
(2022) 09 BOM CK 0064
In the Bombay High Court
Case No : First Appeal No.132 Of 2021

Shantabai And Others

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Citation : (2022) 09 BOM CK 0064

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

Bench : Single Bench

Advocate : R.G. Bagul, Neerja Choubey

Final Decision : Allowed

Judgement

M.S. Jawalkar, J

1. Heard, both the parties.
2. Present appeal is filed by the dependents of deceased Nagorao s/o Kishanrao Ubale challenging the order passed by the Railway Claims Tribunal, Member (Judicial) and Member (Technical) Nagpur in Claim Application No. OA/ (IIu)/ NGP/2013/0327 dated 02/08/2017. By this judgment, the claim of the petitioner was dismissed.
3. The brief facts arising to file claim petition is as under: On 24/01/2012, the deceased was traveling from Purna to Parbhani in the evening by boarding in the general bogie of the Devgiri Express by purchasing the valid railway ticket for Purna to Parbhani. The deceased was standing near the door of the bogie. When the train was reached near Parbhani railway station at KM No. 291/07-08 near starter signal, the train received heavy jerk due to which the deceased was fallen down from the running train and died on the spot.
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 learned Tribunal held that death of the deceased is not established to be due to an accidental fall from running train and amounting to an untoward incident. The claimant failed to establish that the deceased was a bonafide passenger. As no ticket was recovered from him at the time of inquest/spot proceedings and dismissed the claim of the claimants holding that there was no untoward incident and deceased was not bonafide passenger.

6. The Counsel for the applicants contended that, the learned Tribunal erred in not considering the Spot Panchanama and the Inquest Panchanama, in which it is clearly mentioned that the deceased while travelling from Purna to Parbhani by Devgiri express fell down from the train. It also reveals that clothes of the deceased was attached to the wheels of the bogie of Devgiri Express from which it can clearly be inferred that the deceased fell down from the running train. In view of condition of his body and cloths, it would be difficult to get any ticket or articles in his possession.

Learned Counsel for appellant relied on-

1) Union of India Vs Kamla Ramdas Bhasme and ors, in First Appeal No.774/2012

2) Union of India Vs. Rina Devi, reported in II (2018) ACC 591 (SC)

7. Learned Counsel for Union of India, Ms Neerja Choube vehemently opposed the contentions and drawn my attention to the Spot panchanama and inquest panchanama and contended that nothing has been recovered from the person of the deceased and from the spot, prove that the deceased was not having any journey ticket and he was not a bonafide passenger and the alleged contention of the deceased does not come within the purview and meaning of untoward incident. Hence, the railway is in no way responsible for the death of the deceased and not entitled for any compensation.

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. Admittedly there was no railway ticket found for the journey from Purna to Purbhani at the time of preparing of spot panchanama and during the inquest panchanama. These two documents clearly mentioned that deceased come under the train while he was traveling from Purna to Parbhani. What is held by Tribunal that it is not untoward incident and the deceased died while crossing the railway track. However, for such presumption there is no evidence of any railway employees. There is no incident reported by any Loco Pilot of train of crossing of any person, railway track was dashed by the train. In absence of any evidence only on the basis of presumption that deceased was residing near the railway track, he was not bonafide passenger and was hit by the train when he was crossing the track.

10. The learned Counsel for appellant relied upon the decision of this Court in

case of Kamla Ramdas Bhasme (supra). In para 8 held 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."

The learned Counsel for appellants relied on Rina Devi (supra), the Hon'ble Supreme Court in paragraph no.17.4 held as under:

"17.4 We thus hold that the mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which the claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

11. In view of judgment of the Hon'ble Apex Court in Rina Devi (supra) mere filing of affidavit is sufficient for claimant to discharge their initial burden of proving the fact that the deceased was a bonafide passenger holding valid and effective ticket. The accidental death report of railway police station clearly mentioned that the deceased while traveling Purna to Parbhani by Devgiri express fell down from railway due to jerk got seriously injured and died on spot. As per post mortem report, there is crush injury to head and brain. The learned Tribunal presumed certain facts that as the deceased was resident of Shankar Nagar, Parbhani and spot of incident is near the railway station Parbhani. There was possibility of the deceased moving near the scene of incident at the time of occurrence and was run over by train near Parbhani railway station while crossing the track. There is no evidence on record to suggest such things or to presume such things. There is no statement of any of the employees of railway or a Loco Pilot that any person hit by the train while crossing the track.

12. In view of Kamla Bhasme (supra) merely because the deceased was residing near the railway line would not be a ground or holding against the claimant. 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 evidence on record of wife of deceased is having of no use as she is not aware of any facts and not having any personal knowledge about the accident. The report of railway authorities itself shows that the deceased failed down from the Devgiri express while come under the train. There is no discussion in the judgment as to whether the Devgiri express passed on what time and when the body was recovered.

13. As such, the learned Tribunal is totally erred while rejecting the claim of applicant on the basis of presumptions and surmises drawn by him without there being any basis. The Tribunal have not examined the basis on which railways police reported the incident and registered the accidental death and mentioned in the inquest panchanama as well as spot panchanama about death of deceased from falling down from Devgiri Express. As such judgment is liable to be set aside in view of the principle laid down by Hon'ble Apex Court cited supra in respect of payment of compensation.

Accordingly, I proceed to pass the following order:

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment dated 02/08/2017 in Claim Application No. OA(IIu)/NGP/2013/0327 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/- (Rupees Eight Lakhs Only) within four months.
- iv) The amount of compensation be distributed in the proportion of 6:2:2 amongst the applicants.
- v) The said amount shall be deposited in the account of claimants/appellants after verification of identity and bank details within four months.

The appeal stands disposed of accordingly.