

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

First Appeal No.1049/2019

Awadhut Matte and others Vs. Union of India, Through Central Railway

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.G. Bagul, Advocate for appellants
Mr. N.P. Lambat, Advocate for respondent

CORAM : MANISH PITALE, J.

DATED : OCTOBER 09, 2019

By this appeal the appellants (original claimants), have challenged judgment and order dated 13/03/2018, passed by the Railway Claims Tribunal, Nagpur, whereby the claim application filed by the appellants under the provisions of the Railways Act, 1989, was dismissed.

2. The incident in the present case took place on 21/03/2015, when the victim was seeking to alight from the train at Shegaon Railway Station. The Tribunal found on facts that the appellants were able to prove that the victim was a bonafide passenger as a valid railway ticket was found on her person. But, the claim was rejected only on the ground that the present case could not be said to be a case of untoward incident as defined in Section 123(C)(2) of the aforesaid Act. It was held by the Tribunal that since

the victim was alighting from the train when the incident took place and she fell on the platform, leading to serious injuries and ultimately her death, this could be said to be a self-inflicted injury and the case could not be covered under the definition of untoward incident as specifically defined in Section 123(C)(2) of the Act.

3. The question as to whether such injuries suffered by the victim could be said to be self-inflicted injuries is no more *res integra* because in a recent judgment in the case of **Union of India Vs. Rina Devi AIR 2018 SC 2362**, the Hon'ble Supreme Court, after analyzing number of judgments on this question, categorically held that death or injury in the course of boarding or de-boarding of a train is an "untoward incident" under the provisions of the said Act and that in such cases compensation could not be denied merely on the plea that negligence of the victim was a contributory factor. It was held by the Hon'ble Supreme Court in para 16.6 of the Judgment as follows :

"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. V. Sunil Kumar* 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.”

4. In view of above, it becomes clear that the impugned judgment and order passed by the Tribunal is unsustainable and, therefore, it deserves to be quashed and set aside.

5. As regards quantum of compensation, in the very same Judgment in the case of **Union of India Vs. Rina Devi** (supra), the Hon’ble Supreme Court has held that even if incident in question had taken place prior to issuance of Notification dated 22/12/2016, whereby the quantum of compensation payable was increased from Rs.4,00,000/- to Rs.8,00,000/-, the said Notification would apply. It was held that if it was found that the amount of compensation payable prior to said Notification i.e. Rs.4,00,000/- along with interest came to less than aforesaid amount of Rs.8,00,000/-, then the claimants would be entitled to amount of Rs.8,00,000/- without interest thereon. This was specifically held in para 15.4 of the aforesaid Judgment, which reads as follows.

“Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as

may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon (AIR 2001 SC 1333)* (supra) and *Kalandi Charan Sahoo (supra)* stands explained accordingly. The 4-Judge Bench judgment in *Pratap Narain Singh Deo (AIR 1976 SC 222)* (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accidents has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

6. In view of above, the present appeal is allowed. The impugned judgment and order passed by the Railway Claims Tribunal is quashed and set aside. It is held that the appellants are entitled to compensation at Rs.8,00,000/-. Accordingly, respondent shall pay the aforesaid amount of Rs.8,00,000/- (Rs. Eight Lakhs only), to the appellants in equal proportion within a period of three months from today.

JUDGE