

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

FA/2079/2016

ABDUL GANI S/O SHAIKH BABAMIYA AND ANOTHER
VERSUS
UNION OF INDIA, THR G.M. SOUTH CENTRAL
RAILWAYS, SECUNDRABAD (ANDRA PRADESH)

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Advocate for Appellants : Mr P S Agrawal
Advocate for Respondent : Mr S.S.Rathi

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CORAM : V.K. JADHAV, J.

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Reserved on : May 02, 2017
Pronounced on : July 18, 2017.

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COURT'S ORDER :-

1. Being aggrieved by the judgment and award dated 29.10.2015 passed in claim application no.OA(IIU)/NGP/2013/0281, by the Railway Claims Tribunal, Nagpur, the original claimants preferred this appeal.

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

a] As per the case of the appellants-claimants on 13.3.2013 deceased Shaikh Javed was travelling from Aurangabad to Parbhani by Manmad Dharmabad

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Marathwada Express Train No.17687. Deceased Shaikh Javed was standing near the door of the compartment of the alleged train and due to sudden jerk, he fell down and came under the wheels. He had sustained serious injuries and succumbed to the injuries on the spot.

b] Thus, the dependents/claimants approached the Railway Tribunal for grant of compensation. It has been contended in the claim petition that deceased Shaikh Javed was travelling alongwith his mother from Aurangabad station for a destination of Parbhani. He was holding two adult tickets and one 2nd ticket for Rs.30/-. The said tickets were found during the personal search of the deceased. It has been contended that, deceased Shaikh Javed was the bonafide passenger and died in the untoward incident.

c] Respondents-railways has strongly resisted the claim petition by filing written statement. It has been contended that, no such untoward incident has taken place. In the inquiry made by the Circle Security

Commissioner of Railways Security Force, it has been noticed that no such incident of falling of the passenger from the train had taken place. In the alternate, it has also been contended that, deceased was not a bonafide passenger of the train and as such, the appellants-original claimants are not entitled for the compensation.

d] The appellants-claimants have adduced oral and documentary evidence in support of their contentions. Respondent has adduced only documentary evidence. The learned Member of the Tribunal by its impugned judgment and award dated 29.10.2015 dismissed the claim petition. Hence, this appeal.

3. The learned counsel for the appellants-claimants submits that, deceased Shaikh Javed was the bonafide passenger and during his personal search, tickets were recovered. He was travelling with his mother in the said train from Aurangabad Railway station for travelling to Parbhani. He was standing near the door of the compartment of the alleged train, but due to sudden

jerk he fell down and came under the wheels. Thus, the appellants-claimants have proved the death of Sk. Javed, occurred in an untoward incident. Respondent-Railways failed to prove that deceased was not a bonafide passenger of the train and he was not involved in the untoward incident.

4. Learned counsel for respondent-Railways submits that, it is a case of the appellants-claimants that claimant no.2 was accompanying the deceased during the travelling, however, she has not examined herself before the Tribunal. She would have been the best witness to prove the factum of purchasing of tickets and falling of the deceased from the running train. As per the case of the appellants-claimants, deceased was accompanied by his mother, however, on perusal of the details of the said tickets, it appears that, tickets were for three persons which includes two adults and one child. The appellants-claimant no.1 has also stated in his affidavit of evidence that deceased Shaikh Javed alongwith his mother and one child was travelling from

Aurangabad to Parbhani by the said train, however, in the pleadings there is no reference to the said child and, even, in the affidavit, no details of the said child are mentioned. It has also not been stated as to whose child was travelling alongwith deceased Shaikh Javed and his mother. On the other hand, in the statement of the mother recorded during the course of the inquiry, she had stated that one Khatunbi was travelling alongwith her and Sk. Javed was standing near the door of the compartment. She herself and Sk. Khatunbi sat on the berth. The appellant-claimant no.2 has not given any reference to the child. If those two tickets pertain to the appellant-claimant no.2 and said Khatunbi, then the third ticket cannot be said to be of deceased Javed, who was the major son of appellants. Learned counsel submits that, the appellant-claimants have failed to prove that death of deceased occurred as a result of an untoward incident. The appellant-claimants have failed to prove that deceased Sk. Javed was travelling in the said train and he died due to falling down from the running train due to jerk. The Railways Tribunal

therefore, has rightly dismissed the claim petition. No interference is required. There is no merit in the appeal.

5. On careful perusal of the pleadings, evidence and the impugned judgment and award passed by the Tribunal, I do not find any substance in the appeal. By way of the pleadings, it has been contended that, deceased Shaikh Javed was travelling with his mother, whereas in the affidavit of evidence, it has been stated that deceased was travelling with mother and child. The appellant-claimant no.1 has not bothered to explain as to whose child was travelling with the appellant-claimant no.2 and deceased Shaikh Javed. It is a matter of record that, statement of the mother came to be recorded by the police authorities after more than three months from the date of incident. In her statement, she had given a different story. According to her, on the day of incident, she had been to Aurangabad alongwith Sk. Javed to meet her sister-in-law and in the evening started returning from Aurangabad to Vasmat alongwith Sk. Javed and his mother-in-law Khatunbi.

On perusal of the statement of the driver and the guard of the said train, it appears that, said train arrived at Aurangabad Station on 13.3.2013 at about 17.40 hours and left at 18.00 hours. Thereafter train reached Mukundwadi station at about 18.11 hours and left at 18.22 hours. On that day, between Aurangabad to Mukundwadi station, no untoward incident of falling down of a any passenger from the running train was noticed or reported by anyone. On perusal of the inquiry papers, it appears that, the statement of appellant-claimant no.2 Nasimbegum and said Khatunbi came to be recorded belatedly. Both of them have not given any reference to said child travelling with them. On the other hand, there is no reference in the pleadings and in the evidence about said Khatunbi. The Railway Tribunal has observed some glaring irregularities in the important documents i.e. spot panchnama Exh.A-3, accident fall report A-2. Further, the Tribunal has also observed that postmortem report is doubtful.

6. In the backdrop of these facts, the Tribunal has rightly recorded the findings that deceased was not involved in an untoward incident as defined under section 123(c) of the Railways Act. No interference is required. There is no merit in the appeal. Hence, following order.

ORDER

1. Appeal is hereby dismissed. No costs.
2. Appeal is accordingly disposed of.

(V.K. JADHAV, J.)

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