

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.700 OF 2018

Mrs.Padmini w/o Abasaheb Itape and .. Appellants
ors

Versus

Union of India thru General Manager .. Respondent

...

Mr. Vasant N. More for the appellants.

Mr.T.J. Pandian with Dheer Sampat for the respondent.

CORAM: BHARATI DANGRE, J.

DATED : 20th APRIL, 2022

P.C:

1 Heard learned counsel for the appellants and learned counsel for the respondent.

2 The Appeal is filed by the legal heirs of the deceased who succumbed to an untoward incident, on his journey of a local train from Thane to Bhandup on a valid 2nd Class Railway Ticket on 8/1/2012. The deceased, being one Abasaheb Itape, succumbed to the injuries sustained by him and his legal heirs, including son and wife, filed the Claim Petition before the Railway Tribunal, claiming compensation of Rs. Four lakhs, along with interest @ 9% p.a, on a premise that the incident falls within the meaning of 'untoward incident' as defined under Section 123(c) and Section 124-A of the Railways Act, 1989. The claim

came to be rejected by the Tribunal on determining two issues that arose for consideration i.e. (i) Whether the deceased was a bonafide passenger on 8/1/2012 and (ii) whether the deceased died on account of the untoward incident as defined in Section 123(c)(2) of the Railways Act.

The Tribunal held both the points against the claimants and dismissed the claim. Hence, the present Appeal.

3 With the assistance of the learned counsel, I have perused the impugned judgment, in order to appreciate the reasoning contained therein, in the wake of the evidence, placed before the Tribunal.

In order to substantiate the claim, one of the claimant was examined as AW-1, who admittedly is not an eye witness and therefore, his testimony is not of much assistance. The key witness of the claimants is one Rahul Tanaji Gaikwad AW 2, who was residing in neighborhood of the deceased and was travelling along with the deceased, on the same train when he met with an accident.

AW-2 filed his affidavit dated 19/08/2015, and in his affidavit, he deposed as under :-

- (2) I say that, on 08/01/2012 I was travelling along with deceased by the local train IInd Class Compartment from Thane to Bhandup.
- 3) I say that, the said local train was running over crowded hence we could not get seat hence, we were standing near the

door, when the local train reached in between Nahur Station to Bhandup Station at that time my deceased friend late Shri. Abasaheb Vithoba Itape accidentally fell down from the running local due to push by the crowd in my presence.

4) I say that, I had inform the said incident to the wife of the deceased and his family members. I further say that, I had also inform the said incident to the GRP. GRP has recorded my statement.

4 The said witness was subjected to cross-examination, and was in fact afforded an opportunity, to improve on his version when he deposed as under :-

“At present, I am residing at Bhandup. On that day, I was travelling with Abasaheb Vithoba Itape. I am his neighbour. I saw him falling from the train. The incident occurred before the train had reached Bhandup Railway Station. I got down at Bhandup Rly. Stn and informed the police of the said incident on the same day. We were informed by the police that Abasaheb had already been taken to Rajawadi Hospital. When we went to the hospital we found that Abasaheb had already died. He had received injuries on his head and his face had been badly smashed. I cannot say whether his hands and other parts of the body had been cut as his entire body had been wrapped. Police have recorded my statement on 9/01/2012”.

A specific suggestion to the effect that the deceased Abasaheb died while crossing the railway track, was denied by him.

5 Along with the Claim Application, another document were also placed before the Tribunal, i.e. the information to the Medical Officer of Rajawadi Hospital by Station Manager of Bhandup Station on 8/1/2022. The information reported about a male person aged 60 years found lying on the track near kms 26/15 Bhandup Station. The information transmitted read thus :-

“As per information given by some passenger, one unknown male person lying found dead near Chamunda Temple between Up Through & DN Through line while crossing the Railway Track. Reached the spot of incident along with on duty GRP/Hamal and found one unknown person lying between UP/DN Through line and sustained serious injuries to his head and throughout his body and right leg cut from thigh and hanging from skin. Sent to Rajawadi Hospital through GRP HC 537”.

6 The Inquest Panchnama refer to the injuries and further, post mortem report has recorded the following injuries on the body of the deceased.

- (a) Both Upper extremities folded at places keep in irregular further.
- (b) Both legs fractured in hip joint, knee joint, and above ankle joints.
- (c) Laceration in the forehead and left side 11 cm x 4 cms brain deep bones (skull) seem separated and wide open with loss of brain tissues and depression of left eye ball.
- (d) Laceration chin 3 cm x 2 cm x bone deep.

- (e) Laceration in the forehead and left side 11 cms x 4 cms brain deep bones (skull) seem separated and wide open with loss of brain tissue and depression of left eye ball.
- (f) Contused laceration on the left foram on the dossel aspect 13 cms x 5 cms with fracture Raadius Ulna (left)

7 As far as the claim, that the incident occurred as an untoward incident falling within the purview of Section 123(C) (2) of the Railways Act, the Tribunal relied upon two circumstances and in my considered opinion, erroneously, being the nature of injuries sustained and a conclusion is drawn that such grievous injuries can only be inflicted on a person who has either been knocked down or run over by some train. The post mortem report had analysed cause of death as “*death due to head injury with polytrauma in railway track accident*’. Despite this, the Tribunal erroneously applied it’s own analogy when it record that when a person fall from running train, his body will fall against, whereas in this case, the body of the deceased was found lying on kms 26/15 and 26/16 on under U/U- DL and he sustained severe injuries on his head, skull was crushed and legs were separated from the sheen and left leg was amputated from the sheen and hanging to skin. The aforesaid possibility is only the assumption, since the claim is supported by an eye witness, who has categorically deposed that he has seen the deceased

falling from the train and the incident took place before the train reached Bhandup Railway Station, and thereafter on reaching Bhandup Railway Station, he informed the police of the said incident.

The Tribunal is wrong in assuming that the nature of injuries sustained could not lead to an inference that this was on account of the fall, but necessarily it has to be a case where he was hit on the track by a local train but if this was a case, public at large or atleast some person would have noticed, a person being run over by a running train. The above reasoning of the Tribunal, hence, cannot be sustained.

8 As far as finding rendered by the Tribunal in respect of the bonafide passenger, the Apex Court in case of Union of India vs. Rina Devi 2019 (3) SCC 572, has categorically held as under :-

“We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly”.

In such a case, the burden shift on the railway once the claimants bring on record that the deceased was travelling by railway, to refute the contention and here the Railways have not bothered to discharge the said burden.

In the wake of the aforesaid position of law emerging from the authoritative pronouncements of the Apex Court as well as this Court, the decision of the Tribunal cannot be sustained and deserves to be quashed and set aside.

9 Considering that the accident had resulted in the fatality, the legal representatives of the deceased i.e. the claimants are held entitled for compensation for Rs.8 lakhs.

The compensation would be paid within a period of 12 weeks from today. Failure to make over the payment of compensation, as above, shall incur interest @ 8% after 12 weeks.

It is also directed that amount of compensation shall be equally apportioned with the claimants.

(SMT. BHARATI DANGRE, J.)