

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.369 OF 2015

1. Savriya Sugriv Harijan
Age - 35 yrs. widow of deceased.
2. Indresh Sugriv Harijan,
Age - 12 years, son of deceased.
3. Ponam Sugriv Harijan
Age -10 years, daughter of deceased,
4. Nilam Sugriv Harijan
Age -08 years, daughter of deceased,
5. Kiran Sugriv Harijan
Age -05 years, daughter of deceased,

Applicant Nos.2 to 5 are being minors apply through their mother and next friend and guardian I.e Appellant No.1.

Residing at C/o Santoshkumar Faguram Ram.
Ekta Nagar zopadpatti, Near Panvel Highway,
Ghatkopar link Road, Mankhurd, Mumbai 400 043.

... Appellants.

-vs-

The Union of India
Represented by The General Manager,
Central Railway, C.S.T. Mumbai.

... Respondent.

Shri Deepak T. Ajagekar, Advocate for appellants.
Shri T. J. Pandian, Advocate for respondent.

CORAM : A. S CHANDURKAR, J.

DATE : December 12, 2018

Oral Judgment :

This appeal by the claimants has been filed challenging the

judgment of the Railway Claims Tribunal, Mumbai whereby the Claim Petition as filed seeking statutory compensation for the death of the husband of appellant No.1 and the father of the other claimants has been dismissed.

2. It is the case of the claimants that on 14/02/2011 when the husband of claimant No.1 was travelling in local train between Mankhurd and Masjid railway stations, he fell down between G.T.B. Nagar and Wadala railway station. It is their case that the fall from the train was accidental and that the deceased was a bonafide passenger. Along with the application various documents including Station Master Memorandum, Inquest Panchanama and other relevant documents were filed. Written Statement was filed by the respondent denying the claim as made. It was stated that the accident occurred due to negligence of the deceased and the alleged accident could not be said to be an untoward incident under Section 123(c) of the Railways Act, 1989 (for short, the said Act). The learned Member of the Claims Tribunal held that though the deceased was a bonafide passenger, compensation was not admissible as it was not clear how the deceased had fallen down and that there was a discrepancy in the address details submitted by the claimants. The claim application was thus dismissed and hence this appeal by the claimants.

3. Shri Deepak T. Ajagekar, learned counsel for the appellants

submitted that the learned Member of the Claims Tribunal was not justified in dismissing the application despite recording a finding that the deceased was a bonafide passenger. He submitted that the Inquest Panchanama as well as the IInd Class MST was recovered by the police from the spot of the accident which supported the fact that the deceased was a bonafide passenger. These documents were accepted even by the Tribunal but merely on the ground that the manner in which the deceased had a fall was not clear and on account of discrepancies in giving some minor details the claim was rejected. It was submitted that the provisions for grant of statutory compensation under the said Act being beneficial in nature, the Claim Petition ought to have been allowed. In that regard, learned counsel placed reliance on the decision in ***Rathi Menon v. Union of India 2001 ACJ 721***. It was then submitted that as the statutory amount of compensation has been now enhanced to Rs.8,00,000/- the same deserves to be granted by applying the law as laid down in ***Union of India Versus. Rina Devi AIR 2018 SC 2362***. Thus an amount of Rs.8,00,000/- with interest at the rate of 9% per annum deserves to be granted. The learned counsel also placed reliance on the following decisions :

- (i) ***Jameela and ors. vs. Union of India (UOI) AIR 2010 SC 3705***
- (ii) ***Shankar s/o Narayan Rathod vs. Union of India (2017) 0 SC (Mah) 862.***
- (iii) ***Labanyavathi Panigrahi w/o late Simanchal Panigrahi vs. The Union of India 2018 3 ALD 52***

- (iv) *Kavita and ors. vs. Union of India 2018 4 MhLJ 466*
- (v) *Kamla and ors. vs. Union of India (2018) 0 SC (Del) 1182*
- (vi) *Ganesh Das and Anr. vs. Union of India 2018 3 JCR 350.*

4. Shri T. J. Pandian, the learned counsel for the respondent supported the impugned order. He submitted that considering the unclear nature of documents placed on record by the claimants the Tribunal was justified in dismissing that application. The deceased had a fall due to his own negligence and hence the claim application was rightly dismissed. Without prejudice to the aforesaid it was submitted that if it is found that the claimants are entitled for compensation, an amount of Rs.8,00,000/- only is admissible and no interest thereon is payable. For said purpose the learned counsel placed reliance on the decision in *First Appeal No.66/2016 (Arun Balkrishana Pandit and Anr. vs. Union of India)* decided on 23/10/2018.

5. The following points arise for consideration :

- I. *Whether the claimants are entitled to receive statutory compensation ?*
- II. *If yes, what is the quantum of compensation ?*

6. I have heard the learned counsel for the parties at length and I have perused the documents on record. The finding of the Claims Tribunal that the deceased was a bonafide passenger has not been challenged by the

respondent by filing any cross-objection. Once it is found that the deceased was a bonafide passenger coupled with the fact that a IInd Class MST for travelling between Mankhurd to Masjid station was recovered by the police as stated in the Inquest Panchanama, in absence of any contrary evidence, it cannot be said the accident occurred due to the negligence of the deceased. There is no evidence brought on record by the respondent as to oppose or defeat the claim of the claimants. It is not the case of there being any self-inflicted injury by the deceased. The finding recorded that the cause of falling down from the train on account of negligence is without any evidence in that regard. That finding is therefore liable to be set aside. It is thus held that the deceased who was a bonafide passenger died on account of a fall from the train in which he was travelling with a valid IInd class MST permit. On that basis the claimants are entitled for grant of statutory compensation. The observations of the Honourable Supreme Court in ***Rathi Menon*** (supra) support the case of the claimants.

7. **As to Point No.II :**

In ***Rina Devi*** (supra) the effect of enhancement in the amount of statutory compensation from Rs.4,00,000/- to Rs.8,00,000/- has been considered. It has been held therein that compensation would be payable as applicable on the date of the accident with interest. However, if the amount so calculated is less then the amount prescribed as on the date of the award

of the Tribunal, the claimants would be entitled to higher of the two amounts. It is not disputed between the learned counsel for the parties that on the date of accident, amount of of statutory compensation payable was Rs.4,00,000/- the date of accident being 14/02/2011. By calculating the rate of interest at 9% per annum the said figure does not exceed the amount of compensation of Rs.8,00,000/- which is now admissible. It is thus held that the claimants are entitled for statutory compensation of Rs.8,00,000/-.

8. It was further submitted on behalf of the respondent that no further interest would be payable on the amount of statutory compensation of Rs.8,00,000/-. For said purpose he relied on the decision in **Arun Balkrishana Pandit and Anr.** (Supra). It is however to be seen that this Court in **Dilip Madhukar Ogle, Kavita and ors.** and **Shankar Narayan** (supra) has awarded interest even on that amount. I do not find any justifiable reason to refuse to grant interest on that amount at the rate of 9% per annum. The reason for disallowing that amount of interest cannot be gathered from the decision in **Arun Balkrushana Pandit and anr.** (supra). Point No.II is accordingly answered by holding that the claimants are entitled for statutory compensation of Rs.8,00,000/- with interest at the rate of 9% per annum.

9. For aforesaid reasons, the following order is passed :

- (i) The Judgment of the Claims Tribunal dated 09/04/2014 dismissing the Claim Petition is set aside.
- (ii) The Claim Petition is allowed. The claimants are entitled for total compensation of Rs.8,00,000/- with interest at the rate of 9% per annum from the date of the accident.
- (iii) The First Appeal is allowed in aforesaid terms with no order as to costs.

(A.S.CHANDURKAR, J.)