

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

FIRST APPEAL NO. 49 OF 2019

1. Shafiulla Khan S/o Yusuf Khan Pathan
Aged about 59 years, Occu. Business,
(Father of deceased)
2. Roshan Ara W/o Shafiulla Khan Pathan
Aged about : 55 years, Occ. Household
(Mother of deceased)

Both R/o Taj Decoration, Bhutiya Darwaja
Dasra Road, Mahal Nagpur, Tah and Distt.
Nagpur (Mah.)

.... **APPELLANTS**
(Original Claimants on R.A.)

// **VERSUS** //

Union of India, through its
General Manager,
South East Central Railway,
Bilaspur (Chhatisgarh)

.... **RESPONDENT**
(Original Respondent on R.A.)

Shri R.G. Bagul, Advocate for appellants
Shri N.P. Lambat, Advocate for respondent

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 17/02/2022

ORAL JUDGMENT

. This is an appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, assailing the judgment dated 28/09/2018, whereby learned Railway Tribunal has dismissed the claim petition filed by the appellants under Section 124-A of the Railway Act, 1989.

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

The Appellants who are the parents of the deceased Mohd. Khan had filed a claim petition under Section 124-A of the Railways Act, 1989, alleging that on 15/06/2015 their son Mohd. Khan was travelling from Bilaspur to Nagpur by train No. 12855. It was alleged that just before the train entered Nagpur Station, some unknown persons boarded the train near Lashkaribag and assaulted the deceased, they robbed his mobile and cash and threw him from the train. It is stated that the deceased came under the wheels of the train and that his body was cut into pieces. The Appellants claimed that the deceased was a *bona fide* passenger and that his death was caused in an untoward incident.

3. The Respondent denied that the deceased was a *bona fide* passenger. They also denied that the death of the deceased was caused in an untoward incident. The Respondent therefore denied their liability to lay the compensation.

4. The Railway Claims Tribunal, after considering the evidence adduced by the respective parties, held that the deceased was a *bona fide* passenger. The Tribunal, however held that the Appellants had not proved that the death of the deceased was caused in an untoward incident. The Tribunal therefore rejected the application. Being aggrieved by this order, the Appellants have filed this appeal.

5. Heard Shri Bagul, learned Counsel for the Appellants. He submits that the deceased was admittedly travelling from Bilaspur to Nagpur by train no. 12855. The evidence of the father of the deceased shows that just before reaching the Nagpur Station the deceased had called him and told that he would be reaching home within an hour. Since the deceased did not come home his father went to Railway Station and enquired about the deceased. Learned Counsel submits that the bag of the deceased was admittedly found in the train, which fact proves that the deceased was travelling by the train and that he was thrown out of the train or that he had fallen from the train. He, therefore, contends that the Tribunal was not justified in holding that the death of the deceased was not an untoward incident.

6. Shri Lambat, learned Counsel for the Respondent states that

there are no pleadings to indicate that the deceased was attacked or assaulted in the train. He submits that the body of the deceased was cut into three pieces and it is difficult to believe that the passenger in the train would not have witnessed such a violent attack. He further claims that the claim petition does not indicate that the deceased was assaulted in the train. He therefore submits that the findings recorded by the Tribunal do not warrant any interference.

7. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties. It is not in dispute that at the relevant date, the deceased was travelling from Bilaspur to Nagpur. The Tribunal has recorded a finding that he was a *bona fide* passenger. The only question which falls for consideration is whether the death of the deceased was caused in an untoward incident.

8. It may be mentioned that the evidence of PW 1 – the father of the deceased reveals that on the relevant date at about 20:00 hours, the deceased had called his mother and had told her that he would reach home within an hour. The evidence of this witness indicates that since the deceased had not reach home, he went to the Nagpur Railway Station. He has stated that the bag of the deceased was found in the train. They took

search and on the next day, they found the body of the deceased at Lashkaribag, Bhosalewadi premises on Nagpur- Kolkata railway track. The fact that the body of the deceased was found near the said place is also corroborated in the police record. The records further indicate that crime was registered against unknown persons for entering the train and causing death of the deceased.

9. The above circumstances prove that the deceased was travelling by train No. 12855 under a valid ticket. His body was found on a railway track, which fact suggests that the deceased had either accidentally fallen from the train or that he was thrown out of the train. Section 123 (c) and 123(2) covers the case of violent attack as well as accidental death by falling from the train.

10. The circumstances on record therefore prove that the death of the deceased was caused in an untoward incident. Under the circumstances, the Tribunal was not justified in rejecting the application. Hence, the impugned order cannot be sustained. Consequently, the appeal is allowed. The impugned judgment and order is quashed and set aside. It is held that the Claimants are entitled for compensation of Rs.8,00,000/-. The Claimants shall furnish the details of the bank account within two weeks.

11. The Respondent to deposit the compensation in the individual account of the claimants in equal proportion, within a period of eight weeks from the date of the order.

JUDGE

Jayashree..