2025:BHC-AS:652

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO.779 OF 2018

1 Shri Basir alias Mohd. Ahmed Khan]
aged about 50 years, father of the]
deceased]
2 Mrs. Amina Basir Khan]
age 36 years, mother of the deceased]
residing at Building No.A/6, Room No.]
601, 6th Floor, MHADA Colony, Kokari]
Agar, Balaji Society, Forsit Camp,]
Koliwada, Wadala, Mumbai 400 037.].. Appellants.

v/s.

Union of India]
through General Manager,]
Central Railway, CST, Mumbai 400 001.].. Respondent.

Mr. Kunal Bhanage with Mr. Akshay Pawar and Adv. Priyanka Acharya, for the Appellants.
Adv. T. J. Pandian with Adv. Noorjahan Khan and Adv. Gautam Modanwalm, for Respondent-UOI.

CORAM : FIRDOSH P. POONIWALLA,J.
RESERVED ON : 5th DECEMBER, 2024.
PRONOUNCED ON : 8th JANUARY, 2025.

JUDGEMENT :-

This Appeal has been filed under Section 23 of the Railways Claims Tribunal Act, 1987, impugning judgement dated 24th July, 2014 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai ("the Tribunal"), in Claim Application No:OA(IIu)/MCC/2010/0966, preferred by the Appellants, whereby the Tribunal dismissed the Claim Application of the Appellants.

2 The case of the Appellants in the Claim Application filed by them, seeking compensation, is that on 8th May, 2010, their son Nasir Ahmed Khan left home at about 8.30 a.m. for his work. He was a daily commuter of local train holding valid monthly pass from Wadala to Chinchpokli via Sandhurst Road. While travelling, the Appellants' son fell down from the train due to the heavy crowd of passengers inside the compartment pushing each other and this resulted in their son being seriously injured and unconscious. Some passengers of the train directly moved him to J. J. Hospital. He was admitted in the emergency ward, and while taking treatment, he died at about 3.30 p.m. on the same day.

3 In support of the Claim Application, the Appellants relied upon the following documents:-

(a) Injury Report prepared by Police Constable- B. M. Mulani;
(b) ADR Report;
(c) Inquest Panchnama dated 8th May, 2010;
(d) Statement of Appellant No.1 given to the Police on 8th May, 2010;
(e) Cause of Death Certificate;
(f) Post Mortem Report;
(g) Order of the Special Executive Magistrate regarding sudden death, dated 11th December, 2010, as per Circular 10;
(h) Ration Card.

4 In the proceedings, the Appellants lead the evidence of Appellant No.1 by filing Affidavit-in-lieu of Examination-in-Chief dated 25th July, 2013. Appellant No.1 was cross examined on 25th July, 2013. The Respondent did not lead any evidence before the Tribunal.

5 The Tribunal framed three substantive issues, which are as under:-

"1:- Whether the deceased met with an untoward incident within the meaning of Sec. 123(c)(2) of the Railways Act during his journey by the train.
2 Whether the deceased was a bonafide passenger.
3 Whether the applicants are the dependants of the deceased."

ON ISSUE NO.1:-

6 The finding of the Tribunal on issue No.1 is as under:-

" Thane Amaldar PC 1804 B. M. Mulani in his report dated 08/05/2010 after the alleged incident has said that the deceased when in injured condition after alleged incident, was taken by friends in taxi. The policeman was not allowed entry in that taxi. This cannot be believed. He later on went to JJ Hospital on his own and found unconscious injured admitted in JJ Hospital and identified. Injured's father was called through mobile of injured/ deceased whose contact was made via mobile details found with injured/ deceased. ASI P. S. Rathod No.ASI/19 of Wadala Railway Police station made ADR 87/10 as per which Thane Amaldar gave him details on the basis of which Inquest Panchanama and ADR were prepared. Inquest Panchanama says that the deceased person fell down when he was traveling by local train, found injured at 09.45 hrs at Sandhurst Road. Some passengers admitted him in hospital. Afterward, Police constable 1804 went to hospital, saw the situation of injured and informed to legal heir accordingly. Later on injured died in hospital. Police Amaldar never informed any railway station officials on this matter. In Inquest Panchnama, it is said that the deceased person might have died after falling from unknown local train. It is then opined that deceased might have fallen down from train. In all such circumstances, no reason comes out as to why friends of injured (died later) and Police Amaldar did not inform railway station of Sandhurst Road. If incident took near in railway area as alleged, why station authorities were not informed about the incident is not acceptable. Therefore, it can be concluded that the deceased has not died due to untoward incident as required in Section 123(c)(2) of Railway Act, 1989, entitling his dependents to get claim.
Fallen down is thus not established. In para 5, details of PM report only talks of Police details which were made without checking or inquiring the matter from railway station officials.
Vide annexure no.23/24, along with OA, circular No.10 has been

filed from Mr. B. M. Sarwate, Spl. Executive Magistrate, Harbour Section, Railway Mumbai as per which deceased fell down from train and died. Subsequently, details include outward report No.1580/2010 dated 13/12/2010. Address given in this document for deceased is MHADA Colony, Room No.B/4/7, Sion Koliwada, Mumbai-37 whereas address of deceased given in OA Building No.A/6, Room No.601, 6th Floor, MHADA Colony, Kokari Agar, Balaji Society, Forsit Camp, Koliwada, Wadala, Mumbai 400 037. Both appears to be same.
Hence, fallen down cannot be accepted and does not get established.
The issue is, therefore, decided against the applicants."

7 Mr. Bhanage, the learned Counsel appearing on behalf of the Appellants, took me through the impugned Judgement dated 24th July, 2014.

8 Mr. Bhanage referred to the Affidavit-in-lieu of Examination-in-Chief of Appellant No.1 and submitted that, in his evidence, Appellant No.1 had not only given evidence which showed that his deceased son was a bonafide passenger but also gave evidence which showed that he had died due to accidentally falling from the train. Mr. Bhanage submitted that this evidence of Appellant No.1 has not been challenged in cross examination.

9 Mr. Bhanage then referred to the Inquest Panchanama dated 8th May, 2010. He submitted that the Inquest Panchanama clearly records that the deceased person fell down from the train and was found injured at about 9.45 a.m. on Sandhurst Road and that the passengers admitted him to J.J. Hospital. Mr. Bhanage submitted that this evidence has not been properly appreciated by the Tribunal.

10 Mr. Bhanage also referred to the Statement given by Appellant No.1 on 8th May, 2010 to the Police wherein also he had stated

that his son had fallen down accidentally from the local train and had subsequently passed away at 3.30 p.m. at J. J. Hospital. Mr. Bhanage submitted that, considering the total evidence on record, it was very clear that the son of the Appellants had accidentally fallen down from the local train and died due to the same.

11 On the other hand, Mr. Pandian, the learned Counsel appearing for the Respondent, submitted that, in the present case, the Station Master was not informed about the incident. He submitted that the police did not inform the Railways at all about the incident. He submitted that, therefore, the Tribunal was right in holding that it had not been established that the son of the Appellants had fallen down accidentally from the local train.

12 Further, Mr. Pandian also submitted that, in the present case, no panchanama was done at the site of the incident. He further submitted that nobody, who had personal knowledge, was examined to discharge the initial burden that the incident took place by falling down from the train. He pointed out that Appellant No.1 had admitted in his cross examination that he had no personal knowledge of the incident.

13 In support of his submission, Mr. Pandian relied upon the judgement of the Hon'ble Supreme Court in ***Kamrunnissa v/s. Union of India***[1].

14 In Rejoinder, Mr. Bhanage referred to the Injury Report dated 8th May, 2010 submitted by Police Constable Mulani. He submitted that the said Injury Report of Police Constable Mulani clearly stated that, on 8th

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May, 2010, the son of the Appellants suffered an injury at 9.45 a.m. at Sandhurst Road. Mr. Bhanage submitted that this clearly established the accidental falling down from the train of the son of the Appellants. Therefore, the onus shifted to the Respondent to establish otherwise. However, the Respondent had not examined any one to discharge that burden.

15 The Tribunal has come to the conclusion that falling down of the deceased son of the Appellants from the train was not established, and, therefore, it can be concluded that the deceased had not died due to an untoward incident as required by Section 123 (c)(2) of the Railways Act 1989, only on the ground that the Station Authorities were not informed about the incident. The Tribunal has also held that it was not believable that the policeman was not taken in the taxi in which the injured (then deceased) was taken to the hospital.

16 In my view, in arriving at this finding, the Tribunal has ignored the other relevant material on record. The Injury Report dated 8th May, 2010 was submitted by Police Constable Mulani who was, at the time of the accident, on duty at Sandhurst Road. Police Constable Mulani has stated in the said Injury Report that, at Sandhurst Road, at about 9.45 a.m., one person sustained injuries, and that the passengers took the injured in a taxi to the J. J. Hospital. He has further stated that he immediately went to J. J. Hospital and found out that the on-duty doctor had checked the injured person and had admitted him in Ward No.4. He further stated that the injured person was identified as Nasir Basir Khan. In the said Injury Report, the said Police Constable Mulani described the wound as a four inch wound on the left side of the left eye, a three inch

wound on the back side of the head and unseen wound on the body. This description of the injury by Police Constable Mulani is consistent with the fact of the Appellants' son having fallen down from the train.

17 The Inquest Panchanama dated 8th May, 2010 also clearly states that the deceased fell down from the train and was found injured at 9.45 a.m. at Sandhurst Road and that the passengers admitted him into J.J. Hospital. The said Inquest Panchanama further describes the injuries in the same manner as described by Police Constable Mulani in his Injury Report and which are consistent with the falling down from the train of a person. Further, the Inquest Panchanama also stated that, when the panchanama was going on, Appellant No.1 personally came and informed that the deceased is his son – Nasir Ahmed Basir Khan.

18 The cause of Death Certificate gives the cause of death as "Haemorrhage and shock due to multiple injuries (UNNATURAL)". This is also consistent with the deceased falling down from the train. Similarly, the Post Mortem Report also describes the wounds and injuries in a manner that is consistent with the falling down from a train of the deceased.

19 Further, another very important piece of evidence is the Order of the Special Executive Magistrate recording sudden death, dated 13th December, 2010, wherein the Special Executive Magistrate clearly stated that he had conducted the investigation of the papers referred by the police regarding death enquiry and that they found that the death was accidental. He further delivered the order that the Appellants' son, Nasir Ahmed Basir Khan, had fallen down from an unknown train and had died.

20 In my view, all this evidence, taken together, clearly shows that the deceased son of the Appellants had died due to accidentally falling down from a train at Sandhurst Road.

21 As far as the judgement in Kamrunnissa (supra) is concerned, in my view, the same is clearly distinguishable on facts. In the said judgement, the Hon'ble Supreme Court has held that a perusal of the Inquest Report reveals that the body of the deceased therein was found on the road and, therefore, it was not possible to accept that the railway accident in question had taken place when the deceased was boarding the train on the railway station. Further, the Hon'ble Supreme Court also arrived at the aforesaid conclusion on the basis that the Inquest Report showed that the body of the deceased therein had been cut into two pieces from the stomach.

22 Paragraphs 6 and 7 of the said judgement are relevant and are set out hereunder:-

> *"6:- We have considered the contentions advanced at the hands of the rival parties. We are of the view that the issue in hand can be determined on the basis of Paras VII and VIII of the inquest report, submitted by the Assistant Commissioner, Railway Police Station, Devangere. The above paragraphs are extracted hereunder:-*

"VII	*Dead body was lying in two pieces on road. No one on the railway track, with head towards south and lying inside down, legs towards north which had become into two pieces and lying next to the railway track, muscle and intestine has come out of the body. White full shirt, white dhoti and spectacles. White chappals, there is a diary in his pocket having few phone numbers. No other items are found apart from this.*
VIII	*Dead body was lying in two pieces on road. No one on the railway track, with head towards south and*

	lying inside down, legs towards north, railway track is facing east-west direction. Towards north: Road Nos. 2, 3 and Good Shed Road, south by : PF 1 AND THEN quarters of railway staff. *a) b) c) No."*

A perusal of the aforesaid report reveals that the body of the deceased, Gafoor Sab, was found on road. It is, therefore, not possible for us to accept that the railway accident in question had taken place when the deceased was boarding the train on the railway station.

7:- The aforestated report also reveals that the body of the deceased had been cut into two pieces, and was lying next to the railway track. The report further indicates that the intestine of the deceased had come out of the body. The above factual position reveals that the body was cut into two pieces from the stomach. This can be inferred from the facts expressed in the inquest report that the intestine of the deceased had come out of the body. It is not possible for us to accept that such an accident could have taken place while boarding a train."

23 In the present case, the deceased son of the Appellants was not found on the road but on the railway track. Further, the injury to the deceased was not that his body had been cut into two pieces and his intestine had came out of the body. On the contrary, as stated herein above, the Injury Report, the Cause of Death Certificate and the Post Mortem Report, all showed injuries to the head and the body which were clearly consistent with accidentally falling down from the train of the deceased son of the Appellant.

24 In these circumstances, in my view, the judgement in Kamrunnissa (supra) does not assist the case of the Respondent and is clearly distinguishable on facts.

<u>ON ISSUE NO.2</u>

25 The finding of the Tribunal on issue No.2 is as under:-

> *" No recovery of ticket has been mentioned in the inquest Panchanama. Bonafide is not acceptable like this, thus, bonafide is not established. Hence, the applicants are not entitled to claim compensation under Section 124A of the Railway Act and therefore, the claim application deserves to be dismissed.*
> *Bonafide is not established as no ticket detail has been mentioned for travel from Wadala to Chinchpokli whereas injured was found in Sandhurst railway station. In the affidavit, the applicants have merely said that the deceased was a regular commuter but no documents in this regard have been submitted by them. In the absence of any ticket details, bonafide cannot be accepted in view of discussion mentioned above.*
> *The issue is, therefore, decided against the applicants."*

26 The Tribunal has decided Issue No. 2 against the Appellants on the ground that no ticket was recovered from the deceased and that ticket details of the deceased had not been given.

27 In this regard, Mr. Bhanage has referred to the judgement of the Hon'ble Supreme Court in the case of ***Union of India v/s. Rina Devi***[2].

28 In Rina Devi (supra), the Hon'ble Supreme Court has held that mere absence of a ticket with the injured or a deceased would not negative the claim that he was a bonafide passenger. The Hon'ble Supreme Court further held that the initial burden would be on the claimant and can be discharged by filing an affidavit of the relevant facts and then the burden would shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. Paragraph 29 of the said judgement is relevant and is reproduced hereunder:-

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> *"29:- We thus hold that 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 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 burden will then shift on the Railways and the issue can be dealt with from case to case on the basis of 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."*

29 In the present case, Appellant No.1, who is the father of the deceased, has filed Affidavit-in-lieu of Examination-in-Chief, dated 25th July, 2013. In the said Affidavit, he has categorically stated that his deceased son Nasir Ahmed Khan was a welder, working in a work shop at Aboli Deep Building, Arthur Road, Chinchpokli, Mumbai. He has further deposed that his deceased son was a daily commuter of the local train, travelling from Wadala to Chinchpokli via Sandhurst Road, holding a valid monthly pass. Further, the Inquest Panchanama, produced by the Appellants, states that no article or paper was found near the deceased and the police did not seize anything from the deceased. This is also consistent with the fact that the deceased held a valid monthly pass but the same was lost in the untoward incident. In the light of the aforesaid evidence, the Appellants had clearly discharged the initial burden to show that the deceased was carrying a valid monthly pass and was a bonafide passenger. The burden then shifted on to the Respondent-Railways to show that the deceased was not carrying any such pass. The Respondent could have discharged that burden by cross examining Appellant No.1 on this issue. However, no question, whatsoever, has been put to Appellant No.1 in cross examination in respect of the deceased being a bonafide

passenger carrying a valid monthly pass. Not even a case was put to Appellant No.1 that his statement that the deceased held a valid monthly pass was false or incorrect. In my view, in these circumstances, the Appellants have discharged the initial burden of proving that the deceased was a bonafide passenger, and once this burden shifted to the Respondent, it failed to establish otherwise.

30 In these circumstances, the finding arrived at by the Tribunal, that it was not established that the deceased was a bonafide passenger, is erroneous and will have to be overturned.

31 For the aforesaid reasons, I hold that it has been established that the deceased was a bonafide passenger.

32 In my view, in these circumstances, an *"untoward incident"* as defined by Section 123 (c)(2) of the Railways Act, 1989, has been established as it has been established that there was an accidental falling down of a passenger from a train carrying passengers.

ON ISSUE NO.3.

33 The finding of the Tribunal on Issue No.3 is as under:-

> *" Name in Ration Card is Ahmed Khan whereas everywhere name of father is shown as Bashir Ahmed Khan. No proof of both being same has been filed or submitted.*
> *Dependency is not proved clearly as name in Ration Card is Ahmed Khan whereas in OA and other documents, name shown of applicant i.e. father of deceased is Bashir Ahmed Khan. No document has been produced or filed proving both to be same.*
> *Relationship is therefore not established and is irrelevant as bonafide is not established.*
> *Thus, the issue is decided against the applicants."*

34 The Ration Card produced by the Appellants shows the relationship between Appellant Nos. 1 and 2 and the deceased. The Tribunal has rejected the relationship on the ground that the name of Appellant No.1 is shown in the Ration Card as Ahmed Khan. In my view, the said findings of the Tribunal are clearly erroneous because Appellant No.1 has referred to himself as Ahmed Khan at various places in the Claim Application, in the Statement given by him to the Police on 8th May, 2010 and in the Affidavit-in-lieu of Examination-in-Chief dated 25th July, 2013. Further, the Ration Card shows the name of the Appellant No.2 correctly as Amina.

35 In my view, the Ration Card clearly shows that Appellant Nos. 1 and 2 are the father and the mother of the deceased and are dependents within the meaning of said term as defined under Section 123 (b) of the Railways Act as the deceased was unmarried. In these circumstances, I hold that the Appellants are dependents of the deceased.

36 In the light of the aforesaid findings, and for the aforesaid reasons, the Appeal needs to be allowed.

37 Hence, the following orders are passed:-

(i) Appeal stands allowed;

(ii) The impugned judgement dated 24th July, 2014 is quashed and set aside;

(iii) The Claim Application preferred by the Appellants stand allowed;

(iv) The Respondent is directed to pay each of the Appellants as compensation a sum of Rs.4 lakhs, within a period of eight weeks from the date on which the Appellants intimate to the Respondent the details of their respective bank accounts;

(v) If the said amounts are not paid within a period of eight weeks as aforesaid, then the Appellants will be entitled to interest at the rate of 7% p.a. on the said amount from the expiry of the said period of eight weeks till payment/ realization.

(vi) There shall be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)