

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

C.A.F. NO.3143/2016
IN
FIRST APPEAL NO.959/2015

Anita Wd/o Premanand Kotangale,
age 45 Yrs., Occu. Labour,
R/o Near Siddharth Vachanalaya,
Bhankheda, Nagpur, Tah. and
Distt. Nagpur.

..Appellant.

..Vs..

Union of India,
through the General Manager,
Central Railway, C.S.T. Mumbai.

..Respondent.

Shri R.G. Bagul, Advocate for the appellant.
Shri N. P. Lambat, Advocate for the respondent.

CORAM : Z.A.HAQ, J.
DATED : 29.9.2016.

ORAL JUDGMENT

Heard.

Considering the nature of claim and facts of the case, prayer for grant of early hearing is granted. The civil application is **allowed**.

FIRST APPEAL NO.959/2015

2. Taken up for final hearing.

Heard Shri R.G. Bagul, Advocate for the appellant and Shri N. P. Lambat, Advocate for the respondent.

The appellant has challenged the award passed by the Railway Claims Tribunal dismissing the claim petition filed by the appellant on the ground that the appellant/claimant has failed to establish that deceased was a *bonafide* passenger and died because of an untoward incident.

3. The Advocate for the claimant has submitted that the Tribunal has concluded that the deceased was not a *bonafide* passenger as the claimant has not been able to show that the deceased had purchased a ticket and was travelling in train. It is submitted that the burden cast on the claimant to prove the above facts is incapable of being discharged by the claimant and, therefore, the petition could not have been dismissed on that ground. It is submitted that the documents on record show that the death of deceased was due to fall from the train and this is sufficient to hold that deceased died in an untoward incident within the meaning of Section 123(c)(2) of the Railways Act. It is prayed that the impugned award be set aside and the claim petition be allowed with costs.

4. The Advocate for the respondent has supported the impugned award. It is submitted that the claimant has failed to show that deceased was a *bonafide* passenger and died in an untoward incident and, therefore, the Tribunal has rightly dismissed the petition. It is argued that the evidence of Anita (mother of deceased) is not sufficient to support the claim of the claimants. The judgment given by the Delhi High Court in the case of *Gurcharan Singh & Ors. V/s. Union of India* in First Appeal No.507/2011 and the judgment given by the Delhi High Court in the case of *Jaimala & Ors. V/s. Union of India* in First Appeal No.46/2014 are relied upon to substantiate

the argument that unless claimants prove that the victim was a *bonafide* passenger and died in an untoward incident, the claim cannot be granted. It is argued that note-sheet prepared by the police show that cell-phone of deceased was recovered which means that the belongings of deceased were intact with the deceased and non-recovery of ticket leads to the inference that deceased was not a *bonafide* passenger. It is submitted that the Tribunal has properly appreciated the evidence on record and the findings recorded by the Tribunal cannot be faulted with. It is prayed that the appeal be dismissed.

5. After hearing, the following point arises for consideration:

Whether the conclusions of Tribunal are sustainable?

6. It is undisputed that the body of deceased was found on the railway track. The Tribunal has recorded that inquest panchanama shows that Panchas had opined that death of deceased was due to fall from the train. The respondent has not taken any steps to counter the above document which document is not brought into existence by or on behalf of the claimants but the document is from the record of police authorities. Anita (mother of deceased) has entered the witness box. The claim of Anita shows that deceased was going to Badnera from Nagpur and Anita was going to Pulgaon and that Anita boarded passenger train and deceased boarded express train. The respondent has not been able to bring anything on record in her cross-examination to show that the claim made by Anita was false. Even according to the respondent only cell-phone was found on the body of the deceased and nothing else was found. The evidence of Anita that deceased was going from Nagpur to

Badnera is required to be accepted as nothing contrary has been brought on record in the cross-examination and if it is accepted, it cannot be believed that except for cell-phone, deceased was not carrying anything in his pockets. The fact that nothing else except cell-phone is recovered from the body of deceased shows that the belongings of deceased were taken away and, therefore, only because ticket is not found on the body of deceased, it cannot be said that he was not a *bonafide* passenger.

In the judgment given in the case of *Jaimala & Ors. V/s. Union of India* the claimant came out with the case that deceased in that case, was travelling with his two friends and the friends of deceased were not examined and, therefore, it was held that the claimant failed to prove that deceased was a *bonafide* passenger.

In the judgment given in the case of *Gurcharan Sing & Ors. V/s. Union of India*, the claim is dismissed on the ground that the witness examined on behalf of the claimant failed to prove that he was travelling with the deceased as the witness had not filed and proved the ticket. I am not in agreement with the conclusions drawn in the case of *Gurcharan Sing & Ors. V/s. Union of India* and in any case, the facts of present case are different from the above case.

In my view, the claimants have brought on record sufficient evidence on the basis of which it can be said that deceased was a *bonafide* passenger and his death occurred because of untoward incident as contemplated by Section 123(c)(2) of the Railways Act. The findings recorded by the Tribunal are unsustainable.

7. Hence, the following order:

(i) The impugned award is set aside.

- (ii) The claim petition filed by the claimants is **allowed**.
- (iii) The respondent is directed to pay compensation of Rs.4,00,000/- (Rs. Four Lakhs Only) to the claimants alongwith interest at the rate of 9% per annum, the interest being chargeable from the date of incident till the amount is paid to the claimants.

If the amount is not paid within three months, the respondent will be liable to pay interest at the rate of 12% per annum instead of 9% per annum from the date of incident till the date of payment of amount.

The learned Advocate for the appellants states that the appellant No.2 (sister of deceased) is now married and she does not want the amount of compensation and the amount be given to the appellant No.1 (mother of deceased). The respondent is directed to pay the amount to the appellant No.1 (mother of deceased). If for some reason the respondent is unable to pay the amount directly to the appellant No.1, it shall be deposited before the Tribunal.

8. The appeal is **allowed** in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.