

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

FIRST APPEAL NO. 2095 OF 2013

1. Shri. Bhavsingh Yadav Patil,
Age – 68 years, Occupation – Pensioner,
2. Smt. Sulochanabai Bhavsingh Patil,
Age – 63 years, Occupation – Household,
Both are residing at Khadka Road, Behind
Ramdeobaba Mandir, Shiv Krupa Building,
Bhusawal, Tal. Bhusawal, Dist. Jalgaon.

... APPELLANTS
(Ori. Claimants)

VERSUS

The Union Of India,
Through the General Manager,
Central Railway, C.S.T., Mumbai.

... RESPONDENTS
(Ori. Respondents)

...
Advocate for Appellants : Mr. Madhav M. Bhokarikar.
Advocate for Respondent : Mr. Manish N. Navandar.

...

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

RESERVED ON : 2nd May, 2017.

PRONOUNCED ON: 6th July, 2017.

JUDGMENT:

. Being aggrieved by the judgment and order passed by
the learned Member of the Railway Claims Tribunal, Nagpur Bench
dated 12th April, 2013 in Claim Application
No.OA(Ilu)/NGP/2011/0126, the original Applicants have preferred

this appeal.

2 Brief facts as stated in the claim application are as follows:

- i) On 11th October, 2010, deceased Vijay was travelling from Dombivali to Bhusawal by an unknown train. Deceased Vijay went to Dombivali on 6th October, 2010 to his sister's house in search of some job. As he could not get the job, he had started returning to his home town at Bhusawal on 11th October, 2010. It has been contended that the deceased Vijay had purchased the railway travelling ticket from Dombivali for the destination of Bhusawal and also informed to his family about his arrival. It has been alleged in the claim application that due to heavy rush in the train, deceased Vijay fell down from the running train and sustained severe injuries on his head and other parts of body and died on the spot. The second class railway ticket from Dombivali to Bhusawal dated 11th October,

2010 was lost in the said accident.

- ii) Respondent has strongly resisted the said claim application by filing the written statement at Exhibit A-16. It has been specifically denied that on 11th October, 2010, deceased Vijay accidentally fell down from the running train and died. It has also been denied that deceased Vijay was having valid journey ticket. It has been contended that Loco Pilot of Train No.1055 down has informed on walky-talky to the Central Panel Operator and to Deputy Station Manager, Jalgaon Railway Station that one boy aged 18 to 20 years was dashed and run over by the train at KM No.415/25-27 near Jalgaon. On receipt of the said information, the Deputy Station Superintendent, Jalgaon Railway Station has informed to the City Police, Jalgaon. Thus, the alleged incident of accident is not due to accidental fall down by the train and it is a case of dash and run over by the train.

iii) The Appellants / original Applicants and the Respondent led their oral and documentary evidence in support of their rival contentions. The learned Member of the Railway Claims Tribunal, Nagpur Bench by judgment and order dated 12th April, 2013 dismissed the claim application. Hence, this appeal.

3 The learned counsel for Appellants / original Applicants submits that the Appellants and deceased Vijay were residing at Bhusawal, District Jalgaon. On 6th October, 2010 deceased Vijay had been to his sister's house Dombivali in search of some job. Unfortunately, he could not get the job and decided to return at Bhusawal from his sister's house on 11th October, 2010. Deceased Vijay had therefore, purchased a ticket and informed to his family about his return journey to Bhusawal. On way, he fell down due to heavy rush in the train and sustained severe injuries and died on the spot. The learned counsel submits that deceased Vijay fallen down on track of Railway at Shirsoli Jalgaon near Pole No.415/25-27. He was having second class ticket purchased on 11th October, 2010 at

Dombivali station for Bhusawal, which was misplaced. The Appellants are the parents and deceased Vijay was unmarried. The learned counsel submits that the railway tickets are always sold irrespective of any space available and without considering the convenience of the passengers. The same was in present situation, which resulted into falling down of deceased Vijay. This is due to irresponsible handling of the traffic of the train by the Respondent / railways. The learned counsel submits that the said incident was intimated to the brother of deceased Vijay on the same day by a person, who was on duty as Deputy Station Superintendent on Railway Station Bhusawal. FIR was lodged on the very day, accidental death report was prepared, Panchanamas were prepared, postmortem was conducted by Dr.Chavan, Medical Officer, Civil Hospital, Jalgaon. All these documents are supporting the case of the Appellants / Applicants and those are placed on record before the Railway Claims Tribunal for consideration. However, the Tribunal has not considered the said evidence. The learned counsel submits that the Appellants / original Applicants have proved their case and there is no evidence to prove the case of Respondent / railways.

4 The learned counsel for Respondent submits that Respondent / railways examined RW-1 Sandeep Gaurishankar Upadhyay, Loco Pilot of Godan Express Train No.1055, Ex Igatpuri to Bhusawal by filing his affidavit of evidence. It has been averred in the said affidavit of evidence that at KM No.415/15-17 between Shirsoli and Jalgaon Railway Stations, when the said train was passing, Loco Pilot Sandeep Gaurishankar Upadhyay had seen two boys aged about 15 to 20 years were playing on the track. He repeatedly blown the whistle and also applied the brakes. Out of two boys, one boy left the track and other did not move from the track and as a result, he was dashed by the cattle guard of engine of his train. The learned counsel submits that on judicial scrutiny, it is revealed that deceased Vijay was not *bona-fide* passenger of the train. The learned counsel submits that there is no substance in the appeal and the appeal is liable to be dismissed.

5 On careful perusal of pleadings, evidence adduced by the parties in support of their rival contentions and the judgment and order passed by the learned Member of the Railway Claims Tribunal, it appears that it is a specific case of the Appellants /

Applicants that on 11th October, 2010, deceased Vijay was coming from Dombivali to Bhusawal. He had gone to Dombivali before 5-7 days to his sister's house in search of some job. He could not get the job and as such, he started returning to his home town on 11th October, 2010. Deceased Vijay had purchased a railway ticket from Dombivali station and informed his family about his arrival. As against this, the Respondent / railways has come with a specific case that deceased Vijay alongwith another boy was playing on the track and even after giving the signals and blowing the whistle, he did not move from the track. In the result, he was dashed and run over by Train No.1055, Igatpuri to Bhusawal.

6 On careful perusal of the record, it appears that immediately after the said incident, RW-1 Sandeep Gaurishankar Upadhyay, Loco Pilot of Godan Express Train No.1055, Ex Igatpuri to Bhusawal had informed the said incident on walky-talky to the Guard and Deputy Station Superintendent, Jalgaon. RW-1 Sandeep Gaurishankar Upadhyay, Loco Pilot has specifically averred in this affidavit of evidence that on that day his train was passing from KM No.415/15-17 between Shirsoli and Jalgaon Railway Stations and at that time he had seen two boys aged about

15 to 20 years playing on the track approximately 300 meters away. He has repeatedly blown the horn and applied the brakes. Out of the two boys, one boy left the track and other did not move from the track. As a result, he was dashed by the cattle guard of engine of the train. His train was stopped at KM No.415/25-27 at about 17:32 hours. The train has completely passed from the body of the deceased and the Station Master has instructed him to restart the train and accordingly, he has restarted the train at 17:38 hours. Thereafter, his train stopped at its schedule halt at Bhusawal Railway Station at 18:05 hours. He has also taken the entry in Loco Pilot diary to that effect. On perusal of the memo Exhibit A-36, it further appears that the Deputy Station Manager, Jalgaon on 11th October, 2010 informed to the In-charge, Jilha Peth Police Station, Jalgaon that the driver of 1055 down has informed on walky-talky to the Panel Operator of Central Panel Jalgaon A. A. Malik that, in between Shirsoli – Jalgaon on the down road, one boy aged about 18-20 years is run over. The gunman has removed and kept him out of the track. On the basis of said memo, the concerned Police Station Jilha Peth, Jalgaon has taken entry vide Station D. No.204 of 2010, registered at 18:30 hours. RW-1 Sandeep Gaurishankar

Upadhyay, Loco Pilot has denied the suggestion that the dead body was already lying on the track and no dash given by the engine of his train to the trespasser.

7 On perusal of postmortem notes at Exhibit A-46, the opinion as to the probable cause of death is the death due to railway track accident with crushed head injury with multiple commuted and open # of skull and both U/L humerus # with hemorrhage shock. I have also carefully gone through the external injuries as mentioned in 17 with corresponding injuries in column 18. I do not think that the aforesaid injuries as mentioned in these two columns alongwith probable cause of death as opined by the medical officer, who has conducted the postmortem examination, is possible by merely a fall of a passenger from a running train. The postmortem notes Exhibit A-46 clearly supports the case of Respondent / railways. Deceased Vijay was run over by said Godan Express Train No.1055 as reported by its Loco Pilot and as such, deceased Vijay sustained the crush head injury with other injuries. It has no where mentioned in the postmortem notes that the aforesaid injuries sustained by deceased Vijay were post mortem injuries.

8 Appellant No.1 / Applicant No.1 Bhavsingh Yadav Patil has also admitted in his cross-examination that police handed over the pocket diary but not the journey ticket recovered from deceased Vijay. It is pertinent that even after such an incident, the pocket diary of deceased Vijay was found, but the journey ticket was not recovered.

9 In view of the above discussions, I do not find any fault in the finding recording by the learned Member of the Railway Claims Tribunal. There is no evidence at all that deceased Vijay died in an untoward incident in terms of the provisions of Section 123(c) of the Railways Act on 11th October, 2010. There is no merit in the appeal. Hence, the following order:

ORDER

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

[V. K. JADHAV, J.]