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

First Appeal No. 4510 of 2017

District : Parbhani

1. Mira Wd/o. Jagannath Vibhute,
   Age : 42 years,
   Occupation : Household.

2. Nisha D/o. Jagannath Vibhute,
   Age : 16 years,
   Occupation : Education.

3. Shailesh s/o. Jagannath Vibhute,
   Aged : 13 years,
   Occupation : Education
   (Appellants no.02 & 03 minors
   U/g. of real mother
   i.e. Appellant no.01)

   All R/o. Chandaj,
   Taluka Jintur, Dist. Parbhani.

.. Appellants (Original appellants/ claimants)

versus

Union of India,
Through its General Manager,
South Central Railway,
Secunderabad.

.. Respondent

.....

Mr. M. P. Ambekar, Advocate, for the appellants.

Mr. M. N. Navandhar, Advocate, for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

Date of reserving the judgment : 18th July 2019

Date of pronouncing the judgment : 19th September 2019

JUDGMENT :

01. Present appeal has been filed by the original applicants, challenging the judgment and award passed in Claim Application No. OA(llu)/NGP/2013/0162, passed by learned Railway Claims Tribunal, Nagpur Bench, on 18-04-2017, 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 are the legal representatives of deceased Jagannath s/o Vithoba Vibhute. Applicants had contended in the application form that Jagannath purachased ticket at Parbhani Railway Station to go to Aurangabad by Kachiguda-Manmad passenger train No. 57561 on 30-10-2012. He had boarded general compartment and was standing near the door. However, when the train was near KM 157/0-1 of Badnapur Railway Station, he fell down from the running train and died on the spot. Hence, the applicants had filed the said application for compensation in respect of the said 'untoward

accident'.

03. The respondent - railway contested the claim. It was contended that no such incident as narrated in the petition had taken place causing death of Jagannath Vibhute. It can not be said as arising out of '*untoward incident*' defined under Section 123(c) of the Railways Act, 1989 read with Section 124(a) of the Railways Act, 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 there was no 'untoward incident' as contended in the petition has taken place. Deceased was not the 'bona fide passenger' of the train on the relevant day. Therefore, the claim application was dismissed. Hence, present appeal.

05. Heard learned Advocate Mr. M. P. Ambekar appearing for the appellants/original applicants. So also, heard learned Advocate Mr M. N. Navandar appearing for the respondent.

06. It has been vehemently submitted on behalf of the applicants, that the applicants had examined applicant No. 1 to support their claim. She has specifically stated that she was with her husband till they boarded train. There was rush in the train, therefore, she went in ladies compartment and her husband had boarded the general compartment. The tickets were purchased and they were with deceased. There was no reason to disbelieve her statement. Merely because they could not produce ticket, it can not be said that deceased was not a bona fide passenger. In fact, when deceased had entered the railway station platform, he was suppose to take ticket and the railway authorities had not detected him as a passenger travelling without ticket. Therefore, an inference can be drawn that he was travelling with valid ticket. In order to support his submissions, he 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 observed that the claim of applicant No. 1 that she was with her husband is false as she did not even lodged missing report about her husband till next date. Non-examination of eye witness by claimant has been taken adversely against them. The learned Tribunal has relied only on the evidence adduced by respondent, when none of them were also eye-witnesses. The police papers including postmortem report show that deceased expired due to railway accident. The facts have been unnecessarily stretched by the Tribunal to hold that

it was not an 'untoward incident'.

07. Per contra, learned Advocate representing the respondent has supported the reasons given by the Tribunal and submitted that when RW 01 Sayed Gafoor, who was the Guard has stated that no untoward incident was reported to him by anybody. There was no alarm, chain pulling or any unexpected jerk and even there was no rush in the train. The testimony of this person has been rightly believed by the learned Tribunal. In fact, if deceased had purchased two tickets then one ought to have been with applicant No. 1. There is no statement made by applicants that No. 1 was with deceased in the said train. If she was in the said train, then when her husband could not get down at the alleged destination, then she ought to have reacted. She had not even lodged any missing report. Therefore, her conduct is doubtful. The postmortem report would also show the injuries, which can not occur if a person fells down from the same and taking into consideration the width of the bogie and track, possibility of wheels of the railway running over the deceased are very less. In order to support his contentions, he relied on the following decisions of this Court :-

(1) **First Appeal No. 1350 of 2012**
(decided on 23rd December 2015)
[*Dnyaneshwar (Budha) Pandurang Pawar & another* ***Vs.*** *The Union of India*]

(2) **First Appeal No. 3173 of 2016**
(decided on 23rd November 2016)
[*Sunita Wd/o. Dnyaneshwar Sonawane & 03 others* ***Vs.*** *Union of India*]

(3) **First Appeal No. 3165 of 2015**
(decided on 01st September 2016)
[*Sunita Vijay Waghmare & others* ***Vs.*** *Union of India*]

(4) **First Appeal No. 388 of 2016**
(decided on 23rd November 2016)
[*Narendra Vasudeo Amodkar* ***Vs.*** *Union of India*]
Citation : LAWS (BOM) 2016 11 40

(5) **First Appeal No. 742 of 2006**
(decided on 01st December 2015)
[*Nitabai @ Rajeshwari w/o. Rajeshsinh Thakur & others* ***Vs.*** *Union of India*]

(6) **First Appeal No. 469 of 2005**
(decided on 27th February 2008)
[*Bapu Dadarao Shinde* ***Vs.*** *Union of India*]
Citation : Mh.L.J.2008 4 679

(7) **Appeal : MFA Nos.29, 30 & 31 of 2007**
(decided on 03rd November 2015)
[*Rahema Bibi & others* ***Vs.*** *Union of India*]
Citation : LAWS (GAU) 2015 11 47
(Judgment of High Court of Gauhati)

In all these cases the appeals filed by original claimants have been dismissed holding that they could not prove 'untoward incident' and / or the deceased was held to be not a bonafide passenger as

ticket was not found on his/ her person.

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 had sustained injuries 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, as to whether the deceased can be said to be a bona fide passenger of the train, in her testimony AW 1 Meera has categorically stated that she had gone to railway station with her husband, as they were to go to Aurangabad. They had taken tickets, but then as there was rush in the train, she went to board ladies compartment and husband had boarded general bogie. She has stated in her cross, that even her ticket was with husband. No doubt,

when the inquest panchnama has been prepared, any ticket was not found on the dead body of Jagannath. When the applicant No. 1 has stated that deceased had purchased the ticket and she was with her husband at that time, there was no reason to disbelieve her. If there was no explanation by the applicants, then the fact was different. There is no column in application form to disclose that she was accompanying husband, no such averments are appearing. But it can be seen that her testimony is consistent with her statement before police, as no rival situation has been put in her cross. All the police papers are in favour of applicants. It has been categorically stated that Jagannath expired due to fall from train. No such circumstance has been put on record by the respondent to show that with some ulterior motive, the police have prepared false documents. The claims Tribunal can not brush aside those papers by saying that it is not bound by those papers or opinion of police.

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 without ticket, it will have to be presumed that deceased had bought valid 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 applicant was not a bona fide passenger.

11. 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. "*

The ratio in the authorities relied by the respondent, can not be considered here for the reasons that the facts and evidence in this case are different.

12. It is to be noted that the applicant No. 1 has examined herself and then has produced the

police papers. Respondent - railway has examined Guard of the said train and produced papers in the form of enquiry documents. It appears that applicants had no role in the said enquiry or were not heard at all. 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 track. AW 1 Meera, though says that had accompanied husband, is admittedly not an eye witness. Learned Tribunal has cast duty on claimant that she ought to have examined eye-witnesses. However, it can be seen that when she was not present at the time of incident, how she would have come to know about the names of eye-witnesses? Therefore, petition can not be thrown merely on the ground that eye-witness has not been examined. RW-1 was also not at the spot when incident had taken place. Some observations have also been made by learned Tribunal taking into consideration the injuries noted in the postmortem report. When the concerned Medical Officer was not examined, then Tribunal could not have made observations like expert in the said field. Negative conclusion can not be drawn in absence of expert opinion that death could not have been fall but by speeding train. Even Court can not go on inferring that taking into consideration width of railway bogie and placement of track, it is highly impossible that a person would go down from the train and wheels will not run

over him. When the death of Suresh had occurred on railway track, when he was travelling from a train, it is required to be considered whether it was 'untoward incident' or not.

13. 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 the finding arrived at earlier, that the evidence shows that the deceased was travelling from a train and then was found dead due to injuries due to fall, is required to be considered as to whether it is self inflicted injury or his own criminal act, disentitling him compensation.

14. The decisions relied by the learned Advocate for the respondent are of this High Court, that too, from 2008 to 2016. However, now the position stands clarified by the Hon'ble Supreme Court in *Rina Devi's case (supra)* which has been pronounced in 2018. 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 indicate the legal position explained by the Hon'ble Supreme Court, that in case of injury in the course of fall, 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. 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. In view of the said clear legal position, it is held that the present appellants are entitled to get compensation. Points no.02 and 03 are answered accordingly.

15. 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. 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.

16. Here, in this case, the untoward incident had taken place on 30-10-2012 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 loss of hand and foot to the tune of Rs. 8,00,000/-. The petition claiming

compensation was filed on 04-06-2013 and it was decided on 18-04-2017 by the Tribunal. No doubt, the record shows that after the notification an application for amendment was filed claiming amount as per notification. 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 on the sum of Rs.4,00,000/- 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.

17. 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(llu)/NGP/2013/0162, dated 18-04-2017, 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 on the amount of Rs.4,00,000/- 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, an amount of Rs. 50,000/- (Rupees Fifty Thousand Only) each be deposited in the name of applicant No. 1, as well as No. 2 and 3 who are minors, by showing No. 1 as their guardian, in any nationalized Bank of the choice of applicant No. 1 for a period of 5 years. Rest of the amount be given to applicant No. 1 by account payee cheque. After the maturity of fixed deposits, the entire amount with interest be given respective applicants, without waiting for any order from Court.

(d) Award be drawn accordingly.

(Smt. Vibha Kankanwadi)
JUDGE

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