

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

FIRST APPEAL NO. 119/2019.

1.Manohar s/o Eswar Basharkar,
Aged 40 years, occupation – Labourer,

2.Smt. Sharda w/o Manohar Basharkar,
Aged 34 years, Occupation – Household,

Both residents of Chakjatepar (Vill),
Taluka Chimur, P.O. Doma,
District Chandrapur.

... **APPELLANTS.**

VERSUS

Union of India,
through General Manager,
Central Railway, C.S.T.,
Mumbai – 400 001.

... **RESPONDENT.**

Shri Vilas Deshpande, Advocate for Appellants.
Shri Z. Shekhari, Advocate h/f. Shri R.S. Agrawal,
Advocate for the Respondent.

CORAM : VINAY JOSHI, J.

CLOSED FOR JUDGMENT ON : 04.12.2019.
JUDGMENT PRONOUNCED ON : 07.02.2020.

ORAL JUDGMENT :**Admit.**

Considering the controversy involved in the matter, and by consent of learned Counsel appearing for the parties, First Appeal is taken up for final hearing.

2. The appellants filed claim for compensation before the Railway Claims Tribunal, Nagpur for death of Roshan in an untoward incident on 29.04.2019. It is the case of appellants that the deceased Roshan was engaged in labour work. He was proceeding by Navjivan Express and due to sudden jolt and jerk of the train, he fell down resulting into his death. Appellants received a telephonic message from Railway Police Kazipeth (A.P.) about the occurrence. Appellants rushed to MGM Hospital, Warangal and identified the body of deceased Roshan. Appellants learnt from co-passenger Shri Shinde, that the deceased Roshan boarded Navjivan Express at Chandrapur along with three others and had a journey ticket No. 55339515 for proceeding to Katpadi for labour work.

3. Respondent – Railway Department contested the claim by filing written statement. It has disputed that the death of Roshan was an ‘untoward incident’ as defined under Section 123[c] of the Railways Act, 1989. It is also denied that Roshan was a bonafide

passenger. It is contended that the driver of R.C.No.124 informed that a dead body of unknown person was lying on the railway track. Neither train ticket was found on the person of the dead body, nor there was a report of accidental fall.

4. The Railway Claims Tribunal considered the evidence and disallowed the claim. It is held that appellants failed on both the counts i.e. Roshan died due to 'untoward incident' and he was a bonafide passenger. The learned counsel for appellants would submit that the Claims Tribunal miserably failed to appreciate the evidence in its proper perspective. According to him though final report and journey ticket were filed on record, the Tribunal by ignoring the same rejected the claim.

5. Appellants/claimants have filed affidavit in lieu of chief examination. He has stated that the deceased was traveling with a valid railway ticket which is in the custody of Bissi Police Station, hence, he has produced photocopy of the journey ticket. He has also stated that the police had informed him that his son Roshan while traveling from Chandrapur to Katpadi by Navjivan Express fell down and died. So far as the aspect of bona fide passenger is concerned, appellants have produced photocopy of the railway ticket. The learned Tribunal observed that though photocopy of the ticket is

placed on record, the same is not duly exhibited, and therefore, it was not considered. Moreover, the Tribunal has relied on the appellants admission that, Roshan was not possessing any journey ticket.

6. It is a matter of record that photocopy of the journey ticker bearing No.55339515 has been produced on record. True, the document is not exhibited, but, exhibition of document is an administrative act. The learned counsel for appellants submitted that non-exhibition of documents has nothing to do with the proof of the document. In this regard he has relied on a reported case of **Bama Kathari Patil .vrs. Rohidas Arjun Madavi and another [2004 (2) Mh.L.J. 752]**. Undoubtedly exhibiting of document is an administrative act. The documents are exhibited and marked towards administrative convenience for reading the document in evidence.

7. Appellants have pleaded that original ticket was filed in criminal case, meaning thereby they have sufficiently explained the existence of the original. The said aspect is not denied by the respondent. Pertinent to note that appellant have produced a certified copy of the journey ticket which was filed in criminal

prosecution bearing Regular Criminal Case No. 131/2009 in the Court of Judicial Magistrate First Class, Chimur. It needs reference that appellants have lodged a police report against some accused about alleged kidnapping of their son Roshan on 27.04.2009. In the said proceedings, appellants have handed over original journey ticker to the concerned police of which certified copy is produced. Therefore, it can be read in evidence.

8. Respondent has relied on the investigation report i.e. D.R.M. report dated 07.06.2011, so also inspection report dated 19.05.2011, filed by the Inspector of Railway Police Force. The inquiry report indicates that the extract of ticket issuing particulars obtained from Booking Office, Chandrapur, Central Railway does not tally with the concerned ticket. However, there are no details of the extract report so as to discard the copy of railway ticket. Perusal of the journey ticket indicates that it was issued on 28.04.2009 at 11.33 p.m. for four persons to travel from Chandrapur to Katpadi. The alleged incident occurred on 29.04.2009. There is no reason to discard the journey ticket in absence of convincing rebuttal evidence.

9. Besides that the law in this regard is fairly well settled

by the Hon'ble Supreme Court in case of **Union of India .vrs. Rina Devi [(2019) 3 SCC 572]**, wherein it is observed that on filing of claimants affidavit, the burden would shift on railway to disprove the petitioner's claim. The relevant portion of the said judgment can be profitably reproduced as below :

“29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

10. Herein, appellants have filed an affidavit stating about producing journey ticket in some criminal proceeding. Mere non examination of co-passenger is not enough to accord benefit to the

respondent. In the circumstances, reasonably it can be held that the deceased Roshan was a bonafide passenger.

11. Respondent also disputed that the death of Roshan is an 'untoward incident'. The Tribunal observed that appellants have not filed final report of investigation in pursuance of FIR. Admittedly, on 29.04.2009, FIR 113/2009 came to be lodged. The learned Counsel for the appellant has invited my attention towards the final report (A 46), which is very much on record. The final report filed in the Court of Executive Magistrate indicates that Roshan met with an accidental death as he fell down from running Navjivan Express train. The said report clearly supports the appellants case. Moreover, the autopsy report shows cause of death as head injury with ante-mortem fracture of cervical spinal column at cervical vertebra. The said cause is consistent with accidental fall from a running train.

12. Section 124-A of the Railways Act provides for grant of compensation on account of untoward incident. It lays down a strict liability or no fault liability in case of railway accident. The accident in which Roshan expired is clearly not covered by the proviso to Section 124-A of the Act. The accident did not occurred because of

any of the reasons mentioned in Clause [a] to [e] of the proviso, therefore, the case is clearly covered by the main body of Section 124-A of the Act.

13. The learned counsel for appellants submitted that the provisions of Railway Act as regards to compensation shall be liberally interpreted. In this regard, he has relied on the reported case of **Union of India .vrs. Prabhakaran Vijaya Kumar and others (2008 ACJ 1895)**. In said case, it is expressed that the provisions for Compensation under Railways Act is a beneficial piece of legislation and it should receive a liberal and wider interpretation and not a narrow and technical one. Certainly a meaningful reading has to be made of the provisions of the Act, while assessing the evidence.

14. As per the final report, accepted occurred due to fall from running train on 29.04.2009. Investigation carried out by the DRM was subsequent to the filing of the claim and therefore, this aspect also needs consideration. The learned Tribunal was very much swayed by the technicalities. Appellants have discharged the initial burden of proving that Roshan was a bona fide passenger and his death amounts to an untoward incident within the meaning of Section 124-A of the Act. The Tribunal erred in appreciating evidence and legal effect, hence, the impugned judgment would not

sustain in the eyes of law.

15. The concerned accident took place on 29.04.2009. The statutory compensation has to be awarded in terms of the Rules framed by the Central Government. The Rules provide for a schedule prescribing the amount of compensation payable in respect of death and injuries. The said Rules has been amended w.e.f. 01.01.2017, by notification dated 22.12.2016, substituting the Schedule by higher amount of compensation. The Hon'ble Supreme Court in case of Rina Devi (supra), has occasion to consider the issue of award of interest in cases of compensation. It is held that the compensation will be payable as applicable on the date of accident with interest, as may be considered reasonable from time to time. If the amount so calculated is less then the amount prescribed as on the date of award of the Tribunal, the claimant would be entitled to higher of the two amounts. Initially the Scheduled provided compensation of Rs. 4 lakhs for death claim, which has now been substituted to the extent of Rs.8 lakhs, which is higher one.

16. In view of above, First Appeal is allowed. The impugned judgment passed by the Railway Claims Tribunal, Nagpur in Claim Application No. OA(IIu)/NGP/2009/173, dated 21.08.2014 is

quashed and set aside. The application for grant of statutory compensation filed by appellants is allowed. Respondent Railway is directed to pay statutory compensation of Rs. 8 lakhs in equal share to both the applicants/appellants. Respondent shall deposit the amount with the Railway Claims Tribunal, Nagpur within a period of three months from the date of this order, failing which the amount of award will carry interest @ 8% from the date of default till its realization. No costs.

JUDGE

Rqd.