

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.680 of 2018

Smt.Sangeeta Chhagan @ Gautam .. Appellants
Singadiya and ors

Versus

Union of India through General .. Respondent
Manager

...

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

CORAM: BHARATI DANGRE, J.
DATED : 25th APRIL, 2022

P.C:-

1 The Appeal is instituted by the legal representative of Chhagan @ Gautam Pralhad Singadiyam, resident of Chembur, who succumbed to an untoward incident while travelling in a local train from Santacruz to Kurla, via Dadar Station on 12/8/2011 on strength of a valid second class railway ticket.

 On a claim being instituted u/s.124A of the Railways Act, 1989, claiming compensation to the tune of Rs.Four lakhs on account of the death of Chhagan @ Gautam, pleading that the untoward accident, occurred when on 12/8/2011, the deceased alighted at Dadar station of Western Railway and boarded second

class compartment of local train to reach Kurla and since the local trains suddenly started with a jerk, he fell down from the running train due to push by the crowd on platform no.5 of Dadar Railway station and sustained injuries to his head and other parts of body. It was pleaded that the deceased was a bonafide passenger and was travelling by second class compartment, holding 2nd class railway ticket from Santacruz to Kurla bearing No.91232223 dated 12/8/2011. The injuries proved to be fatal and the claim was instituted by the claimants.

2 In support of the claim, the appellant no.2, Pralhad Raichand Singadiya filed his evidence affidavit on 17/1/2017 and also brought on record the photo copy of the railway ticket, S.N. Memo, police report, Inquest Panchnama, cause of death certificate, ration card, election identity card and Aadhar Card etc. The respondent in it's defence, filed the DRM report along with certain documents which were exhibited as Exhibit-R-1.

The applicant deposed about the details of the incident, and it is specifically stated in the affidavit, that the wife of the deceased had filed an affidavit on 17/1/2017, stating that she has relinquished her share in favour of her mother-in-law and father-in-law, who are aged 53 and 50 years respectively. The appellants also brought on record railway ticket, which was not controverted by the respondent, and in any case, the respondent did not raise a plea that he was a ticketless traveller or not a bonafide passenger, the Tribunal accepted that he was a bonafide

passenger of an unknown local train.

3 In recording a finding about the manner in which the accident took place, the respondent in its defence filed a DRM report, wherein it is recorded that the deceased was knocked down by an unknown local train while crossing the railway line. The stand of the Railway before the Tribunal, is trespassing is an offence punishable under the Railway Act, 1989, and therefore, no compensation is payable. The SN/DRM record as under :-

“One male person, aged 25 years knocked down by unknown by DnT/line train near km 18/8 and sustained injury on head”

4 The inquest panchnama of Dadar Police station recorded, that one person by name Chhagan @ Gautam Pralhad Singhadiya was injured on the Dadar Railway Station and the opinion expressed is that the death might have occurred on sustaining serious injuries to him, on being hit by an unknown fast Down Railway train.

The Tribunal heavily relied upon the Inquest Panchnama and the report, and by recording that the reports were prepared by Government Official in regular course of duties and hence, their genuineness and veracity cannot be doubted, and since they are not to gain or lose anything by reporting false facts, the same was accepted as a gospel truth.

The counsel for the appellant has invited my attention to the cause of death certificate which assess provisional

cause as 'shock due to cranio cerebral injury'. The post mortem report recorded the following injuries:

"CLW of 6x5.4x1 cm over left temporal region with depressed communicated fracture of imperial bone with brain mass pointing out"

Taking cognizance of the injuries, the Tribunal concluded that such grievous injuries can only be inflicted on a person who has been knocked down or run over by some train and upon this finding being rendered, dismissed the claim of the applicant.

5 Pertinent to note that the D.M. Memo, refer to an unknown person lying on DnT line between kms 18/8 with injury on his head. The police report also referred to a person who was injured on platform no.5, at Dadar Railway Station and who was admitted to the ICU Ward. In his pant pocket, a railway ticket from Santacruz to Kurla and the cash amount of Rs.7761/- was recovered. The said report also record that the deceased had sustained abrasions all over the body, and a 3 inch injury was sustained on the right side of the head which was bleeding along with a punch wound. The injured was in an unconscious condition. The Inquest Panchnama refer to a 3 inch injury sustained on right side of head and on treatment, the said injury was sutured. It record that apart from this injury, there are no injuries on the body. This injury has resulted into his death.

Surprisingly, the Tribunal without any basis derived a conclusion that such injury can only be caused on being hit or run over by the train, losing sight of the fact that the head injury is also possible on falling out of the train, and was described as a deep bleeding injury, apparently, on the blood being oozing out, the deceased became unconscious. In any case, the cause of death is described as 'shock due to cranio – cerebral injury' which is also known as 'cranio cerebral trauma', which according to medical terms is a condition of brain disfunction caused by an outside force, usually a violent blow to the head. The Medical Jurisprudence state that such type of trauma brain injury often occurs as a result of severe sports injury or a car accident, and such type of injury is considered to be the most serious one, resulting into trauma to the head and physical symptoms of this injury are loss of consciousness from several minutes to hours.

6 Without adverting to the medical aspect of the said injury, the learned Tribunal has arrived at a conclusion that such type of injury could be caused only when a person is hit by the train.

In absence of any evidence to that effect brought by the respondent Railway, the finding rendered by the Tribunal is perverse and cannot be sustained.

7 The deceased being a bonafide passenger, was thrown out of the train, when it started with a jerk and he fell on platform

no.5 and sustained injury to his head which proved to be fatal. This incident would squarely fall within the purview of Section 124A, which make Railway liable to pay compensation for the untoward accident, which would cover the accidental falling of any passenger from the train carrying passengers.

8 The Railway is, therefore, liable to compensate the claimants, the family members of the deceased for the loss of an earning member, and the claimant who claim compensation of Rs.Eight Lakhs as per the amendment to the Schedule of Railway Accidents and Untowards Incidents (Compensation) Rules, 1990, are entitled for the amount, for loss of the family member, on account of an untoward incident.

 The respondent Railway shall disburse the compensation in favour of the claimants within a period of 12 weeks from today, and on failure to do so, the amount shall carry an interest @ 9% p.a.

 First Appeal is allowed in the aforesaid terms by setting aside the impugned judgment and award dated 30/6/2017 passed by the Railway Claim Tribunal, Mumbai Bench, Mumbai in Claim Application No.OA/MCC/1098/2011.

(SMT. BHARATI DANGRE, J.)