
(2023) 06 BOM CK 0003
In the Bombay High Court
Case No : First Appeal No. 1009 Of 2019

Kamlabai

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 07-06-2023

Acts Referred:

Citation : (2023) 06 BOM CK 0003

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

Bench : Single Bench

Advocate : R.G. Bagul, Neerja Choubey

Final Decision : Allowed/Disposed Of

Judgement

M.S. Jawalkar, J

1. Heard.

2. At the request and by consent of parties matter heard finally at the stage of admission.

3. Being aggrieved by the Judgment and Order passed by the Member (Judicial) and Member (Technical) Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No. OA (IIu)/ NGP/2015/0325 dated 21/11/2017 dismissing the claim, hence present appeal is filed by appellant/claimant.

4. The case of the appellant before the Railway Claims Tribunal, was that on 28/01/2015 i.e. on the date of incident the deceased was travelling by Amravati-Nagpur Passenger Train No. 51261 from Badnera to Dhamangaon. The deceased had purchased journey ticket Ex-Badnera to Dhamangaon and boarded on the said train. As usual the train was over crowded hence, due to jostling and pushing of passengers the deceased fell down from running train at Pulgaon Railway line near starter signal and died on spot.

5. The appellant being mother had filed claim before the Railway Claims Tribunal,

Nagpur for claiming compensation of Rs.4,00,000/- on account of death of Kailash S/o Mahadeorao Raut who died in an untoward incident i.e. falling down from running train No. 51261 namely Amravati-Nagpur Passenger Train, the incident which occurred at Pulgaon Railway Line near Starter Signal on 28/01/2015.

6. The respondent had filed his reply and resisted the claim of the appellant. After considering the matter before it the learned Tribunal held that mere finding of the dead body by the side of track and recovery ticket is not sufficient to prove that the deceased was bonafide passenger and pleased to dismiss the claim application vide Judgment and Order dated 21/11/2017. The aforesaid judgment is the subject matter of challenge in the present Appeal.

7. It is the contention of the appellant that the learned Tribunal while deciding the issue of bonafide passenger has held that the journey ticket Ex-Badnera to Dhamangaon is considered to be bonafide to board the said train i.e. Amravati-Nagpur passenger. It is further submitted by the appellant that the learned Tribunal cannot dismiss the claim application for want of eye witness. The learned Tribunal ought to have decided the case on the basis of circumstantial evidence. It is contended that, the deceased was bonafide passenger, the journey ticket was found with the deceased and after considering the police documents, injuries sustained on the body and probable cause of death, the learned Tribunal ought to have held that deceased died due to untoward incident and therefore interference of this Court is required.

8. The learned Counsel for the appellant relied on citations:

1. Chandabai W/o Sanjaysing Shendre and others Vs. Union of India, in First Appeal No.431/2019.

9. The learned Counsel for the respondent opposed the application and supported the order passed by the Railway Claims Tribunal.

10. I have heard both the parties at length. Perused record and judgment relied on by the Counsel for appellant. Case of the appellant was that on 28/01/2015, deceased was travelling by Amravati to Nagpur Passenger Train No. 51261 for a journey from Badnera to Dhamangaon and as he fell down near Pulgaon, he died on the spot. There is no dispute over the fact, one railway ticket bearing No. 30680654 dated 28/01/2015, from Badnera to Dhamangaon has been recovered from the pocket of the deceased by Investigation Officer. The personal search was conducted in the presence of PHC Officials. If inquest panchanama is perused, there is reference of said ticket on the body of person. The opinion of the officer and panch also reflects that deceased has fallen down from the running train and sustained injury to the head and died on the spot. There is ticket verification report, which can be seen that ticket was issued at 16.22 hrs on 28/01/2015 and it was issued by DMN Railway. As such, the valid ticket was in possession of the deceased. He purchased it just before train arrived at Badnera station. The train left from Badnera station at 16.53 hrs as per Train

Signal Register. Train arrived at Pulgaon at 17.59 hrs and departed at 18.00 hrs which reflected from Guard Memo Book. However, only on the basis of intimation given by Station Manager to the on duty GRP/RPF, Pulgaon for necessary action and time mention by him as 17.40 hrs., the inference is drawn by the learned Tribunal that the body was found before arrival of train at Pulgaon station. However, it is highly improbable that person purchased ticket of train 10-15 minute before its arrival to Badnera station to reach at Pulgaon around 20 minutes before the said train arrived at Pulgaon.

11. In my considered opinion, there might be mistake in mentioning time in memo by Station Manager, Pulgaon, as that was the only train going from Amravati to Nagpur and when a person purchase a ticket at Badnera just before 10-15 minutes cannot reach at Pulgaon before train reaches to the Pulgaon and commit suicide or tried to cross the railway crossing. Therefore, no inference other than falling from the train at Pulgaon can be drawn, in view of the ticket which possessed by the deceased at the time of accident/untoward incident. It has to be presumed when deceased was having valid ticket, he was bonafide passenger of that train. There is no witnesses examined by the railway to show that he was crossing the railway track and met with an accident. The learned Tribunal failed to appreciate all these facts

12. As held by this Court in First Appeal No. 431/2019 (Chandabai and others Vs. Union of India), every minutes details about the travel of the deceased cannot be expected to be proved and correct as per the record of Railway Authority as the claimants are neither eye witnesses to the incident nor they were travelling with the deceased. In such eventuality, the claimants are left with no other option, but to rely on the documents as are collected by the Railway Authority during investigation and also the other oral information received from the friends and the deceased himself before his travel. Even if, investigation report is perused, the Investigating Officer is not sure whether the deceased fallen down from the running train or hit by the running train. In the aforesaid background, the learned Tribunal ought to have accepted the piece of evidence i.e. railway ticket possessed by the deceased which was valid and was for the same day and body was detected on railway track. As such, order passed by learned Tribunal is totally perverse and erroneous and liable to be set aside. In view of schedule to Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, applicant is entitled for Rs.8,00,000/- (Rupees Eight Lakhs), as compensation for death of deceased Mahadeorao Raut. Accordingly, I proceed to pass the following order:

ORDER

i) The appeal is allowed with costs.

ii) The impugned judgment dated 21/11/2017, in Claim Application No. OA(IIu)/NGP/2015/0325, passed by Member (Judicial) and Member (Technical), Railway Claims Tribunal,

iii) Respondent – Union of India is directed to pay to the appellant the sum of Rs.8,00,000/-(Rupees Eight Lakhs Only), the said amount shall be deposited in the account of claimant after verification of identity within three months.

Appeal stands disposed of accordingly.