

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

**FIRST APPEAL NO.:3169 OF 2015**

KUM. PRIYANKA D/O. PRAKASH BHOLE  
VERSUS  
UNION OF INDIA, THROUGH GENERAL MANAGER,  
CENTRAL RAILWAY, CHATRAPATI SHIVAJI TERMINUS, MUMBAI.

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

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

RESERVED ON : 2<sup>nd</sup> May, 2017.

PRONOUNCED ON: 1<sup>st</sup> 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 10<sup>th</sup> September, 2015 in Claim Application No.OA(Ilu)/NGP/2011/0259 dismissing thereby the claim petition, the original Claimant has preferred this appeal.

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

- a) On 7<sup>th</sup> July, 2011, deceased Prakash was travelling from Jalgaon to Malkapur. He was going to

Malkapur for some personal work. Deceased Prakash had purchased the railway travelling ticket from Jalgaon Railway Station and boarded the said train for the destination of Malkapur. Even deceased Prakash had informed to the Appellant / Claimant about the same and promised her to bring the digest (guide) for her study. On that day, however, deceased Prakash fell down from the running train in between Km No.423/23-25 Bhadli-Jalgaon on the down road of Railway Station, Jalgaon, District Jalgaon and sustained the serious injuries and died. After collecting the necessary documents, the original Claimant has approached the Tribunal for grant of fixed compensation. It has been contended that due to overcrowd in the compartment of the passenger train, deceased Prakash fell down from the running train and sustained the serious injuries.

- b) The Respondent / railways has strongly resisted the claim petition by filing the written statement. It has been contended that deceased Prakash was

travelling in the train by sitting on the foot board, which is an offence and as such, the Respondent / railways is not liable to pay any compensation.

- c) The Appellant / Claimant and also the Respondent / railways have adduced oral and documentary evidence in support of their rival contentions. The Railway Claims Tribunal vide its impugned judgment and order dated 10<sup>th</sup> September, 2015 dismissed the claim petition. Hence, this appeal.

4 The learned counsel for Appellant / original Claimant submits that there is no dispute that deceased Prakash succumbed to the injuries because of the falling down from the running train. The learned counsel submits that the presumption lies in favour of the passenger that he is travelling with a valid journey ticket unless it is proved by the Respondent / railways that deceased was not a *bona-fide* passenger. The Respondent / railways has failed to prove that deceased was not a *bona-fide* passenger of the train. The learned counsel submits that the documents placed on record support the case of the Appellant / Claimant. However, the Railway Claims Tribunal has

not considered the said documents. Thus, the impugned judgment and order passed by the Tribunal is liable to be quashed and set aside and the Appellant / Claimant may be granted the compensation.

5           The learned counsel for Respondent / railways submits that as per the statutory report, it has come on record that deceased Prakash was travelling in the train by sitting on the foot board, which is not permissible. The dead-body was found on the railway track. This is not *ipso-facto* proves that deceased Prakash was travelling as a *bona-fide* passenger in the train. The learned counsel submits that though a diary found from the trouser of deceased Prakash, the railway ticket was not recovered. Deceased Prakash was not a *bona-fide* passenger nor there is satisfactory evidence that the death of deceased Prakash occurred as a result of an untoward incident. 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.

6           On perusal of the pleadings, evidence and the impugned judgment and order passed by the Railway Claims Tribunal, it appears that no journey ticket was recovered either from deceased Prakash or from the site of the accident. However, it was revealed during the course of inquiry and the same is also mentioned in the statutory

report that deceased Prakash was travelling by sitting on the foot board. I consider that the facts of the present case fall under the exception of the provisions of Section 124-A of the Railways Act and as such, the Railway Administration is not responsible to pay the compensation. The Appellant / Claimant has also admitted the statutory report. Admittedly, there are no eye-witnesses of the fall of deceased Prakash from the train due to overcrowd in the compartment. It is the case of Respondent / railways that the death of deceased Prakash was a result of his own criminal act and the deceased was not a *bona-fide* passenger of the train. Even though the other documents like diary was found during the personal search of deceased Prakash, however, surprisingly, the travelling ticket was not found. In the circumstances, I do not find any fault in the judgment and order passed by the Railway Claims Tribunal. There is no substance 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. ]**