

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

FIRST APPEAL NO. 2569 OF 2016

DRAIBHAR BATASA NAIK AND ANOTHER
VERSUS
UNION OF INDIA THROUGH G.M., WESTERN RAILWAY,
CHURCHGATE, MUMBAI

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Advocate for Appellants : Mr Nagori Girish
Advocate for Respondents : Mr S.B. Deshpande

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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 16.11.2015 in case No.OA(IIu)/NGP/2012/0320 the original applicants preferred this appeal.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] On 27.3.2002 deceased Vikram was travelling alongwith his friend from Surat to Puri by Surat-Puri Express Train No.12744. This train stopped at

Chawalkheda without signal and due to heavy rush in the General Compartment the deceased came out of the train. While standing near the track another train No.19048 Super Fast was passing through Chawalkheda Railway Station, and on the same train while deceased Vikram started re-boarding the train. However, due to stone force of passing through the train he was thrown down and sustained head injuries. He died on the spot. Deceased Vikram was travelling with the valid journey ticket No.R40714320 dated 27.3.2012.

b] Respondent Railway authority has strongly resisted the claim application by filing written statement. It has been contended that no such incident causing death of deceased within the meaning of provisions of Section 123 (c) read with Section 124-A of the Railways Act had taken place and as such the claim application is not maintainable. It has also been contended that deceased Vikram was not bonafide passenger of any train and the applicants are not entitled to any compensation.

c] The applicants have adduced oral and documentary evidence in support of their contentions. Respondent Railway placed on record DRM'S inquiry report alongwith number of documents as prepared during the course of said inquiry.

d] The learned Members of the Railway Claims Tribunal dismissed the claim application leaving the parties to bear their own costs. Hence, this appeal.

4. The learned counsel for the appellant submits that it is rather admitted position that deceased was having a valid journey ticket of Surat-Puri Express Train No.12744 and said travelling ticket came to be seized while drawing inquest panchnama dated 27.3.2012. There is no dispute that the incident had taken place at Chawalkheda station. The DRM report placed on record unmistakably point out that deceased was dashed by the train No.19048 UP, sustained injury and died on the spot. It is also a matter of record that said train Surat-Puri Express in which the deceased was travelling stopped at Chawalkheda without signal. Deceased

Vikram got down from the said train due to heavy rush in the general compartment. Said incident had taken place when deceased Vikram was re-boarding the train. At that time, one another train No.19048 super fast was passing through Chawalkheda Railway Station and due to stone force passing through train deceased Vikram was thrown down and sustained injuries, resulted into his death.

5. The appellants-applicants have examined A.W. 2 Pandav Naik who was travelling with the deceased. He has deposed that near Chawalkheda station since the said train Surat-Puri stopped without signal, he himself and deceased Vikram both got down from the Train and both of them tried to re-board the Train. He had entered into the train, however, they did not notice the train coming from the other direction. Even then, the Tribunal has recorded the findings that incident in question is not an incident of falling down from the train and the applicants have failed to establish that deceased have accidentally fallen down from the Train. Learned counsel submits that, the Tribunal has erroneously

recorded the findings that deceased Vikram is responsible for his own death and it cannot be said that negligence is an ordinary negligence. The Tribunal ought to have allowed the application filed for grant of compensation.

6. The learned counsel for respondent submits that the appellants-applicants have failed to prove that death of deceased Vikram occurred as a result of untoward incident as alleged in the application. Respondent has examined R.W.1 Station Manager, Dharangaon, who has deposed that said Surat-Puri Train had no scheduled stoppage at Chawalkheda but had stopped there for giving crossing to other train. There were two trains which were stopped at the loop lines. The driver of the train No.19048 Tatpti Ganga informed him that one person was dashed by his train. The witness Pandav Naik examined by the applicants has admitted in cross-examination that the accident had occurred due to their negligence. The learned Members of the Tribunal after considering the entire evidence on record has rightly observed that the incident in question is not an incident

of falling down from train and as such there is no untoward incident as alleged in the claim application. No interference is required in the impugned judgment and order passed by the Tribunal. There is no substance in the appeal and the appeal is thus liable to be dismissed.

7. Inquest proceeding in this case were initiated by the GRP officials, on receipt of Memo A-2 dated 27.3.2012 issued by the Station Superintendent Chawalkheda, wherein it is mentioned that Loco Pilot of 19048 at 13.39 hours had given the message that one unknown person aged 30 years died due to hit/dash of the Train. During the course of inquest proceeding, personal search of the deceased Vikram was conducted by the GRP officials. The applicants have placed on record copy of the document inquest panchnama marked at exh.A-5, wherein it has been specifically mentioned that one ticket no.0714340 from Surat-Puri was found. The applicants have also examined A.W. 2 Pandav Naik, who was travelling with deceased Vikram. He had given details of the accident as discussed in the

foregoing paragraphs. It is thus not disputed that the incident had taken place at Chawalkheda station where said Surat-Puri train was stopped for giving crossing to the other train. There was no scheduled stoppage at Chawalkheda for the said Train. Witness Pandav Naik has deposed that when their train started, both of them tried to re-board the train, however, due to stone force of the coming super fast train, deceased Vikram had lost his balance and fell down. It is thus clear that deceased Vikram had sustained injuries by falling down from Surat-Puri train due to stone force of another super fast train Tapti Ganga coming from the other direction. It is not the case that said Surat-Puri train had gathered speed and in the process of re-boarding the said train deceased Vikram had lost his balance. By any stretch of imagination, the negligence, if any, on the part of deceased Vikram could not have been termed as a criminal negligence in terms of the provisions of section 124-A of the Railways Act, 1989. It is a clear case of accidental fall from Surat-Puri Train due to stone force of another coming train. In consequence of which if deceased Vikram was dashed by the Engine of the

Super Fast Train No.19048 Tapti-Ganga Express, it cannot be said that the applicants have failed to prove that the death of deceased occurred as a result of untoward incident. Tribunal has recorded findings to issue No.2 contrary to the evidence placed on record. The impugned judgment thus suffers from perversity. The appellants-applicants are thus entitled for compensation.

8. The appeal succeed. Impugned judgment and order thus liable to be quashed and set aside and the application for grant of compensation deserves to be allowed. Hence, following order.

O R D E R

- I] Appeal is hereby allowed with costs.
- II] The Judgment and order dated 16.11.2015 passed by the learned Members of the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim application No.OA(Ilu)/NGP/2012/0320 is hereby quashed and set side.
- III] Claim Application No. OA(Ilu)/NGP/2012/0320 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/-