

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 2395 OF 2016

SMT. KAUSHALYA W/O PUNDLIK SABALE
VERSUS
UNION OF INDIA, THROUGH GENERAL MANAMER,
SOUTH CENTRAL RAILWAYS, SECUNDERABAD (ANDRA PRADESH)

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Advocate for Appellant : Mr. Pavankumar S. Agrawal.

Advocate for Respondent : Mr. D. G. Nagode.

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CORAM : **V. K. JADHAV, J.**

RESERVED ON : 2nd May, 2017.

PRONOUNCED ON: 18th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and order passed by the learned Member of the Railway Claims Tribunal, Nagpur Bench dated 12th February, 2016 in Claim Application No.OA(Ilu)/NGP/2011/0384, the original Applicant has preferred this appeal.

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

- i) It is the case of Appellant / original Applicant that on 8th September, 2011, deceased Nagesh was travelling by Nanded-Mumbai Tapowan Express Train No.17618 from Nanded to Selu. He was

standing near the door of the compartment and fell down from the running train at Limbgaon Railway Station due to sudden jerk of the said train and came under the wheels and seriously injured. According to the Appellant / Applicant, the Medical Officer reported the said incident to GRP. Deceased Nagesh died due to injuries sustained in the said accident. The Appellant / Applicant approached the Railway Claims Tribunal by filing the aforesaid claim application for grant of compensation. It has been contended in the said claim application that deceased Nagesh was travelling in the said train as a *bona-fide* passenger. He was having valid ticket for travelling as a passenger in the said train.

- ii) The Respondent / railways has strongly resisted the claim application by filing the written statement. It has been contended that no such incident causing death of the deceased within the meaning of the provisions of Section 123(c) read with Section 124-A of the Railways Act has taken place

and as such, the claim application is not maintainable. Deceased Nagesh was not a *bona-fide* passenger of any train.

- iii) The Appellant / Applicant has adduced oral and documentary evidence in support of her contention. Respondent / railways has also adduced oral and documentary evidence and also placed reliance upon the documents prepared during the course of inquiry. The Railway Claims Tribunal vide its impugned judgment and order dated 12th February, 2016 dismissed the claim application. Hence, this appeal.

3 The learned counsel for Appellant / original Applicant submits that during the course of inquest proceedings, personal search of deceased Nagesh was conducted by GRP officials. On perusal of the contents of inquest Panchanama Exhibit A-4, in the watch pocket of pant, one railway ticket of Rs.34/- is recovered. Personal search of deceased Nagesh was conducted in presence of one police head constable B.No.197 Sy. Jafar Noori. The learned counsel submits that deceased Nagesh was in possession of journey ticket and as such, the

burden heavily lies on the Respondent / railways to prove that deceased Nagesh was not a *bona-fide* passenger. The said burden has not been discharged by the Respondent / railways by adducing any cogent evidence. However, the Railway Claims Tribunal has not considered the same and dismissed the claim application.

4 The learned counsel for Respondent / railways submits that the ticket is manipulated and procured one. There is no evidence on record to show that deceased Nagesh had actually boarded the train from Nanded Railway Station and fell down from such train. Case put forth by the Appellant / Applicant is also not convincing because it has not been specifically pleaded that by whom and what time the journey ticket has been purchased and as to how deceased Nagesh went to Nanded, which is 11 kilometers away from his alleged place of residence and for what purpose he was going to Selu. The learned counsel submits that the Respondent / railways had conducted an inquiry and also examined one Mohammed Salim, working as a Loco Pilot of the said mail / express. He has deposed that on 8th September, 2011 he was working as a Loco Pilot of the said train and the said train left Nanded Station at 10:35 and reaches Manmad Railway Station at 17:00 hours. On that day, no untoward incident of accidental fall down of any passenger was reported to him by anybody.

There was neither ACP nor jerk reported in his train. There are contrary statements in the inquest Panchanama as well as the postmortem report. Spot Panchanama has been prepared four days after the incident. The contents of inquest Panchanama are also doubtful. The learned counsel submits that the Railway Tribunal has thus, rightly dismissed the claim application. There is no merit in the appeal and the appeal is thus, liable to be dismissed.

5 On perusal of the pleadings and evidence it appears that the Appellant / Applicant has admitted in her cross-examination that she is a resident of Limbgaon and the incident occurred near the place of the residence. It is also an admitted position that her residence is adjacent to the railway track. There is no evidence at all to show that deceased Nagesh had actually boarded the train from Nanded Station and fell down from such train. The Appellant / Applicant has also not explained as to how deceased Nagesh went to Nanded, which is just 11 kilometers away from the alleged place of residence and for what purpose he was going to Selu. In the given set of facts, the Railway Tribunal has rightly inferred that deceased Nagesh was not travelling in the train, but was strolling near the railway track at Limbgaon where he was living and got hit by the train. This inference has been corroborated by the statements given by the relatives and Applicant

herself. None has reported falling down of a passenger from the running train. The claim application is also silent about the same. The statement of Station Master Limbgaon came to be recorded by the RPF, who has stated that the said train Nanded-Mumbai left Limbgaon Station at about 10:51 hours without taking stop at Limbgaon Station. None has reported to him about falling of the passenger from the said train. The statement of the guard of the train also came to be recorded during the course of investigation by the RPF, wherein he has deposed in the similar manner. Inquest Panchanama has been prepared on 8th September, 2011 at 17:30 hours to 18:10 hours in the Government Medical College, Nanded. Even though in column No.3 of the Inquest Panchanama place and time where dead body found, is recorded as Government Medical College, Nanded, however, in column No.8, it has been added to the effect that "fallen down from train at railway station Limbgaon and injured". It is not clear as to on what basis the police authorities have formed an opinion that deceased Nagesh met with an accidental death by falling down from a running train. The Railway Claims Tribunal has therefore, rightly observed that manipulation has been done by the unscrupulous elements. Though deceased Nagesh was hailing from Limbgaon, which is just 11 kilometers away from Nanded, it is not clear as to how deceased Nagesh was travelling from

Nanded to Selu. The Railway Claims Tribunal has therefore, rightly drawn the inference as mentioned above. The Appellant has failed to prove that the death of Nagesh occurred as a result of of an untoward incident as alleged in the claim application. There is no merit in the appeal and the appeal is thus, liable to be dismissed. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed. No costs.
- II. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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