

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

FIRST APPEAL NO.644/2019

1. Kamaru Jama S/o Sahadat Husen
(Since died)
2. Chandtara Khatun w/o Kamaru Jama,
aged about 50 years,
Occupation – House wife
R/o 110, Fakhadinpur, Town/Village
Kanahar, Anchal – Badhariya,
Tah and District – Siwan (Bihar) **..APPELLANTS**

Versus

Union of India,
Through the General Manager,
Central Railway,
C.S.T.Mumbai. **..RESPONDENT**

....

Shri R.G.Bagul, Advocate for the appellants.
Shri N.P. Lambat, Advocate for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J
RESERVED ON : AUGUST 8, 2021.
PRONOUNCED ON : AUGUST 31, 2021

JUDGMENT :

1. This appeal is preferred under Section 23 of the Railway Claims Tribunal Act, 1987. The appellants are the original Claimants/dependents of deceased Murad Ali Kamaru Jama.

2. The appellants (original claimants) filed Claim Petition before the Railway Claims Tribunal, Nagpur, stating therein that deceased Murad Ali was travelling from Patna to Bangalore by Sanghamitra Express. He was going to Bangalore for doing labour work, as he was working under a Contractor. It is stated that on 11.4.2011, the deceased had purchased a general ticket for Patna to Bangalore and while travelling, near Nagpur Station, at Mangalwari Bazar Gate to Mecosabagh Bridge, the deceased fell down from the train due to jerk of the train and he sustained grievous injuries. He was admitted in Mayo Hospital, Nagpur but, on 13.4.2011 he died during treatment. It is stated that Dr. Ankur Sanghvir from Mayo Hospital gave treatment to the deceased. The appellants claimed rupees 4,00,000/- towards compensation with interest @ 9% per annum. It is further stated that the said ticket, which was purchased by the deceased, is in the custody of Jaripatka Police Station, Nagpur.

3. Alongwith the Claim Petition, the claimants-appellants filed the following documents:

- (i) Marg report;
- (ii) Spot Panchanama;
- (iii) Inquest Panchanama;

- (iv) P.M. Report;
- (v) Photocopy of the Ticket;
- (vi) Telegram and
- (vi) Death Certificate.

4. In response, the respondent - Union of India represented through the General Manager, Central Railway, C.S.T. Mumbai, in its written statement, denied the case of the appellants in toto and specifically pleaded that as per the statement of Duty Guard - Shri S.K. Datta and Conductor - L.C. Shende Train No.122296 on Sanghamitra Express on 12.4.2011, there was no report of chain pulling. It is further pleaded that even there was no untoward incident was reported during their duty hours. The respondent also took a defence that the deceased was not holding a railway ticket for Patna to Bangalore and he was not a *bona fide* passenger.

5. On the basis of pleadings of both parties, learned Tribunal framed the following issues:-

(i) *Whether the applicants prove that they are the dependents of the deceased within the meaning of Section 123 (b) of the Railways Act?*

(ii) Whether the Applicants prove that the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application?

(iii) Whether the Respondent Railway proves that deceased was not a bona fide passenger of the train on the relevant day, with valid journey ticket and the deceased was not involved in untoward incident?

(iv) To what order/relief?

6. The appellants examined appellant No. 1 in support of their claim while the respondent – Railway Administration preferred not to examine any witness.

7. The learned Tribunal, on the basis of oral and documentary evidence on record, rejected the claim of the appellants mainly on the ground that the appellants have failed to prove that the death of deceased had occurred as a result of an untoward incident as alleged in the claim petition and the respondent - Railway proved that the deceased was not a bonafide passenger of the train on the relevant day with a valid journey ticket. This judgment of the learned Tribunal is impugned in this appeal.

8. The learned counsel Shri R.G.Bagul appearing on behalf of the appellants vehemently urged that the learned Tribunal has erred in not considering the evidence of the appellants in its proper perspective and wrongly dismissed the claim. It is further urged that there is an ample evidence on record, which would go to show that the deceased while travelling from Patna to Bangalore by Sanghamitra train fell down from running train near Nagpur Railway station in between Mangalwari bazar gate to Mecosabagh Bridge and sustained grievous head injury and succumbed to his injuries during treatment on 13.4.2011 at Mayo Hospital, Nagpur.

9. It is further urged that the Railway Administration has not come with any evidence to show that deceased while crossing rail track was dashed by some train or jumped before any train and therefore he is not died in untoward incident.

10. The learned counsel further urged that the learned Tribunal failed to appreciate the police documents in its proper perspective and erred in not considering the fact that the valid railway ticket was recovered from the person of deceased and the ticket verification report is also its certified copy was submitted alongwith claim application and therefore, the deceased was the bona fide passenger of the train.

11. With regard to marg report and marg summary, learned counsel Shri Bagul took me through various documents and submitted that immediately after the death of deceased at Mayo Hospital, marg report was lodged at police station, Jaripatka and thereafter the investigation in the cause of death was carried on and marg summary was submitted after one year under Section 176 of the Code of Criminal Procedure. Therefore, it is submitted that there was no reason for the learned Tribunal to take a doubt on either on police or the appellants for manipulation of the record and directing police inquiry. In support of his submissions, learned counsel relied on the following judgments:

- (i) AIR 2018 SC 2362 (Union of India Vs. Rina Devi);
- (ii) AIR 2010 SC 3705 (Jameela and Ors. Vs. Union of India); and
- (iii) The Union of India Vs. Mangalabai w/o Manohar Darunde and others (unreported judgment of this Court) in First Appeal No.297 of 2013) dated 4.12.2013.

12. Per contra, the learned counsel Shri N.P. Lambat appearing on behalf of Railway Administration while supporting the impugned judgment and order, took me through various documents and record and submitted that a perusal of various police papers

would not reflect that the valid railway ticket was recovered from the person of the deceased and, therefore, the burden is on the appellants to prove that deceased was a bonafide passenger with the valid journey ticket.

13. The learned Counsel Shri Lambat further doubted on the late filing of marg summary and submitted that the learned Tribunal has rightly rejected the marg summary from consideration as there was no explanation forthcoming from the appellants as to how after one year the marg summary was submitted. The learned counsel urged to dismiss the appeal.

14. I have considered the submissions made by both parties and also perused record.

15. Before adverting to discuss the rival contentions and the evidence on record, a few provisions of Railways Act 1989 need to be noted.

16. Section 2 Clause 29 of the Railways Act, 1989 defines 'passenger' means: "A person travelling with a valid pass or ticket". Chapter XIII of the Act deals with liability of Railway Administration for death and injury to the passengers due to accident". Section 123 Clause (a) of the said Chapter defines 'accident' to mean an

accident of the nature described in Section 124 and Clause-c of Section 123 defines 'untoward incident' which means:

“(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts or a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.”

17. Section 124-A deals with providing compensation on account of untoward incident. It reads thus:

“124-A: 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 dependent 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 purposes 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”.

18. The Railway Claims Tribunal Act, 1987 provides for the establishment of Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents (or untoward incidents) and for matters connected therewith or incidental thereto.

19. This Act of 1987, which covers Chapter II, III and IV provides for establishment of Railway Claims Tribunal, its jurisdiction, powers and procedure to be followed. Chapter V deals with appeals and Chapter VI deals with miscellaneous provisions.

20. Section 18 of the Tribunal Act, 1987 provides that the Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure 1908, but shall be guided by the principles of natural justice and the Tribunal shall have powers to regulate its own procedure. Sub-section (2) of Section 18 mandates Tribunal to decide every application as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents, written representations and affidavits and after hearing such oral arguments as may be advanced.

21. Now, coming to the facts of present case, the appellant no.1, the father of the deceased examined himself and substantiated his case by producing on record railway ticket, marg report, crime details form, inquest panchanama, P.M. report, voter ID and ration card, which are marked as Exh.AW 1/1 to Exh. AW 1/8. This witness has been cross-examined, wherein he has stated that the police informed him about the incident and he has no personal knowledge. A perusal of journey ticket at Exh. AW1/1 would

reflect that this ticket is for the journey from Patna junction to Bangalore City dated 11.4.2011, time of the ticket 16.39 for Rs.313 bearing no.E99226270. Interestingly, the Railway Administration does not dispute the truthfulness of the ticket and the ticket verification report dated 7.4.2012 which was issued from East Central Railway, Danapur Division, Patna junction, would reflect that the aforesaid Ticket was issued from Patna Junction Booking office on 11.4.2020.

The record reveals that a Marg Report at Sr. No.39/2011 under Section 174 of the Code of Criminal Procedure was registered at Jaripatka Police Station, Nagpur, and thereafter marg enquiry as to the cause of death of the deceased was initiated which included conducting of inquest panchanama, spot panchanama, recovery of clothes of the deceased, recording of statements of witnesses, and other formalities. The record reveals that the police got clue about the parents of the deceased from one diary which was found from the clothes of the deceased. They informed the parents of the deceased and called them at Nagpur for identification of the dead body from the pictures and the clothes of the deceased. As by that time the body of the deceased was already cremated as unknown person.

22. Considering the aforesaid documents now the onus is

shifted on the respondent Railway to prove as to how the said ticket was not issued to the deceased. The learned Tribunal committed an error in not considering this ticket as valid ticket for journey undertaken by the deceased and rejected the claim of the appellants on a misplaced ground that the ticket was not recovered from the person of the deceased.

23. In addition to the above, the appellants in their pleadings and evidence has stated that the aforesaid ticket was issued to the deceased and he was a bonafide passenger. On the contrary, the Railway Administration has failed to prove that this ticket was not issued to deceased and he was not a bonafide passenger.

24. With regard to untoward incident, all the police papers even inspection report of the officer of the respondent would show that death of deceased was due to falling from the running train. Section 123 (c) of the Act, 1989 defines 'untoward incident' which includes the accidental falling of any passenger from train carrying passengers. With regard to untoward incident there is overwhelming evidence on record and further more the respondent has failed to lead any positive evidence in order to substantiate its contention that it was the criminal act or negligence of the deceased

for his death. Moreover, as per Section 124-A of the Act of 1989, it is not the requirement of law to prove negligence on the part of railway administration. What is required to be proved to claim compensation is that the deceased was bonafide passenger with valid railway ticket for travelling, by train carrying passengers at the relevant time and untoward incident occurred and the claimants are dependents of the passenger.

25. The learned Tribunal in the impugned judgment held that the appellants have failed to prove that the death of passenger had occurred on account of an untoward incident as contemplated under the Act.

26. The Coordinate Bench of this Court in the case of **United India Insurance Company Vs. Sindhubai w/o Kondiram Darwante and others** reported in **2010 (3) Mh.L.J.886**, in the similar fact and situation in paragraph 13 relied on various pronouncements of the Hon'ble Apex Court and held that in a beneficial and welfare statute we should adopt the construction which is in consonance with the object of the Act for the benefit of person the Act of was made.

27. A holistic consideration of all the police papers on

record would go to show that immediately after the death of the deceased in Mayo hospital during treatment a marg report was lodged at Sr. no.39/11 under Section 174 of the Code of Criminal Procedure at Police Station, Jaripatka. On the basis of marg report, police investigation as to cause of death was initiated under Section 176 of the Code of Criminal Procedure by ASI Patne. Inquest panchanama and spot panchanama were conducted. Statements of Railway guards were recorded. The police also made inquiry of the deceased. During investigation, general railway ticket was found from the deceased was annexed with marg.

28. For the reasons stated above, I hold that the appellants have proved that the deceased - Murad Ali s/o Kamaru Jama was *bonafide* passenger with valid journey ticket dated 11.04.2011, travelling from Patna to Bangalore by Sanghmitra Express and while travelling, near Nagpur Railway Station in between Mangalwari Bazar Gate to Mecosabagh Bridge, the deceased - Murad Ali fell down from the running train and sustained fatal injuries and died on 13.04.2011 during course of treatment at Mayo Hospital, Nagpur.

29. Considering these findings, the impugned judgment of the learned Tribunal needs to be quashed and set-aside and

accordingly the same is quashed and set-aside.

30. The appellants, being the dependents of the deceased - Murad Ali are entitled to receive statutory compensation of Rs.8,00,000/- (Rs. Eight Lakhs Only). The appellant No.1 i.e. the father of the deceased - Murad Ali, since dead and the appellant No. 2 is mother of the deceased - Murad Ali would be entitled to receive compensation.

31. Accordingly, the respondent i.e. The General Manager, Central Railway, C.S.T. Mumbai is hereby directed to deposit Rs.8,00,000/- (Rs. Eight Lakhs Only), within a period of three months from the date of this order. On such deposit, the appellant Noo. 2 is permitted to withdraw the same with interest accrued thereon.

32. The Appeal stands **disposed** of. No order as to costs.

JUDGE

Ambulkar