

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

FIRST APPEAL NO.2397 OF 2016

PADMINIBAI WD/O MAROTI SHIKHARE AND OTHERS.
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 Respondents : Mr M N Navandar

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CORAM : V.K. JADHAV, J.

Dated: April 06, 2017

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PER COURT :-

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 10.02.2016 in case No.OA(IIIu)/NGP/2012/0245, the original applicants preferred this appeal.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] According to the appellants-original applicants death of deceased Maruti occurred as a result of untoward incident. Deceased Maruti had started his journey from Purna to Nanded and fell down from the

running train due to sudden jerk. In consequence of which deceased Maruti came under the wheels of the running train and sustained serious injuries and died on the spot. It has been contended in the claim petition that deceased was travelling with a valid journey ticket no.50540202 dated 19.5.2012 from Purna to Nanded.

b] Respondent Railway authorities has strongly resisted the claim application on the grounds that no such incident causing death of deceased within the meaning of Section 123(c) read with 124-A of Railways Act has been taken place and as such claim application is not maintainable. It has also been contended in the application that deceased was not a bonafide passenger of any train. The applicants are not entitled for any compensation. It has also been contended that, the applicants have not mentioned in the claim application the number or name of the train as also time of the journey.

c] The applicants have adduced oral and documentary evidence in support of their contentions.

Respondent-Railway authorities have not adduced any oral evidence on record and placed on record the DMR's inquiry report alongwith number of documents as prepared during the course of such inquiry. The learned Members of the Tribunal by the impugned judgment and order dated 10.2.2016 dismissed the claim application. Hence, this appeal.

4. The learned counsel for the applicants submits that, on 19.5.2012 deceased Maruti was travelling by train No.51421(Pune Nizamabad Passenger) from Purna to Nanded with a valid journey ticket and fell down from the running train near Purna Railway Station. During the course of the inquest proceedings, personal search of the deceased was conducted by the GRP officials. A travelling ticket from Purna to Nanded came to be recovered in the personal search of the deceased by the Investigating Officer. Deceased Maruti was having a valid journey ticket in his possession and the same has been mentioned in the inquest panchnama. The learned counsel submits that burden lies heavily on the respondent-railway authorities to prove that deceased

Maurti was not a bonafide passenger. The respondent railway authorities failed to discharge the said burden. The Tribunal has erroneously held that the deceased was not having a valid journey ticket with him and as such he was not a bonafide passenger of the train. Learned counsel submits that the Tribunal has erroneously observed that the deceased must have been run over by the train as otherwise the body of the deceased could not have been cut into two halves. The tribunal without any evidence on record observed that the nature of the injuries sustained by the deceased and two pieces of the dead body of the deceased indicates that deceased could not have been fallen down from the running train. The Tribunal has erroneously observed that the deceased must have been run over by the Train. Learned counsel submits that the Tribunal has erred in holding that because the body was lying in adjoining track, the deceased was not a bonafide passenger and that he did not fall from the train. Learned counsel submits that no one can exactly prepare a trajectory of a body falling from a train, getting entangled on steps, hitting other railway equipment and final place where

body is found. All this is dependent on facts of each case. Mere inconsistency of timings with respect to the accident is not sufficient to draw inference that no such untoward incident of falling from the train had taken place.

5. The learned counsel for the applicants in order to substantiate his contentions placed his reliance on **Sudha Choudhary and others Vs. Union of India reported in 2014 STPL 6499 Delhi.**

6. Learned counsel for respondent Railway authorities submits that said journey ticket has been issued on 9.51 am on 19.5.2012 whereas dead body has been found at 09.00 am at the place of incident by Keyman Shri Janardhan Gadve, who was on duty at that time. Learned counsel submits that as per the statement of Guard Shri Vijay Kumar and Shri B S Rao, Loco pilot that alleged train No.51421 arrived at Purna Station at about 12.45 p.m. and departed at 12.59 p.m. for Chudawa. Thus, the only inference can be drawn that ticket placed on record by the applicants is

manipulated and procured one. In DRM inquiry report conclusion has been drawn that the alleged train No.51421 departed from Purna Railway Station at 12.59 p.m. and ticket has been issued on 19.5.2012 on 9.51 am in the morning hours and as such ticket placed on record is doubtful. Learned counsel submits that it is also a part of the record that ticket placed on record was issued at 9.51 hours whereas dead body has been found at 09.00 hours. Learned counsel submits that on the basis of the nature of the injuries sustained by the deceased the Tribunal has rightly observed that no such incident of falling from the compartment of the running train was possible. Learned counsel submits that there is no substance in the appeal and the appeal is thus liable to be dismissed.

7. On careful perusal of the Record and Proceeding and after going through the judgments and Award passed by the Tribunal, it appears that deceased was not having a valid journey ticket in his possession and as such, he was not a bonafide passenger of the Train. The Journey Ticket placed on record has been issued at

9.51 am on 19.5.2012, whereas, dead body has been found at 09.00 am at the place of the incident. It is the case of the applicants that, on 19.5.2012 deceased was travelling by train No.51421 Pune Nizamabad Passenger for his journey from Purna to Nanded with a valid journey ticket and fell down from a running train near Purna Railway Station. However, as per the record said train No.51421 arrived at Purna Station at about 12.45 p.m. on the said date and departed at 12.59 p.m. for Chudawa. Thus, the only irresistible inference can be drawn that a ticket placed by the applicants on record is manipulated and procured one. In the DRM inquiry report a similar conclusion has been drawn. The Tribunal has, therefore, rightly recorded finding that deceased was not having a valid journey ticket in his possession and as such was not a bona fide passenger of the train.

8. The incident had occurred on the Railway Track near Purna Railway Station. A.W.1 Claimant Padminibai wd/o Maroti Shikhare has stated that she resides in Ambedkar Nagar at Purna, which is hardly one

kilometers away from Purna Railway Station. Thus, possibility cannot be ruled out that deceased who was not living far away from the place of incident might be trying to cross the Railway Track on the day of incident and unfortunately run over by the train. Dead body has cut into two pieces. It has been specifically recorded in the inquest panchnama that body cut off from the waist and both legs separated from the waist. In the postmortem notes, concerned doctor who has conducted the postmortem on the dead body has also shown the position of the dead body by drawing a sketch. The Tribunal has, therefore, rightly observed that nature of the injuries sustained by the deceased and manner in which two pieces of the dead body of the deceased lying, deceased would not have been fallen down from the running train and the deceased must have been run over by the train. A person falling down from a running train may not sustain aforesaid cut injuries into two halves as happened in the present case. In the case of **Sudha Choudhary and others Vs. Union of India reported in 2014 STPL 6499 Delhi** (supra) relied upon by the learned counsel for the appellant, the Delhi High

Court has also observed that the same is also dependent on the facts of each case.

9. In view of the discussion above, I do not find any substance in the appeal. There is no merit in the appeal. The Tribunal has rightly dismissed the claim application of the applicants. No interference is required. Hence, following order.

O R D E R

- I] Appeal is hereby dismissed.
- II] In the circumstances there shall be no order as to costs.
- III] First Appeal is accordingly disposed of.

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(V.K. JADHAV, J.)

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