

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.499/2014

Union of India, through General Manager, South Central Railway, Secunderabad
..Versus..

Smt. Yogita Ishwarlal Sutar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 13.1.2015

1. Heard Shri Pannase, advocate h/f Shri P.S. Lambat, advocate for the appellant and Shri P.P. Pancholi, advocate for the respondents 1 to 3.

2. The appeal is filed by the Union of India challenging the order passed by the Railway Claims Tribunal granting compensation of Rs. 4,00,000/- along with interest, to the legal representatives of the deceased passenger.

3. It is undisputed that Shri Ishwarlal Sutar (deceased passenger) was travelling in Minakshi Express 9769 from Akola to Ratlam on 6th May, 1997. It is undisputed that the deceased passenger had purchased proper ticket for the journey and was an authorized passenger. The only point raised by the appellant is that the deceased passenger was travelling on the roof of the bogie of the train and, therefore, the appellant cannot be held liable for the payment of compensation.

4. After hearing the learned advocates for the respective parties the following point arise for consideration :-

(i) Whether the order passed by the Tribunal suffers from any infirmity and perversity ?

5. It is submitted by the learned advocate for the appellant that the spot-panchanama which is drawn shows that the deceased passenger was travelling on the roof of the bogie of the train and when the train was moving, he dashed against the iron frame of the bridge which

resulted in injuries which caused death of the deceased passenger. It is submitted that the deceased passenger suffered death because of the negligence on his part and the Tribunal has failed to appreciate this aspect and, therefore, the impugned order is unsustainable in law.

6. The learned advocate for the respondents has submitted that the accident has taken place on 6th May, 1997 and the spot-panchanama was drawn on 12th May, 1997 and the spot-panchanama was drawn in Marathi and the respondents, who are the legal representatives of the deceased passenger, are from Rajasthan and not having knowledge of Marathi and, therefore, the reliance placed on the spot-panchanama is misdirected. It is further submitted that the claim as made by the appellant that the deceased passenger was travelling on the roof of the bogie of the train is found to be incorrect by the Tribunal after appreciating the evidence on the record. The learned advocate has prayed that the appeal be dismissed with costs.

7. With the assistance of the learned advocates for the respective parties I have examined the order passed by the Tribunal. The Tribunal has recorded its findings in paragraph no.6 of the impugned order as follows :-

“6. Since these two issues are inter-related, we shall deal with the same together. The applicants have pleaded in their application that Ishwarlal Suthar (deceased) while travelling in Meenakshi Express on 6.5.97 from Akola to Ratlam, he fell down therefrom on account of heavy rush and jerk near Akot Railway Station and died on the spot near Purna Railway Bridge. It is also pleaded by the applicants that the deceased was holding Ticket No.38557122 ordinary class from Akola to Ratalam and General Ticket No.20013153 from Nagpur to Akola. The applicant No.3 has filed affidavit dated 14.12.02 as Exh.AW-1 and also affidavit dated 14.12.02 of one Mr. Rupsingh Laleng Patel as Exh.AW-2 in support of the said claim application. In his cross-examination, AW-1 has stated that the deceased was his son about 22 years old. In cross-examination of AW-2, he has stated that tickets were purchased by him. It is also stated by AW-2 that on 6.5.97 he along with others started their journey from Nagpur to Akola and then to Ratlam, all of them were seated at one place and that the train in question was crowded. To a suggestion that AW-2 along with others were sitting on top of the roof, AW-2 denied. AW-2 stated that owing to rush in the compartment, they could only manage to sit close to the door. AW-2 was also present at the time of

drawing of the Spot Panchanama. The applicants have tendered into evidence Special Power of Attorney, Merg Report, Spot Panchanama, Inquest Panchanama, Post Mortem Report, Ration Card, Journey Ticket, Certificate from Sarpanch, I.D. Card of Ishawarlal Suthar (deceased) etc. The post Mortem Report speaks of the cause of death due to shock to injury to vital organs i.e. brain. The respondent Railway did not dispute the said documents adduced and produced by the Applicants. The Station Master, Akot, S.C. Railway memo addressed to Police inspector, Akot Thana, states the Guard of 582 Up Passenger informed that 582 Up train which goes from Purna to Ajmer, two persons fell down therefrom and their body is scattered on the spot and therefore necessary action be initiated. The spot Panchanama though states that some person(s) was/were sitting on the roof of Meenakshi Express yet this cannot be a ground for the railways to escape liability from the present untoward incident as in the event it was so found by the Respondent Railway that some person(s) was/were traveling sitting on the roof, it was their bounden duty to have taken action in terms of Section 156 of the Railways Act, 1989 which provides for punishment for traveling on roof, steps or engine of train, which, unfortunately, the Respondent Railway have utterly failed to do. Failing to take such action as contemplated under Section 156 of the Railways Act, 1989 itself speaks volumes of and therefore, the respondent Railway have failed to prove that the deceased Ishwarlal Suthar was traveling sitting on the roof as no action was initiated against him under Section 156 of the Railways Act 1989 the memo of Station Master, as referred to hereinabove, cannot be

lost sight of, which clearly speaks that two persons fell from the train and the Police Inspector, Akot, to take necessary action. The Respondent Railway did not lead any evidence oral or otherwise. In the foregoings, we hold and decide that the applicants have proved that Shri Ishwarlal Suthar (deceased) while traveling on 6.5.1997 in Minakshi Express train fell down therefrom, due to heavy rush and jerks, as a result, died in an untoward accident. We further hold and decide that the applicant have also proved that the deceased Ishwarlal Suthar was a bonafide passenger on 6.5.97 in Minakshi Express Train. These issues are decided in favour of the applicants and against the Respondent Railway.”

8. The reliance placed on the spot panchanama by the appellant is misdirected for the reason that the spot panchanama is drawn after 6 days of the incident and it is drawn in Marathi Language, which is not known to the respondents - legal representatives of the deceased passenger. The submission that the legal representatives of the deceased passenger were present at the time of drawing of the spot panchanama is of no consequence in the above mentioned facts.

9. The appellant has not raised any other dispute regarding the

quantum of compensation or the entitlement of the respondents to receive the compensation.

10. In view of the above, the appeal is dismissed with costs quantified at Rs.10,000/- (Rs. Ten Thousand Only) to be paid by the appellant to the respondents. The amount of costs shall be paid till 10th April, 2015.

11. The amount deposited by the appellant shall be given to the respondents as per the impugned order. The respondents are at liberty to execute the order against the appellant for the recovery of the balance amount, if any.

JUDGE