

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

First Appeal No.212 of 2019

**(Nrutyakala wd/o Surendra Thakre and ors. .vs. Union of India through the
General Manager, South East Central Railway, Bilaspur (C.G.))**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Ms. Hemlata S. Dhande, Advocate for Appellants.
Mr. N.P. Lambat, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : October 07, 2019.

The appellants are the original claimants who have challenged judgment and order dated 11.07.2018 passed by the Railway Claims Tribunal, Nagpur, whereby claim application made by them under the provisions of the Railways Act, 1989 was dismissed. The tribunal held in the impugned judgment and order that the appellants failed to prove their case regarding untoward incident leading to death of the victim in the present case and, therefore, compensation could not be granted.

2. As per the claim made by the appellants before the Tribunal, victim being the husband of appellant no.1 was having a season ticket and he was travelling from Gondia to Salekasa on Tarsa Local Passenger Train bearing train number 68741 on 05.09.2016. As per the stated case of the appellant, the victim was standing in the train and due to force from passengers, he fell down from the running train thereby suffering severe injuries, leading to this death. In support of their claim, the appellants placed on record the season ticket that was found on the person of the victim and other such oral and documentary evidence in support of their claim.

3. The claim made by the appellants was denied by the respondent, contending that although the victim was found in a severely injured condition on the railway track, the incident in the present case could not be said to be untoward incident as defined under the provisions of the Railways Act, 1989. The respondent placed reliance on oral and documentary evidence, including the evidence of the Station Master as also the entries in the documents and register maintained by the Railway, the inquest panchanama and copy of first information report and other such documents including the spot panchanama were on record before the tribunal.

4. By the impugned judgment and order, the tribunal found that the appellants examined only the appellant no.1 as a witness in support of the claim application while the respondent examined the Station Master and also referred to documents showing movement of trains at the relevant place on the date of the incident.

5. Upon taking into consideration the oral and documentary evidence on record, the tribunal found that the evidence of the Station Master, railway documents at Exhs. R-1 to R-3 that were prepared in the ordinary course of the duty by the railway officials, demonstrated that while the appellants had claimed that the victim had suffered an untoward incident when he fell from the moving train that was Tarsa Local Passenger bearing train number 68741, record demonstrated that the said train had entered Salekasa Railway Station at 09.14 hours and left the station at 09.29 hours while the body

of the victim was seen at 09.10 hours itself at the place of the incident by Loco Pilot of another train bearing train No. 12856 Intercity Express. This information at 9.10 hours was received on walkie-talkie by the Station Master, who has deposed as a witness for the respondent. On the basis of such appreciation of the evidence and material on record, the tribunal came to a conclusion that it could not be said that the victim had died due to untoward incident as defined under the provisions of the Railways Act and accordingly, the claim petition was dismissed.

6. Learned counsel appearing for the appellants, while challenging the order passed by the tribunal, emphasized on certain documents including document at Exh.A-43, which was an entry made by the Station Master wherein date was recorded as 05.09.2016 and time was recorded as 1104 hours. The learned counsel relied upon the spot panchanama, inquest panchanama and other such documents to claim that the findings rendered by the tribunal were erroneous. It was submitted that the tribunal had erred in holding that the appellants had failed to prove that the incident had indeed occurred in the manner in which they had claimed in their claim application. On this basis, it was contended that if the oral and documentary was appreciated in the correct perspective, it was clear that the incident in the present case was covered under the definition of "untoward incident" defined in Section 123 (c) (2) of the aforesaid Act and that, therefore, the impugned judgment and order deserved to be set aside and the claim application was required to be allowed.

7. On the other hand, the learned counsel appearing for the respondent referred to the evidence of the Station Master, along with the documentary evidence on record to submit that the findings regarding timings rendered by the Tribunal were correct and that, therefore, the case of the appellants stated in their claim application was not supported by the material on record. It was submitted that in such a situation, the impugned judgment and order passed by the tribunal was justified.

8. Heard learned counsel appearing for the rival parties.

9. In the present case, only appellant no.1 gave evidence in support of the claim application, specifically stating that the victim was travelling by the Tarsa Local Passenger i.e. train no. 68741 from Gondia to Salekasa and that he fell from the moving train, suffering injuries which led to his death. A season ticket found on the person of the victim was relied upon by the appellants in support of their claim. Therefore, the stated case of the appellants was that the victim was travelling by the aforesaid train when the untoward incident took place leading to his death, due to which they were entitled to claim compensation from the respondent. The season ticket placed on record clearly shows that it was not train specific and that it was a ticket on which the victim could travel between Gondia and Salekasa.

10. In this backdrop when the evidence of the Station Master is perused, it shows that according to the Station Master information regarding dead body of the

victim lying on the track was received at 0910 hours on the walkie-talkie from the Loco Pilot of another train bearing train no. 12856 Intercity Express. The entry regarding such information being received was shown in the document at Exh. R-1, which was clearly a document prepared in the official course of duty. The document at Exh.R-1 further demonstrates that the train on which the victim was claimed to have been travelling, arrived at the Station Salekasa at 0914 hours. There was nothing significant elicited from the Station Master in cross-examination and, therefore, what comes on record is that the body of the victim was already found lying on the track at 0910 hours before the aforesaid train, on which he was supposed to have been travelling, entered the Salekasa Station. The report given by the Loco Pilot of train number 12856 - Intercity Express at 0910 hours to the Station Master would show that the incident in which the victim was severely injured had taken place at least prior to 0910 hours.

11. When the aforesaid oral and documentary evidence led on behalf of the respondent is appreciated, it is found that the findings rendered by the Tribunal in paragraphs 16 and 17, cannot be said to be erroneous. It is also significant that the body of the victim in the present case was found cut in two parts and as observed by the Hon'ble Supreme Court in the case of **Kamrunnissa .vs. Union of India** reported in **AIR 2017 SC 1436** such facts would also indicate that the claim made on behalf of the claimants about the victim having fallen from a moving train, may not be correct.

12. In view of the above, it becomes evident that the appellants in the present case have not been able to demonstrate how the tribunal committed an error in coming to the conclusion that they had failed to prove that the victim died due to “untoward incident” as defined under the provisions of the said Act.

13. Accordingly, it is found that there is no merit in the present appeal and it is dismissed.

JUDGE

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