

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 2744 OF 2018

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| 1. Govind s/o. Dattatraya Joshi
Age. 57 years, Occ. Service, | .. | Appellants |
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| 2. Sau. Anuradha w/o. Govind Joshi
Age. 52 years, Occ. Household,
Both R/o. Pakkichawl, Nanded,
District Nanded. | | |

Versus

Union of India Through the General Manager, South Central Railway, Secunderabad (A.P).	..	Respondent
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Mr.S.S. Gangakhedkar, Advocate for the appellants.
Mr.M.N. Navandar, Advocate for sole respondent.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	06.09.2023
PRONOUNCED ON	:	06.11.2023

ORDER :-

01. This appeal arises out of judgment and order dated 18.07.2016 passed by the learned Member (Judicial), Railway Claims Tribunal, Nagpur Bench, Nagpur, dismissing the claim application of the present appellants. For the sake of convenience the parties are referred to as per their original status.

02. The facts in short are that son of the applicants deceased Balaji died on 20.03.2011 in a railway accident. Deceased Balaji had been to Basar, Andhra Pradesh for Darshan of Goddess Saraswati along with his friends. On 20.03.2011 he obtained railway ticket bearing No. 51075996 and boarded Secunderabad-Mumbai Devagiri Express. Because of rush in the bogie, he stood in passage near door of the bogie. While the train was between Maltekdi-Nanded railway stations, there was heavy jerk to the train. Because of the said jerk, the deceased fell down and came under the wheels of the train. One Anil Kumar, friend of the deceased pulled chain and stopped the train. In that accident the deceased received fatal injuries and he succumbed to the injuries. Immediately the deceased was taken to the Government Hospital, Nanded, where he was declared as dead. On receiving information from Anil Kumar, incident was reported to Itwara Police Station, Nanded and A.D. No.11 of 2011 came to be registered.

03. Since the deceased died in the railway accident, the applicants filed claim petition bearing Case No.OA(llu)/NGP/2011/0248 and claimed compensation. It is defence of the Railway that no any such incident as

alleged took place. The incident cannot be termed to be under section 123(c) of the Railways Act, 1989. It is specifically stated that this is not a case of untoward incident and applicants are not entitled to receive compensation under section 124-A of the said Act.

04. In support of applicants' case, applicant No.1 got himself examined as AW-1 and proved documents AW-1/1 to AW-1/7. The respondent examined one D.Jaganmohan – a railway guard as RW-1 and proved documents R-1 and R-2. In addition to the evidence, the Railway placed on record report of enquiry conducted by Divisional Railway Manager (DRM). In the said report it was reported that no accident and untoward incident took place on that day. RW-1 Jaganmohan also stated that no any untoward incident took place on the date of the journey. Thus, it is specific case of the Railway that no untoward incident took place. There was no report of falling of any passenger reported to this witness. Neither any incident was informed by the Loco-Pilot. No passenger has reported about any untoward incident. There was no rush in the train. It is also further stated that there was no jerk to the train.

05. On the basis of above evidence, the learned Member held that untoward incident is not proved and therefore the applicants/applicants are not entitled to receive compensation under section 124-A of the said Act. The learned Member considered that the applicants have not cross-examined RW-1 nor moved any application for recalling said witness for cross-examination and thus the evidence of RW-1 is accepted by the applicants. Though it is reported that on a fall of Balaji, Anil Kumar pulled the chain, but he was not examined. The applicants have not examined any other friend or any passenger travelling in the said train. The learned Member discussed that it was necessary to examine any of the friend traveling with the deceased at the time of said accident. It is further considered that about occurrence of untoward incident, there is no memo issued by the Railway Authority nor any information is given by the applicants to the Railway administration and held that when the incident itself is not proved, the applicants are not entitled to receive any compensation.

06. The learned Counsel for the applicants vehemently argued that the case of the applicants ought to have been accepted as the body of the deceased was found on the railway track. There was a ticket with him and

that fact is not disputed. So, it was necessary to accept that the deceased was travelling in the train and died in an accident. He took this Court through the definition of “Passenger” stating that the deceased was clearly a passenger.

07. The learned Counsel for the respondent submits that to claim compensation, it is necessary to prove that the accident or any untoward incident has taken place. The applicants could not prove this basic fact and therefore they are not entitled to receive any compensation. The learned Counsel for the respondent submits that there is procedure prescribed for reporting accident or any untoward incident and the entire story appears to be suspicious. Though it is stated that the chain was pulled by Anil Kumar, there is no such report of pulling of chain with the Railway. Mere finding of ticket with the deceased is not sufficient. He submits that the learned Member has rightly passed the order and no interference is called for.

07. The learned Advocate for the applicants relied upon following judgments :-

- (i) Union of India Vs. Rina Devi, (2019) 3 SCC 572.
- (ii) Dalit Vs. Union of India, 2019 SCC OnLine Bom 1238.
- (iii) Union of India Vs. Dilip & Ors., 2019 SCC OnLine SC 2119
- (iv) Meerabai & Ors. Vs. Union of India, 2020 SCC OnLine Bom 268
- (v) Megha Vs. Union of India, 2020(5) Mh.L.J.144.

(vi) **Shivlal s/o.Shukan Chaudhary & Anr.Vs.Union of India, 2020 (1) Mh.L.J. 859.**

08. The learned Counsel for the appellant relied upon paras 15.3 and 16 of the judgment in the case of **Rina Devi (Supra)** about quantum of compensation. He further pointed out that the ground is also discussed about self inflicted injuries, which is absent in this case. In the said judgment, the Hon'ble Court has observed that merely possession of a ticket is not sufficient to hold that a person is a passenger, nor absence of ticket would mean that a person is not a passenger. This Court finds that this authority is of no help to the petitioner. The ticket is found with the passenger that itself cannot be a conclusion that deceased was a bona fide passenger.

09. In the judgment in the case of **Dalit Vs. Union of India (Supra)**, the Railway had contested claim contending that the incident narrated in the application could not have been considered as untoward incident defined under section 123(c) of the Railways Act and defence was taken that Railway is not liable to pay the compensation. In that case the deceased was not found with ticket, however, it was held that since she had entered in the station, she is presumed to be bona fide passenger. In that case it was held that the

deceased was bona fide passenger.

10. In the case of Union of India Vs. Dilip (Supra), the judgment was on the quantum of compensation. The question of quantum occurs only after untoward incident is proved.

11. Meerabai & Ors. Vs. Union of India (Supra), was a case where the passenger fell down accidentally while alighting the train at Railway Station. The Tribunal had rejected the claim on the ground that the deceased purchased ticket from Akola to Murtizapur and Akola to Shegaon of general train, however, the deceased boarded in express train which was not having stop of Badnera and thus he died due to his negligence as the deceased tried to alight from a running train at Badnera. In that view, this Court had considered the judgment in the case of Union of India Vs. Anuradha reported in 2014 ACJ 856, wherein it was held by this Court that :-

“Even the deceased boarded in a wrong train having a valid journey ticket and died while alighting the train that does not mean that he was not a bona fide passenger and on that ground claim cannot be rejected.”

12. In the case of Megha w/o. Vijay Thakur (Supra) and Shivlal s/o.

Shukan Chaudhary (Supra), this Court finds that the factum of accident or any untoward incident were proved.

13. Considering the facts of this case in the background mentioned above, this Court finds that the applicants could not prove untoward incident or accident. The applicants could have examined any of the friends travelling along with the deceased, when it is specific case that one of the friends took the deceased to the hospital. No any other passenger is examined by the claimants. From the DRM's enquiry, it is seen that no any untoward incident or accident was reported by the Loco-Pilot or any other passenger. Mr. Jaganmohan who was examined by the Railway is not even cross-examined by the applicants. This clearly shows that the story of accidental fall is a cooked up story. Though it is tried to be submitted that in spot panchanama, it is shown that the body was found near Railway track that itself would not be sufficient to establish that the deceased died in an accident or in untoward incident, as given in Section 123 of the Railways Act to seek compensation. It was imperative for the applicant to show that any accident or untoward incident had taken place. The applicants have miserably failed to prove this basic fact. The learned Member of the Tribunal has rightly considered the

application by appreciating the evidence. No fault can be found with the reasoning given or findings recorded by the learned Member. There is no merit in the appeal and the same deserves to be dismissed. Thus, the appeal is dismissed with no order as to costs.

[KISHORE C. SANT, J.]