

(2023) 06 BOM CK 0062
In the Bombay High Court
Case No : First Appeal No.130 Of 2023

Jugganbabu And Others

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Citation : (2023) 06 BOM CK 0062

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

Bench : Single Bench

Advocate : Shilpa Barbate, Neerja Chaubey

Final Decision : Disposed Of

Judgement

M.S. Jawalkar, J

1. Heard learned Counsel for both the parties at the stage of admission.
2. The present appeal is filed by the appellants being aggrieved by the judgment and award dated 17/03/2022 passed by the learned Member, Railway Claim Tribunal, Nagpur in Claim Petition No.OA(II u)/NGP/235/2019.
3. The facts giving rise to file this appeal are as under: On 30/03/2017, the deceased Shameem w/o Jugganbabu was traveling from H. Nizamuddin to Nagpur by Train No.22694 Rajdhani Express with her husband as a bonafide passenger with reserved ticket bearing No.78855433, PNR No.2228476884. That, while traveling, the deceased was standing near wash basin for washing her hand. Due to sudden jerk, the deceased lost her balance and fell down from the running train in the area of Tinkheda Railway Station. The deceased was brought to Nagpur by Train No.12724 NDLS-HYB Express and at Mevo Hospital Nagpur, after examination by doctor, she was declared dead on the same day.

On 30/03/2017, after above mentioned untoward incident, Railway Police Station Nagpur, Dist. Lohmarg, Nagpur has registered the accidental death report No.22/17 under Section 174 of Criminal Procedure Code in respect of accidental

death of Shameen w/o Jugganbabu. On account of the death of Shameem w/o Jugganbabu in above mentioned untoward incident, dependents of the deceased i.e. the appellants preferred to file Claim Petition No.OA (II u)/NGP/235/2019 before learned Railway Claims Tribunal, Nagpur, for claiming compensation of Rs.8,00,000/- along with 9% interest from the date of accident.

4. To this claim of appellants, the respondent filed his written statement and opposed the claim application denying the contention of the claimants. The respondent claimed that the alleged incident does not come within the purview and meaning of untoward incident. It is contended by the respondent railway that the deceased was trying to alight from running train and during this process, she fell down from the running train and sustained injuries and died and therefore the Railway Authority is not responsible for compensating the claimants.

5. After considering the evidence and record before it, the learned Tribunal held that it was a case of a fall while making unsuccessful attempt for alighting from a running train at a place where it did not have its schedule halt and therefore incident does not come under an untoward incident as defined in Section 123 (c)

(2) of the Railway Act and dismissed the claim petition preferred by the claimants.

6. The contention of the appellants is that the Railway Tribunal failed to consider that it is admitted fact that the said train slowed down at that station for signal. Furthermore, deceased fell down from the said train while she was standing near wash basin due to speeding up of train and sudden jerk. Thus, it does not exclude present incident of the death of the deceased from the definition of the "untoward incident" of the train. Therefore, the observation of the learned Tribunal that deceased was not a victim of untoward incident needs to be quashed and set aside.

7. The learned Counsel for appellants relied on Union of India Vs. Rina Devi, reported in (2019) 3 SCC 572.

8. The Learned Counsel for Union of India, Ms Neerja Choubey supported the judgment of learned Tribunal and vehemently opposed the contentions of the appellants and stated that the alleged incident occurred while deceased was trying to alight from running train and due to his carelessness, fell down and died. This fact is rightly appreciated by the learned Tribunal and passed an appropriate order and therefore the said order needs no interference.

9. I have heard both the parties at length. Perused judgment and record and considered citation relied on by the parties. From the deposition of husband of deceased, it is clear that both were travelling on valid ticket and were bonafide passengers of the train coming from Hajrat Nijamuddin to Nagpur. The incident occurred on 30/03/2017. The contention of the appellants is that deceased died due to jerk when she was standing nearby basin of the Railway Coach. The learned Tribunal arrived at conclusion that it was a case of fall while making

unsuccessful attempt for alighting from a running train at a place where it did not have its scheduled halt. The learned Tribunal also held that appellants have not been able to discharge their burden that it was an untoward incident whereas Railway respondents duly established that deceased died on account of self-inflicted injuries and incident would fall under the proviso of Section 124 (A) (b) of the Railway Act and rejected the claim.

. It is very surprising that when husband and wife were traveling from Delhi to Nagpur, there was no reason for deceased to alight from the train between Pole No. 963/16 to 963/18 at Tinkheda Station that too off the lines. The medical report as well as investigation by Central Railway Senior Circle Protection Commissioner RPF Nagpur shows that the DYSS who was on duty reported to the Manager Tinkheda that after passing of 22694 of ruling P/M reported a lady fell down from the train, immediately message given to SCOR. Apart from this, evidence of husband also shows that he was on the Upper berth taking rest when the incident took place and he was realized the said after 20 minutes and he immediately informed to the authorities. The learned Tribunal recorded absurd finding that while attempting to alight from the train, the said incident took place. Nothing in favour of Railway revealed in the cross of these witnesses.

10. The learned Counsel also drew my attention to the evidence of pointman at Tinkheda Railway Station. However her evidence is not at all reliable and it is totally hearsay evidence though she deposed that she came to know from Dy.SS that deceased and her husband were supposed to go to Katol to attend marriage ceremony Dy.S.S. never deposed that couple was supposed to go to attend marriage at Katol. Even if, it is presumed that there was some marriage at Katol. There was no reason for deceased to alight from the train alone at Tinkheda that too without there being any platform and which is at 21 km away from Katol.

11. Though, it is vehemently argued by learned Counsel for Union of India that husband of deceased deposed that there was no incident of jerk, however, he has denied that there was no jerk to the train or there was no crowd of people. It is time and again held by the Hon'ble Apex Court that falling from the train cannot be said to be self-inflicted injury as there has to be intention to commit such act or to cause injury to oneself. When both the husband and wife were travelling from Delhi to Nagpur by Rajdhani Express A.C. coach, there was no reason for deceased wife to alight in between without taking her husband simply because as there is marriage at Katol. Moreover, distance between Tinkheda and Katol is about 21 km. As such, there is no reason for her to alight from running train.

12. The learned Counsel for appellants relied on Rina Devi (surpa) wherein it is held as under:

"We are unable to uphold the above view as the concept of 'self-inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no

fault theory'. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

13. The Railway authorities totally failed to establish that the deceased died while alighting from the train at the place where there was no stop. On the contrary, evidence is sufficient to demonstrate that she fell down from the train and sustained injuries. In absence of any evidence by Railway, the learned Tribunal ought not to have rejected the claim of the appellants. As such, appeal needs to be allowed. Accordingly I proceed to pass the following order:

ORDER

- i) The appeal is allowed.
- ii) The judgment dated 17/03/2022 passed by learned Member, Railway Claims Tribunal, Nagpur in Claim Application No. OA(IIu)/NGP/235/2019 is hereby quashed and set aside.
- iii) The respondent Union of India is directed to pay the sum of Rs.8,00,000/- (Rupees Eight Lakhs only) along with interest at the rate of 6% per annum from the date of filing of application till its realization.
- iv) The respondent Union of India is hereby directed to deposit the said amount within three months. After amount is so deposited, amount of Rs.5,00,000/- (Rupees Five Lakhs) to be paid to the Appellant No.1 along with accrued interest thereon, rest of the amount i.e. Rs.1,00,000/- (Rupees One Lakh), each to be paid to claimants/appellant Nos. 2, 3 and 4 along with accrued interest.

The appeal stands disposed of accordingly.