

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.526 of 2019

Mrs.Pushpa Rajnath Sharma and ors .. Appellants

Versus

Union of India, through General Manager, .. Respondent
Central Railway, CSMT, Mumbai.

...

Mr.Vasant N. More for the appellants.

Mr.T.J. Pandian for the respondent.

CORAM: BHARATI DANGRE, J.
RESERVED : 25th APRIL, 2022
PRONOUNCED : 14th JUNE, 2022.

PC:-

1 The dependents of one Rajnath Sharma, who met with an accident on 20/4/2012, on being denied the compensation by the Railway Tribunal Act, Mumbai, vide impugned judgment dated 31/10/2018, have filed the present First Appeal. The appellants claim that the Tribunal has ignored an important facet of the claim, to the effect that the deceased fell down from the running train and therefore, his case was covered u/s.123(c)(2) of the Indian Railways Act, as an untoward incident, but on the contrary, the Tribunal concluded that the deceased was

run over by a train and his dependents were disentitled for compensation. The Appeal also challenge the finding of the Tribunal to the effect that the deceased was not a bonafide passenger, though a ticket was recovered from his pocket, but, since it was tattered condition, the details could not be ascertained.

2 The deceased is one Sujit Sharma, aged 16 years, resident of Chembur, Mumbai, a labourer, who was travelling in second class compartment of local train from Dadar to Chembur station via Kurla on 20/4/2012. It is alleged that while he was enroute to Chembur and when the train reached near Sion station between km No. 12/12 and 13/13, due to push from the passengers inside, he accidentally fell down from the running train and sustained head injuries and died instantly. He left behind his mother – applicant no.1 and all other applicants who are his siblings as dependents. It is averred that the ticket on which the deceased was travelling, was recovered from his possession during the inquest proceedings, but it was found in a torn condition and since it was stained with blood, the particulars on the ticket were not legible.

3 The claim came to be instituted by the dependents of Sujit Sharma, to the tune of Rs.Four lakhs along with interest @ 9% from the date of application till the actual payment.

In support of the claim, the applicant placed on record the copies of supporting documents in form of Inquest Panchnama, post mortem report, police report etc. The post mortem report opined the cause of death as 'Hemorrhagic shock due to polytrauma (unnatural)'.

4 The Railway contested the claim by filing written statement as well as placing on record the DRM report.

The written statement heavily relied upon the statutory investigation report prepared by the Sr.DSC/RPF/CSMT and accepted by DRM, Mumbai, which recorded as under :-

“from the report of Inspector/RPF/DR it is observed that GRP/DR has mentioned Railway ticket, but without valid particular, in the inquest panchnama. Hence, prima facie, he cannot be termed as a bonafide passenger. Moreover, the deceased presence in Railway premises was unauthorised and he had knocked down by unknown local train, while crossing railway track, in negligent and careless manner as per the report of Inspector/RPF/DR and the inquest panchnama of GRP/DR, as well as Dy.SS/Sion's Memo, which is an offence punishable u/s.147 of The Railway Act, 1989”.

It was pleaded that the incident occurred only due to negligence and criminal act of the deceased.

5 The Railway also contested the claim on the ground that deceased was not at all a bonafide passenger, since it is evident that one railway ticket was recovered, but it was lacking any valid particulars and the copy of the railway ticket is not affixed to the original application and therefore, the claim that the deceased was travelling from Dadar to Chembur via Kurla by local train on second class compartment holding a valid railway ticket, could not be sustained. The written statement also pleaded that the application is bad-in-law and not maintainable on various grounds, including that there are no genuine documents on record to show that the applicants are dependent on the deceased and therefore, the application suffer from non-joinder of parties. Claiming that, the application is not maintainable u/s.124 and/or 124-A, as no case is made out and the death of the deceased occurred due to his own criminal act and negligence, which is an offence punishable u/s.147 of the Railway Act, it was urged that the act of the deceased being willful, unauthorised and unlawful, would amount to self-inflicted injury, for which no compensation was payable.

6 The Tribunal proceeded to determine the following issues :-

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

2 Whether the applicants prove that deceased was a bonafide passenger of the train, in question, on the relevant day?

3 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 ?

4 To what order/relief?”

7 The report of the RPF Inspector in-charge, Thane, C.R. Dadar dated 1/8/2013 report about an incident dated 20/4/2012 at around 2.20 when a person was knocked by a local train at Km 12/12 to 13/13 while crossing the line. It also reported that on receiving information from the Station Master/Sion through Memo PC 2197, PSI GRP/Dadar, proceeded on the spot and since a mobile was recovered on the body of the deceased, his relatives were contacted and his identity was established, pursuant to which ADR No.50/12 was registered by GRP Dadar on 20/4/2012. The report stated that the deceased had died while crossing the railway line when he was hit by a local train and this act thus amounted to an offence punishable u/s.147 of the Railways Act.

8 The question for determination before the Tribunal, was whether the deceased sustained injuries while falling from a running train, which would have entitled him for the compensation, being covered by Section 123(1)(C) of the Railways Act, or whether while crossing the Railway line, he was

hit by a running train, which would disentitle his dependents from any compensation.

In order to decide which of the circumstance resulted into his death, three documents are required to be carefully analyzed, being the spot panchnama, inquest panchnama and the post mortem report.

9 The first document being the spot panchnama, identify the spot as the place near the railway crossing on Dn line km 92/92 to D-93/93. The body was found on the said spot, when he met with a railway accident, to which he succumbed. In order to avoid the inconvenience to the railway traffic, the body was moved from the spot on a stretcher and the spot panchnama was prepared.

The spot is clearly identified as located next to platform no.3 on the railway line. A partly broken mobile was found lying near the body containing a sim card of Idea Company. The spot panchnama also record the boundaries where the body was found and on the east, at about 3 ft, it talk of a *nalla* of railway with water inside it. On the other side, the presence of railway line on platform no.4 is mentioned, whereas on the western side, platform no.2/3 with railway canteen is noted, and over-beam is also noticed. On the north, there exists platform no.3 and 4, and the route going towards Kurla is recorded. AD No.50/2012 also record about an unknown person who has

sustained an injury while crossing the railway line and he is reported to have been dead on the spot.

10 The Inquest Panchnama as well as the post mortem report are the two other documents which are relevant to ascertain the cause of death.

As far as post mortem is concerned, it record the following injuries in column no.17

- “1 Crush wound present over skull in skull cap and brain matter missing from cavity.*
- 2 Lacerated wound present over body of mandible on right side of size 3 x 2 x 1.5 complainant*
- 3 Crush amputation of left arm at upper 1/3rd with gross deduction of skin, muscles, bone of vessels.*
- 4 Crush amputation of right forearm at lower 1/3rd with gross destruction of skin, muscles, bone of vessels”.*

Column No.18 further record the injuries as under :

- “1 Body of mandible on Right side fractured*
- 2 Crush amputation of right forearm*
- 3 Crush amputation of left arm”*

The cause of death has been described as :

“haemorrhagic shock due to polytrauma (unnatural)”

11 The Inquest Panchnama, when carefully read, give the details of the body and describe its status. The panchnama

record that the head of the deceased was completely crushed from the right eye upto the middle and the brain material was oozing out, with hair flowing from the skull. Injuries were also noticed on the face, on right cheek, chin. The right hand was detached from the palm and left hand was detached from the forearm. Injuries were also found on his back. Left leg was found to be folded from the knee with an injury of 2 inch.

12 It is in the wake of the three documents, it has to be ascertained as to what caused the death of the deceased, whether an accidental fall or he being hit by a train while crossing the track as claimed by the Railway.

The post mortem report record crush injuries. As per medical jurisprudence, a crush injury occurs when force or pressure is put on a part of body. Crush injury is a typical injury which happens when part of the body is squeezed between two heavy objects and may result in bleeding/bruises.

If a body part gets caught between two objects in motion or under the influence of high magnitude force, it would get severely injured, owing to the squeeze and rubbing. The injuries sustained are crush injuries which are common in a motor accident, falling from height, structural collapse of a building, industrial injuries. Fingers trapped in a door for a long time will result in crush injury. Similarly, leg stuck under heavy object for long time would result in crush injury.

13 Looking at the injuries described in column no.17 and 18 of the post mortem report and the injuries as noticed in the Inquest panchnama, which reveal that the palm of one hand was amputated, whereas another hand was severed from the arm, itself speaks of the impact of the collision and the fact that the injuries are crush injuries, are indicative of the fact that they were sustained while being hit by a heavy object, i.e. moving train. The accident had resulted into a severe head injury where the portion of the brain was seen to be oozing out and such type of injuries could be caused by being squeezed or pressed against a heavy object. There is no eye witness to the said incident, but taking into consideration the spot panchnama and the nature of injuries, and particularly the report of the DRM which has reported that the incident took place when an unknown person was trying to cross the railway track and was hit by a running train and his body was required to be moved from the spot, in order to permit the smooth flow of railway track, the inference to be drawn is, the deceased was hit by running train.

 The aforesaid factors are indicative that the accident had taken place on account of the cause which was indicated in the A.D. Report.

14 Though I am not able to agree with the finding of the Tribunal that the deceased was not a bonafide passenger, since the railway ticket which was recovered from his person, was smeared with blood and the details could not be ascertained, in

the given facts and circumstances of the case, since the ticket was found and in light of the observation of the Hon'ble Apex Court in case of Union of India vs. Rina Devi, 2018 ACJ 1441, the facts of case are relevant.

“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 bonafide 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”

The conclusion derived by the Tribunal that the deceased was not a bonafide passenger, cannot be accepted.

15 However, since the applicants have failed to prove that the death of the deceased occurred in an untoward incident, covered by section 123(1)(C) of Railways Act., it disentitles them for compensation.

No error can be found in the judgment of the Tribunal which deserve to be upheld and is accordingly upheld. The Appeal is dismissed.

(SMT. BHARATI DANGRE, J.)