recorded during the course of enquiry of Accidental Death case.

10] In this view of the matter, as the untoward incident itself is not proved by preponderance of probability or by any circumstantial evidence, it cannot be said that the learned Tribunal was not correct in rejecting the claim of the claimants for compensation on account of death of their son Kailash.

11] Rulings so cited by the learned counsel for the appellants, as such, are not applicable to the facts of the present case. In the result, appeal is devoid of merit and the same is dismissed with no orders as to costs.

[A.M. BADAR, J]

grt/-