

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

FIRST APPEAL NO. 2941 OF 2013

1. Smt. Ushabai Mangal Deshmukh,
Age – 45 years, Occupation – Household,
2. Ku. Savita Mangal Deshmukh,
Age – 16 years, Occupation – Education,
3. Chi. Pramod Mangal Deshmukh,
Age – 14 years, Occupation – Education,

Appellant Nos.2 and 3 are minors and
Appellant No.1 is their natural guardian
as mother. All are residing at 23 Bornar,
Tal. and Dist. Jalgaon.

... APPELLANTS
(Ori. Claimants)

VERSUS

The Union of India,
Through General Manager,
Central Railway, CST, 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 30th August, 2013 in Claim Application No.OA(llu)/NGP/2011/0162, the original Applicants have preferred this appeal.

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

- i) On 24th September, 2010 deceased Mangal while travelling from Pachora to Mhasawad by an unknown train allegedly fell down from the running train at Km. No.396/13-15 on DN line of Railway track, Bornar Shivar of Railway Station Mhasawad. It has also alleged that second class ticket purchased by deceased Mangal from Pachora to Mhasawad was misplaced.
- ii) Respondent / railways has strongly resisted the claim application by filing the written statement. It has been contended that deceased Mangal was not travelling by train. Deceased Mangal was in habit of taking liquor and under the influence of liquor he came on the railway track which is nearby his village and was dashed by the train at Km.

No.396/13-15.

- iii) The Appellants / original Applicants and the Respondent / railways adduced their oral and documentary evidence in support of their rival contentions. The learned Member of the Railways Claims Tribunal, Nagpur Bench by impugned judgment and order dated 30th August, 2013 dismissed the application. Hence, this appeal.

3 The learned counsel for Appellants / original Applicants submits that on 24th September, 2010 deceased Mangal Deshmukh was travelling by train having valid ticket from Pachora for Mhasawad. Due to heavy rush, he fell down from the running train on down Railway track near Km. 396/13-15 in Bornar Shivar. In consequence of which, he sustained severe injuries and died on the spot. The learned counsel submits that incident was informed on 24th September, 2010 at about 08:00 am by Sanjay Baliram Patil, Deputy Station Master, Mhasawad to MIDC Out-Post, Mhasawad and accordingly, report was registered in the said Police Station vide No.55 of 2010. The ticket was misplaced and could not be found. Postmortem was conducted by Dr. Ajay B. Sonawane, Medical Officer, Civil Hospital,

Jalgaon. The learned counsel submits that deceased Mangal was a *bona-fide* passenger and all the documents are supporting the case of the Appellants / original Applicants. The learned counsel submits that railway tickets are always sold irrespective of any space available and without considering the convenience of the passengers. Due to the said irresponsible approach of the Respondent / railways, the accidents are increasing day-to-day. There is an irresponsible handling of the traffic of the train. The Respondent / railways is totally responsible for the loss and damages caused to the legal heirs of deceased Mangal. The learned counsel submits that the Appellants / original Applicants have proved their case and there is no evidence to substantiate the case as put forth by the Respondent/ railways.

4 The learned counsel for Respondent / railways submits that as per the statements of the relatives of deceased Mangal before the police, it has come on record that deceased Mangal was a heavy drinker. The Respondent / railways has examined two witnesses to substantiate its defence. Deceased Mangal was not travelling as passenger and the Appellants / original Applicants have utterly failed to prove that the death of Mangal occurred as a result of an untoward incident as alleged in the claim application. The learned Member of

the Railway Claims Tribunal has therefore, rightly dismissed the claim application. There is no substance in the appeal and the same is liable to be dismissed.

5 On careful perusal of pleadings, evidence and the judgment and order passed by the learned Member of the Railway Claims Tribunal, it appears that Respondent / railways has examined RW-2 Rameshwar Rakhonde, Loco Pilot, Central Railway, Division Bhusawal by filing his affidavit of evidence. As per the facts averred in the said affidavit of evidence, on 23rd/24th September, 2010, RW-2 Rameshwar Rakhonde was working as Loco Pilot of Train No.N-Bost (Goods Train) and his duty was from Nandgaon to Bhusawal. He has further stated in this affidavit of evidence that when his train was passing through KM No.396/13-15 at about 00:29 hours from Mhasawad Railway Station, he noticed one person was standing near the track and at that time the speed of his train was 75 KMPH. He continuously blew the whistle but the said person did not walk away but jumped in front of the train engine and as a result dashed and run over by the engine of his train. He had immediately informed the incident to Station Master, Mhasawad for further action and also taken an entry in the Loco Pilot Book. An extract of the said Loco Pilot Book

is also placed on record, which is marked as A-86.

6 On careful perusal of postmortem notes A-55, it appears that the concerned medical officer, who has conducted the postmortem, has recorded the external injuries in column 17 alongwith corresponding internal injuries in column 18 of the postmortem notes. The medical officer has opined about the probable cause of death as crush injury of head and crush injury of chest and polytruma. I do not think that such injury is possible by fall from the running train. On the other hand, the said injury alongwith the probable cause of death as opined by the concerned medical officer, supports the case of Respondent / railways that deceased Mangal was run over by the said goods train.

7 The Respondent / railways has also examined RW-1 Sanjay Baliram Patil, Deputy Station Superintendent, Lasalgaon Railway Station, Central Railway, Division Bhusawal by filing his affidavit of evidence. He has stated in his affidavit of evidence that on 23rd September, 2010 he was working as Deputy Station Master at Mhasawad Railway Station and his duty hours were between 16:00 hours and 01:00 hours of 24th September, 2009. According to him, no any untoward incident had taken place and accidental fall down of any

passenger was reported to him by Loco Pilot, Guard or any passenger of any train. He has further explained that KM No.396/13-15 is between Maheji and Mhasawad Railway Stations. On 24th September, 2010 at about 00:30 hours he was informed by Loco Pilot of Goods Train on walky-talky that a dead body of one unknown person is lying on the down track. Accordingly, he has informed the same to RPF and PWS, Mokkdam for further course of action. He has further stated in his affidavit of evidence that the last passenger train which arrived from Pachora to Mhasawad was at 16:43 hours and thereafter, no passenger train arrived at Mhasawad Railway Station on 23rd September, 2010. Thereafter, there was no passenger train on 23rd September, 2010 / 24th September, 2010 till his duty. The report submitted by him is placed on record and the same is marked as A-62. The Appellant / Claimant No.1 Smt. Ushabai Mangal Deshmukh has filed an affidavit of evidence at A-64 and she has admitted in her cross-examination that on 23rd September, 2010 deceased Mangal came to the house at about 10:00 p.m. According to RW-2 Rameshwar Rakhonde, Loco Pilot, when the goods train was passing through from KM No.396/13-15 at about 00:29 hours, on 24th September, 2010, the said incident had taken place. RW-1 Sanjay Baliram Patil, Deputy Station Superintendent has deposed that last

passenger train which arrived from Pachora to Mhasawad was at 16:43 hours and thereafter, no passenger train was arrived at Mhasawad Railway Station on 23rd September, 2010 and thereafter, there was no passenger train on 23rd September, 2010 / 24th September, 2010 till his duty.

8 On the basis of the evidence as discussed above, the only inference could be drawn that deceased Mangal was not travelling as a passenger in any train on the track. On the other hand, the last passenger train which arrived from Pachora to Mhasawad was at about 16:43 hours on 23rd September, 2010.

9 The Appellants / original Applicants have failed to substantiate their case. Deceased Mangal was in the house till 10:00 p.m. on 23rd September, 2010 and his dead body was found on the track on 24th September, 2010. There is no evidence at all as to where from deceased Mangal had purchased the railway ticket and started his journey.

10 In view of the above discussions, I do not find any fault in the finding recorded by the learned Member of the Railway Claims Tribunal. There is no substance in the appeal. 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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