

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1205 OF 2017**

1) Kuwarbai Lakha Sarvaiya	]	
Age: 65 years,	]	
(Wife of the deceased)	]	
2) Rajesh Lakha Sarvaiya	]	
Age: 40 years,	]	
(Son of deceased)	]	
Both R/o. 1st Wadi, Opp. Azad	]	
Timber Mart, 90 Feet Road,	]	
Dharavi Kumbharwada, Mumbai.	]	Appellants
Vs.		
Union of India,	]	
Through General Manager,	]	
Central Railway, CST Mumbai.	]	Respondent

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Mr. Vasant N. More, for Appellant.

Mr. T. J. Pandian, for Respondent.

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CORAM	:	PRITHVIRAJ K. CHAVAN, J.
RESERVED ON	:	21st DECEMBER, 2021.
PRONOUNCED ON	:	23rd DECEMBER, 2021.

JUDGMENT:

1. This is an appeal challenging the judgment of dismissal of the claim application bearing No. OA /IIu/2011/0371 by the Railway Claims Tribunal, Mumbai Bench dated 21st October, 2016.
2. The facts are as follows;
3. On 15th March, 2011, deceased Lakha Jadhav Sarvaiya (hereinafter referred to as "deceased Lakha") along with his relative Chhagan Keshav Wala boarded a local train at Kings Circle station at 7.45 a.m. They had purchased two railway tickets for their respective destinations namely Mira Road and Borivali. When Chhagan Keshav Wala alighted at Bandra for catching further local train for Borivali, he could not see deceased Lakha. It is the contention of the appellants who are widow and son of deceased Lakha that when the local train reached between K.m. No.11/14-15 between Kings Circle and Mahim Station, deceased Lakha fell down from the running local train due to pushing from overcrowded compartment. He fell down resulting into serious injuries and subsequently died on the spot. It is contended that the journey ticket which was in possession of deceased Lakha lost during the incident.
4. Government Railway Police, Wadala Railway Station reached the spot and took the dead body to Sion Hospital for conducting it's postmortem. Assistant Sub Inspector Ramesh Malhari Shendge GRP, Wadala reported the matter on the basis of which A.D.R

No.48 of 2011 came to be registered at Wadala Railway Police Station. An inquest *panchanama* was drawn at Sion Hospital in the presence of two *panch* witnesses namely Durgaram Ramnath Ram and Santosh Bhimrao Bhandari. Identity of deceased Lakha was not ascertained till then. Subsequently, the appellants came to know about the death of deceased Lakha and, therefore, body was handed over to the family members for performing last rituals.

5. The appellants claimed that deceased Lakha was a *bona fide* passenger of the local train with a valid traveling ticket. It was an untoward incident as defined in section 123 (c) (2) of the Railways Act, 1989 (for short "Railways Act") and, therefore, they being legal representatives and dependent of deceased Lakha, claimed compensation under section 124-A of the Railways Act.

6. In the written statement, it was the contention of the Railways that after investigation it revealed that deceased Lakha was hit by some local train while crossing railway lines at Km No.11/14-15. Since death had occurred while crossing railway tracks, it was an offence punishable under section 137 and 147 of the Railways Act.

7. As such, it is the contention of the respondent-Railways that case of deceased Lakha does not fall within the meaning of an 'untoward incident' as defined in section 123 (c) (2) of the Railways Act. A report under section 174 of the Code of Criminal Procedure was filed.

8. On the basis of the pleadings, the Tribunal framed necessary issues. In support of appellants' claim, Rajesh Lakha Sarvaiya, son of deceased Lakha had sworn an affidavit, *inter alia*, tendered certified true copy of Memo of Station Master, Certified true copy of Inquest *panchanama*, Certified true copy of cause of death certificate and certified true copy of statement of co-traveller.

9. The learned Member, having considered the evidence on record, reasoned that the appellants failed to establish that deceased Lakha was, in fact, Lakha Jadhav Sarvaiya, father of deponent and husband of Kuwarbai, *inter alia*, observed that deceased Lakha was not a *bona fide* passenger with valid ticket and, therefore, declined to accept the appellant's contention. For the said reason, claim application came to be dismissed.

10. I heard Mr. More, learned Counsel for the appellant and Mr. Pandian, learned Counsel for the respondent-Railway.

11. At the outset, the office note signed by Senior Divisional Security Commissioner/RPF/CSTM on the subject of claim on account of death of deceased Lakha indicates that from the report of Inspector of RPF as well as GRP, it was noticed that no railway ticket or pass was found on the person of deceased Lakha during inquest *panchanama*. *Prima facie*, it was found that he was not a *bona fide* passenger. It was further noticed that his presence in railway yard was unauthorized and that he had been knocked down by an unknown local train while crossing the railway track and it is an offence under section 137 and 147 of the Railways Act.

12. Secondly, communication by Inspector of R.P.F Wadala Road to Senior Divisional Security Commissioner dated 21st July, 2011 reveals that applicant Kuwarbai had stated before him during inquiry that her husband deceased Lakha left the house on 15th March, 2011 in the morning to go to his relative at Mira Road. While crossing railway track between Mahim and Kings Circle Railway Station, he was hit by some unknown local train and died in the said accident. These two documents *prima facie* indicate that deceased Lakha was not a *bona fide* passenger, particularly in view of the fact that during inquest *panchanama*, no valid ticket was found on his person.

13. The most important document on record is the inquest *panchanama* drawn on the very day at Sion Hospital in the presence of two *panchas* namely Durgaram Ramnath Ram and Santosh Bhimrao Bhandari. Apart from the injuries noted on the person of deceased Lakha who appears to have been hit by some unknown local train, there was yellow coloured shirt and lungi. Apart from description of the injuries over his forehead and hand, *panchanama* also reveals that when his private part was examined, his penis was found to be circumcised and, therefore, they noticed that it must be a dead body of a Muslim. This was quite obvious because except the affidavit of Rajesh Lakha Jadhav Sarvaiya, there is absolutely no evidence, much less, acceptable and believable evidence to establish the identity of deceased Lakha as father of Rajesh and husband of Kuwarbai.

14. Perusal of the postmortem report, especially column No.15 supports the recitals of the inquest *panchanama*, in the sense , column No.15 of autopsy report deals with the injuries to external genitals. It appears that Medical Officer who conducted autopsy started writing something viz; "*as per described in col*" which got scored and it was written as "*Nil*". This also creates a doubt as to what was the reason for the autopsy surgeon not to mention about the injuries to external genitals. Whether the autopsy surgeon wanted to suppress that the penis was circumcised?

15. Second glaring aspect is that body of deceased Lakha was bought by Police Naik No.2294. Column No.3 of postmortem report indicates "By whom identified"? However, that column is kept blank. It is not the contention of the appellants that Police Naik No.2294 was acquainted with deceased Lakha. However, surprisingly on the top of the postmortem report, Medical Officer has written name of deceased as "*Lakhaji Jadhav Sarvaiyya*". It is mysterious as to how Doctor came to know about name of deceased Lakha when the body was not at all identified at the time of conducting postmortem on 16th March, 2011 at 10.45 a.m. This aspect indeed creates a reasonable doubt as regards identity of deceased Lakha.

16. Admittedly, there was no eye witness to the incident. In his affidavit, Rajesh, though testified that his father fell down from a train between Kings Circle and Mira Road, except his bare words, there is nothing on record nor he was an eye witness who noticed his father either purchasing the ticket or falling from the train.

17. There is one more important aspect of this case. To substantiate the fact that the appellants are the legal heirs of deceased Lakha, copy of the ration card has been filed. It's bare perusal reveals that name of Lakha has been scored whose age has been shown as 25 years and age of Kuwarbai is shown as 20 years. It is difficult to ascertain as to who had issued this ration card and on what date? Apart from the name of Kuwarbai, there are names of Ramesh, Rajesh and Ritaben who are not the applicants before the Tribunal. Even otherwise, this document is not sufficient to hold that it was the same deceased Lakha who had died in the train accident. The appellants could have tendered, at least voters identity card, Aadhar Card or any other document with photograph to establish identity of deceased Lakha. In the absence of any such evidence, it is difficult to believe that deceased Lakha was father of Rajesh and husband of Kuwarbai. If the appellants can file photostat copy of identity card of Kuwarbai issued by Election Commission of India and copy of Aadhar Card of Rajesh, why they could not file any such documentary evidence *qua* deceased Lakha?

18. Turning to the affidavit of Chhagan Keshav Wala, who claimed to be a relative of deceased Lakha and was travelling with him on 15th March, 2011, deposed that both of them purchased railway ticket for the journey and boarded the local train in different compartments. When he alighted at Bandra to change the train for going to Borivali, he could not notice deceased Lakha. On 16th March, 2011, he came to know that deceased Lakha was missing. During inquiry, they came to know that deceased Lakha

fell down from the local train.

19. In his cross-examination, Chagan admits that he did not see deceased Lakha purchasing ticket. This admission gives a fatal blow to the contention of the appellants that deceased had purchased a ticket on that day.

20. On behalf of Railways, Ramesh Shendge, A.S.I was examined. He testified that at the relevant time, he was posted at Wadala Police Station. He prepared the inquest *panchanama* at Sion Hospital on 15th March, 2011 which is at **Exhibit RW-2**. He testified that in his memo, he had mentioned that deceased Lakha was hit by train while he was crossing the track. Admittedly, he was not an eye witness but his evidence on oath remained unchallenged because his cross was declined by the learned Counsel for the appellant.

21. The learned Member in the impugned judgment has, therefore, rightly observed all the aforesaid facts while dismissing the application seeking compensation.

22. Thus, it can be safely concluded that the appellants failed to establish identity of deceased Lakha as father of Rajesh and husband of Kuwarbai. *Prima facie*, it appears that deceased Lakha was not a *bona fide* passenger with valid ticket but was crossing railway tracks during which he was hit by some unknown local train resulting into his death.

23. At this stage, Mr. Pandian, learned Counsel for the respondent placed reliance on a judgment of the Hon'ble Supreme Court in case **Kamrunnissa Vs. Union of India, (2019) 12 Supreme Court Cases 391** on the point of section 124-A of the Railways Act. In the said judgment, the Hon'ble Supreme Court held that the applicant had failed to prove that deceased was a *bona fide* passenger who had purchased ticket and was in the process of boarding train. However, evidence on record and the F.I.R reveal that deceased was seen going from direction of Bangalore and while crossing railway track, he failed to notice ongoing train and was overrun by it. It is, therefore, held that there was no justification in entertaining a challenge to the orders passed by Railway Claim Tribunal as also by the High Court rejecting the claim of compensation.

24. Somewhat similar are the facts in the case at hand. Here, not only the appellants failed to establish that it was an untoward incident but also could not establish identity of deceased Lakha as head of their family. Evidence is quite short to construe that the appellants were dependents of deceased Lakha.

25. At this stage, Mr. More has placed reliance on a judgment of Delhi High Court in case of **Moola Ram Vs. Union of India, 2014 ACJ 1975**. In this case, it was observed by Delhi High Court that minor discrepancies in the testimony of eye witness who travelled in the same train with deceased cannot be discarded by adopting a hyper technical approach. However, this ratio would not be of any help to the appellants for the simple reason that apart from minor

discrepancies the very fact that the appellants were dependents of deceased Lakha has not been established and, therefore, ratio would not be of any assistance to the appellants.

26. Consequently, I do not find any merit in the appeal. Hence, it stands dismissed.

[PRITHVIRAJ K. CHAVAN, J.]