

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

FIRST APPEAL NO.3166 OF 2015

Dipali Wd/o. Pramod Patil
and others

.. Appellants

Versus

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

Mr.Vishnu B. Madan, Advocate for the appellants
Mr.M.N.Navandar, Advocate for Sole Respondent

**CORAM : A.V.NIRGUDE, J
DATED : 26.08.2016**

P.C. :-

1. This appeal challenges the judgment and award dated 05.10.2015 passed by the learned Member of the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA(IIu)/NGP/2014/017 rejecting the claim of the appellants for compensation on account of death of one Pramod who happened to be son, husband and father of the appellants.

2. The facts of the case leading to this litigation, in short can be stated as under:-

3. On 29.10.2013 Pramod purchased the journey ticket from Jalgaon to go to Nashik. He boarded the train No.15018 Up Kashi Express. His dead body was found between K.M.No.417/14-12 in between Jalgaon-Shirsoli up Road of Railway Station Jalgaon, Dist. Jalgaon in two pieces. Two pieces were found laying at about 50 feet distance.

4. The appellants asserted that Pramod died in a "untoward incident" as defined under Section 123(C)(2). In other words they asserted that Pramod fell down from the running train and died due to such accident. They claimed compensation under Section 124 (A). Their claim was opposed by the Railway Administration.

5. The Medical Officer opined that the kind of injuries could have occurred only due to running over of a train. There is thus no doubt that Pramod some how came under the wheels of a train his body was cut in two pieces. On the other hand it is admitted fact that a valid railway ticket was found in Pramod's pocket. It is also clear from the evidence that Pramod could not have reached the spot where his dead body was found by any other mean, but by train. Pramod reached this spot only by traveling in a train. If his dead body as found at such spot it cannot be assumed that Pramod could have

alighted from train then walked up to the spot where his dead body was found for committing suicide.

6. Elaborate evidence came on record and learned Members of the Railway Claims Tribunal, Nagpur Bench, Nagpur came to a conclusion that Pramod probably committed suicide and therefore it was not a death in untoward incident. The learned Member of the Railway Claims Tribunal, Nagpur Bench, Nagpur came to a conclusion that the nature of the injuries sustained by Pramod, it can not be said that he could have fallen down from running train.

7. No doubt, the learned Member of the Railway Claims Tribunal, Nagpur Bench Nagpur recorded reasons as to why they could not accept the possibility that Pramod's death occurred due to falling down from running train. But the learned Member of the Railway Claims Tribunal, Nagpur Bench, Nagpur ought to have considered that Pramod was a bonafide passenger of certain train and his dead body was found laying near railway track. His death occurred due to railway accident. Once these facts are proved, then the learned Members ought to have applied provision of Section 124(A) r/w Section 123 to these facts.

Section 124 (a):

Compensation on account of untoward incident— When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident: Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purposes of this section, “passenger” includes—

(i) a railway servant on duty; and

(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.

8. In this case there was strong possibility that Pramod died due to accidental fall from the train. And in view of provision of Section 124 (A) it was for Railway Administration to prove that it was a suicide etc.

9. I am of the view that the case of the appellants was amply proved. The conclusion drawn by the learned

Member of the Railway Claims Tribunal, Nagpur Bench, Nagpur was based on their own guesswork. No one came forward to state that Pramod committed suicide. Even the written statement on record does not indicate such stand. The written statement asserted that Pramod died due to his own negligence as he was standing on foot board etc.

10. Appeal therefore should succeed. Appeal is allowed. The respondent shall pay fixed compensation of Rs.4,00,000/- alongwith 8% from the date of accident till the date of award. And 6% from the date of award till the amount realization.

[A.V.NIRGUDE,J.]