



Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.41 OF 2015**

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|----|------------------------------------|---|------------|
| 1. | Arun Anshiram Dhotre |] | |
| | (Aged – 45 Years) Father |] | |
| 2. | Aruna Arun Dhotre |] | |
| | (Aged – 40 Years) Mother |] | |
| | Village – Virsai (Bushawadi) |] | |
| | Post – Kangawai, Tal – Dapoli |] | |
| | Dist. Ratnagiri. |] | Appellants |
| | Vs. | | |
| | Union of India, Through |] | |
| | General Manager, Western |] | |
| | Railway, Having his office at |] | |
| | 3 rd Floor, Churchgate. |] | Respondent |

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Mr. Balasaheb Deshmukh i/b Mr. D.T. Ajagekar, for Appellants.

Mr. Chetan Agrawal a/w Mr. Sachin R. Pawar, for Respondent.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 28th August, 2023.
PRONOUNCED ON: 31st August, 2023.

JUDGMENT:

1. By this appeal, the appellants impugned the judgment and order dated 21st April, 2014 passed by Member (Technical), Railway Claims Tribunal, Mumbai Bench, Mumbai dismissing their Claim Application bearing No. OA/(IIu)/MCC/2011/0025.

2. Briefly stated, facts are as follows.

3. One Alpesh Arun Dhotre (for short 'deceased') was travelling by a local train between Bhayander and Vasai along with his friend on the fateful day of 26th January, 2010. When the local train reached between Naigaon and Vasai Road Railway Station, due to excessive crowd in the compartment, deceased fell down out of the train sustaining fatal injuries. An accident memo was prepared by the Station Master pursuant to an information received from one unknown person that an unknown person was found lying by the railway track. When the concerned Government Railway Police staff along with two porters reached near k.m 50/07 on down local line, they noticed a boy lying on the ground with serious head injury.

4. An inquest *panchanama* was drawn in the presence of *pancha* witnesses under section 174 of the Code of Criminal Procedure. Statements of the witnesses were recorded. Dead body was sent for postmortem to Primary Health Centre, Vasai (East) District Thane. Autopsy was conducted at Primary Health Centre at Navghar. Autopsy report was collected. As per the Autopsy report, cause of death was "Hemodynamic Shock to Polytrauma". Investigating report was given by the Inspector of R.P.F of Vasai Road Station as well as particulars of an untoward incident.

5. Meanwhile, parents of the deceased who claimed to be his dependants moved an application before the Railway Claims Tribunal seeking compensation.

6. The learned Tribunal, after going through the application and evidence of appellant No.1 - Arun Dhotre rejected the claim mainly on the ground that the appellants have failed to establish that it was an untoward incident within the meaning of section 123 (c) (2) of the Railways Act, 1989. The Tribunal rejected the claim also on the ground that the applicants failed to prove that they were dependants of the deceased. The Tribunal, however, held that the deceased was a *bona fide* passenger, in the sense, he was travelling between Bhayander and Vasai Road Railway Station with a valid railway ticket at the time of the accident.

7. I heard Mr. Deshmukh, learned Counsel for the appellants and Mr. Agrawal, learned Counsel for the respondent-Union of India.

8. Chapter XIII of the Railways Act contemplates liability of railway administration for death and injury to passengers due to

accidents. Definition of ‘untoward incident’ as per section 123 (c) (2) of the said Act means the accidental falling of any passenger from a train carrying passengers. Section 124A of the Railways Act provides compensation on account of untoward incident whereas proviso (a) to (e) of Section 124-A are exceptions wherein Railway Authority is not liable to pay compensation. Section 124-A and it’s proviso read as under;

“124A. Compensation on account of untoward incident.- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;

- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident”.

Explanation.-For the purposes of this section, “passenger” includes-

- (i) a railway servant on duty; and
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]

9. The impugned judgment and order passed by the Railway Claims Tribunal suffers from several irregularities as well as illegalities, in the sense, entire judgment is perverse and needs to be quashed and set aside for the following reasons.

10. An affidavit in lieu of examination-in-chief of appellant No.1- Arun Dhotre who is the father of the deceased indicates that he and appellant No.2 are the parents of the deceased who died on 26th January, 2010 while travelling from Bhayander to Vasai Road in the local train along with friend. Around 10.50 hours when the said

local train reached between Naigaon and Vasai Road stations near k.m 50/7, deceased accidentally fell down from the train due to heavy rush and push by the passengers in the compartment, resulting into his instantaneous death.

11. Evidence of this witness would obviously be of hearsay in nature as he had no occasion to witness the accident. However, accident memo dated 26th January, 2010 drawn by Government Railway Police, inquest *Panchanama* and the investigation report given by Additional Divisional Railway Manager dated 8th March, 2011 unfold the entire facts, thereby establishing the fact that fall of the deceased from the train was an accident, meaning thereby, it was an untoward incident.

12. Accident memo dated 26th January, 2010 drawn by the Government Railway Police reveals that one unknown person aged about 20 years was found dead at k.m 50/7 near down railway line. Inquest *Panchanama* drawn on 26th January, 2010 indicates injuries on the person of the deceased. Description of the injuries as stated in the inquest *panchanama* is as under;

“Injuries:- 2 to 3 inch wound behind the head and skull has been broken and internal flesh came out from it, right hand has broken in internally in wrist, and left hand has broken in arm, there are abrasions on chest and abdomen, left foot has broken in calf and 1 inch round wound seen on it, there is bleeding from ears, due to skull broken and eyes and mouth are open”.

13. It is an admitted fact that the deceased had died due to the injuries as stated hereinabove as well as from the postmortem report dated 26th January, 2010. Death certificate of the deceased is also filed on record. Death certificate given by Navghar Primary Health Centre reveals provisional cause of death as “Polytrauma”.

14. The most important document is the final investigating report given by ADRM the subject of which itself shows that it was in respect of an investigation of an untoward incident. It is not the case of the respondent that death of the deceased falls within the proviso to section 124-A of the Railways Act which provides that no compensation is payable if a passenger dies or suffers injury due to situation mentioned therein. Section 124-A of the Railways Act lays down strict liability or no fault liability in case of railway accident. The respondent has not been able to bring its case under any of the clauses of section 124-A of the Railway's Act.

15. Coming back to the report of ADRM which is quite interesting one. The Authority had examined following documents;

- (a) Investigation report of IPF/BSR,
- (b) SS/BSR memo,
- (c) Form No.2,
- (d) Police Report,
- (e) Inquest *Panchnama*,
- (f) Certificate of cause of death,
- (g) Postmortem report,
- (h) Statement of deceased's cousin
- (i) Statement of deceased's father

Conclusion drawn by the Authority is quite strange. The Authority had concluded as under;

“From the scrutiny of the above documents it was found that, SS did not mention any cause of incidence in his memo GRP mention in their report deceased fell down from unknown local train, but they failed to establish the reason of incidence i.e falling down from any train, by any supportive evidence, hence cognizance cannot be given on such assumptions mentioned in the GRP's reports. Moreover there is no independent eyewitness to the incidence. Therefore, in the absence of independent witness and concrete evidence, it cannot be establishes that the deceased has fallen down from any train. It is also revealed that GRP found one 2nd class railway local ticket dated 26.01.10 Ex. Bhayandar – Vasai Road, in possession of deceased during the personal search, but no any copy of same is available to verify bonafideness; hence cognizance can

not be given on such information. Compensation can not be granted to claimant in this case”.

It appears that despite there being a specific memo given by the Station Superintendent on the basis of the Government Railway Police report that the deceased fell down from an unknown local train, the Authority disbelieved his own employee for the reasons best known to it. The conclusion as regards Station Superintendent failed to establish the reason of incident is something which is beyond one's understanding as to what was expected of the Station Superintendent by this Authority? Observations of the Authority that in the absence of any independent eye witness to the incident or any other concrete evidence, it cannot be established that the deceased had fallen down from train is something, no sane man will accept or believe. The observations of the ADRM are beyond the pale.

16. The learned Tribunal appears to have simply reproduced the conclusions arrived at by the ADRM in the said report without application of mind. Strangely, on one hand, Authority accepts that the deceased was found with a valid traveling ticket but it further states that no any copy of the same is available to verify the *bona*

fides. A true copy of the ticket is also annexed by the appellants bearing No.86822043. There is a reference of railway ticket in the inquest *panchanama*. There is a reference of two second class railway tickets dated 26th January, 2010 indicating that they were travelling from Bhayander to Vasai Road Railway Station. Admittedly, friend of the deceased was traveling with the deceased at the relevant time and, therefore, both must have purchased tickets. There is no doubt that the deceased was a *bona fide* passenger at the relevant time. From the documents on record, it has been established that the deceased died due to an accidental death which was an untoward incident.

17. The appellants have tendered ration card indicating name of the appellants, name of the deceased as well as other family members which was issued by the Competent Authority. They have also tendered copies of their Aadhar Cards. From the documentary evidence coupled with the evidence of the appellants, it has been proved that they were dependants of the deceased.

18. Learned Counsel for the respondent submitted that since it was a Republic Day, there was no rush in the local train and,

therefore, there was no question to board an over crowded local train resulting into his fall. However, Counsel for the respondent fairly admits that the deceased was a *bona fide* passenger. Counsel would argue that the appellants could have examined cousin of the deceased in support of their case. Merely because cousin of the deceased, who was admittedly travelling with him in local train with valid ticket was not examined, would not *ipso facto* diminish other clinching evidence discussed hereinabove.

19. Rather, respondent has not explained as to why no evidence had been adduced on their behalf in rebuttal in order to bring their case within the exceptions to section 124-A of the Railways Act. The respondent could have examined Station Superintendent, Government Railway Police Personnel or at least Additional Divisional Railway Manager who had given a report dated 9th January, 2012.

20. In case of **Union of India Vs. Rina Devi, 2018 ACJ, 1441**, in paragraphs 16.1 and 16.2, the Hon'ble Supreme Court on the point of principle of strict liability and concept of self inflicted injury observed thus;

“16.1 From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and Section 124A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an ‘untoward incident’. Only exceptions are those provided under proviso to Section 124-A. In Prabhakaran Vijaya Kumar (supra) it was held that Section 124A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela (supra).

16.2 Coming to the proviso to Section 124A to the effect that no compensation is payable if passenger dies or suffers injury due to the situations mentioned therein, there is no difficulty as regards suicide or attempted suicide in which case no compensation may be payable. Conflict of opinions in High Courts has arisen on understanding the expression ‘self inflicted injury’ in the proviso. In some decisions it has been held that injury or death because of negligence of the victim was at par with self inflicted injury. We may refer to the decisions of High Courts of Kerala in Joseph PT (supra), Bombay in Puspa (supra) and Delhi in Shayam Narayan (supra) on this point”.

(emphasis supplied)

21. The Tribunal had answered the issue of “bona fide passenger” in respect of the deceased in the affirmative. The second issue as regards “untoward incident” has been answered in the negative.

Third issue as to whether the appellants are the dependants of the deceased has also been answered in the negative.

22. Reasons assigned to the negative finding to the issue of untoward incident are cryptic, in the sense, a short paragraph appears to have been extracted from the ADRM's report to construe that it was an untoward incident. As such, observations are indeed cryptic and perverse.

23. The Tribunal disbelieved ration card tendered by the appellants by observing that the appellants cannot be said to be the dependants of the deceased in view of section 123 (b) of the Railway Act. It seems that the Tribunal had lost sight of clause (ii) of Section 123 (b) which reads thus;

“(ii)the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger”.

Parents can also be said to be dependants in view of the aforesaid clause. The Tribunal has also committed grave error by observing that on the date of the accident, the appellants are shown to be the

residents of “Virsa in Ratnagiri” instead of “Vasai in Thane District”. Such observations made by the the trial Court are again in ignorance of common sense, for, merely because residence of the appellants-parents of the deceased is shown as Virasai in Ratnagiri would not dis-entitle them from claiming compensation in view of the facts and attending circumstances. They cannot be denied their original claim on the aforesaid ground.

24. Corollary of the aforesaid observations is that impugned judgment is not only perverse but also in total ignorance of the settled legal position enunciated in the case of **Union of India Vs. Rina Devi** (supra) as well as the facts and evidence on record.

25. The impugned judgment and order, therefore, needs to be quashed and set aside. Now, to the order.

:O R D E R:

[1] The appeal is allowed.

[2] The impugned judgment and order dated 21st April, 2014 passed by Member (Technical), Railway Claims Tribunal, Mumbai Bench, Mumbai in Claim Application bearing No.

OA/(Ilu)/MCC/2011/0025 is quashed and set aside.

[3] The Respondent shall deposit compensation of Rs.8,00,000/- in the Railway Claims Tribunal Mumbai within a period of six weeks from today.

[4] There shall be equal apportionment of the amount of compensation amongst the appellants.

[5] If the respondent fails to deposit the compensation within six weeks, future interest @ 9% per annum shall have to be paid on the amount of compensation, till the entire amount is realised.

[6] The Record and Proceeding be remitted to the Railway Claims Tribunal, Mumbai.

26. Appeal stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]