

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.389 OF 2016

1. Nanibai Wd/o. Sukhlal Barela,
Age:45 years, Occu:Nil
2. Raju S/o Sukhlal Barela
Age:23 years, Occu:Nil,
3. Mukhesh S/o Sukhlal Barela,
Age:20 years, Occu: Nil,

All R/o. Dongargaon, Pandhana Tahsil,
District Khandwa (M.P.)

**...APPELLANTS
(Orig. Appellants)**

VERSUS

Union of India,
through General manager,
Central Railway, Chatrapati Shivaji Terminus,
Mumbai.

**...RESPONDENT
(Orig. Respondent)**

...

Mr. V.B. Madan, Advocate for Appellants.
Mr. M.N. Navandar, Advocate for Respondent.

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CORAM: P.R.BORA, J.

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Date of reserving the judgment: 25/8/2016

Date of pronouncing the judgment: 01/09/2016

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JUDGMENT:

1. The appellants have filed the present appeal against the judgment and order passed by the Nagpur Bench of the Railway Claims Tribunal (hereinafter referred as 'the Tribunal') in Case No. O.A. (Ilu) NGP / 2013 / 0021, decided on 6.11.2015.

2. The aforesaid petition was filed by the appellants seeking compensation being the legal heirs of deceased Sukhlal Ratan Barela, who was stated to have died in an untoward incident alleged to have occurred on 2nd June, 2012, while travelling by a train. It was the contention of the appellants that deceased Sukhlal, while travelling by a train from Nimbhora to Khandwa, fell down from a running train, and died as a result of injuries caused to him in the said accident. According to the appellants, deceased Sukhlal was a bona fide passenger and died in an untoward incident and, as such, being his legal heirs, they were entitled to receive the compensation of Rs.4,00,000/-(Rs. four lacs) from the Railway Administration.

3. The petition so filed by the appellants was resisted by the Railway Administration. In the written statement filed on behalf of the Railway Administration, it was contended that it was a case of self inflicted injury and deceased Sukhlal has died because of his own negligence and, as such, the Railway Administration was not responsible for paying any compensation as claimed by the appellants. In order to substantiate the contentions raised in the petition, appellant No.2, namely, Raju Sukhlal Barela has deposed before the Tribunal, and appellants have also placed on record certain documents, and had also placed reliance on the Police papers in relation to the alleged accident. One Shri Salil Pare, the Deputy Station Superintendent, Nepanagar, deposed on behalf of the Railway Administration. The Railway Administration has also filed on record certain documents.

4. Learned Tribunal, after assessing the oral and documentary evidence brought before it, dismissed the petition vide the impugned judgment and order. Aggrieved thereby, the appellants have filed the present

appeal.

5. Shri V.B.Madan, learned Counsel appearing for the appellants, submitted that the appellants have duly proved that the deceased Sukhlal Barela was a bona fide passenger and died in an untoward incident while travelling by a train in a journey from Nimbhora to Khandwa. Learned Counsel submitted that the Tribunal has failed in proper appreciation of the evidence on record and has drawn far fetched inferences which have resulted in causing injustice to the appellants. Learned Counsel further submitted that the conclusions recorded by the Tribunal that the appellants have failed in proving that the deceased Sukhlal was bona fide passenger and that he died in untoward incident, are erroneous and deserve to be set aside.

6. Per contra, Shri M.N.Navandar, learned Counsel appearing for the Railway Administration, has supported the impugned judgment. Learned Counsel submitted that the appellants have failed to discharge the initial burden cast on them to prove that the deceased was

a bona fide passenger and further that he accidentally fell down from the train, and suffered death in the accident so happened. Learned Counsel, therefore, prayed for dismissal of the appeal.

7. On perusal of the impugned judgment, it is revealed that the Tribunal has dismissed the petition filed by the appellants on both the counts, holding that the appellants have failed in proving that deceased Sukhlal was bona fide passenger, and further that, the deceased Sukhlal had accidentally fallen from the train so as to make the Railway Administration liable for paying the compensation.

8. I have carefully perused the evidence on record and more particularly, the documentary evidence on record. It is not in dispute that the deceased was found lying near the Railway Track in KM Nos.519/26-28 Down Track, Chandani, Nepanagar, on 2nd of June, 2012. There is further no dispute that he was lying dead. He was first noticed by one Nilesh s/o Hansraj, the Gangman working in the Railway Department and residing at Railway

Colony, Neapanagar, at about 12:00 hours on 2nd of June, 2012, and said Nilesh had lodged the information in that regard and the same was treated as the First Information Report in the said matter. The documents on record further reveal that the inquest panchnama was prepared on 2nd of June, 2012, during the period between 1430 to 1450 hrs. in presence of independent Panch witness. While carrying on the inquest panchnama, personal search of the clothes on the person of deceased Sukhlal was also taken and in the personal search so carried out, one Railway ticket, one diary having noted some phone numbers therein, and two currency notes of denomination of Rs.1000/- each were recovered from the pant pocket of the deceased. It is further not in dispute that the Railway ticket which was recovered from the pant pocket of deceased Sukhlal was purchased on 1st of June, 2012, at 2104 hrs for the journey from Nimbhora to Khandwa.

9. In the impugned judgment, the Tribunal has, however, recorded a finding that the appellants have failed in proving that deceased Sukhlal was a bona fide passenger. In paragraph No.16 of the impugned judgment, the Tribunal has made following observations:

"16. So the ticket relied upon and placed on record by the applicants is not on the date of the incident but, on the previous date, which clearly shows that the ticket was manipulated and procured one. Hence, the inference can easily be drawn against the applicants that the deceased was not a bona fide passenger. "

10. In the premise of the evidence available on record, to which I have referred to hereinabove, the finding so recorded by the Tribunal is not only incorrect and unsustainable but is perverse. Merely for the reason that the Railway ticket, which was found with the deceased, was of the previous date, the Tribunal has recorded a finding that the ticket was manipulated and procured one.

11. As has been noted hereinabove, the dead body of deceased Sukhlal was first noticed by the Railway Gangman at about 12 noon on 2nd of June, 2012, and after lodging of the FIR by the said Gangman, the inquest panchnama and personal search of the dead body was conducted immediately thereafter during the period between 14:30 hrs to 14:50 hrs. The concerned Railway

ticket was admittedly recovered from the pant pocket of deceased Sukhlal in the personal search while preparing inquest panchnama of the dead body of said Sukhlal. The material on record further reveals that one Diary was also revealed from the pant pocket of deceased Sukhlal wherein some phone numbers were noted. The material on record further reveals that on one of such phone number, a phone call was made by a Police person which was the number of one Ravindra Babulal Barela who is the son in law of deceased Sukhlal and he was informed about the alleged accident and about the death of the Sukhlal. The record further reveals that thereafter, said Ravindra, son-in-law of the deceased, and the son of the deceased, namely, Raju, reached at the spot and identified the dead body to be of deceased Sukhlal Barela.

12. It is, thus, quite evident that when the inquest panchnama was prepared and the personal search of the dead body and the clothes on the person of the deceased was conducted, none of the relative of deceased Sukhlal was present on the spot. It was conducted by the Police persons in presence of independent Panch witness. From

the evidence as such there was a zero possibility of somebody putting the ticket in the pant pocket of the deceased. The only unimpeachable inference that can be drawn from the aforesaid evidence would be that the deceased was bona fide purchaser of the Railway ticket which was found in his pant pocket and in absence of any contrary evidence on record, it has to be presumed that the deceased has started his journey from Nimbhora to reach at Khandwa and, in the meanwhile, the untoward incident happened in which he suffered death.

13. I reiterate that the finding recorded by the Tribunal that, the ticket was manipulated and procured one, is perverse, for the reason that there is absolutely no evidence on the basis of which the Tribunal could have drawn such inference, and recorded such finding. The possibility of manipulation of putting the Railway ticket in the pant pocket of the deceased or, to procure the said railway ticket, could have been only at the instance of, and by the legal heirs or relatives of the deceased, and obviously for the purpose of claiming compensation. However, as I have discussed here-in-above, that the

relatives and / or the legal representatives of the deceased came to know about the alleged accident later on, and much prior to that the ticket was recovered from the pant pocket of the deceased while conducting Inquest panchnama and the personal search by the Police persons in presence of the independent Panch witness.

14. It is further evident that when the personal search was conducted and the ticket was recovered from the pant pocket of the deceased, the persons who conducted the personal search and recovered the said ticket from the pant pocket of the deceased were unaware of the identity of the person and for them it was a dead body of unknown person. Thus, in no case, such inference could have been drawn by the Tribunal that the Railway ticket so found in the pant pocket of the deceased was manipulated or procured one.

15. Such inference could not have been drawn even on the basis of the fact that the ticket was of the previous date. Admittedly, the dead body was noticed by a Railway Gangman at about 12 noon. Nobody was

knowing as to at what point of time the alleged accident had occurred and at what point of time deceased might have suffered the death. As has been opined by the concerned Medical Officer who has conducted the post mortem examination on the dead body of deceased Sukhlal, the death had occurred more than eight hours prior to the time of conducting the post mortem examination and was possible within the period of 36 hours prior to conducting the post mortem examination. The post mortem examination is admittedly conducted on 3rd of June, 2012 at about 10 a.m. From the opinion recorded by the concerned Medical Officer, in the post mortem examination, thus, the death of the deceased was possible within 36 hours prior to the conducting of the post mortem examination. It, therefore, cannot be said that the deceased suffered the death on 2nd of June, 2012. The possibility of the deceased suffering death at the late hours of 1st of June, 2012, or in the early hours of the 2nd June, 2012, was writ large. No such inference, therefore, could have been drawn by the Tribunal that the ticket was manipulated because it was of the previous date and not of the date of the incident.

16. During the hearing of the present appeal, learned Counsel for the appellant was asked to place on record the information as about the trains running in between Nimbhora to Khandwa. Learned Counsel, after collecting the information, informed this Court that the ticket which is recovered from the pant pocket of deceased Sukhlal pertains to a passenger train having regard to the ticket fare charged. Learned Counsel further informed that one passenger train runs from Bhusaval to Itarasi which starts at 8.45 p.m. from Bhusaval and it reaches to Nimbhora in between 11 a.m. to 11.30 p.m. Learned Counsel further submitted that the deceased might have boarded the said train at Nimbhora in the period between 11 p.m. to 11.30 p.m. Learned Counsel submitted that the Railway ticket is shown to have been purchased on 21:04 hrs. on 1.6.2012. Learned Counsel further submitted that Nepanagar is at a distance of 60 to 70 kms from Nimbhora where the dead body of deceased Sukhlal was noticed near the Railway track. There is, therefore, reason to believe that the alleged incident might have occurred in the early hours of 2nd of June, 2012. From

the facts which have come on record, it can be reasonably inferred that the deceased might have started the journey on 1st of June, 2012, from Nimbhora and, before reaching the destination i.e. at Khandwa, the untoward incident happened in the late hours of 1st of June, 2012, or in the early hours of 2nd of June, 2012. I have, therefore, no hesitation in holding that the deceased was a bona fide passenger of the Railways.

It is further significant to note that in the written statement filed by the Railway Administration, it has not raised any specific defense that deceased Sukhlal was not a bona fide passenger. As such, in fact, no issue was liable to be framed in that regard. It appears that the Tribunal, suo motu, framed the said issue and without there being any objection in that regard, has answered the said issue in negative for some erroneous reasons. The finding so recorded is perverse and cannot be sustained.

17. Now, the next question arises whether deceased Sukhlal died in an untoward incident or otherwise. Admittedly, none of the appellant was accompanying the deceased and, as such, there was no possibility on their

part of having any knowledge as to occurrence of the alleged incident. As has come on record, the appellants came to know about the alleged untoward incident and the death of deceased Sukhlal only after they were contacted by the Police persons. In the circumstances, it cannot be expected from the appellants to state and / or disclose in what manner the accident had occurred. Obviously, therefore, the appellants cannot be expected to mention in the claim petition as to whether the deceased fell down due to jerk or ACP in the train or due to jostling of the passengers due to heavy rush in the compartments.

18. It is nobody's case that deceased Sukhlal had committed suicide by throwing himself before the train or that it was homicidal. If these two possibilities are ruled out, the only inference which emerges indicate the possibility of accidental death. The plea taken by the Railway that deceased suffered the death because of his own negligence has not at all been proved by it. Unless there is some concrete evidence showing the negligence on the part of the deceased, merely on surmises or conjectures no such inference can be drawn. The Tribunal

has, therefore, manifestly erred in arriving at a conclusion that appellants have failed in proving that Sukhlal died in an untoward incident.

19. Though the Railway Administration has raised an objection that the deceased was travelling by standing / sitting near the door of the train, and the foot board travelling is an offense and thus, the deceased has suffered the death because of his own negligence, there is absolutely no evidence in this regard and all such submissions are in the form of surmises and conjectures. In absence of any concrete evidence showing that the alleged accident happened because of negligence on the part of the deceased, it has to be inferred that the deceased Sukhlal suffered the death in an untoward incident while travelling by a train.

20. From the perusal of Section 123 (c) (2) and 124-A of the Railways Act 1989, it is clear that for claiming compensation on account of death suffered in a train accident, two things are to be established; one that the deceased was a bona fide passenger of the train, and

the other that, he suffered the death in an untoward incident. From the material on record which I have elaborately discussed in the foregoing paragraphs, I have no hesitation in holding that both the aforesaid aspects are duly proved by the appellants and they are, therefore, entitled to the compensation as claimed by them. Hence, the following order:

ORDER

- 1) The appeal is allowed.
- 2) The impugned order is quashed and set aside.
- 3) The appellants are held entitled to receive the compensation of Rs.4,00,000/- (Rs. four lacs).
- 4) The respondents are directed to pay the amount of compensation to the appellants with interest thereon at the rate of Rs.9 per cent per annum from the date of application till its realization.
5. Seventy five per cent of the amount of compensation shall be paid to appellant no.1 Nanibai i.e.

the widow of the deceased along with interest and twelve and half percent, each, to appellant nos. 2 Raju s/o Sukhlal Barela and appellant no.3 Mukesh s/o Sukhlal Barela.

(P.R.BORA)
JUDGE

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