



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

FIRST APPEAL NO.857/2022

1. Chamelibai Wd/o Janrao Malave,
aged about 60 Yrs., Occ. Housewife.
 2. Vijay S/o Janrao Malave,
age 35 Yrs., Occ. Labour.
 3. Kavita W/o Supadu Jogi,
age 29 Yrs., Occ. Housewife,
R/o Bhagdara, Tal. Jamner,
Dist. Jalgaon.
 4. Vinod s/o Janrao Malave,
age 25 Yrs., Occ. Labour.
Apl. Nos.1, 2 and 4 R/o Bharadi Wada,
at P.O. Anjale (Bhalod), Ta. Yaval,
Dist. Jalgaon (M.S.) 425304. ... Appellants
- Versus -
- Union of India,
through General Manager,
Central Railway CSMT, Mumbai. ... Respondent

Ms. Sumesha Chaudhari, Advocate for the Appellants.
Ms. Neerja G. Chaubey, Advocate for the Respondent.

CORAM :- MRS. VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT :- 30.10.2023
DATE OF PRONOUNCING THE JUDGMENT :- 9.1.2024

JUDGMENT

Being aggrieved by the judgment passed by the
Railway Claims Tribunal, Nagpur in O.A.
No.(IIu)/No.NGP/33/2019 dated 22.4.2022 dismissing the

death claim of the deceased Janrao in railway accident, the claimants have filed the present appeal.

2. The appellants are the dependents of the deceased who died in railway accident on 7.11.2018. The deceased along with claimants was staying at Anjale, Taluka Yaval, District Jalgaon. The deceased Janrao Abhiman Malave was working at Surat as a Labour. He along with his elder son Vijay were coming back for Diwali Festival from Surat and boarded in general compartment of Train No.19045 Tapti Ganga Express. They have purchased the ticket of express from Surat to Bhusawal. It is the case of appellants that due to heavy rush and push blow of passengers deceased fell down at KM. 443/1-3 at Bhusawal Station and he died on spot. The journey ticket was with co-passenger who is the son of the deceased and he had surrendered it to the Ticket Collector when he arrived at Bhusawal Station. According to claimants the deceased was a *bona fide* passenger and he died in an “untoward incident” and hence they have claimed the compensation.

3. The respondent Railway has opposed the claim application stating that deceased was not possessing valid journey ticket for travelling in Tapti Ganga Express Train No.19045 and was not a *bona fide* passenger of said express. The death of deceased does not fall within the meaning of provisions of Section 123(c) read with Section 124A of Railways Act.

4. The Railway Accident Claims Tribunal has after considering the evidence and documents on record delivered the judgment stating that time of Tapti Ganga Express and the occurrence of body on railway track is not matched. The allegations about falling down from Tapti Ganga Express on the track has not been proved as said train had arrived at Bhusawal Station at 15.45 Hrs. and the information of the body was given at 15.27 Hrs. i.e. even before arriving of Tapti Ganga Express the body was lying there on track therefore, it is clear that the deceased was not travelling from said train and he was not a *bona fide* passenger of said train and, therefore, the Tribunal has rejected the claim petition.

5. The learned Counsel for claimants has stated that the Tribunal has not considered the evidence of the co-passenger who is the son of the deceased. He was having valid ticket for travelling. His evidence is not considered and only on the evidence of the railway persons the judgment was passed rejecting the claim of the claimants.

6. Heard both sides. Perused the evidence on record.

7. Following point arises for my determination:-

(i) Whether the Railway Claims Tribunal is justified in rejecting the claim of claimants for compensation?

8. Claimants are wife and children of deceased. There is no dispute that the body was found on the track at KM No.443/1-3 prior to one K.M. to Bhusawal Railway Station. Whether the death of deceased is caused in an “untoward incident” is required to be seen. Before entering into merits of the case, it is necessary to see the definition of “untoward incident” under Section 123(c) of Railways Act which is as under:-

*Section 123 ¹[(c) “untoward incident” means-(1)
(i) the commission of a terrorist act within the
meaning of sub-section (1) of section 3 of the*

¹ Inserted by Act 28 of 1994, S.2(w.e.f.1-8-1994).

*Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or
(ii) the making of a violent attack or the commission of robbery or dacoity; or
(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
(2) the accidental falling of any passenger from a train carrying passengers.]”*

9. It is the contention of the claimants that the deceased was travelling from Tapti Ganga Express Train from Surat to Bhusawal on 7.11.2018. The falling from the train was noticed by the Loco Pilot of Train No.12534 of Pushpak Express. He has informed it on walkie-talkie. As per his evidence R.W.2 Ganesh Namdeorao Kshirsagar he saw the body at 15.27 Hrs. at KM N0.443/1-3. The location is just one Kilometre prior to the arrival of Bhusawal Station. Another witness, the R.P.F. staff Shri Shailendra Bachchav, is also examined by the respondent. He has seen the body at 15.40 Hrs. and reported the matter to the Station Master. The memo had been issued by the Deputy S.M. to G.R.P./R.P.F. Shri Ramanlal Lad (R.W.1) Loco Pilot of Train

No.19045 Tapti Ganga Express has been examined who adduced evidence to the effect that Train No.19045 arrived at Bhusawal Station at 15.45. Hrs. and there was no jerk reported in the train neither there was any ACP or falling down of any passenger reported by any person. The body was found even before the train reached on the spot.

10. There is no evidence on record to prove that deceased was travelling from said express. The co-passenger has not produced the ticket. In this case evidence of witness is not sufficient for non-production of ticket as the body was found even before reaching alleged express on the spot the travelling of the deceased from said train creates doubt. Rather it is proved from the evidence of the witnesses of respondent that deceased was not travelling by said train.

11. To claim compensation it is necessary that the deceased must be a *bona fide* passenger and he should have died in an “untoward incident”. It is the specific contention of claimants that deceased was travelling by said train and his son was with him. A.W. 2 is the son who has given the evidence about

travelling by said train but the facts brought on record by Railway authority occurrence of body even before arrival of train on said spot clearly proves that the deceased was not travelling by said train. The travelling of deceased by said train itself is not proved and no such incident is reported by any of the passenger who were travelling from said train. Therefore, the learned Tribunal has rightly considered the documentary and oral evidence on record and rejected the claim petition. For the aforesaid reasons, the appeal stands dismissed with no orders as to costs.

(MRS. VRUSHALI V. JOSHI, J.)