

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

FIRST APPEAL NO. 129 OF 2022

1. Rajendrakumar S/o Chotelal Jain
Age about 73 years, Occu. Business
R/o Behind Rathod Tal, Gaddha Toli,
Tah. and Distt. Gondia
2. Ashish S/o Rajendrakumar Jain
Age about 46 years, Occu. Business
R/o Behind Rathod Tal, Gaddha Toli,
Tah. And Distt. Gondia
3. Rajesh S/o Rajendrakumar Jain
Age about 44 years, Occu. Business
R/o Behind Rathod Tal, Gaddha Toli,
Tah. And Distt. Gondia
4. Smt. Babita W/o Surendra Jain
Age about 48 years, Occu. Household
R/o Dongargarh (Chattisgarh)
5. Smt. Jiya alias Ziya Rani W/o
Pankajkumar Verma
Age about 41 years, Occu. Household
R/o Kajipur Nagar, Tah. Khaliabad
Distt. Sant Kabir Nagar (U.P.)

...APPELLANTS

VERSUS

Union of India,
Through The General Manager,
South East Central Railway,
Bilaspur (C.G.)

...RESPONDENT

Shri R.D. Dharmadhikari, Advocate for appellants.

Shri N.P. Lambat, Advocate for respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 14th FEBRUARY, 2022

ORAL JUDGMENT :

. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment and order dated 27.02.2020, whereby the Railway Claims Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as “the Tribunal”) dismissed the claim petition filed by the appellants under Section 124A of the Railways Act, 1989.

2. The brief facts necessary to decide this appeal are as under:

The appellants (who shall be referred hereinafter as “claimants”) are the dependents of deceased Surajdevi Rajendrakumar Jain. It was the case of the claimants that on 17.08.2017 the deceased was traveling from Dongargarh to Gondia by Train No.58117-Zadsukhada-Gondia passenger train. She was traveling alone. On the way, she called her grandson Kunal and informed that one person, who was in drunken condition, was causing nuisance. She also told him that it was dark and she was unable to change the coach. Her husband went

to pick her at Gondia Railway Station at the scheduled arrival of the train. Her phone was not reachable and she was not traced when they took search of the train, she was found lying in Coach No.048406 under berth Nos.86, 87 and 88. The railway doctor examined her and declared her dead. The claimants alleged that the deceased Surajdevi was a *bonafide* passenger and her death was caused in an untoward incident. Hence, claimants filed claim petition under Section 124A of the Indian Railways Act, 1989 claiming statutory compensation.

3. The respondent opposed the petition mainly on the ground that the death of Surajdevi was not caused in an untoward incident. It was alleged that there was no violent attack on the deceased and as such the railway administration is not liable to pay compensation to the claimants.

4. The Tribunal framed the issues and recorded the evidence of the claimants as well as the respondent. Upon analyzing and appreciating the evidence adduced by the respective parties, the Tribunal held that there is no evidence to prove that the deceased Surajdevi had suffered any violent attack or that she was murdered in the train. The Tribunal observed that the deceased was an old lady and

could have fallen from the seat or berth and died a natural death. The Tribunal therefore concluded that death of deceased Surajdevi was not caused in an untoward incident, and accordingly dismissed the petition filed by the claimants under Section 124A of the Railways Act. Being aggrieved by this judgment the claimants have filed this appeal.

5. Shri R.D. Dharmadhikari, learned counsel for the claimants submits that evidence of Kunal, grandson of the deceased, proves that the deceased had called him and that she had reported that one person in drunken condition was causing nuisance in the compartment. He further submits that the Spot Panchanama, Inquest Panchanama as well as *Post Mortem* report amply proves that the death was due to head injury. He therefore submits that the Tribunal has erred in presuming that the death of the deceased was natural and it was not caused in an untoward incident.

6. *Per contra*, Shri N.P. Lambat, learned counsel for the respondent submits that the evidence of RW4-Dr.Balagari Ratnamaiah proves that the deceased had not sustained any injury. He further submits that all the valuables were intact and there is evidence of theft or dacoity. He contents that the evidence adduced by the respondent

amply proves that the deceased had died a natural death, which does not come within the purview of 'untoward incident' as to entitle the claimants to file claim petition under Section 124A of the Railways Act.

7. I have perused the record and considered the submissions advanced by the learned counsel for the respective parties. The short point falling for my consideration is, "whether the deceased was a *bonafide* passenger and her death was caused in an untoward incident?"

8. The evidence of AW-1 Ashsih Jain, son of the deceased, reveals that on 17.08.2017 his mother was traveling from Dongargarh to Gondia by Train No.58117 Zadsukhada-Gondia passenger train. She had boarded Coach No.048406 with a valid ticket. He has stated that the deceased had called her grandson-Kunal from Amgaon Railway Station and told that there were no co-passenger in the compartment and that one person in drunken condition was causing nuisance. Her grandson told her to change the coach at Gudma Station and his grandfather i.e. husband of the deceased would come to Gondia Railway Station to receive her. He further states that when his father went to Gondia Railway Station, he could not trace her and her mobile

was not reachable. Thereafter, some police personnel of GRP searched the train and found the dead body of the deceased lying in Coach No.048406 under Berth Nos.86,87,88 and 89 in an injured condition.

9. AW-2 Kunal Jain, grandson of the deceased, has also deposed that his grandmother was traveling by from Dongargarh to Gondia by Train No.58117 Zadsukhada-Gondia passenger train. This witness has deposed that he had received a phone call from the deceased that she was the only lady passenger in the compartment and that one person in drunken condition and of criminal nature was creating nuisance. He had told her to change the compartment, but she had informed that it was dark and she did not understand how to change compartment or how to seek help. He told her that his grandfather i.e. husband of the deceased would come to Gondia Railway Station to receive her. That about 10 to 15 minutes later he called her to assure that she would be safe, but her mobile was unreachable even that, after making frequent calls he was unable to contact her.

10. The evidence of these two witnesses amply proves that the deceased was traveling from Dongargarh to Gondia by Train No.58117

Zadsukhada-Gondia passenger train. It is not in dispute that her body was found in Coach No.048406 under Berth Nos.86,87,88 and 89. It is not in dispute that she was in possession of valid train ticket and that he was a bonafide passenger. The contention of the respondent is that the deceased died a natural death which does not fall within the ambit of 'untoward incident'.

11. In support, the respondent has examined Chandrakumar Bhawoojar, who was working as Guard on Train No.58117. He claims that the said train had reached at Gondia Railway Station at 21:46 hours and that no untoward incident was reported to him by Loco Pilot, Station Master or any passenger on that train.

12. RW-2 Hiralal Tembhurne, Deputy Station Superintendent, Gondia Railway Station, claims that Train No.58117 had arrived at Gondia Railway Station at 21:50 hours and that he has deposed that Section Engineer, C&W had informed him that one unknown lady aged about 60 to 65 years was laying in unconscious condition in Coach No.SE048406 of Train No.58117. He claims that there were no injuries on her body and that the doctor, who had examined her, had issued memo with remark "life is extinct in the body of above person."

13. RW-3 – Sudhir Bajpai, Deputy Station Superintendent also claims that he had received information that body of one unknown person was lying in compartment of Train No.58117. He passed on this information to Hiralal Tembhurne. Subsequently, they took search of the train and they noticed a body of one lady about 65 to 70 years lying in the compartment. The body of the said lady was identified by her husband Rajendra Kumar, who had come to the Railway Station to receive her. He has stated that the doctor had examined the said lady and declared her to be dead. It is stated that all the valuables viz. mobile, ring, mangalsutra and wrist watch etc. were on the body of the deceased and there were no injuries or abrasions on her person.

14. The evidence of RW-4 Dr. Balagari Ratnamaiah, Assistant Divisional Medical Officer at Gondia Health Unit, indicates that he had received report that one lady was found in compartment of Train No.58117 in unconscious condition. He examined the said lady. She was in an unconscious state, had black eye and was bleeding through nose. There was no respiratory movements, peripheral parts of the body were cold and pupils were dilated and non reactive to light. He declared her to be dead and issued a death certificate.

15. The evidence of RW-4 believes the contentions of the respondent that the deceased had not sustained injuries. Moreover, the Spot Panchanama reveals that broken pieces of red bangles were found in the compartment and there were faint bloodstains on the wall of the compartment. The panchanama reveals that blood was oozing from her nose and there was swelling near her left eye. The Inquest Panchanama also records that there was swelling on the left eye as well as on the right eyebrow and that blood was oozing from her nose. The Inquest Panchanama records that there was a dent on the left hand side of the head.

16. The *post mortem* report indicates that following injuries on the dead body :

External Injuries :

- (1) Contusion of size 4 cm X 3 cm over right side of forehead, bluish red.
- (2) Contusion of size 3 cm x 3 cm over right orbit and eyelids, bluish red.
- (3) Contusion of size 3 cm x 3 cm over left side of forehead, bluish red.
- (4) Contusion of size 4 cm x 3 cm over left temporal region, bluish red.
- (5) Contusion of size 3 cm x 3 cm over right orbit and eyelids, bluish red.

Internal Injuries :

- (1) Scalp hematoma of about 50cc present over left fronto-parieto-temporal region,
- (2) Subdural Hematoma of about 35cc over left cerebral hemisphere,
- (3) Subarachnoid hemorrhagic film over left cerebral hemisphere
- (4) Brain was oedematous.

17. The doctor has opined that these injuries were *antemortem* and that the cause of death was due to head injuries and it was unnatural death. There is absolutely no evidence to indicate that these injuries could have been caused due to fall from the berth or the seat. Under these circumstances, the findings recorded by the Tribunal that the death could have been caused due to fall is contrary to the evidence on record. It need not be emphasized that this statutory provision is a piece of beneficial legislation, which should receive a liberal construction in favour of the claimants so as not to curtail the benefits conferred by the Statute. Unfortunately, the entire approach of the Tribunal in dealing with the evidence is pedantic and is patently illegal leading to miscarriage of justice.

18. The evidence on record proves that the deceased was a bonafide passenger of Train No.58117 Zadsukhada-Gondia passenger train from Dongargarh to Gondia. She had complained that one person in drunken state was causing nuisance and annoyance to her. Subsequently, her body was found in Coach No.SE048406 under Berth Nos.86,87,88 and 89 with several injuries on her body and as per doctor's opinion her death was due to head injuries. All these facts lead to an inference that while on journey she had died due to violent attack, which is an untoward incident within the meaning of Section 123(c)(ii) of the Railways Act, 1989. Consequently, the claimants being dependents of the deceased were entitled for statutory compensation.

19. Under these circumstances and in view of discussion supra, the Appeal is allowed. The impugned judgment is quashed and set aside. The Respondent is directed to pay to the claimant compensation of ₹8,00,000/-. The claimants to furnish individual bank account to the respondent within two weeks. The 40% amount of compensation in respect of the share of claimant No.1-Rajendrakumar s/o Chotelal Jain be equally distributed in favour of appellant nos.2 to 5 and balance

Modified as per
Hon'ble Court's
order dated
05.05.2022
Sd/-
P.A.

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amount to the extent of 15% each in the account of claimant nos.2 to 5 within a period of eight weeks from the date of this order.

The Appeal stands disposed of in above terms. The Civil Applications, if any, stand disposed of.

JUDGE

Wagh