

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO.290 OF 2021**

1. Meenadevi Jaiprakash Gupta,	.. Appellants /
2. Ram Jaiprakash Gupta	Original
3. Poonam Jaiprakash Gupta	Applicants.
Versus	
Union of India,	.. Respondent
Through General Manager, Central	
Railway, CSTM, Mumbai 400 001.	

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Mr. Vasant N. More for the appellants /applicants.
Mr. T. J. Pandian for the respondent.

**CORAM: BHARATI DANGRE, J.
RESERVED : 25th APRIL, 2022
PRONOUNCED : 08th JUNE, 2022**

P.C:-

1. The present appeal is filed by the claimants, who are the original applicants before the Railway Claims Tribunal, Mumbai, on rejection of their claim for compensation filed under Section 16 of the Railway Claims Tribunal Act, 1987, on account of death of Mr. Jaiprakash Harilal Gupta, in an untoward incident. The Railway Claims Tribunal rejected the claim filed on 10.07.2013, claiming compensation of Rs.4,00,000/- by the claimants, by a judgment and order dated 04.02.2021. The Tribunal rejected the claim by recording that the applicants have

failed to establish that the deceased Jaiprakash Harilal Gupta, was a bonafide passenger of the railway and that he met an accident which is liable to be categorized as ‘untoward incident’.

2. In support of the appeal, I have heard learned Advocate Vasant More for the appellants and Advocate T. J. Pandian for the respondent.

The appellants have placed on record a compilation of documents along with the translation in terms of the order dated 29.10.2021. The appeal is therefore ready for hearing and is so taken up for hearing. I have perused the necessary documents placed on record.

3. The deceased is one Jaiprakash Harilal Gupta, age 46 years who was running a Medical Store at Vikhroli. Being a devotee of Lord Ganesh, he was enroute to the Ganesh Temple at Titawala on 28.04.2013, it being a Ganesh Chaturthi. The appellants claim that he purchased return railway ticket from Vikhroli to Titawala and after offering his prayers, he was returning to Vikhroli, by a local train which he boarded at Titawala and when the train reached near Ambivali Station, he accidentally fell down from the running train and sustained serious injuries and died on the spot.

4. The claimants, being his widow and one major son along with a minor daughter instituted a claim before the Railway Claims Tribunal, Mumbai and claimed that the deceased was travelling on a second class railway ticket from Vikhroli to Titawala but the ticket was lost during the entire episode and the claim was based on assertion, that he was a bonafide passenger

of railway. Compensation of Rs.4,00,000/- along with 18% interest was claimed from the date of filing of the application till realization of the amount. The applicants claimed to be financially dependents on the deceased and presented the application before the Tribunal on 09.06.2012.

5. In support of the claim, the applicant no.1 Meenadevi Gupta stepped into the witness box and asserted her claim. She admitted that she was not a eye-witness to the incident but relied upon several documents including the station master memo, the police report, inquest panchanama, postmortem report and death certificate. In the cross examination, she admitted that one mobile phone, key and amount of Rs.390/- was recovered from the body of her husband which was handed over to her son. She specifically denied this suggestion that her husband had died while crossing the railway track and not on account of fall from the running train.

6. In order to oppose the claim, the railway filed their written statement denying the case of the claimants that the accident took place on account of a fall from the running train. The Presenting Officer of the Railway Claims Tribunal, pursuant to the directions of the Tribunal placed on record the spot map and the photographs as directed by the Tribunal, by its order dated 04.02.2021.

7. Several documents were brought on record by the respective parties which included the inquest panchanama as well as postmortem report and also the memo from the Station Manager of Titwala Station. The said memo notified that a

unknown person is hit by an unknown train while trespassing. The memo came to be forwarded to the Medical Officer /SRDMO, Rukminibai Hospital at Kalyan.

The Senior Inspector of Kalyan Railway Police Station was also informed that one unknown person aged about 55 years met with a railway accident and succumbed to the serious injuries. It also intimated that he was taken to hospital but was declared dead before admission. His body was sent to Rukminibai Hospital for postmortem and from the SIM Card recovered from the body of the deceased which was found in a broken mobile by transmitting the SIM to another mobile, the relatives of the deceased were contacted and the body was handed over to them after conducting procedural formalities.

8. Two important documents placed before the Tribunal included the inquest panchanama and the postmortem report.

The inquest panchanama recorded the following injuries on the body of the deceased:

On middle of the head 4" straight injury, above left ear 3" injury, above right ear middle of the head 4" curve injury, on stomach back side 4 to 5 inch broad and 15 to 16" long curve injury, inside flesh is seen, left hand broken at arm, on right hand wrist 3% long deep injury, right leg ankle torn and skin is hanging, both leg nail is removed, and stretching marks on various place of body, while seeing the private part of the deceased it is intact and he may be Hindu by religion.

The panchanama also record that broken Nokia Company mobile, one key and cash of Rs.390/- is recovered from him and except this no other articles was found on his person. The inquest panchanama further record as under:-

“Deceased knock down by unknown local train succumbed head and serious injury on back side and died due to excess bleeding, even for knowing the exact reason body hand over to Shri Shaikh 350 and sent to Rukminibai Hospital for P.M.”

9. The postmortem report, refer to various injuries in column no.17 as under:-

- i) Closed fracture of left lower radius bone
- ii) Closed fracture of right upper femur
- iii) Crushed injury to right ankle
- iv) CLW vertex 2” X ½ “X scalp deep
- v) Multiple abrasions on upper and abdomen, chest
- vi) CLW back oblique from right upper back extending towards abdomen 10” X 3” X muscle deep, oozing of blood from nose and mouth.

The cause of death is opined as “Haemorrhagic shock due to polytrauma due to accident”

10. The photographs of the spot are brought on record through the Presenting Officer of the Railway Claims Tribunal, who deposed that he has nominated one Pradeep Kharivale, Chief Commercial Inspector to take photographs of the spot and

prepared incident spot mark. The said photographs reflect the spot of incident which is found to be around 500 meters away from the railway platform and body of deceased was found at K.M. No.63/29 in between Titwala and Ambivali Up line Station. On going through the photographs placed on record giving exact location where the accident took place, the Tribunal has recorded that there is an open space near accident spot which has no boundary wall on east side and some open space on west side and there is pathway which is used by motormen.

On perusal of the map and the photographs, the Tribunal accepted the claim of railway as reflected in the accident memo issued by the Dy. SS/TLA and DRM report that the victim was hit by unknown train while trespassing in negligent manner. Even the police report mentioned about a body have been found in an injured condition on the spot.

11. The case of the Railway as accepted by the Tribunal is twofold: that the applicants have failed to establish that the deceased was a bonafide passenger of the train in question at the time of accident and that he suffered an injury in an untoward incident while travelling in train.

As far as the contention about bonafide passenger is concerned, the applicants have failed to make good the said assertion that he was a bonafide passenger. It was only occasionally he used to travel to Titwala for Ganesh Darshan and he was not commuting on the said route on every day basis. A mere assertion that he was a bonafide passenger in absence of any proof being adduced to the effect, would not shift the burden

on the Railway as sought to be argued by the learned Advocate for the appellants by relying upon the decision of the Supreme Court in case of Union of India V/s. Rina Devi, reported in ACJ 2018 page no.1441. The panchanama did not lead to recovery of any ticket from the body of the deceased, when the key, cash amount and broken mobile phone was recovered. The Railway Authorities have established that the deceased was not in possession of ticket and if at all he had purchased a return ticket from Vikhroli to Titwala, when all his other belongings were traced out on his body, there is no reason why the ticket could not have been recovered. Therefore, it was imperative on part of the applicants who bring on record some evidence to establish that the deceased was a bonafide passenger of the railway when he was undertaking the journey, which ultimately resulted in his death.

12. Coming to the nature of injuries sustained by the deceased which are reflected in the inquest panchanama and the postmortem report, it is apparent that the injuries are deeply eschewed on the body of the deceased and from the stomach back side, the injury is described to be 15 X 16 cm long curve injury, with flesh being protruding out. The accident had broken the left ear of the deceased and right leg ankle was found to be torn and skin was seeing hanging. The nails of the tow were removed and stretching marks were noticed on various parts of the body.

The nature of injuries that has been described in the inquest panchanama and in the postmortem note which referred

to fracture of upper femur as well as lower hip radius bone and fresh injuries to the ankle as well as multiple abrasions over various parts of the body like the upper arm, abdomen and chest are reflective of the deceased being dragged over some distance and the injuries are not indicative of fall from the running train. The cause of death is opined as “Haemorrhagic shock due to polytrauma”.

13. Having a close assessment of nature of injuries sustained by the deceased, it is indicative of he being knocked down by a train and the Tribunal has rightly concluded that the injuries are not a result of accidental fall. Further since no material brought on record by the applicants to establish that the injuries are sustained by a fall, in these circumstance the Tribunal is justified in placing reliance upon the DRM report, recording that the alleged incident dated 28.04.2013 occurred due to the deceased's own negligence and carelessness as he sustained serious injuries as the deceased was present in the Railway operational area (tracks) unauthorizedly.

Considering the nature of injuries sustained by the deceased which include crush injuries, fracture of left lower radius bone, right upper femur and multiple abrasion as well as contusion lacerated wound, back/from right upper back extending towards abdomen which is described as 10 X 3 muscle deep, are rightly considered by the Tribunal, to be injuries caused by the deceased on being hit by a unknown train and is not a case of accidental fall.

14. The Railways Act, 1989 defines the “Passenger” as a

person travelling with a valid pass or ticket”. Section 123 (c) of the Railways Act, 1989 define the term ‘untoward incidents’ to include the accidental falling of any passenger from a train carrying passengers and in the scheme of the enactment section 124(A) is the provision for payment of compensation on account of untoward incident. The said provision contemplates that when in the course of working a railway any untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of Railway Administration, it would entitle a passenger who has been injured or the dependent of the passenger who has been killed to maintain an action and recover damages in respect thereof, then 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 the loss occasioned by the death of, or injuries to, a passenger as a result of such untoward incident.

By a proviso appended to the very said section i.e., 124(A), the Railway Administration is absolved of its liability to pay compensation, if the passenger die or suffer injuries due to his own criminal act.

Section 124 (A) lays down strict liability or no fault liability in case of railway accident and if the case falls within the purview of section 124 (A), it is irrelevant, who is at fault and the duty is cast upon the Railway Administration to pay compensation.

15. In the light of the aforesaid statutory provision, the facts in

the present case have been construed by the Tribunal. There is admittedly no eye-witness for fall of the deceased from the train and therefore, the Tribunal has relied upon the nature of injuries, which do not establish that they are sustained on account of fall from the railway, as claimed by the applicants but the nature of injuries when carefully studied, would irresistibly lead to a conclusion that they have been sustained on being knocked by a running train.

The Tribunal has appreciated the evidence brought on record and rendered its findings based on the basis of spot panchanama, inquest panchanama as well as the postmortem note and the conclusion is arrived, to the effect that the applicants have failed to prove that the deceased met with an untoward incident and the dependents are entitled for compensation.

The judgment delivered by the Tribunal do not warrant any interference both on facts, and on law and it deserves to be upheld.

Necessarily, the appeal filed by the appellants /applicants who have failed to establish their claim for compensation under section 124 (A) of the Railways Act, 1989 must fail. The appeal is dismissed.

No order as to costs.

(SMT. BHARATI DANGRE, J.)