

sShailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.723 OF 2018**

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|----|-------------------------------------|---|-------------------|
| 1. | Smt. Jayashree Suresh Gharat |] | |
| | Age 49 years, Occ: Housewife, |] | |
| 2. | Shri Haresh Suresh Gharat |] | |
| | Age 27 years, Occ: Service, |] | |
| 3. | Shri Krishna Suresh Gharat |] | |
| | Age 26 years, Occ: Service, |] | |
| 4. | Smt. Janabai Baburao Gharat |] | |
| | Age 72 years, Occ. Housewife, |] | |
| | R/o. Indira Nagar, Zopadpatti No.3, |] | |
| | behind Mamta Hotel, Mulund (W), |] | |
| | Mumbai – 400 080. |] | Appellants |
| | Vs. | | |
| | Union of India, |] | |
| | Through General Manager, |] | |
| | Central Railway, CSTM Mumbai. |] | Respondent |

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Mr. Vasant More, for Appellants.

Mr. T. J. Pandian a/w Mr. T.C. Subramanian, for Respondent.

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**CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 11th MARCH, 2021.
PRONOUNCED ON : 23rd MARCH, 2021.**

JUDGMENT:

1. This appeal takes an exception to the judgment and order passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai on 28th February, 2018 in Claim Application No. OA(II u) /MCC/1133 of 2011 by which the Tribunal has dismissed the Claim Application filed by the appellants who are the dependants of one Suresh Gharat (for short 'deceased').

2. Briefly stated the facts are as follows;

On 29th September, 2011, one Suresh Gharat aged about 47 years, a painter by profession, was travelling by an unknown local train from C.S.T, Mumbai to Mulund on a strength of a valid second class railway ticket. When the overcrowded train reached between Nahur and Mulund Railway station near K.M. No.29/4-5, due to a sudden push by the passengers in the compartment, he fell down from the running train and died instantaneously due to serious head injury. He left behind his widow, applicant No.1- Jayashree and sons, applicants No.2 and 3 viz; Haresh and Krishna and mother, Janabai as dependants.

3. A claim application was filed before the Railway Claims Tribunal seeking compensation. The Tribunal, after going through the evidence of A.W.1-Jayashree on affidavit and having considered the record of the respondent, arrived at a conclusion that the deceased was not a *bona fide* passenger as he did not possess a valid railway ticket. Rather, he was a trespasser who

was, in fact, knocked down by an unknown local train while crossing the railway track. In short, it is held that the deceased died due to his own negligence. As it was an offence, it does not cover within the term 'untoward incident' as defined in section 123 (c) (2) of the Railways Act, 1989 (for short 'Railways Act'). The Tribunal has, therefore, dismissed the application.

4. Dissatisfied with the impugned judgment, the appellants have approached this Court.

5. I heard Mr. More, learned Counsel for the appellants and Mr. Pandian, learned standing Counsel for the respondent.

6. In short, Mr. More would argue that the Tribunal has committed a grave error in disbelieving the evidence of A.W.1-Jayashree which remained un-controverted that the deceased fell down of a running train due to push by overcrowded passengers in the compartment between Mulund and Nahur Railway Station. He would argue that the finding of the Tribunal that the deceased was not a *bona fide* passenger is also erroneous in the sense that there is no evidence adduced by the respondent to indicate that they had either searched the surrounding area of the spot of the incident or tried to find out as to whether the ticket perhaps could have been lying somewhere near the spot. There was no eye witness indicating that the deceased was crossing the track. Neither the motorman nor any of the Police or Panch witnesses have been examined. It is also submitted that evidence of the Station Superintendent is hearsay.

7. The learned Counsel, therefore, submitted that the impugned judgment and order be set aside as it is against the settled principles of law.

8. Mr. Pandian, learned standing Counsel for the respondent, however, has supported the impugned judgment by contending that the Station Superintendent is well conversant with the area who had testified that spot of the accident has normally been witnessed as a point where people frequently cross the railway track.

9. Mr. Pandian has also drawn my attention to the fact that the deceased was a resident of Indira Nagar Zopadpatti which is abutting to Mulund Railway Station. Therefore, possibility of the deceased crossing the track at the relevant time cannot be totally ruled out.

10. Learned Standing Counsel thus, has supported the impugned judgment and order by stating that there is no reason to set aside the impugned judgment and award, *inter alia*, praying for dismissal of the appeal.

11. Affidavit in lieu of examination-in-chief of A.W.1-Jayashree, in sum and substance, indicates that on 29th September, 2011, the deceased was travelling with his friend namely Ashok Mhatre from C.S.T to Mulund by a local train in a second class compartment holding a second class railway ticket. However, he accidentally fell down from the running train as he was pushed by the

overcrowded passengers between Nahur and Mulund station. He sustained serious injuries and consequently died. She further deposed that her husband (deceased) was a *bona fide* passenger, however, the ticket lost during the untoward incident. She has tendered certified copies of memo of station Superintendent, inquest panchanama, photostat copy of the death certificate and postmortem report.

12. A.W-1-Jayashree in her cross examination denied that her residence is near the railway track. There is no suggestion given to this witness that her husband was travelling without ticket. Even, there is no suggestion that he was not travelling with his friend namely Ashok Mhatre. There is no suggestion in the cross that the deceased was crossing railway track and in that process, he was hit by a running train. The evidence of this witness on oath, therefore, remained un-rebutted. Report of the Station Superintendent reveals that information was given by some unknown passenger about a person falling on the railway track with a head injury. Admittedly, there was no eye witness.

13. One Rajesh Prasad, working as Deputy Station Superintendent at Kalyan has also sworn an affidavit. The sum and substance of his evidence on affidavit indicates that on 29th September, 2011, he was working at Mulund Railway Station as a Superintendent from 19.00 hours to 7.30 hours. He received an information from an unknown person at about 22.30 hours about a person trespassing between Nahur and Mulund Railway Station. When he reached the spot of the incident along with *Hamal* and

on duty G.R.P he noticed a male lying near down line track at K.M. No.29/4-5 with head injury, head smashed and skull broken. He immediately issued a memo to the on duty GRP, A.S.I Gaikwad who took the body of the said unknown person for medical treatment at Rajawadi Hospital in an ambulance.

14. In the course of cross-examination by the learned Counsel for the appellants, Rajesh Prasad admits that he was neither informed by the Motorman nor the Guard of any local train. He himself had not witnessed the incident.

15. In view of the aforesaid evidence, it is quite clear that neither this witness had witnessed the incident nor there was any eye witness. It is, therefore, difficult to accept the respondent's case that the deceased was hit by a running train while crossing the track. In the inquest panchanama, it is stated that skull of the deceased was broken from the forehead to head and his brain had come out.

16. The Tribunal had observed that there was no reason to disbelieve the memo of station superintendent dated 29th September, 2011 wherein it has been observed that the deceased was hit by an unknown train between Nahur and Mulund Railway Station which is perverse and against the settled legal position. It has been further observed that the Police and Pancha witnesses have opined that the deceased might have been knocked down by an unknown local train. It is hard to accept that opinion of the Panch witnesses to inquest panchanama and the Police Personnel

could be considered while concluding that it was a death while crossing the railway track. These observations need to be set aside, for, neither there is an expert opinion on record nor the Tribunal could have accepted the contents of the inquest panchanama to construe that it was not an untoward incident as the respondent had failed to discharge its burden under section 123 (c) (2) of the Railways Act. Since the provision for compensation in Railway's Act is a beneficial piece of Legislation, it should receive liberal and wider interpretation and not narrow and technical one.

17. So far as the aspect of *bona fide* passenger is concerned, the respondent has failed to discharge its burden as to whether while drawing spot panchanama due care was taken to find out, if at all, there was any ticket lying at the scene of occurrence as the possibility of misplacing the ticket in that process cannot be ruled out.

18. At this stage, it would be apposite to refer to the judgment in the case of **Union of India Vs. Rina Devi, 2018 ACJ 1441**. In paragraph 16.1 and 16.2, the Hon'ble Supreme Court on the point of principle of 'strict liability' and concept of 'self inflicted injury' observed thus;

"16.1 From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and Section 124A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an 'untoward incident'. Only exceptions are those provided under proviso to Section 124-A. In Prabhakaran Vijaya Kumar, 2008 ACJ, 1895 (SC), it was held that section 124-A lays down strict liability or no fault liability in case of railway accidents. Where

principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela, 2010 ACJ 2453 (SC)”.

16.2 Coming to the proviso to Section 124-A to the effect that no compensation is payable if passenger dies or suffers injury due to the situations mentioned therein, there is no difficulty as regards suicide or attempted suicide in which case no compensation may be payable. Conflict of opinions in High Courts has arisen on understanding the expression ‘self inflicted injury’ in the proviso. In some decisions it has been held that injury or death because of negligence of the victim was at par with self inflicted injury. We may refer to the decisions of High Courts of Kerala in Joseph PT., 2014 ACJ 559 (Kerala), Bombay in Pushpa, 2018 ACJ 1296 (Bombay) and Delhi in Shayam Narayan, 2018 ACJ 702 (Delhi), on this point”.

19. There was no reason for the Tribunal to observe that while crossing the railway track, deceased met with an accident. Had it been an act of crossing the railway track, it would have been a criminal act, however, there is no F.I.R.

20. In view of the judgment in the case of **Union of India Vs. Rina Devi** (supra), Section 124-A of the Railways Act lays down ‘strict liability’ or ‘no fault liability’ in case of railway accident. The respondent has not been able to bring it’s case under clause (c) of provision to Section 124-A of the Railways Act and, therefore, it is bound to compensate the dependants of the deceased who suffered death in an untoward incident.

21. Thus, in the aforesaid background, the appeal is allowed with costs of Rs.3,000/-.

22. The impugned judgment and order dated 28th February, 2018 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai in Claim Application No. OA (Ilu).MCC/1133 of 2011 is quashed and set aside.

23. The respondent–Railway shall deposit compensation of Rs. 8,00,000/- (Rupees Eight Lakhs only) in the Railway Claims Tribunal Mumbai within a period of six weeks from today.

24. There shall be equal apportionment of the amount of compensation amongst the appellants.

25. If the respondent fails to deposit the compensation within six weeks, future interest at the rate of 9% p.a. shall have to be paid on the amount of compensation, till the entire amount is realised.

26. The Record and Proceedings be remitted to the Railway Claims Tribunal, Mumbai.

[PRITHVIRAJ K. CHAVAN, J.]