

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

FIRST APPEAL NO. 48 OF 2019

1. Shri Anekashwar S/o Raghunath Meshram,
aged about 54 years, Occ. Private Job
(Husband of deceased).
2. Shri Vaibhav s/o Anekashwar Meshram,
aged about 26 years, Occ. Student
(Son of deceased).
3. Ku. Anjali D/o Anekashwar Meshram,
aged about 20 years, Occ. Education
(Daughter of deceased).

All are R/o Siddharth Ward, Visapur,
Tah. Ballarpur, District Chandrapur (M.S.).

...APPELLANTS

Versus

Union of India,
through its General Manager,
Central Railway Mumbai CST.

...RESPONDENT

Shri R.G. Bagul, Advocate for the appellants.
Shri V.M. Gadkari, Advocate for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : OCTOBER 06, 2021.

ORAL JUDGMENT :

This is the claimants' Appeal against the judgment
and order dated 15/03/2018 passed by the Member, Railway
Claims Tribunal, Nagpur in Case No. OA(IIu)/NGP/2014/0169

wherein the claim for compensation of the claimants, legal representatives of the deceased, came to be rejected.

2. I have heard Shri R.G. Bagul, learned counsel for the appellants, and Shri V.M. Gadkari, learned counsel appearing for the Railway Administration.

The facts in nutshell may be stated as under :

3. On 09/10/2013, the deceased Smt. Minakshi while travelling from Gondwana Visapur to Ballarshah railway station by train No. 58802 on Gondia-Ballarshah passenger train, fell down at platform No.1 of Ballarshah Railway Station and she died on 10/10/2013 in hospital. The appellants/claimants filed a Claim Application No. OA(IIu)/NGP/2014/0169 before the Railway Claims Tribunal claiming statutory compensation on account of death of the deceased.

4. The respondent – Railway Administration resisted the claim petition mainly on the ground that the untoward incident occurred due to negligence of the deceased who was

trying to alight from the compartment before the train came to a full halt and when it halted it gave a jerk due to which the deceased lost her physical balance and fell down on the platform, and therefore, the Railway Administration cannot be held responsible and liable to pay compensation as claim. In their specific pleadings it is stated that the deceased was travelling on ticket No.72082 issued on 08/10/2013 and travelled on 09/10/2013, and therefore, she was not a bonafide passenger.

5. The learned Member of the Railway Claims Tribunal framed necessary issues and recorded evidence as adduced by the parties. The claimants examined claimant No.1, i.e., husband of the deceased while Railway Administration examined two witness – David Shravan Badole, Station Superintendent Ballarshah and Ravindra Maruti Kottalwar, Railway booking contractor.

6. The learned Tribunal on appreciation of evidence on record dismissed the claim petition mainly on the ground that in an untoward incident, the deceased herself was

responsible and secondly that she was not a bonafide passenger. This judgment of the Tribunal is impugned in the present Appeal.

7. I have heard learned counsel Shri Bagul for the appellants and learned counsel Shri Gadkari for the Railway Administration.

8. First and foremost, the occurrence of the untoward incident on 09/10/2013 wherein death of the deceased is not disputed. The question is only with regard to negligence on the part of the deceased and whether the deceased was a bonafide passenger.

9. It is not disputed that the card ticket was recovered from the possession of the deceased during panchnama (A/3). In this context, it would be advantageous to refer to Section 2 Clause 29 of the Railways Act, 1989 (“**the said Act**”) which defines “passenger” means a person travelling with a valid pass or ticket. Therefore, the passenger means a person who is having a valid ticket.

10. Section 124-A of the Act deals with providing compensation on account of untoward incidents. It reads thus :

“124-A. 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 dependant 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 for 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 by 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 purposes 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 passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”*

11. 'Untoward incident' as per Section 123(c) of the said Act *inter-alia* includes the accidental falling of any passenger from a train carrying passengers.

12. A plain reading of Section 124-A of the Act would indicate that it is not the requirement of law to prove that Railway Administration was negligent for the untoward incident. What is required to be proved to claim compensation is that the deceased was a bonafide passenger with valid railway ticket for travelling by train carrying passengers and untoward incident occurred and the claimants are dependents of the passenger. There are certain exceptions to the general provision of Section 124-A. Those exceptions include 'self-inflicted injury' or 'criminal act' of the passenger. Admittedly, the respondent railways administration does not take the defense of self-inflicted injury or own criminal act of the passenger as provided under the proviso to Section 124 A of the Railways Act.

13. In this context, the Hon'ble Apex Court in the case of **Jameela & Ors. Vs. Union of India, AIR 2010 SC 3705**, while rejecting the contention that the deceased has died by falling

down from the train because of his own negligence, in para 9 has held as under :

“9. XXXX Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to section 124A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.”

14. Considering the aforesaid observations of the Hon’ble Apex Court, the deceased who standing at the gate of the train and who was about to alight at the platform, due to jerk she fell down, cannot be termed as negligence constituting self inflicted injury or criminal act, and therefore, findings recorded by the learned Member of the Tribunal is misconceived and against the provisions of law.

15. With regard to issue of bonafide passenger, it is not in dispute that she was travelling with a ticket issued to her from the office of Railway Administration. As per the definition of Section 2(29) of the said Act, for a bonafide passenger a

person must be travelling with a valid pass or ticket.

16. In the instant case, it is the case of the respondent – Railway Administration that the said ticket was issued on 08/10/2013 and she travelled on 09/10/2013, and therefore, she was not a bonafide passenger, however, the record is absolutely silent as to invalidity of the aforesaid ticket. Admittedly, a card ticket was found from her possession during panchanama. It is for the railway administration to prove with convincing evidence that the said ticket was not valid ticket. The witness No.2 Kottalwar, on behalf of the Railway Administration stated that ticket was issued from his booking center Visapur on 08/10/2013, however, he has failed to bring on record any document to substantiate his contention. Moreover, the burden on the claimants to prove that she was a bonafide passenger have been discharged by the claimants by producing ticket on record. The Railway Administration has failed to discharge the onus shifted on it.

17. Considering the aforesaid and considering the object and purpose in bringing Section 124A of the Act in the

statute book, I have no hesitation to hold that the deceased Minakshi was travelling as a bonafide passenger on 09/10/2013 in train No. 58802 and in an untoward incident, she suffered injuries, and therefore, she died. The appellants/claimants being dependent on her, are entitled to receive compensation as prescribed under the Act in case of death. I answer both the points accordingly and pass the following order :

ORDER

- i. The Appeal is allowed.
- ii. The judgment and order dated 15/03/2018 passed by the Member, Railway Claims Tribunal, Nagpur in Case No. OA(IIu)/NGP/2014/0169 is quashed and set-aside.
- iii. The respondent – Railway Administration is directed to pay compensation of Rs.8,00,000/- to the appellants in equal share within a period of three months.
- iv. In the circumstances, there shall be no order as to costs.

JUDGE

Sumit