

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

FIRST APPEAL NO. 278 OF 2019

Malan Bee w/o Sayad Mazar and others

VS.

Union of India and another

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

Court's or Judge's

Shri. S. K. Sable, counsel for appellants.
Shri. N. P. Lambat, counsel for respondents.

CORAM : Manish Pitale J

DATED : 30.09.2019

The appellants herein are original claimants who have challenged judgment and order dated 10.11.2017 passed by the Railway Claims Tribunal, Nagpur Bench, whereby claim application filed by them has been dismissed.

2. The case of the claimants before the Tribunal was that the incident in question leading to death of the victim in the present case, occurred on 22.05.2014. It was submitted that the victim was travelling in train No.57584 - Purna to Akola passenger. He fell down from the said train on the track, suffering injuries, to which he ultimately succumbed.

3. It was claimed that the journey ticket was found on the body of the victim for boarding the said train. In support thereof, it was claimed that the brother of the victim had purchased the ticket and handed it over to the victim.

4. The respondent denied that an 'untoward incident' as contemplated under the provisions of Railways Act 1989, occurred in the present case and in support of such stand, the respondent examined the Railway Superintendent (RW-1) and other witnesses to demonstrate that the claims made by the appellants herein were not sustainable.

5. The Railway Superintendent was examined before the Tribunal. He placed documentary and oral evidence on record to show that the aforesaid train in which the victim was allegedly travelling arrived at Nandapur Railway Station at 08:42 hrs. and departed at 08.43 hrs. The victim in the injured condition was noticed by Loco Pilot of another train at 6:58 hrs. itself. On this basis, it was contended on behalf of the respondent that the version of the incident sought to be placed on record on behalf of the appellants was not supported by material on record. There was nothing to show that the case of the victim in the present claim would be covered under the definition of 'untoward incident' as defined in Section 123(C)(2) of the Railways Act 1989.

6. In the impugned judgment and order, the Tribunal has extensively discussed the oral and documentary evidence placed on the record by the rival parties. It is found that the claimants (appellants herein) failed to cross-examine the witnesses of the respondent, although witnesses were available for cross-examination, as a result of which the oral and documentary material placed on record on behalf of the respondent on the basis of documents prepared in the case of official duty, were not controverted or contradicted on behalf of the appellants. It was found that the witness examined on behalf of the appellants was admittedly not an eye witness to the incident and further that the brother of the victim who had allegedly purchased Railway ticket and handed over the same to the victim was not examined by the appellants. On this basis, the Tribunal came to a conclusion that no case of 'untoward incident' was made out on behalf of the appellant and accordingly, the claim was dismissed.

7. The learned counsel appearing on behalf of appellants before this Court, submitted that the Tribunal had committed an error for the reason that the victim was indeed found with railway ticket and further he was found in an injured condition on railway track, which was sufficient to demonstrate that an 'untoward incident' had taken place and that the appellants were entitled to grant of compensation. It was also submitted that the

evidence and material placed on record on behalf of the appellants was sufficient to prove their case and that the Tribunal erred in dismissing the claim application.

8. On the other hand, the learned counsel appearing for the respondent submitted that the case of the appellant was completely falsified by the evidence and material on record.

9. Heard learned counsel for the rival parties. It is evident from the material on record in the present case that, the stated claim of the appellant was that the victim was travelling in the aforesaid train when the 'untoward incident' occurred, but the fact that the body of the victim was found in an injured condition lying on railway track at 6.58 hrs. while the train in which he was claimed to have been travelling arrived at the spot more than two hours later, completely falsified the claim made on behalf of the appellants. It cannot be said that merely because railway ticket was found with the victim and he was found in an injured condition on railway track itself would be sufficient to prove that 'untoward incident' as defined under Section 123(C)(2) of the Act had taken place. The evidence and material brought on record on behalf of the respondent, sufficiently demonstrated that the claim made on behalf of the appellants was not supported.

10. In view of the above, it cannot be said that Tribunal has committed any error in dismissing the claim application filed by the appellant.

11. Accordingly, the appeal is dismissed. No order as to costs.

JUDGE

KOLHE