
(2008) 02 BOM CK 0030
In the Bombay High Court
Case No : F.A. No. 469 of 2005

Bapu Dadarao Shinde and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Railways Act, 1989 — Section 123, 124A

Citation : (2009) ACJ 1834 : (2008) 4 MhLj 679

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : G.J. Mohan Rao, for the Appellant; A.N. Samant, for the Respondent

Final Decision : Dismissed

Judgement

Abhay S. Oka, J.—I have heard the learned Counsel appearing for the parties. The appellants were the original claimants in a claim petition filed u/s 124A of the Railways Act, 1989 who have challenged the Judgment and Order dated 12th April, 2004 passed by the learned Members of the Railway Claims Tribunal, Bombay Bench at Bombay. The learned Advocate for the appellants has placed on record a compilation containing true copies of pleadings, notes of evidence and all the documents produced before the Tribunal.

2. According to the case made out by the appellants in their claim petition, the appellants are the parents of one Milind Bapu Shinde. According to the appellants, the said Milind was travelling by a local train from Bhandup Station to Churchgate station via Dadar. According to the appellants, the said Milind fell down from a running train near Ghatkopar railway station at about 8:30 a.m. on 14th September, 1999. He sustained injuries as a result of the accidental fall from the train and he succumbed to the injuries on 15th September, 1999. According to the case of the appellants, the deceased was a bona fide passenger and was victim of an untoward incident within the meaning of Section 123(c)(2) of the said Act of 1989.

3. The claim petition was opposed by the respondent by filing written statement. The written statement is of general denial.

4. By the impugned Judgment and Order, the learned Members of the Tribunal held that the deceased was not a bona fide passenger within the meaning of explanation to Section 124A of the said Act of 1989. Moreover, the learned Members of the Tribunal held that the appellants have failed to establish that the death of the deceased was caused due to an untoward incident.

5. The learned Counsel appearing for the appellants submitted that there was sufficient evidence on record to show that the deceased was travelling by a local train and he accidentally fell down from the running train between Ghatkopar and Vidyavihar stations. He submitted that the Tribunal could not have discarded the evidence of a witness Rajesh Kishor Sawant. He pointed out that his evidence clearly establishes that the deceased accidentally fell down from the train. He submitted that in fact the said witness was a co-passenger of the deceased.

6. Further submission of the learned Counsel for the appellants is that the evidence of the said witness also proves the fact that the deceased was a bona fide passenger as he deposed that the railway pass held by the deceased and identity card issued by the railways was with the police. He submitted that the respondent have not lead any evidence by examining the Panch witnesses and have not discharged the burden of rebutting the presumption that the deceased was a bona fide passenger. The learned Counsel appearing for the respondent supported the impugned Judgment and Order.

7. I have carefully considered the submissions. I have perused the true copies of the inquest panchanama. The inquest panchanama does not disclose that any railway pass or identity card was found on the person of the deceased. A copy of report submitted by the officer-in-charge of Kurla railway police station to the medical officer of the Sion Hospital is placed on record. In the said report it is merely stated that the deceased sustained injuries at Ghatkopar railway station.

8. It will be necessary to refer to the affidavit in lieu of evidence filed by the 1st appellant. The 1st appellant has no personal knowledge about the cause of death of the deceased. He stated that his son left the house at 7:45 a.m. on 14th September, 1999 for reporting to his work at Churchgate. He stated that he was holding a valid pass from Bhandup to Mumbai C.S.T. which was issued on the very day i.e. on 14th September, 1999. He specifically deposed that he received all the belongings of the deceased including the railway pass and identity card at Kurla railway police station. He stated that the season ticket was kept in the purse. He stated that the railway pass was stained with dirt and therefore it was thrown away on the date on which the ashes of the deceased were immersed. In the cross-examination he denied the correctness of a suggestion that the deceased was not possessing any railway pass. It is pertinent to note that though the appellants produced several documents, the identity card issued by the railway to the deceased was not produced. Even assuming that the version of the

1st appellant that the railway pass which was stained with blood was thrown away, the appellants could have always produced the identity card issued by the railways enabling a passenger to acquire and hold the monthly or quarterly pass. According to the case of the 1st appellant he was possessing the identity card. It is pertinent to note that the 1st appellant did not come out with a case that there was any one accompanying the deceased in the train.

9. The witnesses Rajesh Kishor Sawant filed his affidavit in lieu of evidence. He stated that he was working with a contractor by the name Dayanand Parab. He stated that he along with the deceased were working on daily wages with the said contractor. He further stated that he used to travel along with the deceased from Bhandup to Churchgate. He stated that they were travelling on monthly season ticket from Bhandup to Churchgate. According to their case, they used to get down at Parel railway station and take up a western railway suburban local train from Elphinston Road railway station to Churchgate. He stated that apart from deceased and himself, one Uttam, one Rajesh and one Ganga residing at Bhandup were travelling together from Bhandup to Parel on the fateful day. He stated that when the train was in between Ghatkopar and Vidyavihar stations, he heard a noise which indicated that somebody had fallen down. He stated that some passengers were shouting that somebody had fallen down. He stated that he was inside the compartment and he did not pay any attention.

10. He stated that when he got down at Parel station, he noticed that the deceased was not on the platform. He stated that he accordingly informed the contractor and thereafter came back to Kurla via Dadar. He stated that when he reached Kurla railway police station, the measuring tape, attendance card, gate pass, railway pass and identity card of the deceased were kept on the table before the police officer. He stated that he supplied the address of the deceased to the police officer.

11. In the cross-examination, he admitted that he was not present at the time of recording inquest panchanama of the dead body of the deceased. He admitted that he did not see the deceased falling down from the train. He stated that he identified the dead body of the deceased at Kurla railway police station. However, he later on clarified that he did not see the dead body at Kurla railway police station but he was told that the dead body was taken to the Sion Municipal Hospital.

12. The learned Members of the Tribunal in the impugned Judgment and Order observed that it was unsafe to rely upon evidence of the 1st appellant. It must be stated here that to the main Appeal compilation, the copy of the impugned Judgment which is annexed by the appellants does not contain complete paragraph No. 4 which is found in the true xerox copy of the Judgment which forms part of the additional compilation produced by the appellants. The 1st appellant came out with the case that the monthly season ticket was purchased by the deceased on the very day i.e. on 14th September, 1999. Though there is no police record to show that a railway pass and identity card were found on the

person of the deceased, the 1st appellant came out with the case that the railway pass and identity card were handed over to him by the police and that the railway pass was thrown away. Apart from the fact that none of the police papers show that railway pass and identity card were recovered, even assuming that what is stated by the 1st appellant is true, it is significant to note that the railway identity card was not produced by the appellants.

13. It is also pertinent to note that the 1st appellant did not come out with the case that the deceased used to regularly travel with the witness Rajesh Kishor Sawant from Bhandup to Churchgate. The said witness Rajesh came out with a very peculiar story that railway pass and identity card of the deceased along with the articles of the deceased were kept on a table at Kurla railway police station. If this was true, certainly there ought to have been a record maintained by the police to show that the said articles were recovered from the dead body of the deceased. Therefore, the Tribunal rightly held that the deceased was not a bona fide passenger.

14. Initially the witness stated that he identified the dead body of the deceased at Kurla railway police station. Later on he changed his version by stating that dead body was never brought to the police station but it was at Sion Hospital. Considering these aspects, the learned Members of the Tribunal have rightly disbelieved and discarded the oral testimony of the said witness as well as of the 1st appellant.

Apart from the deposition of the said witnesses examined by the appellants, there is no documentary evidence to prove that the deceased accidentally fell down from a running local train. This finding has to be recorded as the Tribunal has rightly held that the witness Rajesh is not a trustworthy witness.

15. Thus, the Tribunal was right in dismissing the claim petition. Hence, I pass the following order-

ORDER

The Appeal is dismissed with no orders as to costs.