



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 839 OF 2022

1. Kavita Wd/ Shailesh Gavai
Aged about 30 years, Occu. - Housewife,
2. Prashik S/o Shailesh Gavai
Age – 10 Yrs, Occu – Education
3. Komal S/o Shailesh Gavai
Age – 8 Yrs, Occu – Education

(Appellant No. 2 & 3 are through 1, Mother
Natural Guardian)

4. Krushna S/o Kisan Gavai
Age 61 years, Occu. - Nil,
5. Sarubai W/o Krushnaji Gavai
Age 50 years, Occu. - Nil,
All R/o Vasadi Khurd, Vasadi budruk,
Tal – Nandura, Dist.- Buldhana-443404

... **APPELLANTS**

...**VERSUS**...

Union of India,
Through General Manager,
Central Railway,
CSMT Mumbai

...**RESPONDENT**

Ms Sumesha Chaudhari, Advocate for appellants
Ms N.G. Chaubey, Advocate for respondent

CORAM : **SMT. M.S. JAWALKAR, J.**

DATE OF RESERVING THE JUDGMENT : **14/07/2023**

DATE OF PRONOUNCING THE JUDGMENT : **18/07/2023**

JUDGMENT

Heard learned Counsel for the appellants and learned Counsel for the respondent.

2. Being aggrieved by the judgment and award dated 10/05/2018, passed by the Learned Railway Tribunal, Nagpur Bench, Nagpur in Claim Application No. OA(Ilu)/NGP/0033/2018, whereby the learned Tribunal has pleased to dismiss the claim application of the appellants, the present Appeal is filed by the applicant.

3. The Brief facts of the claim petition is as under : -

On 17/10/2017, the deceased was travelling by the train no. 12627 Dn. Karnataka Exp from Daund to Itarsi along with his brother and other relatives, for which the deceased had

purchased a valid journey ticket. It is further submitted that they all were returning from Braramati but there was no direct train from Baramati so they came up to Daund and from Daund they boarded Karnataka Express. When the said train was passing from the Jalgaon the deceased was going to washroom and the said train received the unexpected jerk due to which the deceased was pushed by the passenger and fell down from the running train at KM 413/17 DN line pole. The co-passengers took him to the hospital but deceased succumbed to the injuries. Therefore the dependents of the deceased filed claim application and demanded compensation for such untoward incident.

4. The Respondent Railway has resisted the claim application of the applicants by filing reply along with DRM, Statuary Report with defense that the deceased was not the bonafide passenger of the train and the death of the deceased has not been caused in an untoward incident. It is further submitted that the claim of the applicant is not maintainable as the alleged incident is not covered under section 123(c) or section 124 A of the Railway Act.

5. It is contended by appellant that the learned Tribunal wrongly considered the documentary evidence put forth by the Railway Administration and held the death of the deceased does not occurred under an untoward incident and therefore rejected the claim petition of the applicant. The aforesaid judgment is the subject matter of challenge in the present appeal.

6. It is the contention of the learned counsel for the appellant that the learned Tribunal failed to considered that the deceased was in possession of valid journey ticket and therefore he was bonafide passenger at the time of untoward incident. It is further contended that the learned Tribunal wrongly held that the deceased and his co-passengers was traveling in sleeper coach but was in possession of general class ticket. The aforesaid allegations was not proved by the respondent by examining any cogent witness and learned Tribunal simply believed on the statement made by the respondent and held that deceased was not bonafide passenger at the time of untoward incident is totally erroneous which needs interference by this Court.

7. It is the contention of the Respondent that the deceased was not a bonafide passenger as no valid ticket was recovered from the body of the deceased and the said incident was not occurred in the course of journey, this fact was rightly considered by the learned Railway Tribunal and passed an appropriate order, which required no interference.

8. I have heard both the parties at length. Perused judgment, record and proceedings. In short, it is the case of claimants that on 17/10/2017, Shailesh Krushna Gavai had purchased second class Railway Ticket from Daund to Itarsi and boarded the train, Karnataka Express going towards Itarsi. He boarded along with his brother and other relatives, they were returning from Baramati as there was no direct train from Baramati, they came up to Daund and boarded Karnataka Express for Itarsi. Due to heavy jerk the deceased fell down from the running train at KM 413/17 DN line pole. The co-passengers also boarded down as train slowed down there and took him to the hospital but deceased succumbed to the injury. Therefor legal representatives of deceased filed claim petition for compensation against Railway.

9. The learned Counsel for respondent vehemently opposed the application on the ground that they have not filed any complaint immediately to Railway Authorities but he was admitted to hospital at Jalgaon. There was no chain pulling nor any passenger reported about the accident. It is further submitted that as per timing of train, it was arrived at 16.39 and proceeded on 16.40 at Jalgaon Railway Station. However, there is no explanation why he was hospitalize at 9.00 p.m. The Tribunal appears to have accepted the objection raised by the Railway Authorities and rejected the claim of the applicants.

10. If deposition of AW – 1 is perused, she has clearly mentioned the name of her relatives Arun Wankhede and Nilesh Gavai were accompanying the deceased at the relevant time. They were going to their home town at Buldhana as there was Diwali festival. Accordingly, they were to board down at Itarsi. They were having separate travelling tickets, number of which, given in the deposition. The said tickets were recovered from the T-shirt of the deceased at the time of inquest panchanama. The deceased failed down near KM 413/17 DN down line pole, as train was slow there

Arun and Nilesh also boarded down there. She has placed on record Death Certificate of Shailesh Gavai, which was issued by Jalgaon Municipal Corporation. Date of death referred as 17/10/2017. His address is shown is of Buldhana. She has also placed on record Ration Card. There is letter written by Police Station, Jalgaon to Medical Officer is placed on record. Admittedly, AW – 1 has not seen accident personally. However, her evidence is important as she has placed on record showing death of deceased at Jalgaon and police complaint filed at Jalgaon.

11. So far as, AW – 2 is concerned, he was one of the co-passenger with deceased. He has specifically deposed that they three have purchased Railway Tickets from Baramati to down passenger train and boarded from Baramati at 7.15 a.m. They alighted at Daund at 9.00 a.m. and purchased ticket of Karnataka Superfast Express up to Itarsi. He also deposed that there was lot of crowd in the train, due to Diwali Vacation. However, somehow they entered into the train. His uncle deceased Shailesh was pushed by the rush when he was near bathroom and fell down. In the meantime, the train speed has been reduced. As per his contention

some one has might have pulled the chain hence he himself and Nilesh Gavai and Arun Wankhede got down. They ran back around half kilometer and saw Shailesh there, who was injured severely. They both lifted, brought him aside of Railway Track. There was a road to the side of Railway track and therefore, requested people to carry the injured for the medical treatment to hospital. One driver of Maroti Car has helped them and brought up to some private clinic but doctor was not available. Immediately they have hired one auto and requested to go to Government Hospital. Doctors have admitted and started treatment. He was alive for 2-3 hours. At that time, they were waiting outside the hospital. Doctor informed the accidental death of Shailesh to the Police Authorities. At around 21.00 hours police came to that hospital and made inquiry. They have submitted Travelling tickets and spot of incident was also shown to the police. As such, spot panchanama was carried on 18/10/2017, inquest panchanama was carried on Civil Hospital, Jalgaon at 7.00 a.m. If copy of First Information Report which is on record, if perused it can be seen that accidental death (AD) came to be registered on the basis of information given by on duty Medical Officer. The learned Tribunal failed to appreciate this document

wherein, the admission date is given 17/10/2017, time is given as 20.16 minutes and not 9.10. as referred in judgment 9.10 is the time of death.

12. It is mentioned in the AD itself that the deceased was travelling along with his relatives from Daund to Bhusawal and fell down at Jalgaon. There was no reason for deceased to board down at Jalgaon and therefore, the evidence laid by claimant is appears to be probable. If inquest panchanama is perused there is reference of three tickets recovered from the pocket of shirt of the deceased. The opinion in postmortem report clearly says that death due to Polytrauma due to railway accident. There is verification report in respect of tickets on record as page A-89. As such, all the persons were bonafide passengers of the train Daund to Itarsi and paid Rs.220/- for second class. All these aspects are totally, I said deliberately ignored by Railway Tribunal. There is due explanation put forth by the claimants, why it was not immediately informed to the Railway Authorities as for them saving life was important at the relevant time. It is also duly explained that they tried to hospitalize deceased in a private hospital, which was shown by the Maroti Car

driver, however, doctor was not available and therefore they required to shift him in the Government Hospital. General experience in Government hospital is known unless formalities are not completed, hospital persons do not admit a person. As such, delay in admission is duly explained.

13. The Tribunal has not properly appreciated timing of admission nor appreciated this fact that Death Certificate, Police Report also shows that the deceased fallen down from the train and as he fallen down both the relatives required to board down from the train. Otherwise they were not having any reason to board down at Jalgaon. Railway Tribunal is totally failed to appreciate evidence on record and went on observing contrary to the record. Once it is duly established that they were bonafide passengers, it was the Railway who has to rebut evidence by leading proper evidence that the deceased was not bonafide passenger of the Railway. The order passed by the Tribunal is not only perverse but contrary to the aims and objects of the beneficial legislation of compensation to the victims of railway accident. The order is totally unjustifiable and cannot sustain in the eye of law and liable to be

set aside. Accordingly, I proceed to pass the following order :

ORDER

- i) Appeal is allowed.
- ii) The judgment and order passed by learned Railway Claims Tribunal, Nagpur in Claim Application No. OA (IIu)/NGP/0033/2018 on 27/11/2019, is hereby quashed and set aside.
- iii) The applicants are entitled for amount of Rs.8,00,000/- plus interest at the rate of Rs.6% per annum from the date of filing of petition till its realization.
- iv) The Railway Authorities/respondent to pay the said compensation within three months from the date of passing of this order.
- v) On deposit of amount of compensation claimants are entitled to withdraw the same.

(Smt. M.S. Jawalkar, J.)

Jayashree..