

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

First Appeal No. 2283 of 2018

District : Nanded

1. Nagorao s/o. Gangaram Kamble,
Age : 65 years,
Occupation : Labour,
R/o. Mashti,
Post Pimpalgaon (ku),
Taluka Dharmabad,
Dist. Nanded.

.. Appellants
(Original
claimants)

2. Sow. Vithabai w/o. Nagorao
Kamble,
Age : 46 years,
Occupation : Household,
R/o. as above.

versus

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

.. Respondent

.....

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

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 applicants, challenging the judgment and award passed in Claim Application No. OA(11u)/NGP/2015/0234, passed by learned Railway Claims Tribunal, Nagpur Bench, on 31-01-2018, whereby the claim for compensation filed by the present appellants came to be dismissed. *[Parties are referred as per their nomenclature before the Tribunal.]*

02. Present appellants/ original applicants had claimed that they are the legal heirs of one Gautam Nagorao Kamble. Applicants had filed the petition for compensation on account of death of Gautam in an untoward incident alleged to have occurred on 07-04-2015. Deceased Gautam was travelling with his mother by Train No. 57563 Hyderabad-Parbhani passenger, from Dharmabad to Nanded. They had bought tickets. However, due to sudden jerk to the running train, Gautam fell down at K. M. No. 420/7-8. He sustained serious injuries. He was shifted to hospital, however, he succumbed to injuries after few days. His ticket was lost in shifting. Hence, the applicants are claiming 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 Gautam, 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 applicants are 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 Gautam as well as his mother were not bona fide passenger of the train on the relevant day. So also, it was held that applicants have failed to prove that Gautam 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 appellant. So also, heard learned Advocate Mr D.V. Soman appearing for the respondent.

06. It has been vehemently submitted on behalf of the applicants, that the applicants had contended that Gautam and his mother had bought tickets, but

ticket with deceased was lost after the incident. Therefore, they were bona fide passengers. In fact, when they had entered the railway station platform, they were suppose to take ticket and the railway authorities had not detected them as a passenger travelling without ticket. Therefore, an inference can be drawn that they were travelling with valid ticket. Merely because the ticket was not found on the dead body of Gautam, will not infer that he had not bought ticket. Learned Tribunal has taken a wrong view that if the ticket would have been purchased it would have been found on the person of Gautam at the time of shifting him to hospital, where he was alive for about 10 days thereafter. Unnecessarily, importance has been given to the report of DRM. In order to support his submissions, the learned Advocate for applicants 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 applicants 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 employees has been believed on that count. Tribunal has accepted the position that Gautam was found in injured condition on railway track. Postmortem report shows that he died to accidental injuries. Tribunal has taken note of documents A-6 to A-8 prepared by Investigating Officer; wherein it was mentioned by Police as well as panchas that deceased had fallen down from running train. ADR also shows that it was mentioned that deceased was caught under the train and his both legs

were cut off and seriously injured. However, Tribunal still arrived at the conclusion that 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 Station Master as well as Guard have categorically reported that there was no alarm, chain pulling or any unexpected jerk and even there was no rush in the train. No untoward incident was reported on that day. If the incident had occurred as narrated by applicants, then it ought to have reported to the appropriate authorities. The testimony of RW 1 Arjun Chourasia - station master has been rightly believed by the learned Tribunal. Gautam and his mother had not taken tickets. In fact, that is an offence under the Railways Act. Respondent was not responsible to compensate applicants and therefore their petition has been rightly rejected. In order to support his contentions, he 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 applicants are 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. Now, turning towards the first point as to whether the deceased can be said to be a bona fide passenger of the train, it can be seen that applicants have examined his mother. She has specifically stated that she was with Gautam, when they boarded the train. It has been rather extracted from her that she could not get comfortable seat in

the train. She got down at Samrala and then by taking rickshaw she went to the spot of accident. That means she did not come to know about the accident of her son, when she was in train. No doubt, she has admitted that nobody had pulled chain nor raised hue and cry. This admission does not conclude that there was no such incident as narrated by her. She has deposed that deceased as well as she had purchased tickets and he was carrying them with him. Under such circumstance, it was natural that she was not knowing anything about regarding tickets. No doubt, the report says that any ticket was not found on the person of Gautam, however that can not be the only criteria to come to said conclusion. Gautam was injured. He was taken by somebody to hospital. It is unexpected that he should tell that person or persons about tickets. Though he expired 10 days after the accident, that does not mean that he was in a position to tell about whereabouts of tickets. When the applicants have stated that deceased had purchased the ticket, then learned Tribunal ought to have believed the version of applicants. It can be seen that the learned Tribunal went on to discuss that when the Guard and station master have stated that there was no reporting of untoward incident or unexpected jerk, then there was no untoward incident. When the police papers were produced before it supporting applicants, those papers have been disbelieved and preference is given to the testimony

of employees of Railways. This appears to be the wrong approach of the Tribunal.

10. The ratio laid down in the authorities those have been cited by the learned Advocate for the applicants are definitely applicable here. When the deceased was not caught by Ticket Collector for travelling from the train without ticket, there is room to believe that they had bought valid ticket. The ratio in the authorities relied by the respondent, the facts before the Delhi High Court, would show that the applicants were held to be the bonafide passengers. However, it has been held that there was no untoward incident. Respondent had not given any explanation as to why the ticket checker on duty had not caught deceased for travelling without ticket. Therefore, to that extent, 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. 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."

Taking into consideration these observations, when in this case, there is positive statement of the mother of deceased that deceased had also purchased ticket, it will have to be held that the deceased was a bona fide passenger.

11. At the outset, it can be said that there appears to be no dispute that the deceased was found in injured condition on the railway tracks. RW 01 has stated that no untoward incident, unexpected jerk or rush in any compartment was reported during his duty hours. No doubt, it was for mother of the deceased to explain as to why she had not report the incident immediately to Guard or other officials; but that can not be the only ground to disbelieve her. She has stated that she works as 'Aanganwadi Sevika'. Therefore, we can gather her educational qualification. When there was evidence before learned Tribunal to come to the conclusion that Gautam had received injuries due to fall from running train,

then the inference ought to have been drawn by Tribunal that there was 'untoward incident'. Rather it can be inferred on the basis of evidence of the applicants that deceased had purchased ticket, then he being bonafide passenger, fallen from Train, 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 his 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, in this case, 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 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 applicants are 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 on 07-04-2015 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 11-08-2015 and it was decided on 31-01-2018 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/2015/0234, dated 31-01-2018, 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 applicants. The respondent shall pay costs of Rs. 10,000/- [Rupees ten thousand] to the applicants.

(c) After the said amount is deposited, it be distributed equally between applicant No. 1 and 2. An amount equal to the 50% of the entire amount be given by account payee cheque to each of them and remaining 50% of the same be kept in fixed deposit in their name for a period of 5 years, in any nationalized bank of their choice. After the maturity of those fixed deposits, the entire amount together with interest thereon be given to those respective applicants, without waiting for order from any Court.

(d) Award be drawn accordingly.

(Smt. Vibha Kankanwadi)
JUDGE

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