

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

FIRST APPEAL NO. 1372 OF 2019

1. Aayeshabi Budhan Shah,
aged about 34 years, Occ. - Household,
2. Shaistabi Budhan Shah,
aged about 12 years, minor,
Occ. Education,
3. Husain Shah Budhan Shah,
aged about 10 years, minor,
Occ. - Education,
4. Anwar Shah Budhan Shah
aged about 8 years, minor,
Occ. - education,

Nos. 2, 3, and 4 are minors, through their
natural guardian mother, appellant no.1,

All r/o Baba Mushtak Ali Nagar,
Parpeth, Malkapur, Tq. Malkapur,
distr. Buldhana (M.S.)

.... **APPELLANTS**

// **VERSUS** //

The Union of India, through General
Manager, Central Railway, C.S.T. Mumbai.

.... **RESPONDENT**

Shri R.G. Bagul, Advocate for Appellants.
Shri Z.S. Shekhani, Advocate h/f Shir R.G. Agrawal, Advocate for
Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 25/02/2021.

JUDGMENT :

1. The Appellants herein have challenge the judgment and award dated 17.03.2017 passed by the Railway Claims Tribunal, Nagpur dismissing the Claim Application No.OA(llu)NGP/2015/0235 filed under Section 123(c) read with 124-A of the Railways Act, 1989. The Appellants who are the Claimants in the Claim Application shall be hereinafter referred to as the 'Claimants'.

2. The Appellant no.1 is the widow and the Appellant nos.2, 3 and 4 are the minor children of the deceased Budhan Shah, who according to the Claimants died in untoward incident on 13th March 2015. The case of the Claimants was that, on the relevant date, said Budhan Shah had purchased a general class ticket to go to Surat (Gujrat) from Malkapur. It is stated that he had boarded Train no.12834 Howrah – Ahmedabad Express and that he was compelled to stand near the door due to heavy rush. The Claimants alleged that said Budhan Shah fell down from the Train due to the sudden jerk and that he sustained severe injuries and that he died in the hospital on the next date, due to injuries sustained in the said accident. The Claimants therefore, filed an application under Section 123(C) read with 124-A of

the Indian Railways Act, claiming compensation, in view of death of said Budhan Shah in untoward incident.

3. The Respondent denied that the deceased was a *bona fide* passenger and that his death was in untoward incident, and therefore, denied their liability to pay any compensation.

4. Upon considering the evidence on record, the Tribunal has recorded a finding that the deceased was not a *bona fide* passenger. The Tribunal has held that the deceased had not fallen down from the Train while boarding the Train but, he had fallen due to his own rash and negligent act as he was attempting to board a running Train. The Claims Tribunal therefore, held that it was not an accidental death and consequently, by virtue of proviso contained in Section 124-A of the Railways Act, the Respondent not liable to pay any compensation to the Claimants. The Tribunal therefore, dismissed the Claim Application. Being aggrieved by this judgment, the Claimants have filed this Appeal under Section 23 of the Railways Claims Tribunal Act, 1987.

5. Learned Counsel for the Appellants states that the evidence on record proves that the deceased had fallen from the running Train. He was shifted to the Hospital and that he died on the next date, while undergoing treatment in the hospital. He has relied upon the decision

of the Apex Court in the case of *Union of India vs. Rina Devi (2018) AIR 2623*, to contend that mere negligence would not disentitle grant of compensation under the Railways Act. He submits that there is no evidence on record to indicate that the deceased was guilty of criminal negligence so as to deprive the legal representatives for the compensation. He further submits that the deceased had admittedly fallen from the Train at the railway platform and this leads to an inference that he was a *bona fide* passenger. He contents that the absence of ticket is itself not a ground to hold that the deceased was not a *bona fide* passenger.

6. Learned Counsel for the Respondent has drawn my attention to the inquest panchanama, which states that no ticket was recovered from the person of the deceased. He therefore, submits that the deceased was not a *bona fide* passenger and he is not entitled to claim any compensation.

7. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The points fall for consideration is whether the deceased was a *bona fide* passenger and whether his death was due to untoward incident.

8. It is to be noted that, the case of the Claimants is that the

deceased had boarded Train no.12834 Howrah – Ahmedabad Express at Malkapur station and that he had fallen from the running Train at the platform of the same station. The evidence of R.W.1 Shailesh Fulzele, Dy. Station Superintendent, reveals that Train no.12834 Howrah – Ahmedabad Express had reached the station at 1.01 am and had left the station at 1.03 am. He had stated that immediately after passing of the said train, some person had informed him that one person was lying on the track. He has produced Station Diary at Exhibit R1, the Memo at Exhibit R2 and Train Signal Register at Exhibit R3. The Station Diary and Memo at Exhibit R1 and R2 also record that one person was lying in injured condition, at the railway track on the platform of Malkapur station. The Inquest Panchanama also records that the deceased had fallen from Train no.12834 Howrah – Ahmedabad Express. The Post Mortem report, particularly injuries recorded in paragraph 17 of the report, substantiate the claim of the Claimants that the deceased had succumb to the injuries sustained in the accident.

9. The Tribunal has recorded a finding that the deceased had fallen while he boarding at the Train, but exonerated the Respondent on the ground that the deceased had fallen from the Train due to his own negligence, as he was not expected to board at running Train. It is

to be noted in the judgment in the case of *Rina Devi (supra)*, the Apex Court has held that “the 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 proviso to Section 124-A of the Railways Act, merely on the plea of negligence of the victim as a contributing factor”. Hence, the finding recorded by the Tribunal that the death was not in an untoward incident, cannot be sustained.

10. While considering the issue of *bona fide* passenger, the Apex Court has referred to the decision of Delhi High Court in the case of *Gurucharan Singh vs. Union of India (2014) 7 AAC 758* and the decision of the Andhra Pradesh High Court in *Jetty Naga Lakshmi Parvathi vs. Union of India 2017 AAC 797 (AP)* and its previous decision in *Kamrunnissa v. Union of India AIR 2017 SC 1436*, the Apex Court has held that mere presence of a body on the Railway premises will not be conclusive to hold that the 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. It was held that, 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.

11. In the instant case, the Claimants have deposed that the deceased had purchased the Train ticket to travel from Malkapur to Surat(Gujrat). The evidence on record indicates that he had already boarded the Train and had fallen from the running Train. The evidence adduced by the Claimant reveals that the deceased was holding a valid Train ticket. Hence, it can be inferred that he was a *bona fide* passenger. Considering the facts of the case and under the circumstances and particularly, in the absence of any other rebuttal evidence, the deceased is held to be a *bona fide* passenger. Under the circumstances, the Claims Tribunal was not justified in dismissing the claim application either on the ground that the deceased was not a *bona fide* passenger or that he had not died in an untoward incident. The impugned order, is therefore, cannot be sustained.

12. Hence the following order :

- (a) The appeal is allowed.
- (b) The impugned judgment and award is set aside.
- (c) It is held that the appellants are entitled for compensation of Rs.8,00,000/-. The Claimant no. 1 being the widow, shall be entitled for compensation of

Rs.2,00,000/-and the Claimants nos. 2, 3 and 4 shall be entitled for compensation of Rs.2,00,000/- each.

- (d) The Claimant nos.2, 3 and 4 are minors, hence the amount payable to them, shall be invested in any nationalized bank on the fix deposit initially for a period 6 years with further renewal, till the date of they attain the age of majority.
- (e) The Respondent to deposite the compensation amount within a period of three months from today.

The Appeal stands disposed of.

JUDGE

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