

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

First Appeal No. 1095 of 2018

District : Nanded

Dalit s/o. Tukaram Mudkhede,
Age : 55 years,
Occupation : Labour
R/o. 1612, Arunoday Nagar,
Taroda (Kd.),
Taluka & Dist. Nanded.

.. Appellants
(Original
applicant)

versus

Union of India,
Through General Manager,
South Central Railway,
Secunderabad (Andhra Pradesh)

.. Respondent

.....

*Mr. Pavankumar S. Agrawal, Advocate, for the
appellant.*

Mr. D.V. Soman, Advocate, for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving the
judgment : 13th June 2019**

**Date of pronouncing the
judgment : 10th July 2019**

JUDGMENT :

01. Present appeal has been filed by the original applicant, challenging the judgment and award passed in Claim Application No.

OA(IIU)/NGP/2014/0254, passed by learned Railway Claims Tribunal, Nagpur Bench, on 10-11-2017, whereby the claim for compensation filed by the present appellant came to be dismissed. *[Parties are referred as per their nomenclature before the Tribunal.]*

02. Present appellant / original applicant had claimed that he is the legal heir of one Malanbai Tukaram Mudkhede. Applicant had filed the petition for compensation on account of death of Malanbai in an untoward incident alleged to have occurred on 03-05-2014. Deceased had boarded unknown train in the evening hours from Nanded Railway Station for travelling up to Mukhed. When the train was passing Mugat Railway Station, she accidentally fell down due to sudden jerk in the intervening night of 03-05-2014 to 04-05-2014. She sustained serious injuries and died on the spot. Hence, the applicant had claimed compensation.

03. The respondent - railway contested the claim. It was contended that incident narrated in the application can not be considered as 'untoward incident' defined under Section 123(c) of the Railways Act, 1989. It was stated that no such incident causing death of Malanbai, within the meaning of Section 124(a) of the Railways Act had taken place and, therefore, the claim application

itself is not maintainable. Other averments in the application have been denied. It was specifically contended that the applicant is not entitled to get any amount of compensation.

04. Taking into consideration the rival contentions, parties have led oral as well as documentary evidence. After hearing both sides, the learned Tribunal has come to the conclusion that the deceased Malanbai was not bona fide passenger of the train on the relevant day. So also, it was held that applicant has failed to prove that Malanbai expired in an untoward incident. Therefore, as aforesaid, the claim application was dismissed. Hence, present appeal.

05. Heard learned Advocate Mr. P.S. Agrawal appearing for the applicant. So also, heard learned Advocate Mr D.V. Soman appearing for the respondent.

06. It has been vehemently submitted on behalf of the applicant, that the applicant himself has stated that he had left Malanbai to Nanded station and she had purchased ticket for boarding train. Therefore, she was bona fide passenger. In fact, when she had entered the railway station platform, then she was supposed to take ticket and the railway authorities had not detected her as a passenger travelling without ticket. Therefore, an inference

can be drawn that she was travelling with valid ticket. Merely because the ticket was not found on the dead body of Malanbai, will not infer that she had no ticket. Unnecessarily, importance has been given to the report of DRM. In order to support his submissions, learned Advocate for applicant has relied on the decision in *Union of India Vs. Prabhakaran Vijaya Kumar & others* [AIR 2009 SC (Supp.) 383], wherein it has been held that *"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 railway train and falls down during the process. In other words, a purposive and not literal interpretation should be given to the expression."* Further, in *Union of India Vs. Bimala wd/o. Pintho Tudu & others* [2012(3) Mh.L.J. 883], this High Court, Bench at Nagpur, has held that *"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. Unless the negative is proved or there is evidence, may be, circumstantial in nature, that the deceased was not holding valid ticket, it would be desirable, to presume that deceased was authorised passenger."* Further, in *Union of India Vs. Nandabai w/o. Sheshrao Dangat & others* [2015(6) Mh.L.J. 295], this Court, Bench at Nagpur, has observed, that *"Merely because railway ticket was not recovered from dead body, it cannot be said that deceased was travelling without ticket. Possibility that ticket may have been lost during course of untoward incident cannot be ruled out and,*

therefore, presumption need to be drawn that the deceased was a bona fide passenger." Similar view was taken in *Union of India Vs. Hari Narayan Gupta & another* [AIR 2007 Rajasthan 38], *Smt. Vaishali Wd/o. Nitesh Bhalerao Vs. Union of India* [2010(5) ALL MR 726], *Maniben Paljibhai Parmar Vs. Union of India* [MANU/MH/1494/2004]. Learned Advocate for the applicant has further submitted that the learned Tribunal has wrongly held that there was no untoward incident, as it was not reported to the Guard of the Train. The evidence of railway employee has been believed on that count. Tribunal has accepted the position that the dead body of Malanbai was found on railway track and postmortem report shows that she died to accidental injuries. However, came to the conclusion that still the death may not be due to untoward incident. Learned Tribunal has taken a wrong view.

07. Per contra, learned Advocate representing the respondent has supported the reasons given by the Tribunal and submitted that RW 1 is the driver of another train, which had come to Railway station. He had spotted the dead body of Malanbai and then gave information to Station Master. The testimony of this witness has been rightly believed by the learned Tribunal. In fact, as per the report of D.R.M., there was no unexpected jerk or untoward incident. Malanbai had not taken ticket. In fact, that is an offence under the Railways Act. Applicant

has not examined any eye witness to prove his contention. The said accident occurred due to the negligence on the part of the deceased herself, for which the railway is not responsible to compensate. In order to support his contentions, the learned Advocate for respondent relied on the decision in *Geeta & others Vs. Union of India* [2013 SCC OnLine Del. 2168] and *Gurcharan Singh & others Vs. Union of India* [2014 SCC OnLine Del. 101] and further in *Jamirul Nisha & another Vs. Union of India* [2008 SCC OnLine Del. 320]. In all these cases, after considering the similar facts, the Delhi High Court had come to the conclusion that the applicant was a bona fide passenger, however, the factum of his death / injury has not been proved in an untoward incident. In that case, deceased / injured had tried to alight from running train.

08. Taking into considering the rival contentions, following points are arising for determination. Findings and reasons for the same are as follows :-

(I) Whether the deceased was a bona fide passenger on the date of the incident ?

(II) Whether the deceased died in an untoward incident, as contemplated under Section 123(c) of the Railways Act, 1989?

(III) Whether the applicant is entitled to get compensation ? If yes, to what extent ?

All the points are taken up together for discussion for the sake of convenience and to avoid repetition.

09. Firstly it is required to be seen as to whether the deceased can be said to be a bona fide passenger of the train. AW 1 Dalit has stated that he had deceased Malanbai to railway station. He had purchased the ticket for his mother. No doubt, the report says that any ticket was not found on the dead body. When the applicant has specifically stated that he had purchased the ticket for his mother and then his mother went on platform, in that event, the learned Tribunal ought to have held that Malanbai was a bona fide passenger. Fact is on record that nobody had noticed the dead body of Malanbai for long period. Under such circumstance, applicant can not be held responsible for loss of ticket. How applicant was suppose to come to know that a particular person has witnessed the incident is a question; because Tribunal has put burden on applicant to examine eye-witness. In fact, in such situation, circumstances were required to be considered to arrive at as to whether Malanbai would have purchased a ticket or not. However, it appears that the learned Tribunal unnecessarily went to discuss the evidence of driver of another train, who

had noted the dead body of Malanbai laying between the tracks. He has told the facts which he had seen. There was no evidence adduced by respondent in this case to show that there was no reporting of untoward incident. The Tribunal has harped on the fact that applicant was not aware about the name or number of the train for which he had bought ticket for his mother. It is to be seen that respondent has not adduced contrary evidence to show that no tickets were sold between 7 to 7.30 p. m. on 03-05-2014. He might have given wrong date inadvertantly as 04-05-2014 as he could come to know about death of his mother only on that day. How many trains had passed after 7.00 p. m. till dead body was noticed is not disclosed by respondent. Therefore, taking into consideration the postmortem report and the fact that dead body was found between the track; it can be concluded that Malanbai died due to fall or hit by train.

10. The ratio laid down in the authorities those have been cited by the learned Advocate for the applicant are definitely applicable here. When the deceased was not caught by Ticket Collector for travelling from the train or found on platform without ticket, there is room to believe that she had bought valid ticket. The ratio in the authorities relied by the respondent, can not be applied here in this case. In *Union of India Vs. Rina Devi*

[AIR 2018 SC 2362], the Hon'ble Supreme Court has dealt with the point "Burden of proof when body found on railway premises - Definition of 'passenger'". The conflicting decisions on the subject were noted and it has been observed thus :-

" 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 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. "

Therefore, it can be said that there was error on the part of the Tribunal to come to the conclusion that the deceased was not a bona fide passenger.

11. It can be said that there appears to be no dispute that the dead body of Malanbai was found on the railway tracks. It is stated that nobody had reported any no untoward incident. However, for the afore-said reasons it can be inferred that deceased had purchased ticket, then she being bonafide passenger was within the premises of Railway

Station. It appears that she was hit or dashed by Train and therefore it would be an 'untoward incident' as contemplated under Section 124 of Railways Act.

12. Section 123(c) of the Railways Act defines '*untoward incident*'. In the said provision, accidental fall of any passenger from a train has been covered. However, Section 124A of the Railways Act deals with '*liability of the railway to pay compensation on account of untoward incident*'. It has been specifically provided that no compensation is payable by the Railway Administration if the passenger suffers injury due to (a) (b) self-inflicted injury (c) his own criminal act (d) (e) Thus, for our consideration, taking into consideration both the situations stated earlier (i.e. deceased fell down from train or was hit/dashed by train), it is required to be considered as to whether it is self inflicted injury or her own criminal act, disentitling applicants from claiming compensation.

13. The decisions relied by the learned Advocate for the respondent are of various High Courts, that too, from 2008 to 2014. However, now the position stands clarified by the Hon'ble Supreme Court in *Rina Devi's case* (*supra*). The Hon'ble Supreme Court has explained "*Application of principle of strict*

liability - Concept of self inflicted injury". The decision by High Court of Kerala in *Joseph PT vs. Union of India* [AIR 2014 Kerala (12)], this Court's decision in *Pushpa Vs. Union of India* [(2017) III ACC 799 (Bom.)] and Delhi High Court's decision in *Shayam Narayan Vs. Union of India* [(2018) ACJ 702], were considered and it has been held thus :-

" We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in *United India Insurance Co. Ltd. Vs. Sunil Kumar* [2017 (13) SCALE 652] laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. **Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.** " [Stress supplied by me]

Thus, above portion which has been stressed clearly indicates the legal position explained by the Hon'ble Supreme Court, that in case of injury in the course of boarding or de-boarding a train would be an 'untoward incident' entitling a victim to compensation and will not fall under the proviso to

Section 124A merely on the plea of negligence of the victim as a contributing factor. Therefore, it was not held to be covered under 'self inflicted injury' in Section 124A of the Railways Act. Further, it cannot be said to be 'a criminal act intentionally done'. For a criminal act to come under Section 124A of the Railways Act, there has to be an intention either to cause loss to anybody else or to himself/herself or to the railways in respect of its property. Therefore, though in *Shayam Narayan's case (supra)*, act of criminal negligence was considered, yet, the Hon'ble Supreme Court did not approve the view taken by the Delhi High Court. Railway has not come with a case that deceased has committed suicide. Evidence has not been adduced from that angle. In view of the said clear legal position, it is held that the present appellant being heir of Malanbai is entitled to get compensation. Points no.01 and 02 are answered in affirmatively.

14. Now, turning towards the quantum that can be awarded, a note of the judgments and law laid down by the Hon'ble Supreme Court in *Rathi Menon Vs. Union of India* [AIR 2001 SC 1333], *N. Parameswaran Pillai Vs. Union of India & another* [AIR 2002 SC 1834] and *Thazhathe Purayil Sarabi & others Vs. Union of India & another* [AIR 2009 SC 3098] is required to be taken. In *Rathi Menon's case (supra)*, it was held that "*The compensation must be fixed as per what on Rules prescribed at the time of making the order for payment of*

compensation and not in terms of money value which prevailed on date of accident." The observations are, *"The relevance of the date of untoward incident is that the right to claim compensation from the Railway Administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of rules. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the rules to be disbursed to the claimant. "* Thereafter, in *N. Parameswaran Pillai's case (supra)*, it was held that in view of authoritative pronouncement made in *Rathi Menon's case (supra)*, the appellants were entitled to enhancement in the compensation. In that case, the legal representatives of the deceased had claimed compensation of Rs. 2,00,000/- but then in the meantime, the Central Government had enhanced the compensation and, therefore, enhancement was granted. Some of the High Courts following *Rathi Menon (supra)*, have applied the amended schedule as on the date of adjudication in *Union of India v/s. Aggala Dilleswara Rao [2006 ACJ 1470]*, *Pramath Kumar Jena v/s. Union of India [AIR 2012 Ori 32]* and *Radha Yadav v/s. Union of India [2017 SCC OnLine Cal 420]*. In *Thazhathe Purayil Sarabi's case (supra)*, it was a point regarding interest to be paid and it was held that the interest can be awarded either from the date of claim or from the date principal sum adjudged to be payable and/or awarded.

15. Here, in this case, the untoward incident had taken place in the intervening night of 03-05-2014 to 04-05-2014 and, therefore, compensation that was claimed was to the tune of Rs. 4,00,000/-. However, Ministry of Railways by notification dated 22nd December 2016, enhanced compensation for death to the tune of Rs. 8,00,000/-. The petition claiming compensation was filed on 10-11-2014 and it was decided on 10-11-2017 by the Tribunal. Under such circumstance, taking into consideration the date of making order for payment of compensation i.e. today, the notification which has come in force on 22nd December 2016, is required to be made applicable in view of the above said pronouncements by the Hon'ble Supreme Court and in view of the decision in *Thazhathe Purayil Sarabi's case (supra)*, interest that is required to be granted is 6 % simple interest per annum from the date of the application till the date of award and thereafter at the rate of 9 % per annum till the date of actual payment of the same. Taking into consideration these reasons, the appeal deserves to be allowed.

16. Hence, the following order :-

(a) The first appeal is hereby allowed.

(b) The judgment and award passed by learned Railway Claims Tribunal, Nagpur Bench, in Claim Application

No. OA (11u)/NGP/2014/0254, dated 10-11-2017, is hereby set aside. The said claim stands allowed. The respondent is directed to pay compensation of Rs. 8,00,000/- [Rupees eight lacs] together with interest at the rate of 6 % per annum from the date of the application till the date of the award i.e. today and thereafter, at the rate of 9 % per annum till the date of actual payment of the same to the applicant. The respondent shall pay costs of Rs. 10,000/- [Rupees ten thousand] to the applicant.

(c) After the said amount is deposited, 50% of the same be given to applicant by account payee cheque and remaining 50% of the same be kept in fixed deposit in his name for a period of 5 years, in any nationalized bank of his choice. After the maturity of the fixed deposit, the entire amount together with interest thereon be given to the applicant, without waiting for order from any Court.

(d) Award be drawn accordingly.

(Smt. Vibha Kankanwadi)
JUDGE

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