

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1416 OF 2024.

- 1) Mr. Mevalal Kunai Mourya]
Aged-46 Years, Father of Deceased,]
R/o. Room No. 6, Shivshakti Chawl, Indira]
Nagar, Pathanwadi, Rani Sati Marg,]
Malad (E), Mumbai.]
- 2) Mrs. Savita Mevalal Mourya]
Aged-42 Years, Mother of Deceased,]
R/o. Room No. 6, Shivshakti Chawl, Indira]
Nagar, Pathanwadi, Rani Sati Marg,]
Malad (E), Mumbai.] **... Appellants.**

Versus

- 1) Union of India, Through General]
Manager, Western Railway, Churchgate,]
Mumbai-400 020.] **...Respondents.**

Mr. Balasaheb Deshmukh i/by Mr. Deepak T. Ajagekar, for the Appellant.
Mr. Pushkar Gokhale, for the Respondent.

Coram : **Sharmila U. Deshmukh, J.**

Reserved on: **January 10, 2025.**

Pronounced on : **January 20, 2025.**

JUDGMENT :

1. The Appeal has been preferred at the instance of the Original Applicants whose claim for compensation on account of death of their son in an incident of 5th June, 2013 filed under Section 16(1) r/w Section 13(1-A) of Railway Claims Tribunal Act, 1987 r/w Section 124-A of the Railways Act, 1989 has been dismissed by the impugned

Judgment dated 20th December, 2019.

2. The Application for compensation filed in the prescribed form pleads that on 5th June, 2013 their son Rakesh Mevalal Mourya , one Umesh Harish Narvekar and other friends came to Mahim railway station and boarded the local train for travelling to Malad where the deceased used to reside. At about 10.45 pm when the local train reached between Andheri and Jogeshwari railway station, the deceased accidentally fell out of the train due to heavy rush in compartment and expired before admission in hospital due to serious grievous injuries. The deceased was holding valid IInd Class railway season ticket bearing No. U 30585634 alongwith railway identity card No. T 16701431 for travelling from Churchgate railway station to Bhayandar railway station for the period from 15th May, 2013 to 14th June, 2013, which was recovered from the body of the deceased as noted in Inquest Panchanama. The Applicants are financially dependent on the deceased. Along with the Application, the Applicants filed the Station Master memo, Inquest Panchanama, death certificate, railway pass, Identity card, bank account details, ration card and photographs of the Applicants.

3. The defence of the Respondent was that as per the memo and diary of SS/Jogeshwari on 5th June, 2013, one unknown male was found lying injured near down local line between Andheri and

Jogeshwari and thus the alleged incident dated 5th June 2013 is not an untoward incident. It was further denied that the deceased was a bonafide passenger as no railway pass was found in the possession of the deceased and that the Applicants are not dependent on the deceased.

4. The Applicant No. 1 examined himself and deposed to the contents of the Application, and, produced the railway season ticket, railway identity card, Station Master memo, copy of Inquest Panchanama, statement of employer of deceased and statement of co-employee of the deceased and copy of the death certificate. In the cross examination, he admitted that he had not personally witnessed the incident. AW-2 i.e. the co-employee of the deceased Umesh Narvekar deposed that on 5th June, 2013 the deceased and one other colleague and he himself came to Mahim railway station on 5th June, 2013 and boarded the Borivali Local Railway Station. He further deposed that the deceased boarded the second class general gents compartment and he and his other colleague boarded the other compartment and he alighted at Jogeshwari railway station. In cross-examination he has admitted that he did not personally witness the incident. Pertinently in the cross-examination there is not even a suggestion given that on 5th June, 2013 the deceased had not boarded the local train.

5. The Railway Claims Tribunal framed the following issues:

“i) Whether the applicants prove that they are the dependents of the deceased within the meaning of Section 123 (b) of the Railways Act ?

ii) Whether the applicants prove that the deceased was a bonafide passenger, of the train, in question, on the relevant day ?

iii) Whether the applicants prove that the death of the deceased had occurred as a result of an untoward incident, as alleged in the claim application ?

iv) To what order/relief ?”

6. Issue Nos. 1 and 2 were answered in favour of the Applicants and Issue No 3 against the Applicants. The Tribunal considered the DRM Report produced by the Respondent which concluded that the SS/JOS did not mention any reason of the incident in the memo, but, the GRP has mentioned in Inquest Panchanama that deceased was knocked down by unknown local train and that incident took place due to his own negligence and carelessness. The Tribunal accepted the genuineness of the reports for the reason that they were prepared by government officials in regular course of their duties. The Tribunal further went on to examine the injuries mentioned in the Inquest Panchanama to conclude that such grievous injuries can be

sustained by a person who is either been knocked down or run over by some other train and dismissed the Claim Application.

7. Mr. Deshmukh, Learned Counsel appearing for the Appellant would submit that the Appellants have established their claim by examining two witnesses, whereas the Respondent failed to examine any witness. He has taken this Court to the accident memo of the Station Master and would contend that column Nos. (I) to (iv) are not filled by the Station Master which include column as to whether the deceased has been hit by some unknown train. He submits that the station diary reports that the accident is untoward incident.

8. Pointing out to the Inquest Panchanama he submits that the opinion of Panchas, which is mere presumption, that the deceased must have been knocked down by some local train is contrary to the Station Master accident memo and the station diary. He would further point out the statement given to the police by the co-employee who was also examined and had specifically deposed as to the fact of boarding of local train by the deceased on date of accident. He submits that the Tribunal has proceeded to examine the injuries to come to conclusion that the injuries as a result of having been fallen down from the train in the absence of any such case or evidence put forward by the Respondent Railways. In support he relies upon the following decision.

Nirmala Vs. Union of India*¹**Balu Narayan Gawale vs. The Union of India*²**

9. *Per contra*, Mr. Gokhale, learned Counsel appearing for the Respondent would submit that Aw-2 was planted witness as he was co-employee of the deceased. He submits that the Tribunal has rightly considered the injuries and the Inquest Panchanama to come to conclusion that the injuries are result of having been knocked down by local train. He would further submit that the statement of the employer is that the timings of the deceased were from 10.00 a.m. to 6.00 p.m. and the accident had occurred at about 9.30 a.m. He submits that it was not necessary for Respondents to produce any evidence as the documents on record proved that the same is not an untoward accident.

10. The following point arise for consideration:

(1) Whether the Railway Claims Tribunal was justified in rejecting the claim for compensation by holding that the death of the deceased was not result of an untoward incident.

As to Point no (1).:

11. Before proceeding to the facts, it will be apposite to refer to the relevant statutory provisions. Section 123(c) of the Railways Act defines an untoward incident which reads thus:

1 2023 SCC Online Bom 473.

2 2024 SCC Online Bom 1238

"123. (c) "Untoward incident" means--

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the 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."

12. Section 124-A provides for no fault liability compensation to be paid for the loss occasioned by reason of untoward incident subject to the exceptions carved out in clauses (a) to (e) of the proviso and reads thus:

"124-A. Compensation on account of untoward incidents.- *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 dependent 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 purpose 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."*

13. In exercise of powers conferred by Section 129 of Railways Act, The Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 have been framed. Rule 3 provides that any railway servant, including guard and driver of the train, on coming to know of occurrence of an untoward incident shall report the same to the nearest Station Superintendent. The Station Superintendent shall report such incident to the Divisional Security Commissioner in prescribed Form I as per Rule 4. Under Rule 6, the Station Superintendent shall make necessary entries in the station diary and make brief report to the Divisional Office, Zonal Railways, police and

Divisional Security Commissioner of the Railway Protection Force. Under Section 7, the officer of the Force on receipt of report under Rule 6 shall carry out the investigation within sixty days and submit report to Divisional Security Commissioner of the Force. Similarly under Rule 8, the police are required to initiate investigation and prepare inquest report. The reports prepared by the police shall be forwarded to the Magistrate and the report prepared by the Force shall be forwarded by the Divisional Security Commissioner to Divisional Railway Manager within fifteen days of receipt of report of investigation from the Force under Rule 10. Under Rule 11, the Divisional Railway Manager may either accept the report of the Force and pass order or direct further investigation by the Force. If the report is accepted, the order passed shall be communicated to the Station Superintendent for necessary entries to be made in the station dairy. Under Rule 13 the investigation report alongwith the acceptance by Divisional Railway Manager is required to be sent to the Claim office, which on receipt of notice of claim shall submit the Divisional Railway Manager's report to the concerned Bench of Railway Tribunal alongwith the written statement.

14. The gist of the Rules reproduced above demonstrates complete procedure to be followed for investigation of untoward incident commencing from report by the railway servant, making

entries in Station dairy, investigation by the police and Force and order of Divisional Railway Manager.

15. The claim of the Applicants have been dismissed on the ground that the incident was not an untoward incident i.e. there was no accidental falling from the train. The Tribunal held that the deceased had been knocked down by an unknown local train while crossing the railway track. The evidence will have to be considered to ascertain whether the Applicants have proved that the deceased died by falling from a local train. To substantiate the claim, the Applicant No 1 examined himself and have produced the Inquest Panchanama, the Station Master memo and the statement of the co-employee of the deceased. As per the prescribed procedure, the information about the accident is first given to the Station Master and the Station Master's Memo shows that column no (I) which is required to be filled when the person is hit by train has not been ticked. In event the deceased was knocked down by a local train, the motorman would have reported the incident to the Station Master and the appropriate column in the Memo would have been ticked.

16. Proceeding to the Inquest Panchanama, the Panchanama record the possibility expressed by the Panchas that the deceased must have expired due to being knocked down by train. The Panchas are described in the Inquest Panchnama as labourers residing in the

vicinity of the railway station and careful reading of the panchanama discloses that the panchas have expressed the possibility that the deceased must have been knocked down by a train. As per the prescribed procedure, the investigation is required to be carried out by the officer of Force. Perusal of the report of the Force would indicate that the same is based on scrutiny of documents and reports that GRP has mentioned in inquest panchnama that deceased was knocked down by local train. It was expected that while carrying out the investigation, the details of the local train which allegedly knocked down the deceased would be recorded. The spot where the deceased was found was identified and it was possible for the Railways to find out the local down which would be passing through the spot where the deceased was lying.

17. The report of the Force could not be accepted as the Station Master's diary as well as the accident memo does not record any information having been given by any motorman of having knocked down any person which was bounden duty of the railway servant as per Rule 3. In event the accident was by reason of the deceased being hit by a train while crossing the tracks, the motorman would have immediately reported the incident to the Station Master.

18. On the other hand, the Applicants has examined the co-employee as AW-2, who has specifically deposed that on the date of

accident, the deceased had boarded the local train. His testimony has not been shaken in the cross examination. There is not even a suggestion that the deceased had not boarded the local train on the said date. The contention that AW-2 is a planted witness cannot be accepted for the reason that on the very next day i.e on 6th June, 2013, the statement of AW-2 was recorded by the police and his statement matches the deposition that the deceased had boarded the local train.

19. The Trial Court based its finding on the possibility expressed in the Inquest Panchanama and the DRM's report, which in turn relied upon the Inquest Panchnama, to opine that the deceased was knocked down by a local train. The Respondent in the present case did not lead any evidence and filed the DRM Report along with certain documents and the Tribunal has accepted the genuineness and the veracity of the said documents.

20. In the case of ***Union of India vs. Prabhakaran Vijaya Kumar***³ the Apex Court has held that in the absence of any of the exceptions mentioned in clauses (a) to (e) of the proviso to Section 124-A, on account of no fault liability, the compensation is required to be paid. It is not the case of the Respondents that the incident which has taken place falls in any of the exceptions contained in clauses (a) to (e) of the proviso to Section 124-A. The Respondent denies that the

³ [2008 ACJ 1895]

incident which occurred on 5th June, 2013 is an untoward incident i.e. there is no accidental falling of any passenger from the train as the deceased was lying injured near local line. It cannot be disputed that even after falling down from local train the deceased could be found lying on the railway tracks and merely because he was found on railway track cannot lead to presumption that he was knocked down by the local train while crossing the tracks.

21. It is no doubt true that there is no eye witnesses to the incident however AW-2 has specifically deposed that he along with the deceased had reached Mahim railway station and boarded different compartments of the train. In the cross-examination his testimony has not been shaken. The Applicants have therefore discharged the initial burden to show that the deceased had in fact boarded the local train and thereafter the onus shifted on the Respondent to lead evidence to prove that the incident was not an untoward incident, which has not been done. Despite being aware of the exact position where deceased was lying injured, the railways did not examine any motorman of the train which is alleged to have knocked down the deceased.

22. The provisions of Section 124-A of the Railways Act provides for no fault liability with the exceptions as carved out in the proviso. The Tribunal failed to appreciate that the Respondent has not examined any witnesses and thus the case of the Applicants was

established by the evidence produced on record.

23. For coming to conclusion that the death had occurred by reason of being knocked down by the unknown local train, the Tribunal has further relied upon the injuries mentioned in the Inquest Panchanama to hold that such grievous injuries can only be inflicted on the person who has been knocked down or run over by some train. Mr. Deshmukh, is right in contending that there is no such case put forth by railways and there is no evidence produced on record. Even if the injuries are grievous, the Tribunal does not possess the expertise to determine whether the injuries have been sustained by reason of being knocked down by a train or by reason of falling from the train. It is not uncommon that a fall from a speeding train can result in grievous injuries by the impact of the dash against the train and falling on the tracks. The statutory provisions does not define grievous injury of particular nature for the purpose of Section 123(c)(2).

24. An accidental falling of the passenger amounts to an untoward incident, for which compensation is payable by the Railways, unless the incident falls within the exceptions provided in the proviso to Section 124-A. The Applicants having discharged their initial burden have established the occurrence of untoward incident and the onus then shifted on the Railways, which the Railways have failed to discharge. The Tribunal proceeded on surmise and conjectures while

ignoring the evidence which has been placed on record. As held by this Court in the case of ***Balu Narayan Gawale vs. The Union of India (supra)*** it is well settled that the provision of compensation in Railways Act is beneficial piece of legislation and when upon cumulative consideration of facts and circumstances based on evidence on record it can be reasonably considered on preponderance of probability that the deceased had expired due to accidental death which does not fall within any of the exceptions carved out in the proviso to Section 124-A, the claim should have been allowed.

25. In the case of ***Ramdhan @ Namdeo vs. Union of India***⁴ learned Single Judge of this Court has held that as it was the case of the Respondent-Railways that deceased while crossing the railway track was knocked down, it was for the Respondent-Railways to prove the same by leading appropriate evidence. In the present case the Tribunal has gone one step further as without any case being pleaded by the Railways Tribunal has rejected the claim on the ground that the deceased was knocked down by the train.

26. The evidence produced on record by the Applicants prove that the deceased had expired in an untoward incident as contemplated by Section 123 (c)(2) by reason of which the compensation is payable under Section 124-A of the Railways Act, 1989

4 2008 SCC Online Bom 1215

and that the incident does not fall within any of the exceptions carved out in the proviso to Section 124-A. The issue is accordingly answered in favour of the Applicants.

27. Resultantly, the First Appeal is allowed and following order is passed:

ORDER:

(a) First Appeal is allowed.

(b) The impugned Judgment dated 20th December, 2019 is hereby quashed and set aside.

(c) Respondent-Railway shall pay compensation of Rs. 8,00,000/- to the Appellants within a period of 8 weeks from the date of uploading of this order on the official website of this Court.

(d) In event of failure to make payment within the prescribed time, the Respondent Railways to pay interest @ 6% p.a. on the amount of compensation till the entire amount is realized.

28. In view of the disposal of First Appeal, nothing survives for consideration in the pending Civil/Interim Applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]