

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

FIRST APPEAL NO. 123 OF 2013

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PREETAMDAS DHONDUDAS VAISHNAV AND ANOTHER
VERSUS
UNION OF INDIA

...
Advocate for Appellants : Mr P S Agrawal
Advocate for Respondent: Mr M N Navandar

...
CORAM : V.K. JADHAV, J.
Dated: March 10, 2016

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PER COURT :-

1. Being aggrieved by the judgment and order passed by the Member (Technical), Railway Claims Tribunal, Nagpur Bench, dated 18.9.2012 in claim application No. OA (Ilu)/NGP/2010/0107, the appellants preferred this appeal.

2. Brief facts, giving rise to the present appeal, are as follows :-

a] On 21.02.2010, in the early morning, the deceased Gajanan alongwith his father [applicant no.1] came at Nanded Railway Station. In presence of father, deceased Gajanan bought one Railway ticket for travelling from Nanded to Bhokar by Train No.1401 Mumbai-Nagpur

Nandigram Express from Nanded Railway Station ticket counter for himself. The said original railway ticket was kept by deceased Gajanan in his pocket. Deceased Gajanan had boarded the said train on 21.02.2010 in presence of his father. On the way, when the said train was running between Mudkhed to Bhokar, deceased Gajanan accidentally fallen down from the running train due to sudden jerk and he came under the wheels of the running train and died on the spot. Original ticket was lost during the process of accident. The appellants/original claimants filed claim application for grant of compensation of Rs.4,00,000/- (Rs. Four lacs) with interest @ Rs.12% p.a. from the date of accident till its realization against the respondent. The learned Member of the Tribunal, by impugned order dated 18.9.2012, dismissed the claim application. Hence, this appeal.

3. The learned counsel for the appellants submits that, the Tribunal has not considered the oral evidence of the appellant/original claimant no.1-Preetamdas. As per his affidavit of evidence, on 21.2.2010, in the early

morning, he went with his son Gajanan to Nanded Railway Station, where his son deceased Gajanan in his presence bought one railway ticket for travelling from Nanded to Bhokar by Mumbai-Nagpur Nandigram Express No.1401 from the ticket counter for himself and in his presence deceased Gajanan kept the said ticket in his pocket. He has further deposed that, in his presence, deceased Gajanan boarded Mumbai-Nagpur 'Nandigram Express' bearing train no.1401 in the early morning on 21.2.2010 and accordingly, he returned to his house. Learned counsel submits that, the learned Member of the Tribunal has discarded the evidence of the appellant/original claimant no.1 on the ground that, he has not witnessed the actual incident and, further in the morning time, if he had accompanied his son deceased Gajanan to Nanded Railway Station, he was not able to tell the amount paid by his son for purchasing the said ticket. Learned counsel submits that, the Tribunal has discarded the oral evidence of claimant no.1 also on the ground that he is not able to tell for what purpose deceased Gajanan was going to Bhokar on that day. Learned counsel submits that, the

Tribunal has discarded the oral evidence of claimant on flimsy grounds.

4. Learned counsel further submits that, dead body of the deceased Gajanan was found near the railway track in the area of Salwadi. Even investigating officer has also drawn the conclusion that deceased Gajanan died due to fall from the railway. Learned counsel submits that, the Tribunal has not considered the evidence lead by the claimants for the reason that, the claimant no.1 came to know about the incident through the police at about 11.30 a.m. on that day itself. Learned counsel submits that, the Tribunal has weighed the evidence with suspicion for the reason that, as to how police came to know the whereabouts of deceased when nothing was recovered from his dead body and Police Patil gave information at about 10.30 a.m. about the incident on that day. Learned counsel submits that, claimant no.1 has stated in his cross examination that, he was intimated by the police on phone and accordingly he went to the spot to identify his son. Learned counsel submits that, the Tribunal has not

considered the report submitted by the Divisional Security Commissioner and, on the other hand, given much weightage to the evidence of male guard R.W.1 Ratan Singh s/o Narendra Singh, whose statement was recorded by the Railway Administration six months after the incident and, accordingly, he came to be examined before the Tribunal on behalf of the respondent. Learned counsel submits that, the Divisional Security Commissioner in his report concluded that deceased Gajanan lost his balance while travelling in the train, and, accordingly, fallen down from the train and died. He simply reported that, in view of the provisions of Section 156 of the Railway Act, 1989, travelling by standing near the door is an offence and, therefore, the respondent is not liable to pay any compensation. Learned counsel submits that, the accidental fall of any passenger from a train carrying passengers is covered under the definition of untoward incident and considering the preponderance of probabilities the Tribunal ought to have drawn inference that deceased Gajanan met with an accidental death by falling down from the running train and not by any other way.

Learned counsel submits that, the Tribunal ought to have allowed the claim application alongwith interest.

5. Learned counsel for the appellant, in order to substantiate his contentions, places reliance on following judgments :-

[i]. **Juhi Parveen and another Vs. Union of India reported in 2014 STPL (Comp.) 982 Delhi**, wherein it is held that, merely because railway ticket is lost, it cannot be held that, deceased is not a *bona fide* passenger and the same has to be examined as per the facts of the individual case.

[ii]. **Union of India Vs. Prabhakaran Vijaya Kumar and others reported in AIR 2009 SC (Supp) 383**, and

[iii] **Thazhathe Purayil Sarabi and others Vs. Union of India and another** reported in **AIR 2009 Supreme Court page 3098**.

6. Learned counsel for appellant/original claimants also brought to the notice of this Court the provisions of Rules called as Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (hereinafter referred to as the Railway Passengers Rules) wherein, in Rule No.10 (3) and Rule 12, it is provided

that, “the Divisional Security Commissioner is required to submit the report to the Divisional Railway Manager and, final orders passed on the report by the Divisional Railway Manager shall be communicated to the Station Superintendent who shall maintain the records and make necessary entries in the Station Diary to that effect.”

Learned counsel further submits that, in Rule 11 the Railway Passengers Rules, the Divisional Railway Manager is supposed to take an action on the report submitted by the Divisional Security Commissioner either to accept the said report or sent it back for more inquiry, if required, in the matter. Learned counsel submits that, in the case in hand, no such action seem to have been taken by the Divisional Railway Manager on the report submitted by the Divisional Security Manager. In the case in hand, the Divisional Security Manager has submitted report and copy of the same is placed on record.

7. The learned counsel for respondent submits that, as per provisions of section 2 (29) of the Railways Act, 1989, the passenger means a person travelling with a

valid pass or ticket. Learned counsel submits that, in view of the explanation to section 124-A of the Railways Act, 1989, for the purpose of that section, *a passenger includes a person who had purchased a valid ticket for travelling, by a train carrying passengers, on any date or valid platform ticket and becomes a victim of an untoward incident.* Learned counsel submits that, in this case, no railway ticket was found with deceased Gajanan and, therefore, the compensation on account of untoward incident in this case cannot be claimed.

8. Learned counsel further submits that, the learned Member of the Tribunal has rightly considered the evidence of guard. As per the evidence of guard, on 21.2.2010, he was working as a guard of 'Nandigram Express'. He has deposed that, on that day said train arrived at Mudkhed Railway Station at about 06.26 hours and departed at 06.36 hours and thereafter said train reached at Bhokar Railway Station on 06.54 hours and departed at 06.56 hours. He has further stated that, during his duty hours no untoward incident of falling down of any passenger was reported to him by

Station Master, passenger nor Loco Pilot, and therefore, he has not made any diary entry of the incident in the Guard Journal Book. He has further clarified that, there was no alarm chain pulling, unexpected jerk or rush to the train. Learned counsel submits that, the Member of the Tribunal has rightly believed the evidence of male guard R.W. 1 Ratansing. Learned counsel submits that, so far as report submitted by the Divisional Security Commissioner is concerned, the same is a detailed report based upon the statement which may not substitute the proof of any particular fact. The same is, therefore, cannot be relied upon in any manner. Learned counsel further submits that, the Member of the Tribunal has rightly discarded the oral evidence of original claimant no.1. Learned counsel submits that, the claimant no.1 was not able to tell the price of the ticket. Learned counsel submits that, even claimant no.1 was not able to tell as to for what purpose deceased Gajanan was going to Bhokar on that day.

9. Learned counsel submits that, the learned Member of the Tribunal has rightly weighed the

evidence with suspicion since claimant no.1 had visited the spot of incident even though Police Patil reported the incident to the police at 10.30 a.m. and claimant no.1 reached to the spot at about 11.30 a.m on that day. Learned counsel submits that, nothing was found with the dead body and even Police Patil has reported to the police about the said incident as dead body of unknown male person found near the Railway track. Learned counsel, thus, submits that, the learned Member of the Tribunal has rightly dismissed the claim application.

10. Following points arises for my determination and, I have recorded my findings to those points for the reasons given below :-

POINTS

FINDINGS.

1. Whether the appellants prove that they are the dependents of deceased Gajanan s/o Preetamdas Vaishnav ?	In the affirmative
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2. Whether the respondent railway proves that deceased Gajanan s/o Preetamdas Vaishnav was not a bonafide passenger on 21.02.2010 of the train in question ?	In the Negative.
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3. Whether the applicants prove that deceased died in an untoward incident in terms of Section 123(c) of Railways Act, 1989 on 21.02.2010? In the affirmative
4. Whether impugned Judgment and order calls any interference ? In the affirmative
5. What order ? As per final order.

REASONS

11. It is true that, in this case, there is no direct evidence. It is always a matter of discussion that, if, the passenger has bought a ticket, he would be entitled to occupy the seat in the compartment of the Train. Further, it is a matter of record that, the tickets are sold in random manner without specifying the number of the seat or other details on it. The claim, therefore, cannot be rejected merely on the ground that, deceased Gajanan was travelling in a train by standing near the door.

12. The relevant provisions of The Railways Act, 1989 as referred by the learned counsel appearing for the

respective parties, in their submissions, are reproduced here, which reads thus :-

Section 2 (29) :- “Passenger” means a person travelling with a valid pass or ticket;

Section 123. Definitions :- In this Chapter, unless the context otherwise requires, -

(a)

(b)

(c) “untoward incident” means -

(1)

(2) the accidental falling of any passenger from a train carrying passengers.

124-A.Compensation on account of untoward incidents :- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the the railway Administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.- For the purpose of this section, "passenger" includes-

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]

13. Claimant no.1-Preetamdas has filed his affidavit of evidence before the Tribunal stating therein that, on 21.02.2010, in the early morning, he went to Nanded Railway Station alongwith his deceased son Gajanan and, in his presence, deceased Gajanan bought one Railway Ticket for travelling from Nanded to Bhokar by Mumbai-Nagpur Nandigram Express from Nanded Railway Station for himself and even deceased Gajanan kept the said ticket in his pocket in his presence. He has further stated on oath that, deceased Gajanan

boarded said Nandigram Express in the early morning on 21.02.2010 in his presence and, after seeing off to his son, he returned to his house after the train left the station. I am just unable to understand, as to why the learned Member of the Tribunal had discarded the evidence of claimant no.1 Preetamdas. The learned Member of the Tribunal has discarded the evidence on the ground that, he is not able to tell the price of the Ticket. Even for any person accompanying a passenger, if a ticket is purchased from the counter, it is not possible for the accompanying person to state the price of the ticket. Furthermore, his evidence is discarded on the ground that, he is not able to tell as to for what purpose deceased Gajanan was going to Bhokar, on that day. Learned Member of the Tribunal has not properly appreciated oral evidence in this case. In my considered opinion, the evidence of claimant is reliable, trustworthy and natural.

14. On careful perusal of the record and proceeding, more particularly, the spot panchanama, it appears that, dead body of deceased Gajanan was found within

the limits of village Salwadi. It has specifically mentioned in the spot panchanama that, the spot is near the Railway Track of that line. So far as spot of incident is concerned, there is no crossing. There is no village road by either side of the track. It thus appears that, there is no reason for any person to cross that Railway track so far as that particular spot is concerned. On perusal of the postmortem report, it appears that, the cause of death is given a hemorrhagic shock due to head injuries and fracture and multiple injuries by railway accident. On the same day, Police Patil of village Samandaradi, Tq. Bhokar, reported the incident to police Station Bhokar, wherein, it is specifically mentioned that, on receiving the information from the Sarpanch of the said incident, Police Patil visited the spot and found a dead body of unknown person near the Railway Track. He has specifically reported that, the said person died due to fall from the train. On the basis of his report, A.D.No.12 of 2010 came to be registered and one PHC Dhawale was assigned with the inquiry of it.

15. In light of the above facts, it cannot be said that deceased Gajanan was not a *bona fide* passenger merely because train ticket was not recovered. Facts emerging from the evidence adduced by the Claimants unmistakably point out that deceased Gajanan was a passenger of said train as defined under section 2 (29) of the Railways Act, 1989. The provisions of Section 123 (c) (2) and Section 124-A of the Act of 1989 are squarely applicable to the facts and circumstances of the present case.

16. The learned counsel for the appellant has pointed out the rules of Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003. The relevant rule nos.10,11 and 12 are reproduced herein below :-

10. Forwarding of investigation report by the Police and the Force:-

- (1) The police on completion of the investigation, shall forward the report thereof to the Magistrate, as required under the Criminal Procedure Code, 1973.
- (2) The officer of the Force shall forward the report prepared under sub-rule (2) of rule 7 to the Divisional Security Commissioner of the Force.

- (3) The Divisional Security Commissioner shall submit the report to the Divisional Railway Manager within fifteen days of the receipt of investigation from officer of the force.

11. Action on the report by the Divisional Railway Manager. —

- (1) The Divisional Railway Manager, on receipt of the report,[mentioned in sub rule (3) of rule 10 shall examine the same within fifteen days]”.

- (2) When, on examination, Divisional Railway Manager is satisfied that the investigation is complete, he shall pass an order accepting the said report.

- (3) If the Divisional Railway Manager has reason to believe that some more inquiry is required in the matter, it shall refer the same back for investigation to the officer of the Force along with his observations for further investigation.

- (4) On receipt of a reference under sub-rule (3), the officer of the Force shall investigate the matter further and submit the report immediately to the Divisional Railway Manager.

- 12. Communication of order.—**Final orders passed on the report by the Divisional Railway Manager shall be communicated to the Station Superintendent who shall maintain the records and make necessary entries in the Station Diary to this effect.

17. On careful perusal of the report prepared by the Divisional Security Commissioner, it appears that, the Divisional Security Commissioner, after considering the communication made by the Station Master, the Driver of the Train and R.W.1 Ratan Singh, has come to the conclusion that deceased Gajanan died because of fall from the running train. The Divisional Security Commissioner has only reported to his superior authorities that, deceased was not supposed to travel in a running train by standing near the door and, therefore, Railway Administration is not liable to pay any compensation.

18. As per the provisions of said Rule 10, the Divisional Security Commissioner is required to submit the report to the Divisional Railway Manager and accordingly, as per the provisions of Rule 11 and 12, the Divisional Railway Manager is supposed to pass an order on the said report. In the case in hand, the respondent has not placed on record the order passed by the Divisional Railway Manager, if any, on the said report submitted by the Divisional Security

Commissioner.

19. The learned Member of the Tribunal has believed the evidence of R.W.1 Ratan Singh, whose statement came to be recorded on 17.7.2010 about the incident which alleged to have taken place on 21.2.2010. In cross examination, he has admitted that, he is not aware whether any passenger fallen down from running train No.1401 between Mudkhed and Bhokar railway station. He has further admitted in his cross examination that, in running train he will remain in the brake van. Under these circumstances, in any manner, he would not be able to understand what happened to a passenger travelling in the said train unless reported to him by somebody. Furthermore, after six months of the incident, in what way, he could re-collect as to what happened on 21.2.2010 when the said train was proceeding from Mudkhed to Bhokar.

20. The learned counsel for the appellants/claimants has placed his reliance in a case Juhi Parveen and another (supra), wherein, in paragraph nos. 2,7,9 and

10 of the Judgment, the Delhi High Court has observed that, only because the ticket is not found, it cannot be held that the deceased was not a bona fide passenger. In paragraph No.7 of the Judgment, the Delhi High Court has observed that, *“the Tribunal has committed a gross-illegality in ignoring the report of the DRM dated 8.2.2010 which was filed by the respondent itself before the Commissioner.”*

In the case in hand, even the Divisional Security Commissioner had not come to the conclusion that because of the ticket not found with the dead body, it can be said that deceased Gajanan was not a bonafide passenger of a train and, therefore, Railway Administration was not liable to pay the compensation.

21. The learned counsel for respondent has placed his reliance in a case **Fatemabi Rahis Shah and others Vs. the Union of India through General Manager in First Appeal no. 1844 of 2012**, wherein this court has taken a view that, the statutory report is based upon the statements, which may not substitute the proof of a particular fact. This court, in paragraph no.6 of the

judgment has made following observations :-

“6. Neither the police papers, nor the statements made before the Tribunal come to the aid of the claimants. If the fall from the train would have been proved by preponderance, then I would have considered the case of the claimants with regard to the absence of the ticket. However, as the untoward accident itself is not proved by preponderance, nor by any circumstantial evidence, the case of the appellants cannot be considered. The statutory report is based upon the statements which may not substitute the proof of a particular fact. It has to be proved by preponderance.”

22. This Court has observed that, if the fall from the train proved by preponderance, then, the Court would have considered the claim of the claimants with regard to the absence of the ticket. In the backdrop of the same, this Court has further observed that, the statutory report has placed on the record which may not substitute the proof of a particular fact. Even after this observation, this court has further observed that the same has to be proved by preponderance.

23. In view of the above discussion, I am of the Considered view that, the learned Member of the Railway Tribunal has not weighed the evidence in its proper perspective and thereby, arrived at a wrong conclusion. The learned Member of the Tribunal has erroneously observed that the evidence and record is against the applicant and even the statutory report is also not supporting to the case of the claimants. The learned Member of the Tribunal has committed a grave mistake while discarding the oral evidence of claimant no.1 on flimsy grounds. Thus, there is substance in the appeal. The appeal succeeds. The impugned order is liable to be quashed and set aside and, application for compensation deserves to be allowed. Accordingly, I answer the point nos. 1,3 and 4 in the Affirmative and answer the point no.2 in the Negative. Hence, the order.

ORDER

- I. The appeal is hereby allowed with costs.
- II. The order dated 18.9.2012 passed by the learned Member (Technical), Railway Claims Tribunal, Nagpur Bench in Claim Application No.**OA(IIu)/NGP/2010/0107** is hereby quashed and set aside.

III. Claim Petition No.OA (Ilu)/NGP/2010/0107 is hereby allowed in terms of its prayer clauses.

IV. The respondent do pay an amount of Rs.4,00,000/- (Rs. Four Lacs) alongwith interest @ 6% per annum to the appellants/original claimants from the date of the accident till the realization of the entire amount.

V. Award be drawn up accordingly.

VI. First appeal is accordingly disposed of.

(V.K. JADHAV)
JUDGE.

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aaa/-