

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

FIRST APPEAL NO. 746 OF 2016

VAJEEULLA HASAMULLA ANSARI AND ANOTHER
VERSUS
UNION OF INDIA THR G.M., CENTRAL RAILWAY, C.S.T.
MUMBAI

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Advocate for Appellants : Mr Nagori Girish
Advocate for Respondents : Mr M N Navandar

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CORAM : V.K. JADHAV, J.

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**Reserved on : April 05, 2017
Pronounced on : April 18, 2017.**

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COURT'S ORDER :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and order passed by the Railway Claims Tribunal, Nagpur Bench Nagpur dated 20.11.2015 in case No.OA(IIIu)/NGP/2014/0184 the original applicants preferred this appeal.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] On 23.5.2014 deceased Valiulla was travelling with General Second Class Ticket from Basti to Lokmanya Tilak Terminus to meet his uncle and boarded from

Basti in Gorakhpur-Kurla Express Train No.12541 UP and fell down from the running train on 25.5.2014 in between Jalgaon to Shirsoli. The applicants who are the dependents of the deceased approached to the Railway Claims Tribunal for grant of compensation by filing the aforesaid claim application. It has been contended in the claim application that there was heavy rush in the General Compartment of the train and the deceased Valiulla fell down from the running train due to sudden jerk in the train.

b] Respondent Railway Claims Authority has strongly resisted the claim application by filing its written statement. It has been contended that no such incident causing death of the deceased Valiulla within the meaning of the provisions of Section 123 (c) read with Section 124-A of the Railways Act, 1989 has taken place and as such the claim application is not maintainable. It has also been contended that, deceased Valiulla was not a bonafide passenger of any train.

c] The applicants have adduced oral and

documentary evidence to substantiate their contentions. Respondent Railway authorities placed on record DRMS inquiry report alongwith number of documents as prepared during the course of such inquiry. After hearing both the parties, the Tribunal has dismissed the claim application. Hence, this appeal.

4. The learned counsel for the applicant submits that the applicants have placed on record copy of inquest panchnama at Exh.A-5. As per the contents of inquest panchnama, it appears that on personal search of the deceased Valiulla one black purse in which one general ticket from Basti to LTT and one Passport were recovered by the Investigating Officer. Personal search of the deceased Valiulla was conducted in the presence of one PHC Official. Thus, deceased Valiulla was having a valid journey ticket in his possession purchased by him in Basti. It has also been accepted in the DRMS inquiry report that during the inquest proceeding, one general ticket of second class from Basti to LTT was found with the deceased. The date and ticket number was also mentioned in the DMRC. The learned counsel submits

that the Railway Claims Tribunal has not appreciated the oral and documentary evidence in its proper perspective. The impugned judgment and order suffers from perversity. The Tribunal has wrongly recorded the findings to issue nos. 2 and 3 in the negative, though there is ample evidence on record that deceased was a bonafide passenger of the Train on the date of incident and death of deceased occurred as a result of an untoward incident within the meaning of Section 123 (c) read with section 124-A of the Railways Act, 1989.

5. The learned counsel for respondent Railways authorities submits that the ticket placed on record is a manipulated and procured one. The police authorities have not recorded number and date of the ticket in the inquest proceedings and only given reference to a ticket from Basti to LTT. The learned counsel submits that, A.W.1 is not an eye witness to the incident and she has no first hand knowledge that deceased had purchased the ticket. Mere filing the train ticket allegedly to be of deceased could not prove that deceased was a passenger of the train in the facts of the case. Though it is a

specific case of the applicants that deceased Valiulla was travelling by train No.12541 Gorakhpur-Kurla express, the police in all their documents mentioned about unknown train. Thus, mere finding of a dead body or a person in injured condition on or by the side of the track does not, *ipso facto* prove that said person/deceased fell down from the train. Learned counsel submits that the applicants have utterly failed to prove that, death of Valiulla occurred as a result of an untoward incident within the meaning of the provisions Section 123 (c) read with section 124-A of the Railways Act, 1989. The learned Members of the Tribunal has, therefore, rightly dismissed the claim application. No interference is required. There is no substance in the appeal and the appeal is liable to be dismissed.

6. On careful perusal of the record and proceeding, it appears that, in DMR's report, it has been specifically mentioned that one second class train ticket from Basti to LTT bearing No.D-02302815 dated 23.5.2014 was found with the deceased. On careful perusal of the

DMRs report, it appears that after considering the inquiry papers forwarded to it, it has been concluded that, deceased Valiulla was travelling in the said train by standing near the door and as such he lost his balance due to his own negligence for which the Railways authorities is not liable to compensate. It appears from the impugned judgment and order that the Tribunal has not at all considered the DMR's report. It appears that the Tribunal has not at all discussed the DMR's report. As per the record, in the personal search of the deceased Valiulla one black purse in which one general ticket from Basti to LTT and one Passport were recovered. The appellant-applicant no.2 has examined herself and she has stated in her cross examination that her husband deceased Valiulla (appellant-applicant no.1) is residing at Saudi Arabia. In the inquest proceeding, reference has been given to said Ticket as well as the pass port of deceased Valiulla. Copy of the said pass port has been placed before the Tribunal. Said passport bearing Photograph of deceased Valiulla with the requisite details as required for issuing the pass port. Said Railway Ticket and pass port found in a

black purse recovered in the personal search of the deceased by the Investigating Officer. Merely, on the basis that police authorities have not mentioned ticket number and date of ticket in the inquest panchnama, no inference could be drawn that ticket placed on record is a manipulated and procured one. The Tribunal has failed to notice the said passport kept alongwith said ticket in the black purse. The Tribunal has not considered the DMR's report and the other documents referred during the course of the inquiry in its proper perspective. The impugned judgment and order suffers from perversity. The deceased Valiulla was travelling in the said train as a bonafide passenger and died on account of an untoward incident.

7. There is evidence in the form of DMR's report and other inquiry papers to prove that deceased Valiulla met with an accidental death by falling from the running train. It is not a case that, deceased Valiulla found in injured condition by the side of the Track. In such accidental fall from a running train, it is difficult to expect a direct evidence. The passenger of the said train

hardly come forward to give evidence. It also cannot be expected from the Railway staff posted at the various points to notice the accidental fall from the running train. In the instant case, fall from the train has been proved by the preponderance. Statutory report placed on record supports the case of the applicants.

8. In the light of the above discussion, impugned judgment and order is liable to be quashed and set aside and the application for compensation deserves to be allowed. Hence, following order.

O R D E R

- I] Appeal is hereby allowed with costs.
- II] The order dated 20.11.2015 passed by the learned Members of the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim application No. No.OA(IIIu)/NGP/2014/0184 is hereby quashed and set side.
- III] Claim Application No.OA(IIIu)/NGP/2014/0184 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% p.a. to the appellants/original claimants from the date of the accident till realization of the entire amount.

V] Award be drawn up accordingly.

VI] First Appeal is accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

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aaa/-