
(2022) 08 BOM CK 0058
In the Bombay High Court
Case No : First Appeal No. 174 Of 2021

Digambar Gagnadhar Kadam And Others	APPELLANT
Vs	
Union Of India	RESPONDENT

Date of Decision : 26-08-2022

Acts Referred:

Railways Act, 1989 — Section 123(c), 124A

Citation : (2022) 08 BOM CK 0058

Hon'ble Judges : M.S. Jawalkar, J

Bench : Single Bench

Advocate : R.G. Bagul, Neerja Choube

Final Decision : Allowed/Disposed Of

Judgement

M.S. Jawalkar, J

1. Heard. Heard finally by consent of the learned Counsel for both the parties.
2. Present appeal is filed by parents of deceased Satish Kadam challenging the order passed by the Railway Claims Tribunal, Member (Judicial) Nagpur in Claim Application No. OA/ (IIu)/NGP/2013/0109 dated 28/03/2017. By this judgment, the claim of the petitioner was dismissed.
3. The brief facts arising to file claim petition is as under: On 04/12/2012, the deceased namely Satish was traveling from Purna to Parbhani by purchasing a valid railway ticket bearing No. 68374337. During the course of journey when the train was moving from railway station Purna, the train received heavy jerk due to which the deceased pushed by the passengers and was fallen down from the running train in the track of platform No.4 of Purna Railway Station and died on the spot. On the basis of police investigation papers, the claim application came to be filed by claimant before Railway Claims Tribunal. The Tribunal dismissed the claim application on 28/03/2017.
4. The claim was resisted by the respondent- Railway on the ground that the

applicant was not bonafide passenger of the train and it is not an untoward incident.

5. The appellant contended that the learned Tribunal erred in not considering the Police papers from which it can clearly be inferred that the deceased fell down from the running train and he was having valid railway ticket bearing No. A68374337 for Purna to Parbhani to conclude him as a bonafide passenger. Learned Counsel for appellant relied on-

1) Union of India Vs. Rina Devi reported in AIR 2018 SC 2362.

2) Union of India Vs. Kamla Ramdas Bhasme FA No. - 774/2012

6. The statutory report prepared by the Railway officers which clearly goes to show that the deceased has fallen down from the running train and died. He was also having valid ticket.

7. Learned Counsel for Union of India, Ms Neerja Choube vehemently opposed the contentions and she has drawn my attention to the judgment of Railway Tribunal. She has submitted that no such incident causing death of the deceased within the meaning of the provisions of Section 123(c) read with Section 124-A of the Railway Act has taken place and as such, the claim application is not maintainable in the eyes of Law.

8. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The questions for consideration are whether the deceased was a bonafide passenger and whether his death was caused in an untoward incident.

9. I have considered rival contentions of the parties and also gone through the judgment and documents placed on record, which clearly shows that the deceased was having a valid journey ticket bearing No.68374337 from Purna to Parbhani of the date of incident. Similarly the statutory report and spot panchanama clearly shows that the railway ticket of Rs.18/- from Purna to Parbhani was found from the person of the deceased and were seized by the investigating officer which makes it clear that the deceased was a bonafide passenger on the date of incident.

10. The learned Tribunal erred in appreciating statutory report and evidence of complainant and only gave weightage to the evidence of RW-1 i.e. Deputy Station Superintendent that he received a message on walkie-talkie from Loco Pilot of incoming train No.57539 who informed him that one dead body is lying in the track on platform No.04. This fact makes it clear that neither RW-1 is an eye-witness to the incident nor the Loco Pilot of the incoming train. Mere finding of the dead body on the railway track cannot be set to be sufficient to come to the conclusion that the person had not made with an untoward incident.

11. The learned Tribunal wrongly held that the recovery of ticket, by itself is not sufficient to show that the deceased was travelling in the train and came to the

conclusion that the deceased while crossing the track at Railway Station Purna was dashed/hit by some unknown train and died. From the valid ticket an inference can also be drawn that the passenger has died due to fall from the train. It is not always necessary to draw an inference that the person had died while crossing the railway track particularly in view of the absence of an eye witness account.

12. It is also the case of respondent/Union of India that the deceased was resident of Purna, in view thereof, it was held that he was crossing railway line when accident occurred. As held in Union of India Vs. Kamla Ramdas Bhasme (supra) which is as under:

"Considering importance is sought to be laid by the appellant on the fact that the deceased was residing near the railway line and hence the case as put forth could not be believed. Merely because the deceased was residing near the railway line would not be a ground for holding against the respondents. The evidence on record indicates that there is no report given by any of the employees of the railway authorities of any accidental dash being given by the passing train to the deceased. The nature of injuries suffered by the deceased especially those on the head also lead to an inference that said injuries are possible due to fall from the train. The Tribunal after considering aforesaid evidence was pleased to hold that the appellant had failed to discharge its burden of proving that the deceased was not a bonafide passenger."

Inter alia, as held by Hon'ble Apex Court in the Union of India Vs Rina Devi in para 16.1 which reads as under:

"16.1. From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. 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 124A. In Prabhakaran Vijay 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)."

13. In view of the above facts and circumstances of the case and after perusing the record, it appears that there is no eye-witness to the aforesaid incident. Thus, in my considered opinion, the Railway Claims Tribunal totally erred in holding it as a self inflicted injury and denied the claim of the petitioner. Learned Tribunal also erred in holding that deceased was not bonafide passenger of the train. As such I proceed to pass the following order:

ORDER

i) The appeal is allowed.

ii) The impugned judgment dated 28/03/2017 in Claim Application No. OA(IIu)/

NGP/2013/0109 passed by the Railway Claims Tribunal, Nagpur Bench is hereby quashed and set aside.

iii) The respondent/Union of India is directed to pay to the appellants the sum of Rs.8,00,000/-.

iv) The amount of compensation be distributed equally amongst the applicants.

v) The said amount shall be deposited in the account of claimants/appellants after verification of identity and bank details within three months.

The appeal stands disposed of accordingly.