

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

FIRST APPEAL NO. 1169 OF 2017

1. Smt. Dropadibai @ Dhurpata
W/o Shivaji, Bhalande,
Age: 41 Years, Occu : Housewife,
R/o Dhoki, Tq & Dist. Nanded.
2. Ram S/o Shivaji, Bhalande,
Age : 15 Years, Occu: Education,
R/o As above.
3. Vaishnavi D/o Shivaji Bhalande,
Age : 13 years, Occu: Education,
R/o As above.

(Appellant No.1 and 2 Minor,
Under Guardian of real Mother
Applicant No.1 Smt. Dhropadibai
@ Dhurpata W/o Shivaji, Bhalande)

Applicants
(Orig.Claimants)

Versus

Union of India,
Through General Manager,
South Central Railways,
Secundrabad. (Andhra Pradesh)

..Respondent

Mr. P.S. Agrawal, Advocate for the Appellants
Mr. M.N. Navandar Advocate for Respondent sole.

CORAM : A.M. DHAVAL, J.

DATE : 16.08.2018

JUDGMENT :-

1. In case No. OA (IIU)/NGP/2013/0135, the Railway Claims Tribunal, Nagpur by Judgment dated 25th January, 2017 dismissed the claim application of the appellants for compensation of Rs. 4,00,000/- on account of death of Shivaji. Aggrieved thereby, the claimants have preferred this Appeal.

2. According to the appellants, on 30.03.2013, Shivaji Balande, husband of appellant No.1 and father of minor appellants 2 and 3 boarded Dharmabad-Manmad Marthwada Express Train No.17688 at 7 **a.m.** When he was standing near the door, due to heavy rush and sudden jerk of the railway, he fell down near point No.290/00-01 near Parbhani Railway Station and came under the wheels of the train and suffered death. It is claimed that he was bona fide passenger, but the ticket with him was lost. According to the Applicants, in presence of one Sudam Chapat deceased Shivaji purchased a railway ticket from Parbhani to Selu and boarded Dharmabad-Manmad Marathwada Express Railway No. 17688. The railway authorities held inquiry and statements of material witnesses were recorded. As Railway

Authority refused to pay compensation, this claim was filed under S. 123(u) of the Railways Act. The Railway filed written statement at Exh.A-12. They denied that the deceased had purchased a ticket and boarded the train and he fell down from a running train due to sudden jerk as claimed by the appellants. According to the inquiry held by the railway, the dead body of Shivaji was seen by Loco Pilot of Marathwada Express. He stopped the train. There was no jerk to the train at the relevant place. The inquiry revealed that no person had fallen from the running train. The deceased suffered self- inflicted injuries or natural injury covered under section 124-A of Railway Act. Therefore, the railway is not liable to compensate the claimants.

3. On the basis of these pleadings, the issues were framed. Claimant No.1 examined herself. The railways filed the documents relating to the death like spot panchanama, inquest panchanama, postmortem notes and statements of witnesses recorded.

4. The Member of Railway Tribunal held that the claimants have not proved that the deceased was bona fide passenger as he was not holding any ticket and that he fell

down from the railway. Therefore, his death was not on account of untoward incident. Hence, the claim application was dismissed. Hence, this appeal.

5. Mr. P.S. Agrawal made following submissions :-

(i) The provisions of Railway Claims Tribunal Act is beneficial legislation. It attracts strict liability when the accidental death of a person is noticed in the railway premises.

(ii) The passenger travelling in a train is presumed to be a bona fide passenger and the burden is on the railway to show that he was not a bona fide passenger. Mere absence of railway ticket cannot be a ground to hold that he was not a bona fide passenger.

(iii) There was a statement of Sudam Chapat recorded during inquiry which shows that the deceased purchased railway ticket at Parbhani in his presence. Therefore, the deceased was a bona fide passenger.

(iv) It is also claimed that deceased was not residing near the spot of accident.

6. Besides, the First report of the accident was reported by Key Man Ramesh Madne, who has stated that deceased fell down from the train Dharmabad-Manmad Marathwada Express. The inquiry report by the railways is a false story led by railway that the dead body was first seen by Loco Pilot and Guard and when they attempted to help, there was pelting of stones by public. It is afterthought and false. There was no documentary evidence to support it.

7. There was sufficient material to show that deceased was bona fide passenger and he met with death in railway accident due to untoward incident. Hence, he was entitled for compensation.

8. It is also submitted that as held in **Union of India Vs. Rinadevi**¹ the claimants are entitled for compensation of Rs.4,00,000/- + interest or the newly fixed compensation of Rs. 8,00,000/- whichever is higher. He relied on number of rulings which will be considered in due course.

9. Per contra, Mr. Navandar, learned advocate for the Railways argued that for grant of compensation, it is pre-

1 2018 STPL 6454 SC

requisite that deceased must be a bona fide passenger. The burden lies on him to show that he was a bona fide passenger. The claimants have to produce such evidence. It is also necessary for the claimants to show that deceased died in railway accident by fall from railway. If there is no such evidence, the claimants cannot claim compensation.

10. The points for my determination with my findings are as follows :-

- | | | | |
|------|---|-----|--------------------------|
| (i) | Whether the deceased Shivaji Bhalande was a bona fide passenger and met with a death by fall from the Railway ? | ... | In the negative. |
| (ii) | What order ? | ... | The appeal is dismissed. |

REASONS

11. It is not disputed that Dharmabad-Manmad Marathwada Express train No.17688 comes at Parbhani Station at 7.11 a.m. and leaves the Station at 7.13 a.m. On 30.03.2013. Ramesh Madne, Key Man was on duty Gang No. 6 to check railway at Parbhani from 7.00 a.m. to 7.00 p.m. He left Parbhani Station at 7.00 a.m. and near Kilometer

No.290/01, he found one dead body lying on the railway track. He received information first and thereafter, he had gone to the spot. Several people had gathered around the dead body. He reported the accident to railway station Master, Parbhani.

12. Report of incidental death was filed and inquiry of death case was held. It shows that the deceased was run over by a running train and died due to the accident (A-17). The spot panchanama drawn revealed that the dead body was lying near the railway track proceeding towards Pedgaon. It was 15 paces away from the relevant railway track. There were shops at a distance of 25 paces from place of dead body. No valuables or any cheat was found on the spot. The panchanama was drawn at 9.00 a.m.

13. The inquest panchanama shows that the deceased had sustained severe injury to his skull. His skull was smashed and there was heavy bleeding and brain was exposed and was out of the skull. It is recorded that the skull was totally smashed (चेंदामेंदा). The postmortem note shows that there was communited fracture of skull occipital low cryna and brain and side of the skull vault death was

due to hyfo denapanic shock due to multiple fractures due to head injury. The deceased was a resident of Pangra Tal. Purna, Dist. Parbhani and his dead body was handed over to his cousin Gangadhar.

14. The evidence on record shows that there was no eye witness. The personal search of deceased revealed that he was not having any railway ticket. Mr. Agrawal in order to show he was bona fide passenger and fell from the train relied on the following facts :-

(i) The report of the Key Man that the deceased had fallen from the train. It may be stated that he is not eye witness and his knowledge was hearsay. He has merely given his inference on the basis of the fact that dead body was found near the track.

(ii) There was statement by Sudam Chapat, brother-in-law of deceased Shivaji. He stated that he had been to Pangra on the call of Shivaji and on 30.03.2013 both of them came to Parbhani Railway Station and he purchased railway ticket of Rs.30/- for deceased Shivaji and then, Shivaji at 7.00 a.m. proceeded for Journey from Parbhani to Selu and

Shivaji caught train within 10 minutes. Thereafter, the train left and then he received message. The Police contacted the relatives of the deceased on the basis of diary found in the pocket of the deceased.

(iii) The story led by the railway that the dead body was seen by Auto Pilot and Guard of Marathwada Express is after thought and it is not supported by any report to that effect given to Railway Station Master.

15. The relevant provisions of law as below.

Section 2 - Definitions - In this Act, unless the context otherwise requires -

“(29) “Passenger” means a person travelling with a valid pass or ticket:

Section 123 - Definitions.- In this Chapter, unless the context otherwise requires,-

(a) "accident" means an accident of the nature described in section 124;

(c) ["untoward incident" means-

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or decoity; or

(iii) the indulging in rioting, shoot-out or arson, by

any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

Section 124A.1 Compensation on account of untoward incidents.- 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 of 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 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 purpose of this section "passenger" includes -

- (i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passenger on any date or a valid platform ticket and becomes a victim of an untoward incident.

16. Mr. Agrawal and Mr. Navandar have relied on the following rulings which can be conveniently granted as per the subject as follows :-

17. Learned advocate Mr. Agarwal relied on following judgments

(i) **Union of India Vs. Prabhakaran Vijaykumar & Ors.**, AIR 2009 SC (Supp) 383, wherein it is observed in paragraph 14 that:

“14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental

falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

- (ii) Similar view is taken in ***Jameela & Ors. Vs. Union of India, AIR 2010 SC 3705*** in paragraph 9 and 10.

18. He further relied on following judgments to argue that where a passenger dies accidentally in the railway premises, it must be presumed that he was a bona fide passenger, holding a ticket and the burden will be on the Railways to prove that he was not possessing ticket.

- (i) ***Union of India Vs. Bimla wd/o Pintho Tidu & Ors., 2012 (3) Mh.L.J. 883***, in para 9 and 13 it is observed as under:

"9. Under section 123(c)(2) of the Railways Act, 1989, the "untoward incident" means the accidental falling of any passenger from a train carrying passengers. The reading of section 124 and 124A makes it clear that issues like wrongful act, neglect or default on the part of Railways Administration are irrelevant."

"13. Now, the question that crops for consideration

is whether failure of the claimant/passenger to produce valid ticket would lead to a presumption that the passenger met with untoward incident and died was not an authorized passenger or was not holding a valid pass or ticket. To draw such inference, would be to expect from the dependents of the deceased to prove impossible. It is known fact that in such a long journey which consumes more than 15-16 hours, passengers are checked by ticket checkers and certainly more than once. In such circumstance, the fact that the deceased was not detected as passenger travelling without ticket, would give rise to an inference that he was travelling with valid ticket. Whether the deceased had purchased a valid ticket and what happened to that was a fact within his personal knowledge. Having regard to the fact that the provision for compensation in the Railways Act, is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one. This has been observed by their Lordships in case of Union of India ..vs.. Prabhakaran Vijaya Kumar, cited supra. "

- (ii) Similar view is taken in ***Union of India Vs. Nandabai w/o. Sheshrao Dangat & Ors***, 2015 (6) *Mh.L.J.* 295, in paragraph 6.
- (iii) **Raj Kumari & Anr. Vs. Union of India 1993 STPL 4596 MP**, paragraph 7

- (iv) **Union of India Vs. Hari Narayan Gupta & Anr., AIR 2007** Rajasthan 38, paragraph 12, 13 and 15.
- (v) **Mehar Parveen wd/o Abdul Rab & Anr. Vs. Union of India**, 2007(2) Mh.L.J. 777 (Bombay), paragraph 12 and 13.
- (vi) **Union of India Vs. Smt. Anuradha Deshmukh & Anr.**, 2013 STPL 17888 Bombay, paragraph 7.
- (v) **Union of India Vs. Parmeshwaran Pillai**, 2013 STPL 1418 Kerala, paragraph 7 and 8.
- (vi) **Smt. Vaishali wd/o Nitesh Bhalerao Vs. Union of India**, 2010 (4) Bom CR 506, paragraph 10.

19. Mr. Agrawal further relied on following judgments with respect to amount of quantum to be awarded and the interest payable:

- (i) **Rathi Menon Vs. Union of India**, AIR 2001 SC 1333(1), wherein it is held that the railway accident compensation must be fixed as per what on Rules prescribed at the time of making the order for compensation, and not in terms of money value which prevailed on the date of accident.
- (ii) Above judgment has been followed in **N. Parameswaran Pillai Vs. Union of India**, AIR 2002 SC 1834.

- (iii) **Thazhathe Purayil Sarabi & Ors. Vs. Union of India & Anr.**, AIR 2009 SC 3908. In this case, the Apex Court held that, even in absence of statutory provision, courts are empowered to grant interest as per the provisions of Interest Act, 1978 from the date of the claim or from the date principal sum adjudged to be payable. The direction for payment of interest on default of payment of principal sum within period of 45 days is not proper.

20. Learned advocate Mr. M. N. Navandar, appearing for the Respondent argued that the responsibility to prove that the Appellant was a bona fide passenger and was holding a valid ticket, is on the claimant and if he does not satisfy the same, the claim is liable to be dismissed. In this regard, he relied on the following judgments:

- (i) **Dnyaneshwar Pawar & Anr. Vs. The Union of India** [Aurangabad Bench (Coram : A. M. Badar, J.), First Appeal No. 1350 of 2012, dated 23.12.2015] wherein it is held that:

“Reliance is also placed on judgment of the Supreme court in the case of Union of India Vs. Prabhakaran Vijay Kumar and others reported in AIR 2009 SC (supp.) 383, to argue that the liability under Section 124 of the

Railways Act 1989 is a strict liability and irrespective any wrongful act, neglect or default on the part of the Railways, injured passenger or dependents of passenger killed in an untoward incident, are entitled for compensation from the Railways.”

It is further held that:

“9. ... Papers of enquiry of this accidental death case, or evidence of claimant Dnyaneshwar before the Railway Claims Tribunal does not help the claimants to prove that deceased Kailash was a passenger in the passenger train and he suffered fall from the train causing his death. On the contrary, police statement of claimant Dnyeneshwar goes to show that when his son Kailash was crossing the railway track for going to his field situated on the other side of the track, he was dashed by a running train causing his death. Similar are the statements of relatives of claimants recorded during the course of enquiry of Accidental Death case.

10] In this view of the matter, as the untoward incident itself is not proved by

preponderance of probability or by any circumstantial evidence, it cannot be said that the learned Tribunal was not correct in rejecting the claim of the claimants for compensation on account of death of their son Kailash.”

21. The same view is followed in following cases:

- (i) ***Sunita Sonawane & Ors. Vs. Union of India*** [Aurangabad Bench (Coram: P. R. Bora, J.) judgment in First Appeal No. 3173 of 2016, dated 23.11.2016], in paragraph 5.
- (ii) ***Sunita Waghmare & Ors. Vs. Union of India*** [Aurangabad Bench (Coram: A. V. Nirgude, J.) judgment in First Appeal No. 3165 of 2015, dated 1.9.2016], paragraph 3 and 4.
- (iii) ***Narendra Amodkar Vs. Union of India*** [Aurangabad Bench (Coram: P. R. Bora, J.) judgment in First Appeal No. 388 of 2016, dated 23.11.2016], paragraph 5 and 7.
- (iv) ***Nitabai Thakur & Ors Vs. Union of India*** [Aurangabad Bench (Coram: A. M. Badar, J.)

judgment in First Appeal No. 742 of 2006, dated 1.12.2015], paragraph 10 and 11.

(v) **Bapu Shinde Vs. Union of India** [High Court Bombay Bench (Coram: A. S. Oka, J.) judgment in First Appeal No. 469 of 2005, dated 22.2.2008], paragraph 12, 14 and 15. It is held in this case that accidental fall of the deceased from the train has to be proved by trustworthy evidence.

(vi) **Smt. Rahema Bibi Vs. Union of India** [Gauhati High Court (Coram: N. Chaudhary, J.) judgment in MFA Nos. 29, 30 & 31 of 2007, dated 3.11.2015] paragraphs 6 and 7.

22. In the light of the above Judgments, following propositions of law can be culled out.

(i) In order to claim compensation under section 123, the claimant should prove that the deceased or the injured was a bona fide passenger.

(ii) If a person holds a valid ticket for journey, he is said to be a bona fide passenger.

(iii) Absence of ticket with the deceased is not sufficient to infer that he was not a bona fide passenger but the burden to prove that he was bona fide passengers always lies on the claimants. Once that burden is initially discharged, then onus shifts to the railways to show that the deceased was not a bona fide passenger.

23. Under section 106 of Evidence Act reads as under :

106. Burden of proving fact specifically within knowledge.

When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

The illustration No.2 (b) :

A is charged with travelling on a railway without ticket. The burden of proving that he had ticket is on him.

24. As held by Apex Court in the case of **Union of India Vs. Rina Devi 2018 STPL 6454 SC**, if the deceased was not having a ticket, the claimants could have filed affidavit of any person to show that he had purchased a ticket and it was lost. Mere statement recorded during the inquiry of a person will not be sufficient to discharge any burden on the

claimants to show that the deceased had purchased a ticket.

25. In the present case, the claimants have examined claimant No.1. she had no personal knowledge of the accident. The deceased was not having a ticket on his person. The claimants were claiming that he had purchased a ticket in presence of Sudam Chapat while boarding the train, but Sudam Chapat was not examined. The reliance was placed only on his statement which is not admissible. There should have been affidavit of such a person and if necessary, he should have been subjected to the cross-examination.

26. The reliance on the report of Key man or accidental ADKS report is misplaced because both the reports are based on surmises or inferences drawn from the fact that dead body was found near the track.

27. It was argued that the deceased was not residing at Parbhani, but was residing at Dhoki and therefore, he could not have been on the spot unless he was travelling has no substance. The evidence shows that deceased was residing at Pangra. and after his death, his wife and family has gone

to reside at Dhoki Dist. Nanded. Claimant No.1 has admitted that spot was near the place of her residence and as per the claimants' story, the deceased had gone to Parbhani Railway Station to board a train. Therefore, it is obvious that he was residing near Parbhani Railway Station and his dead body was also found at some distance from Parbhani. The place where the body was found is a residential locality. There were shop premises and gate near the spot. These facts are indicative of possibility of the deceased trying to cross railway track and meeting with the accidental dash resulting into the death.

28. It must be stated that mere death of a person on the railway track or in the railway premises is not a cause for claiming compensation. There is no provision in the Railways Act to award the compensation for no fault liability unlike u/s. 140 of the Motor Vehicles Act. I feel it fit to suggest to the railways that it should incorporate a provision to award some ex-gratia compensation for the persons meeting with the accident resulting into permanent disability or the legal heirs of a person meeting with death on railway track on the principle of no fault liability, on

compassionate ground.

29. The most material piece of evidence is the postmortem report and inquest panchanama. It shows that skull of the deceased was totally smashed and his brain came out of the skull vault. After a person falls from the train, he may die due to head injury, but he will not come under the train. The bogey is much broader than the track. The wheels of the train and rail track are much inside the outer edge of bogey. His head may dash on hard pole or hard floor but will not be smashed by mere fall. His head could have been smashed under the same train only if he would have accidental death while boarding the train and he would have gone under the track through the gap between the train and the platform. This is nobody's case. The condition of head and brain of the deceased indicates that he was run over by a train and this is not possible if he has boarded the train at Parbhani Station and after covering some distance, he fell down from running train. Pertinently, the deceased had not sustained injuries on any other part of the body. It indicates only possibility that the deceased died due to running over a train over his head and thereby his

head was completely smashed and his brain came out. The claimant has no knowledge about the accident and the story developed by the claimants is improbable in the light of the nature of injury sustained by the deceased. When the deceased was run over by the train, it rules out possibility that he had boarded the said train and he fell down from the said train. Therefore, I find that this strong piece of evidence rules out possibility of deceased being a passenger in the train and he fell from the running train. In the circumstances, he was not bona fide passenger and legal heirs are not entitled for compensation.

30. The learned Member of the Railway Claims Tribunal though for different reasons arrived at the same findings. I find that no fault can be found with the said findings. Therefore, the claim was rightly rejected.

31. Hence, the Appeal deserves to be dismissed and is dismissed accordingly. No order as to costs.

(A.M.DHAVAL, J)