IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 939 OF 2019

Mrs. Raziya Abdul Kadir Shaikh
Residing at - Irla Shastri Nagar,
R. No.26, Near Homeopathy Medical
College, Juhu, Mumbai – 400 056. ...**Appellant**

Versus

Union of India
Through General Manager
Western Railway, Churchgate,
Mumbai – 400 020 ...**Respondent**

Mr. Vasant N. More, for the Appellant.
Mr. T. J. Pandian, for the Respondent.

SANTOSH SUBHASH KULKARNI

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Date: 2022.01.24 16:58:39 +0530

CORAM: N. J. JAMADAR, J.
RESERVED ON: 20th DECEMBER, 2021
PRONOUNCED ON: 24th JANUARY, 2022

JUDGMENT:

1. This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 ("the Act, 1987") is directed against the judgment and award dated 23rd December, 2016, passed by the learned Vice Chairman (Judicial) of the Railway Claims Tribunal, Mumbai Bench, Mumbai ("the Tribunal"), whereby the claim application OA (II u)/MCC/0435/2011, preferred by the appellant – applicant under Section 124-A of the Railways Act, 1989 ("the Railways Act") for compensation on account of the

death of her son Abdul Salam Kadir Shaikh in an untoward incident on 11th May, 2010, came to be dismissed.

2. The background facts leading to this appeal can be stated in brief as under:

(a) Abdul Salam Kadir Shaikh ("the deceased"), then 23 year old, was a bachelor. On 11th May, 2010, he was travelling from Andheri to Dadar by a local train on a valid second class ticket. The applicant asserted that after the train left Andheri station and was running, in between kilometers 21/7A and 21/8, due to push from the other passengers in the compartment, the deceased fell off the running train and sustained a fatal head injury. The deceased died on the spot. The deceased's father had deserted his mother Raziya, the applicant, and, thus, the applicant being the sole dependent preferred the application for compensation under Section 124-A of the Railways Act.

(b) The respondent resisted the application by filing a written statement. It was contended that since the applicant had no personal knowledge of the occurrence, the mode and manner of the alleged untoward incident pleaded by the applicant was not correct. On the contrary, the respondent asserted, the accident memo and inquest panchnama indicate

that the deceased was not a *bona fide* passenger and had not suffered death in an untoward incident. The deceased suffered the fatal injury while unauthorisedly crossing the railway track. There was no material to show that the deceased fell off accidentally from a train carrying passengers. On these, amongst other, grounds the respondent prayed for dismissal of the application.

(c) The Tribunal recorded evidence of applicant Mrs. Raziya (AW-1). After appraisal of the oral evidence and the documents tendered for his perusal, especially the accident memo submitted by the Station Superintendent, Andheri, the inquest panchnama and the postmortem report, the learned Vice Chairman of the Tribunal was persuaded to hold that the deceased was knocked down/run over by an unknown local train while crossing the railway tracks near Andheri Railway Station. Thus, the said incident did not fall within the ambit of "untoward incident" as defined under Section 123 (c)(2) of the Railways Act. The Tribunal further held that the deceased was not a *bona fide* passenger. Thus, the claim for compensation was negatived by the impugned judgment and award.

3. Being aggrieved by and dissatisfied with the impugned judgment and award, the applicant has preferred this appeal.

4. I have heard Mr. V. N. More, the learned Counsel for the appellant, and Mr. T. J. Pandian, the learned Counsel for the respondent, at length. With the assistance of the learned Counsels for the parties, I have perused the material on record especially the pleadings, the deposition of Mrs. Raziya (AW-1) and the documents tendered for the perusal of the Tribunal.

5. Mr. More, the learned Counsel for the appellant, strenuously submitted that the Tribunal erred on both the counts. Firstly, the inference drawn by the Tribunal that the deceased was not a *bona fide* passenger for the only reason that a valid ticket was not found on the person of the deceased is wholly unsustainable. Emphasis was laid on the fact that the claim of the applicant on the said count went untraversed during the course of her cross-examination. Secondly, the approach of the Tribunal in recording a finding that the deceased did not meet death in an untoward incident is far from satisfactory. In the process, according to Mr. More, the Tribunal committed a manifest error in law in banking upon the guess hazarded by the witnesses to the inquest, who had no opportunity to observe the incident. Recording such erroneous findings, the Tribunal unjustifiably deprived the appellant of a legitimate claim for compensation, submitted Mr. More.

6. In opposition to this, Mr. Pandian, the learned Counsel for the respondent, stoutly submitted that in the facts and circumstances of the case, no fault can be found with the findings recorded by the Tribunal that the deceased was not a *bona fide* passenger, and met death while crossing the railway tracks. Mr. Pandian sought to draw support to the aforesaid submissions from the accident memo submitted by the Station Superintend and the inquest.

7. I have given anxious consideration to the rival submissions. Since, the Tribunal banked upon the entries in the accident memo and the statement in the inquest panchnama for arriving at the findings that the deceased was not a *bona fide* passenger and the deceased did not meet death in an untoward incident, it may be apposite to consider those documents, at the threshold.

8. The accident memo records that the body was found lying on platform no.5, at kilometers 21/7A and 21/8, at Andheri Station. The head of the deceased was cut into two pieces. The inquest panchnama, apart from noting the injuries found on the person of the deceased, records that in the opinion of the witnesses to the inquest and police, the deceased was dashed by

an unknown train on the railway tracks, suffered fatal head injury and died on the spot.

9. It would be contextually relevant to note that in the postmortem report the autopsy surgeon noted the following external injuries:

> "1. CLW over head to mandible, exposing whole interior of skull.
>
> Brain not seen, found missing.
>
> Rupturing Rt. Eye ball, Rt. Of nose to mandible.
>
> 2. Multiple abrasions all over the body.
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> On Internal examination, the following injury was noted.
>
> 1. Scalp ruptured with rupture of whole of skull, brain found missing, whole skull cavity exposed."

In the opinion of the autopsy surgeon, the cause of death was head injury (unnatural).

10. From the injuries noted by the autopsy surgeon, as evidenced by the postmortem report, it becomes abundantly clear that the deceased suffered a fatal injury to head. Indisputably, the deceased had multiple abrasions all over the body. However, what is conspicuous by its absence is any other grievous or fracture injury to the rest of the parts of the body. This factor assumes critical significance in evaluating the claim of the applicant that the deceased fell off while travelling in the train carrying passengers and suffered the head injury.

11. Before proceeding to evaluate the evidence and documents on record, it may be apposite to note the approach expected of the Tribunal and Court in considering the claim for compensation. Undoubtedly, Section 124-A of the Railways Act is a beneficial piece of legislation. The avowed object is to award compensation to the injured or the dependent of the deceased, who suffered injury or death, as the case may be, in an untoward incident without delving into the question as to whether there has been any wrongful act, neglect or default on the part of the railway administration. Under Clause (c) (2) of Section 123 of the Railways Act an "untoward incident" means the accidental falling of any passenger from a train carrying passengers. Though the said expression centers around, "accidental falling", it is susceptible to different connotations in the context of facts. "Accidental falling" can be in a myriad of situations and does not govern only a case where a person falls off, after having comfortably boarded the train. Having regard to the object of the beneficial legislation, the Tribunals and Courts are expected to construe the term, "accidental falling" in a purposive manner.

12. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Union of India vs.***

Prabhakaran Vijaya Kumar & ors.,[1] wherein the Supreme Court adverted to two possible interpretations of the expression, "accidental falling of a passenger from a train carrying passengers" and, thereafter, delineated approach to be adopted. The observations in paragraphs 11 and 12 are instructive and thus extracted below:

> "**11**. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide *Kunal Singh vs. Union of India (2003) 4 SCC 524(para 9), B. D. Shetty vs. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India vs. ESI Corporation (2000) 1 SCC 332* etc.
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> **12**. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. vs. The Workmen AIR 1961 SC 647(para 7), Jeewanlal Ltd. vs. Appellate Authority AIR 1984 SC 1842 (para 11), Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd. AIR 1981 SC 852 (para 13), S. M. Nilajkar vs. Telecom Distt. Manager (2003) 4 SCC 27(para 12)* etc."
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> (emphasis supplied)

The controversy at hand is thus required to be approached keeping in view the aforesaid exposition of law.

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1 2008 ACJ 1895.

13. Another limb of the resistance on the part of the respondent was that on the person of the deceased no valid ticket was found. Thus, the deceased cannot be said to be a passenger within the meaning of Section 124-A of the Railways Act. The Explanation appended to Section 124-A defines a passenger as under:

> "Explanation.- For the purposes of this section, "passenger" includes-
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> **(i)** a railway servant on duty; and
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> **(ii)** a person who has purchased a valid ticket for traveling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]"

14. Undoubtedly, the Explanation to Section 124-A defines a passenger to include a person, who had either a valid ticket for travelling by a passenger train or a platform ticket. Evidently, the definition is inclusive. Nonetheless, the proof of possession of a valid ticket cannot be construed as a *sine qua non* for entertaining an application for compensation, in all situations as the factual context throws a variety of complex situations. In a case, where the application is preferred by the dependents, who did not accompany the deceased, the insistence on strict proof of the deceased having a valid ticket may operate onerously. Even where the deceased was carrying a valid ticket, the outcome depends upon a number of variables like whether

the persons, who found the deceased in a fatally injured state, have had the opportunity to ascertain the existence or otherwise of the valid ticket or made diligent efforts to locate the ticket and, even after having found the ticket, made it a point to make a record of the same in the contemporaneous documents. Therefore, a claimant – dependent can not be non-suited on the sole ground that on the person of the deceased a valid ticket was not found.

15. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of ***Union of India vs. Rina Devi,***[2] wherein the Supreme Court *inter alia* considered the question of burden of proof when body was found on the railway premises in the context of the definition of the passenger. After referring to the previous pronouncements, including the judgment of the Supreme Court in the case ***Kamrunnissa vs. Union of India***[3], on which strong reliance was placed by Mr. Pandian, the learned Counsel for the respondent, the Supreme Court expounded the legal position as under:

> **"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

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2 (2019) 3 Supreme Court Cases 572.

3 (2019) 12 Supreme Court Cases 391.

> 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 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."
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> (emphasis supplied)

16. The Supreme Court thus laid down in clear and explicit terms that mere absence of ticket would not negative the claim that the injured or the deceased was a *bona fide* passenger. Initial burden to establish that the injured/deceased was the *bona fide* passenger would be on the claimant. Once such an initial burden is discharged, then it is for the respondent to prove to the contrary, and the question of *bona fide* passenger is required to be determined on the basis of the evidence adduced in the given case.

17. In the case at hand, the applicant Mrs. Raziya (AW-1) categorically affirmed that the deceased was travelling from Andheri to Dadar on a valid second class ticket. The applicant put oath behind the said statement. It is imperative to note that during the course of the cross-examination of Mrs. Raziya (AW-1), no endeavour was made to controvert the said assertion. Nay, even a suggestion was not given to Mrs. Raziya (AW-1) that the deceased was travelling without a valid ticket.

18. As the claim of the Mrs. Raziya (AW-1) that the deceased was travelling on a valid ticket went uncontroverted, it cannot be said that the respondent succeeded in discharging the burden, which shifted upon it, to show that the deceased was not a *bona fide* passenger. The Tribunal did not advert to this aspect of the matter. The mere fact that in the contemporaneous documents it was recorded that no valid ticket was found on the person of the deceased, in the absence of challenge to the testimony of Mrs. Raziya (AW-1), could not have been thus relied upon to negative the claim of the applicant.

19. On the aspect of the claim of the applicant that the deceased fell off from a train carrying passengers, the learned Tribunal seems to have committed an error in appreciating the evidence. First and foremost, the nature of the injuries found on the person of the deceased. Had the deceased met death while crossing the railway tracks, as was sought to be contended, it was highly unlikely that there would have been no other injuries, except the abrasions, on any other part of the body of the deceased, especially the upper and lower limbs. The head injury, in the facts and circumstances of the case, appears more compatible with the case that the deceased fell off the train carrying the passengers.

20. Secondly, the Tribunal lost sight of the fact that in the accident memo, it was recorded that the body was found on the platform. There is no material to indicate that the body was found at a particular place on the tracks and, thereafter, it was shifted to the platform for the purpose of carrying inquest. Thirdly, the reliance on the guess, hazarded by the public witnesses to the inquest, about the probable cause of the incident was also fraught with infirmities. The purpose of inquest under Section 174 of the Code of Criminal Procedure, 1973, is to note the apparent cause of the death and describe the wounds, fractures, bruises and other marks of injury as may be found on the body of the deceased. To base a finding as to the manner of the incident, on the basis of the statements made by the witnesses, who have had no opportunity to observe the incident, is to approach the issue from a completely incorrect perspective.

21. For the foregoing reasons, I am persuaded to hold that the Tribunal was in error in returning a finding that the deceased did not suffer death in an untoward incident.

22. Mr. More, the learned Counsel for the appellant, was justified in placing reliance on a judgment of this Court in the

case of ***Rekha Dilip Sapkale vs.Union of India,***[4] wherein, in an identical fact situation, this Court had interfered with judgment of the Tribunal negativing the claim of the applicant therein. Paragraphs 12 to 15 of the said judgment read as under:

> "**12**. Undoubtedly, the deceased had died due to head injury as is evident from the post-mortem report. The post-mortem report does not indicate that the head injuries could have been sustained due to a dash given by a running train. No doubt, there were several injuries on the person of the deceased as depicted in the post-mortem report, however, it cannot be said that those injuries could be sustained only when a person is hit by a train while crossing the track. In the absence of any satisfactory evidence that the deceased was crossing the railway track, it will have to be presumed that he was a bona fide passenger, who met with an accident due to a fall from an unknown running train and, therefore, it can be said to be an "untoward incident" as defined in Section 123(c)(2) of the Railways Act. The question again arises as to why no offence came to be registered if the act of the deceased was falling under the proviso to Section 124(A), clause (c), meaning thereby, it was his own criminal act.
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> **13**. Merely because no ticket was recovered from the spot of incident nor from the person of the deceased during inquest panchanama, does not ipso facto mean that he was ticketless. It is significant in the light of the fact that there is no evidence forthcoming as to whether the respondent had searched the spot to find out if the deceased had a ticket. No spot panchanama was conducted by the respondent.
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> **14**. It is not the case of the respondent that the motorman or guard of any of the local train or, for that matter, the motorman of the train which hit the deceased, had in fact, witnessed the incident as to how it had happened. Secondly, the findings of the Tribunal are quite perverse in the sense that it has relied upon the inquest panchanama wherein the panchas and police opined that the deceased was knocked down by an unknown local train. Such observations are not only improper, incorrect but also in total ignorance of the law of evidence. The police and pancha witnesses cannot be said to be experts to render their opinion, more so, when they are not eye- witnesses. Such observations by the Tribunal are required to be set aside.
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> **15**. Since the provisions for compensation in Railways Act is a beneficial piece of legislation and, therefore, it should

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4 2021(3) ABR 327.

> receive a liberal and wider interpretation and not a narrow and technical one. The appellant being dependant of the deceased, should not be deprived of such benefit, which is bestowed by the legislation."
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> (emphasis supplied)

23. The upshot of the aforesaid consideration is that the appeal deserves to be allowed.

24. The appellant – applicant was held to be a legal dependent, by the Tribunal. Hence, the appellant – applicant is entitled to compensation of Rs.4,00,000/- along with interest at a reasonable rate as ruled by the Supreme Court in the cases of ***Rina Devi*** (supra) and ***Union of India vs. Radha Yadav.***[5] In the latter, the aspect of quantum of compensation and interest component was further elucidated as under:

> "**11**. ..... Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration."
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> (emphasis supplied)

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5 (2019) 3 SCC 4110.

25. Hence, the following order:

: **O r d e r** :

(i) The appeal stands allowed with costs.

(ii) The impugned judgment and award stands quashed and set aside.

(iii) Application No.OA (II u) / MCC / 0435/ 2011, preferred by the applicant stands allowed.

(iv) The respondent do pay a compensation of Rs.4,00,000/- along with interest at the rate of 8% p.a. from the date of accident (i.e. 11th May, 2010) till the date of deposit/realization.

(v) Upon realization, the Tribunal shall release 50% of the amount in favour of the applicant and invest rest of the amount in a fixed deposit initially for the period of three years, in the name of the applicant, with liberty to the applicant to withdraw the quarterly interest accrued thereon.

[N. J. JAMADAR, J.]