

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

FIRST APPEAL NO. 93 OF 2022

Prem s/o Ramesh Hatkar Aged
about 56 years, Occ : Labour, R/o
279, Ghanshamdas Nagar, Nanda
Nagar, Indore (M.P) 452 001

.... **APPELLANT**

// VERSUS //

The Union of India, General
Manager Central Railway, CSMT,
Mumbai.

.... **RESPONDENT**

Ms. S. R. Choudhari/Borkar, Advocate for the appellant.
Mr. Lambat, Advocate for the respondent.

CORAM : M.S. KARNIK, J.
DATED : 22.04.2022.

ORAL JUDGMENT :

Heard finally by consent of both the parties.

2. The appellant – Prem s/o Ramesh Hatkar who is the father of the deceased Anand has filed this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment and order dated 26.11.2019 passed by the Railway Claims Tribunal (Member Technical) Nagpur Bench, Nagpur dismissing the claim petition filed for compensation

from railway administration on account of death of his son (Anand) in a railway accident. In the light of the order that I propose to pass, it may not be necessary to burden this order with the detailed facts. Suffice it to observe that on 17.07.2017, Anand who is deceased, while traveling from Kalyan to Khandwa fell down from the running train. The railway administration contended that he did not have a valid ticket for traveling. The Tribunal was of the opinion that deceased Anand was not a *bona fide* passenger of the train on the relevant date with a valid journey ticket and that it cannot be said that the death of Anand had occurred as a result of an untoward incident as alleged in the claim application within the meaning of Section 124-A r/w Section 123 (C) of the Railways Act, 1989 (the Act).

3. In my opinion, the matter needs to be remitted back to the Tribunal for a fresh hearing. Perusal of the impugned judgment and order reveals that the Tribunal proceeded to decide the application on merits in the absence of any arguments being advanced on behalf of the claimant as learned Counsel for the claimant did not appear for advancing arguments on the date fixed. Such course was adopted by the Tribunal, which is permissible under Section 18(1) of the Railway Claims Tribunal (Procedure) Rules, 1989 (the Rules). Rule 18(1) provides thus :

“18.(1) Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear [when the application is called] for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.”

4. The Tribunal records that in the absence of the claimant, it proceeded to hear the counsel for the railway administration. After referring to the relevant pleadings, the Tribunal framed issues at paragraph 3.

5. The Tribunal in paragraph 7 recorded the contentions raised on behalf of the railway administration. Then in paragraph 8, the Tribunal records the contentions raised on behalf of the learned Counsel for the claimant. Even in paragraph 14, the Tribunal records the contentions raised on behalf of the learned Counsel for the claimant indicating that the counsel vehemently argued that the son of the appellant - Anand died due to accidental fall from train between KM No. 307/20-22 up and down track between Chalisgaon to Nyaydongri Railway Station. From the judgment and order, it is seen that the arguments advanced on behalf of the learned Counsel for the claimant as well as counsel for the railway administration are taken into consideration for arriving at the findings.

6. I have gone through the Record and Proceedings. The order-sheet of the proceedings of the Tribunal reveals that on 21.11.2018, the claim applicant closed the evidence. The Respondent closed their evidence on 24.01.2019. Thereafter on 01.03.2019 the matter was adjourned to 05.04.2019 for arguments. On some dates thereafter the counsel for the applicant was present. Roznama of 08.08.2019 records the presence of learned Counsel for the claimant as well as the respondent and the matter was posted for arguments on 11.09.2019. Thereafter, on 11.09.2019, at the

request of the learned Counsel for the respondent, the matter was adjourned and the same was posted for arguments on 04.10.2019. On 04.10.2019, the applicant and his Counsel were absent whereas the counsel for the respondent was present, the Tribunal in such a situation posted the matter for arguments on 07.11.2019. The order-sheet dated 07.11.2019 records the absence of the applicant as well as his counsel. In this order-sheet, it is recorded that the Counsel for the railway administration argued the matter and the judgment came to be reserved.

7. From the first part of the judgment and order it is apparent that the Counsel for the claimant was not heard. Undoubtedly, under Rule 18(1) of the Rules, the Tribunal may, in its discretion, either dismiss the claim petition for default or hear and decide it on merit, if on the adjourned date the applicant does not appear when the application is called for hearing. The later part of the judgment however indicates that the counsel for the claimant argued the matter and upon considering the contentions of the learned Counsel for the claimant and the counsel for the railway administration, the matter was decided on merits. It is apparent that there is a conflict in what is recorded in order-sheet and that what is recorded in the judgment. Even the judgment and order proceeded on the footing that the counsel for the claim applicant as well as the applicant were absent and in their absence, it proceeded to decide the application on merits on the basis of available materials upon hearing the Counsel for railway administration; whereas in the later part of the judgment, the arguments of the Counsel on

behalf of the claim applicant are reflected. This is an infirmity which will vitiate the order.

8. I must indicate that in the appeal memo this contention is not raised but it is taken up during the course of arguments. The present is a case where the claim for compensation is made by the appellant for the death of his son in a railway accident. Having noticed this apparent infirmity, in my opinion, it is in the interest of justice that the matter needs to be remitted to the Tribunal for a fresh decision after giving an opportunity of hearing to the applicant. Learned Counsel for the appellant prays for an opportunity of hearing before the Tribunal on merits in the interest of justice. It is not as if the appellant never appeared and there has been a persistent default. The appellant led evidence and appeared on several occasions before the Tribunal. Having regard to the benevolent intention in enacting the said Act, the default cannot be said to be such that even an opportunity should not be granted to the claim applicant to contest the application on merits apart from the infirmity noticed hereinbefore. Therefore the appeal is allowed on the following terms :

- (a) The impugned judgment and order is set aside. The Claim petition is remitted to the Tribunal for a fresh decision on merits.
- (b) The parties to appear before the Tribunal on 21.06.2022 at 11.00 am along with the copy of this order. This will be construed as a sufficient notice and no further notice is necessary.

- (c) The Tribunal after hearing the parties, to decide the claim application on its own merits and in accordance with law. The Tribunal shall not be influenced by any observations made in the impugned judgment and order and shall decide the matter afresh on its own merits. The Tribunal is requested to decide the claim application as expeditiously as possible and preferably by end of September,2022.
- (d) The applicant to co-operate with the Tribunal and will not seek any unnecessary adjournment.
- (e) The appeal is allowed in the aforestated terms with no order as to costs.

(M.S. KARNIK, J.)

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