

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 470 OF 2017
WITH
CIVIL APPLICATION NO. 3382 OF 2009
IN
FIRST APPEAL NO. 470 OF 2017**

Union of India,
represented through,
The General manager, Central Railway,
Mumbai CST. .. Appellant

Vs.

1. Santoshkumar Ganpatsingh Rathod
W/o. Ganpatsingh Arjunsingh Rathod,
2. Miss. Kajal Ganpatsingh Rathod
aged 12 yrs. D/o Ganpatsingh A. Rathod
3. Mast. Pramod Ganpatsingh Rathod
S/o Ganpatsingh Arjunsingh Rathod

All R/at Village & Post. Sinla,
via Marwar Junction, Dist. Pali,
State – Rajasthan .. Respondents

.....

Mr. T.J. Pandian a/w Mr. T.C. Subramaniam for the appellant
Mr. Mohan Rao for the respondents

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 22nd DECEMBER, 2021.

PRONOUNCED ON : 23rd DECEMBER, 2021.

**UDAY
SHIVAJI
JAGTAP**
Digitally signed
by UDAY
SHIVAJI JAGTAP
Date:
2021.12.23
15:40:54 +0530

JUDGMENT :-

1. This is an appeal by the Union of India, through General Manager, Central Railway, Mumbai CST impugning the judgment of the Railway Claims Tribunal dated 16.03.2009 by which the learned Vice Chairman (Judicial) allowed the application of the original applicants by awarding compensation in the sum of Rs. 4 lakhs with interest accrued @ 9% p.a.
2. The facts in brief are as under :-
3. The application under Section 16 of the Railway Claims Tribunal Act came to be filed on account of death of one Ganpatsingh Arjunsingh Rathod by his legal representatives claiming to be his dependents. Ganpatsingh A. Rathod died as a result of injuries sustained by him in an untoward incident.
4. Deceased Ganpatsingh A. Rathod was travelling in a local train from Ghatkopar to Kandivali via Dadar on 04.09.2002 While travelling in the train, he accidentally fell down at Sion Railway Station. The claimants contend that deceased Ganpatsingh A. Rathod had a monthly season ticket but the same was lost during the course of the accident.
5. While contesting the claim, the respondent – Railway Administration filed a written statement and denied all the

averments. It is specifically contended that the alleged accident dated 04.09.2002 was not an untoward incident and as such do not fall within the ambit of Section 123(c) of the Railways Act. It is specifically contended by the Railway Administration that the death of the deceased occurred due to his own negligence as the body of the deceased was found in the gutter at K.M. No.10/11. The Railway Administration has also denied that the deceased was a *bona fide* passenger.

6. The learned Vice Chairman framed necessary issues and had gone through the evidence of applicant no.1 – Smt. Santoshkumar Ganpatsingh Rathod. He had also perused the documents placed on record on behalf of the claimants. The respondent – Railway Administration did not chose to adduce any evidence.

7. It is apparent from the record that the Railway Administration had not seriously challenged the accidental death of deceased Ganpatsingh A. Rathod. The Post Mortem report at **Exh.A-5** and the police report at **Exh.A-3** if read conjointly, would reveal that the deceased had fallen down from the train. Even if it is the contention of the respondent - Railway that the deceased was found lying in a gutter, the Post Mortem report reveals that the cause of death was due to intracranial haemorrhage with fracture of skull. No evidence has been adduced by the Railway Administration to establish that the death of the deceased was either due to knock down by the Railway or was run-

over by the train. In the absence of any such material to that effect, the learned Vice Chairman has rightly arrived at a conclusion that the deceased must have fallen down from the train, resulting into intracranial haemorrhage. Even AW-1 Shelsingh categorically stated that the deceased boarded the train which he had witnessed. The Railway Administration could not rebut the evidence of AW-1 Shelsingh.

8. As regards the deceased being *bona fide* passenger, it is the contention of the claimants that the deceased was holding a monthly valid season pass but the same was lost during the course of the accident. Considering the fact that the deceased was found lying in the gutter, possibility of misplacing the monthly season pass in the said gutter cannot be ruled out. It would be unrealistic to accept that the authorities conducting the inquest panchanama would, on their own, search for the belongings of the deceased lying in the gutter. It has been rightly submitted on behalf of the claimants that it was the Railway Administration to prove that the deceased was travelling without ticket. Admittedly, the said burden was not discharged and, therefore, it will have to be presumed that the deceased was a *bona fide* passenger with valid season pass.

9. As it has been established that the deceased was a *bona fide* passenger and had died due to fall from the train, the incident falls within the definition of Section 123(a) of the Railways Act. It was an 'untoward incident' within the

meaning of Section 123(c)(2) of the Railways Act.

10. Section 124A of the Railways Act is extracted below :-

“124A. Compensation on account of untoward incident – *When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:*

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to –

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation – For the purpose of this section, “passenger” includes –

- (i) a railway servant on duty; and*

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

11. This section lays down strict liability or no fault liability and hence, if a case comes within the purview of Section 124A, it is wholly irrelevant as to who was at fault. It is quite apparent that the exceptions carved out in the aforesaid Section from (a) to (e) wherein under those contingencies, no compensation is to be payable under Section 124A of the Railways Act. The respondent – Railway authorities failed to establish that the deceased died due to his own act and, therefore, the death of the deceased was indeed an ‘untoward incident’ which had occurred while he was travelling in the train on the fateful day, as a *bona fide* passenger with a valid season pass. The present case is clearly covered by Section 124A of the Railways Act.
12. The respondent no.1 – claimant is the wife of the deceased and respondent nos. 2 and 3 are the children of the deceased. This fact has not been seriously challenged by the Railway Administration. As such, the respondents have proved that they were dependents of deceased Ganpatsingh A. Rathod.
13. To conclude, I do not find any merit in the appeal. Hence, it needs to be dismissed as the learned Vice Chairman (Judicial) has meticulously considered each and every aspect

while allowing the claim application.

14. Consequently, the appeal needs to be dismissed in the following terms :-

ORDER

- (i) The appeal is dismissed.
- (ii) The Registry is directed to disburse the amount of compensation deposited in this Court amongst respondents / claimants in equal proportion with accrued interest after due identification of the respondents.
- (iii) In view of the dismissal of the appeal, Civil Application No.3382 of 2009 does not survive and the same is also disposed of.

(PRITHVIRAJ K. CHAVAN, J.)