

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

FIRST APPEAL NO. 409/2020

1. Md. Majid,
Age about 50 years, Occ. Labour,

2. Mahamuda Bibi w/o Md. Majid,
Age 47 years, Occ. Housewife,

**On R.A.
(Orig. Claimants)**

Both R/o. Sariabad, Bindole,
Dist. Uttardinajpur (West Bengal) – 733156.

...APPELLANTS

// VERSUS //

Union of India,
Through the General Manager,
Central Railway, CST Mumbai.

**.... RESPONDENT
On R.A.
(Orig. Resp.)**

Shri R. G. Bagul, Advocate for appellants.
Shri Z. S. Shekhani, Advocate h/f Shri R. G. Agrawal, Advocate for
respondent – sole.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 17.02.2021

JUDGMENT

The appellant herein have challenged the judgment dated

25.11.2019 passed by the Railway Claims Tribunal in Case No. OA(IIu)/NGP/240/2018, dismissing their application for compensation.

2. Brief facts necessary to decide this appeal are as under:-

The appellant are the parents of the deceased. They filed an application for compensation on the ground that Mahasin s/o Md. Majid fell down from the train which traveling from Lokmanay Tilak to Malda Town by Train No. 22511 Kamakhya Karmabhumi Express and died due to injuries sustained in the said untoward incident.

3. The respondent resisted the claim mainly on the ground that the deceased Mahasin was not a bonafide passenger that he did not die in an untoward incident.

4. Upon considering the evidence on record, the Tribunal has held that the statement of Dharampal Meshram who was on patrolling duty indicates that the body was seen at 10.00 a.m. whereas, the spot panchanama reveals that it was prepared at 08.45 a.m. The Claims Tribunal has dismissed the petition in view of the discrepancy in the time recorded in the spot panchanama vis-a-vis the statement of Dharampal Meshram. The Tribunal has also recorded a finding that the

daily diary indicates that Shri Ashok Shahu, Police Official had visited the spot on 10.05.2018 at 20:10 hrs. and that he had not seen any person lying near railway lines.

5. Learned counsel for the appellants submits that the statement of Shri Dharampal Meshram clearly indicates that he had seen the body at 08.00 a.m. His statement was recorded on the same day and the spot panchanam was also drawn on the same day at 08:45 a.m. He states that the deceased was shifted to the hospital and he expired on the same day. Learned counsel for the appellants further submits that a ticket was also recovered from the wallet of the deceased which also substantiates the contentions of the appellant that the deceased was a bonafide passenger and had died in an untoward incident.

6. Learned counsel for the respondent states that there is no cogent evidence to prove that the deceased was a bonafide passenger.

7. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The only point for consideration is that whether the deceased Mahasin was a bonafide passenger and he died in an untoward incident.

8. It is the case of the appellant that the deceased and his brother Mehboob Alam were traveling from Lokmany Tilak to Malda Town by Train No. 22511 Kamakhya Karmabhumi Express Train. It is stated that due to heavy rush, the deceased was standing near the door and that he fell down from the running train near Ajani Station, Nagpur. The case of the appellant is supported by Mehboob Alam, brother of the deceased. His evidence indicates that on 09.05.2018, he and his brother had purchased tickets to travel from Lokmany Tilak to Malda Town and boarded Kamakhya Karmabhumi Express Train. He has stated that there was heavy rush in the general boggy and hence his brother i.e. deceased was standing near the door. He has deposed that when he woke up in the morning, he realized that his brother was not in the train. There is no denial of the statement that this witness and his brother – Mahasin had boarded the Kamakhya Kamakhya Karmabhumi Train with valid train ticket.

9. The evidence of Dharmapal Meshram clearly indicates that he was on patrolling duty 08.00 a.m. to 04.00 p.m. He claims that he had seen the body of an unknown person lying near the railway line at 10.00 a.m. and had informed the Police Station as well as the Station Superintendent, Ajani, Nagpur. The record reveals that the Police were

informed about the incident much prior to 10.00 a.m. This fact is evident from the spot panchanama which was drawn at 08.45 a.m. Under the circumstances, the minor discrepancy in the statement of this witness not touching the case cannot be a ground for rejection of the evidence as a whole.

10. It is also to be noted that the Police had recovered Adhar Card, cash of Rs. 4,000/- as well as a ticket of the deceased. This fact also substantiates the contention of the appellant that deceased was a bonafide passenger. The provision for compensation under Section 124-A of the Indian Railways Act is a beneficial piece of legislation and should receive a liberal interpretation, in consonance with the object of the Act. The Tribunal in my considered view has taken a very pedantic approach despite there being no evidence to prove or even to suggest that the death of Mahasin was suicidal or as result of self-inflicted injury or due to any other factors enumerated in clauses (a) to (e) of Section 124-A of the said Act.

11. The evidence adduced by the appellant amply proves that the deceased was a bonafide passenger and had died in an untoward incident.

12. Under the circumstances, appellants are entitled for compensation of Rs. 8,00,000/- in terms of Notification dated 22.12.2016. Hence, the following order:-

(1) The appeal is allowed. The impugned order is set aside. The appellants are awarded compensation of Rs. 8,00,000/- with interest @ 6% per annum from the date of the petition till the date of the final realization.

(2) The respondent is directed to deposit said amount within a period of three months.

(3) In view of the Affidavit in evidence filed by the father of the deceased, the minor son of the deceased shall be entitled to 40% of the compensation.

(4) The said amount shall be invested in the name of the child namely Rakibool Mohammad in any nationalized bank, initially for a period of six years, with further extension till the the date he attains the age of majority.

(5) The balance amount shall be paid to the widow namely Rekha Khatun wd/o Mohd.

Mahasin and the parents of the deceased in proportion of 20% each.

13. Appeal stand disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)

Gohane.