



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1259 of 2017

1. Archana Wd/o. Parmeshwar Shinde
Age : 26 years, Occu.: Household
2. Onkar S/o Parmeshwar Shinde,
Age : 06 years, Occu.: Nil,
Minor U/g of his real mother
appellant No.1.
3. Trimbak S/o Hanumant Shinde,
Age : 52 years, Occu.: Agril.,
4. Godawaribai W/o Trimbak Shinde,
Age: 42 years, Occu.: Household
All R/o. Shastri Nagar, Parbhani,
Tq. And Dist. Parbhani.

... Appellants
(Orig. Claimants)

VERSUS

The Union of India,
Through the General Manager,
South Central Railway,
Secunderabad (Telangana).

... Respondent
(Orig. Respondent)

.....
Mr. M.P. Kale, Advocate for Appellants
Mr. M.N. Navandar, Advocate for Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th SEPTEMBER, 2024

ORAL JUDGMENT :

1. This appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, by the claimants challenges the impugned judgment and order dated 29.08.2016, passed by the Railway Claims Tribunal, Nagpur, in case No.OA(Ilu)/NGP/2012/0131.

2. Facts which are not in dispute are that, on 09.01.2011, Parneshwar S/o. Trimbakrao Shinde had undertaken a journey after purchasing ticket from Gangakhed Railway Station to go to Parbhani. He boarded at unknown train and fell down near Shingnapur Railway Station at KM No.320/8 and died on the spot. Claimants i.e. wife, minor son and parents of Parmeshwar filed claim petition for compensation of Rs.8,00,000/- along with interest @ 8% per annum.

3. Respondent/Railways opposed the claim by filing written statement contending that no such incident as alleged by claimants causing death of deceased within the meaning of Section 123(c) read with Section 124-A of the Railways Act, has taken place. Deceased was not a bonafide passenger of any train. As such, claim application is not maintainable. Railways denied all claims made in claim application and prayed for dismissal of the same.

4. Tribunal after assessing the material on record and hearing the parties dismissed the claim on the ground that claimants have failed to prove that deceased was a bonafide passenger and he has died in an untoward incident. Hence, the present appeal.

5. Heard learned advocate for appellants and learned advocate for respondent.

6. Learned advocate for appellants assailed the judgment and order of Tribunal contending that Tribunal has erred in recording a finding that deceased has not died in an untoward incident and that he was not bonafide passenger. He submits that there is sufficient material on record to show that deceased had fallen from running train. Tribunal failed to properly appreciate the material on record. Dismissal of claim by Tribunal is contrary to the letter and spirit of beneficial legislation. In support of his submissions, he relied on ***Aniruddha Roy Mahendranath Vs. Union of India , AIROnline 2023 BOM 1481.***

7. Per contra, learned advocate for respondent / Railways supported the impugned judgment and order, he submits that Tribunal has properly appreciated the evidence on record and has rightly come to the conclusion that deceased had not died in an untoward incident within the meaning of Section 123(c). Since no valid ticket was found with the dead body, deceased cannot be said to be a bonafide passenger.

8. Heard learned advocate for appellants and learned advocate for respondent at length. Perused the record.

9. It is a matter of record that Keyman found a dead body lying alongside the track, he therefore, lodged the report on 09.11.2011, stating that, "*The deceased is injured due to fell down from train and get injured to head and body and died on the spot.*" Crime details form (spot panchanama) shows that dead body was found in face down position on the Eastern side of railway track, at a distance of 4 feet. In the post-mortem report indicates following injuries are noticed on the dead body:

- (i) CLW over apex of orantium of size 5 CM x 2 CM Ā herniation of brain Ō duramatter.
- (ii) Open # of Rt tibia & fabula
- (iii) Closed # of Lt tibia & fabula
- (iv) Closed # of Lt radius & ulna
- (v) Bright red bruises over Rt side of chest and abdomen sub cut shows partial hemorrhage

The cause of death is hypovolumic shock following multiple injuries and fracture of skull.

10. While considering the injuries suffered by the deceased in untoward incident, the Tribunal has observed in

para 19 that, *"The applicants have placed a copy of Inquest Panchnama (Exh.AW-1/3), wherein column 9 – Description of the dead body, it is mentioned cut down and cut in small pieces and in column 10 against the head 'Description of injuries on dead body' there is mentioned head injury cut down from the railway, neck, chest, stomach, limbs, hands, legs and back crushed and the police and panchas have opined that there is possibility that the deceased might have fallen down from the train and died."*

Above observations of the Tribunal are contrary to the inquest panchanama as in column No.9, it is not mentioned that the dead body was cut into pieces and neck, chest, stomach, limbs, hands, legs and back were crushed. The said observation is also contrary to the post-mortem report, wherein above mentioned injuries are not mentioned. Admittedly, as per post-mortem report the cause of death of deceased is hypovolumic shock following multiple injuries and fracture of skull. This is possible due to fall from running train and the spot panchanama and the report of the dead body supports the same. Finding thus recorded by the Tribunal about the condition of the dead body and claimants failed to prove that Parmeshwar died on account of untoward incident is

erroneous and the same is unsustainable in the facts of the present case. The Tribunal has erred in holding that claimants have failed to prove that deceased died in an untoward accident.

11. The Tribunal has further erred in holding that deceased was not a bonafide passenger. Merely because no ticket was found with the dead body that by itself is not sufficient to come to a conclusion that deceased was not a bonafide passenger. Possibility cannot be ruled out that the ticket may have been lost during the untoward incident.

12. In *Union of India Vs. Nandabai w/o. Sheshrao Dangat and Others, (2015(6) Mh.L.J. 295)*, this Court at Nagpur Bench has observed,

"6. Merely because railway ticket was not recovered from dead body, it cannot be said that deceased was traveling without ticket. Possibility that ticket may have been lost during course of untoward incident cannot be ruled out and, therefore, presumption need to be drawn that the deceased was a bona fide passenger."

13. In *Dalit Tukaram Mudkhede Vs. Union of India [MANU/MH/1829/2019]*, this Court has relied on *Union of India Vs. Bimala wd/o Pintho Tudu and Others, 2012 (3) Mh.L.J. 883*, wherein it is held,

"Fact that deceased was not detected as passenger travelling without ticket, would give rise to an inference that he was travelling with valid ticket. Unless the negative is proved or there is evidence, may be, circumstantial in nature, that the deceased was not holding valid ticket, it would be desirable, to presume that deceased was authorised passenger."

14. In ***Rina Devi*** (supra), the Apex Court has held,
- "17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

15. In the light of aforestated ratio and in view of the settled legal position that claimants have to prove their case on the touchstone of preponderance of probability. They need

not prove their case beyond reasonable doubt. In present case, circumstantial evidence and material on record is sufficient to show that deceased had fallen from running train and died in an accident. The claimants therefore have discharged their *prima facie* burden, and the burden shifted on the Railways to prove that death of deceased had occurred in the circumstances otherwise than claimed by the claimants. Admittedly, Railways has not led any evidence. In this view of the matter, the Tribunal has failed to appreciate material on record in the proper perspective and has erroneously dismissed the claim of claimants. The adverse findings recorded by the Tribunal are therefore unsustainable.

16. For the aforestated reasons, the first appeal deserves to be allowed. Hence, the following order:-

ORDER

- (i) First appeal is allowed.
- (ii) Impugned order dated 29.08.2016, passed by Railway Claims Tribunal, Nagpur, in case No.OA(Ilu)/NGP/2012/0131, is hereby quashed and set aside.

- (iii) Claim application No.OA(Ilu)/NGP/2012/0131, filed by claimants is allowed in terms of prayers made therein.
- (iv) Railways/respondent to pay compensation of Rs.8,00,000/- to the appellants/claimants within 12 weeks from the date of uploading of this order.
- (v) Amount to be deposited in the Tribunal.

[NITIN B. SURYAWANSHI]
JUDGE