

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

FIRST APPEAL NO.:3168 OF 2015

URMILA (PRAMILA) RAMU JAKHOTIYA AND ANOTHER
VERSUS
UNION OF INDIA, THROUGH GENERAL MANAGER,
CENTRAL RAILWAY, CHATRAPATI SHIVAJI TERMINUS, MUMBAI.

Mr. Vishnu B. Madan, Advocate for the Appellant
Mr. Manish N. Navandar, Advocate for the Respondent.

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

RESERVED ON : 2nd May, 2017.

PRONOUNCED ON: 1st August, 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 10th September, 2015 in Claim Application No.OA(Ilu)/NGP/2011/0307 dismissing thereby the claim petition, the original Claimants have preferred this appeal.

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

- a) On 13th July, 2011, deceased Ramswarup was travelling from Akola to Amravati by Bhusawal-

Amravati passenger train. Deceased Ramswarup had been to Latur for marketing the pulses. After finishing the work, he came at Akola from Latur and boarded the said train for Amravati. He had purchased a valid travelling ticket from Akola to Amravati on 13th July, 2011. Due to the overcrowd in the compartment of the passenger train, deceased Ramswarup fell down from the running train and sustained the serious injuries. He was immediately shifted to District General Hospital, Akola. However, while undergoing the treatment, he succumbed to the injuries. The Claimants being the dependents, approached the Railway Claims Tribunal by filing the aforesaid claim petition for grant of fixed compensation. It has been contended in the said claim petition that though deceased Ramswarup had purchased the travelling ticket, the same was misplaced and it was not recovered at the time of Panchanama. It has been contended that deceased Ramswarup died in an untoward incident in terms of the provisions of Section 123(c)

of the Railways Act, 1989 and he was a *bona-fide* passenger in the train.

- b) The Respondent / railways has strongly resisted the claim petition by filing the written statement. It has been contended that deceased Ramswarup was not travelling by any train and as such, his death is not occurred in an untoward incident in terms of the provisions of Section 123(c) of the Railways Act. It has also been contended that deceased Ramswarup was not a *bona-fide* passenger.
- c) The original Claimants have adduced oral and documentary evidence in support of their contentions. They have also admitted the statutory report placed on record. The Respondent / railways has not adduced any evidence. The Railway Claims Tribunal vide its impugned judgment and order dated 10th September, 2015, dismissed the claim petition. Hence, this appeal.

4 The learned counsel for Appellants / original Claimants submits that the accident took place due to the sole negligence on the part of railway administration. It has been specifically mentioned in the A.D. report that the deceased fell down from the passenger train on 13th July, 2011 at platform No.2 of Akola Railway Station and sustained the injuries. There is nothing on record to show that deceased Ramswarup was not travelling by train. There is no evidence of walking on the railway track. The Respondent / railways has not adduced any evidence. Respondent / railways has failed to prove that deceased Ramswarup was not a *bona-fide* passenger. It has been specifically mentioned in the statutory report that deceased Ramswarup was trying to alight from the moving train and thus, fell down. Thus, there is sufficient evidence on record about happening of an untoward incident and the burden on the Respondent / railways to prove that deceased Ramswarup was not a *bona-fide* passenger, was not discharged. The accident took place due to irresponsible handling of the traffic of the train by Respondent / railways. There is gross negligence of Railway Administration of delivering unlimited tickets.

5 The learned counsel for Appellant / Claimants in order to substantiate his contentions, placed his reliance on the following cases:

- a) **Union of India Vs. Bimala and others**, reported in, **2013 (2) T.A.C. 162 (Bom.) Bombay High Court**,
- b) **Union of India (Uoi) Vs. Smt. Sushila Devi and others**, reported in, **2006 ACJ 806**,
- c) **Smt. Akhtari Vs. Union of India, through G.M., NER, Gorakhpur**, reported in, **2009 (1) T.A.C. 644 (All.) Allahabad High Court**,
- d) **Union of India Vs. Prabhakaran Vijaya Kumar & Ors**, decided on 5th May, 2008 by the Supreme Court in Appeal (Civil) No.6896 of 2002,
- e) **Jameela & Ors Vs. Union of India**, decided on 27th August, 2010 by the Supreme Court in Civil Appeal No.1184 of 2003,
- f) **Aasha Gupta Vs. the Union of India**, decided on 3rd May, 2012 by the Patna High Court in Miscellaneous Appeal No.954 of 2010,
- g) **Smt. Ram Payari Vs. Union of India**, decided on 31st March, 2014 by the Delhi High Court in FAO No.142 of 2012.

6 The learned counsel for Respondent / railways submits that the Appellants / Claimants have failed to establish that deceased Ramswarup accidentally fell down from the train. Thus, there is no evidence to prove that the death of deceased Ramswarup occurred as result of an untoward incident. The learned counsel submits that the investigation and statutory report is against the Appellants / Claimants.

It is proved beyond doubt that deceased Ramswarup was not a *bona-fide* passenger of the train. The Railway Claims Tribunal has therefore, rightly dismissed the claim petition. There is no substance in the appeal and the appeal is thus, liable to be dismissed.

7 On careful perusal of the pleadings, evidence and the impugned judgment and order passed by the Railway Claims Tribunal, it appears that there is no satisfactory evidence that the death of deceased Ramswarup occurred in an untoward incident. Deceased Ramswarup was found on platform No.2 in an injured condition. However, there is no evidence to show that deceased Ramswarup was travelling by the said Bhusawal-Amravati passenger train. It is also not clear from the evidence adduced by the Appellants / Claimants whether deceased was boarding the moving train or whether he was alighting from the moving train. Though the statutory report is admitted by the Appellants / Claimants, on perusal of the same it appears that, it is stated in the said report that, neither any document nor any railway ticket was found with the deceased and as such, there is no evidence that deceased Ramswarup was travelling by the train as alleged. On perusal of the documents collected during the course of the inquiry, it appears that Dy.S.S. Akola has issued a memo and informed that one person is lying in an injured condition on platform No.2 at Akola

Railway Station and thereafter, said person was taken to the hospital for treatment. There is not a single document on record to show that deceased Ramswarup was travelling in the train and he was fallen down on the platform from the moving train and sustained the injuries. I do not find any fault in the judgment and order passed by the Railway Claims Tribunal. The cases relied upon by the learned counsel for Appellants / Claimants cannot be made applicable to the facts and circumstances of the present case. 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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