

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

FIRST APPEAL NO. 696 OF 2019

1. Pratibha wd/o Manoj Rangari,
aged about 30 years, Occ. Household.
2. Jigyanshu s/o Manoj Rangari,
aged about 8 years, Occ. Student.
3. Manthn d/o Manoj Rangari,
aged about 3 years, Occ. Student.

Applicant Nos. 2 and 3 are minor children
Through applicant No.1, i.e., mother.

4. Rekha w/o Haridas Rangari,
aged about 56 years, Occ. Household,

All are R/o Near Railway Cabin,
Chandramani Nagar, J.N. Road, Kamptee,
Tah. Kamptee, District Nagpur.

...APPELLANTS

Versus

Union of India,
Through The General Manager,
South East Central Railway, Bilaspur.

...RESPONDENT

Shri B.S. Mandhare, Advocate h/f Shri P.S. Mirache, Advocate for
the appellants.

Shri Anoopsingh Parihar, Advocate for the respondent.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : SEPTEMBER 01, 2021.

ORAL JUDGMENT :

Heard finally with the consent of learned counsel appearing for the parties at the stage of admission itself.

2. This is the claimants' Appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 ("**the Act**") assailing the judgment and award dated 17/08/2018 passed by the Member (Technical), Railway Claims Tribunal, Nagpur in Case No. OA(Ilu)/NGP/188/2016, whereby the Tribunal has rejected the claim of the claimants.

3. The facts, which are necessary to decide the present Appeal, are as under :

i. Appellant No.1 is the wife, appellant Nos. 2 and 3 are the children and appellant No.4 is the mother of the deceased Manoj. The appellants filed claim petition before the Railway Claims Tribunal, Nagpur stating therein that on 26/03/2016, the deceased had purchased an ordinary railway ticket bearing No. UXA-00198465 for performing journey from Gondia to Nagpur for Rs.60/-. The deceased was travelling by

the train as a bonafide passenger, and when the said train reached the Railway Station, Kamptee up main line near KM No. 1115/31-32, the deceased fell down from the said running train due to jerk and died on the spot in the said untoward incident. The Police had filed the merg report for accidental death. The appellants filed claim petition claiming compensation of Rs.8,00,000/-.

ii. The respondent/ railway administration, in its written statement, denied the contents in the claim petition with regard to bonafide passenger and untoward incident, thereby denying its liability to pay compensation. It is the specific defence of the railway administration that no incident of accidental fall from the running train was reported to the Station Manager, Kamptee by any loco-pilot or guard of any train passed through Kamptee Railway Station in between 16:00 to 24:00 hrs on the day of alleged incident. The railway administration also denied the authenticity of the railway ticket and claimed that the deceased was not the bonafide passenger. The Tribunal framed the following issues :

“1. Whether the Applicants are the dependents of the deceased within the meaning of section 123(b) of the Railways Act?

2. Whether the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application within the meaning of Section 124-A r/w 123 © of Railways Act?

3. Whether the deceased was a bonafide passenger of the train on the relevant day, with valid journey ticket?

4. To what order/relief?”

iii. The claimants examined claimant No.1, i.e., the wife of the deceased Pratibha, and brought on record following documents, in support of their claim :

- Railway ticket (Exh. A-1).
- Memo issued by Deputy Station Manager-II, Kamptee (Exh.A-2).
- Merg report (Exh. A-3).
- First Information Report (Exh. A-4).
- Spot panchanama (Exh. A-5).
- Inquest Panchanama (Exh. A-6).
- Postmortem report (Exh. A-7).
- Death certificate (Exh. A-8).

iv. The respondent/ railway administration examined one Sharda Prasad Sahu, who was working as a Station Master, Railway Station, Kamptee at the relevant time, and he has placed on record original Station Master Diary, TSR and Memo at Exh. R-1 to R-3.

v. The Tribunal, on the basis of appreciation of material on record, rejected the claim of the appellants. The Tribunal doubted the veracity of the deposition of the claimants' witness Pratibha mainly on the ground that she was not knowing as to in which train the deceased was travelling and that the place of the incident is very near from her residence, and therefore, it is doubtful about the genuineness of the purchase of railway ticket. The Tribunal also raised doubt on the falling of the passenger from the train considering the injuries as mentioned in the postmortem report. The Tribunal has observed that considering the extensive damage and destruction to the entire body involving all vital organs would result only when a person is hit by a speedy train, but not in the case of mere fall from the train. The Tribunal also

observed that the appellants have failed to mention any reason as to why the deceased had purchased the railway ticket from Gondia to Nagpur when the deceased is the resident of Kamptee. It is further observed that there was no reason for the deceased to go to Gondia, which is almost 100 kilometers away from Kamptee in search of a job rather than Nagpur, which is only 20 kilometers from Kamptee. It is further observed that the reason for journey ticket upto Nagpur also goes unexplained as the journey was being performed in late night hours and a person who is not working anywhere would not look for job in night hours.

vi. With regard to factum of untoward incident, the Tribunal observed that the deceased and the claimants are the residents of Near Railway Cabin, Chandramani Nagar, Kamptee, which is very near to the Kamptee Railway Station, and the distance of spot of incidence is only 50 meters from the residence as seen from the documents, sketch in DRM report and as admitted by the claimants' witness Pratibha herself in her cross-examination. In conclusion, the Tribunal hold that the

appellants have failed to prove that the deceased died on account of untoward incident, and therefore, the railway administration is not liable to pay any compensation. This judgment is impugned in this Appeal.

4. I have heard Shri Mandhare, learned counsel for the appellants, and Shri Parihar, learned counsel for the respondent.

5. Shri Mandhare, learned counsel for the appellants, pointed out various documents from the record, i.e., railway ticket, merg report, spot panchanama, inquest panchanama, ticket verification report, etc. and submits that the deceased, at the relevant time, was travelling as a bonafide passenger in train running from Gondia to Nagpur, and due to untoward incident, he fell down from the running train and came under the wheels of the train and died on the spot. That the postmortem report shows the death due to head injury and injuries to vital organs.

He further submits that the claimants' witness Pratibha has proved the journey ticket, which was recovered from the pant pocket of the deceased at the time of inquest panchanama, and therefore, he was a bonafide passenger, and that the impugned judgment of the Tribunal is based only on its own assumptions and presumptions without considering the factual position on record, and thus, the learned counsel urged to set aside the impugned judgment and award and grant compensation to the appellants.

6. Per contra, Shri Parihar, learned counsel for the respondent/ railway administration, while supporting the impugned judgment and award, submitted that considering the multiple injuries sustained by the deceased, it is certainly a case of running over by the train and not the case of falling down from the running train, and thus, the learned counsel urged to dismiss the Appeal.

7. I have considered the submissions put forth on behalf of both the sides and perused the record. The following

points arose for consideration of this Court :

- i. Did the claimants prove that the deceased Manoj was travelling as a bonafide passenger in train running from Gondia to Nagpur, died in an untoward incident ?*
- ii. Whether the claimants are entitled for statutory compensation ?*

8. At the outset, for claiming compensation under the provisions of the Railways Act, 1989 (“**Act of 1989**”), the appellants need to prove that the deceased, at the relevant time, was a bonafide passenger, i.e., he was having a valid and effective journey ticket, and that his death has occurred due to untoward incident. The untoward incident is defined under Section 123(c)(2) of the Act of 1989 which inter alia means “the accidental falling of any passenger from a train carrying passengers.”

9. In the instant case, the journey ticket (Exh. A-1) is recovered from the body of the deceased during inquest panchanama by the Police during inquiry of the merge report No. 12/2016 under Section 174 of the Code of Criminal

Procedure. The document at page A-47 is a ticket verification report, issued from the Chief Booking Supervisor, Central Railway, Gondia, whereby it is certified that the ticket No. UXA-00198465 issued on 26/03/2016 purchased for Rs.60/-, which was valid for three hours from the time it was issued, and therefore, considering the overwhelming evidence on record with respect to the journey ticket for performing journey from Gondia to Nagpur, the doubt raised by the Tribunal about the genuineness of the ticket is misplaced, and is contrary to the material on record.

10. With regard to the untoward incident, as per the definition of untoward incident, as stated above, it is necessary to prove that the death of the deceased was due to falling down from the train while travelling. In the instant case, admittedly, the claimant No.1 Pratibha, who was examined, is not an eye-witness to the incident. However, DRM enquiry report, at page 26, indicates that during police panchanama, the Police recovered journey ticket bearing No. UXA-00198465 of time 19:22 hrs, which was purchased from Gondia

reservation center for probably train No.18237 up from Gondia to Nagpur. That the said report also indicates that at 23:20 hrs, report with regard to detection of dead body at spot was informed. The report further indicates that during inquiry, the statement of the claimant No.1 Pratibha was recorded, wherein she has stated that on 25/03/2016, the deceased Manoj was supposed to take a journey to Gondia in search of a job, and that she herself works as a Cleaner in Chodhary hospital. She further stated that on 26/03/2016, the deceased was supposed to come to Kamptee, however, in the report it is claimed that there was no information or report about the untoward incident occurred to train No. 18237 up or any other train at Kamptee Railway Station, and therefore, they claimed that the railway administration is not responsible for the death of the deceased.

11. The sketch map, attached to the spot panchanama at page A-48, would indicate the spot of the incident to be one of the tracks of the railway. A perusal of all the police papers would show that there is no eye-witness to the incident, and

the report of lying of dead body at track is reported to the police. A perusal of the inquest panchanama would show that after inspection of the dead body, the police and the panchas reached the conclusion that the deceased had died due to fatal injuries while the deceased fall down from the train and came under the wheels of the train and died on the spot in the said incident.

12. A perusal of the cross-examination of claimant No.1 Pratibha would reveal that she has denied all the suggestions put to her, however, she has admitted that she was not the eye-witness to the incident. She has also admitted that the place of the incident is near to her residence. She has further stated that the deceased was searching for a job and was not working. She has denied that she has filed a false and bogus ticket on record. She has denied that the deceased, while crossing railway track under the influence of liquor, was dashed by some unknown train and died.

13. The witness Sharda Prasad Sahu, examined on behalf of the respondent/ railway administration, deposed that on 26/03/2016, at about 23:20 hrs, Shri Manikchand – RPF, informed him that one unknown person's dead body is lying at KM No. 1115/32 up main line No.3 track, and accordingly, he asked to the staff member to visit the said spot, and issued a written memo. That neither the guard nor the loco-pilot or any other person informed about the untoward incident and accidental fall down from the train. In his cross-examination, he has admitted that he did not visit the spot.

14. With regard to the untoward incident, as the claimants could not examine any eye-witness, from the minimal evidence which could be produced on behalf of the claimants, i.e., the journey ticket, verification of ticket, spot panchanama showing body of the deceased on the track and the inquest panchanama, inference in favour of the claimants has to be drawn.

15. Considering the overall position with regard to the body of the deceased that he might have fallen down from the running train, and in the absence of any concrete evidence on part of the railway administration to prove its defence of suicide or running over by train, I have to observe that the claimants could prove that on 26/03/2016, the deceased Manoj was a bonafide passenger of the aforesaid train and died due to falling down from the running train and came under the wheels of the train. The observation of the Tribunal so also the argument of Shri Parihar, learned counsel for the respondent, that considering the multiple injuries on the body of the deceased, it could have been a case of running over by the train and not falling down from the train, is without any substance.

16. A perusal of the spot panchanama and the inquest panchanama indicates the position and location of the body which suggests that the body was run over by the train, and that does mean that after falling down from the train by the passenger, there is every possibility that some other train would have run over from the person of the passenger. Section 124-A

of the Act of 1989 is a salutary provision for the welfare of the passengers, who are travelling in the train and it has to be interpreted and the evidence on record has to be appreciated by keeping in mind the avowed object in bringing the aforesaid provisions in the statute book.

17. In the instant case, I am satisfied that considering the valid journey ticket, which was recovered from the pant pocket of the deceased, so also considering the fact that he was travelling from Gondia to Nagpur in train coming from Gondia to Nagpur at the relevant time, coupled with the fact of evidence of wife of the deceased stating that he had gone to Gondia in search of a job and he was supposed to come to Kamptee on 26/03/2013, in the opinion of this Court, in the absence of any other rebuttal evidence from the side of railway administration, the minimal evidence brought on record by the claimants, has to be accepted. The Tribunal has reached the conclusion mainly on the basis of its own conjectures and surmises. The Tribunal has not considered the material on record in its correct perspective. The Tribunal has not

considered the evidence of the claimant No.1 Pratibha, so also not considered the verification issued by railway administration about the authenticity of ticket issued by railway administration. The Tribunal also failed to consider the inquest panchanama in its proper perspective and wrongly concluded that considering the multiple injuries, the deceased not fallen from the train.

18. For the aforesaid reasons, this Court is of the opinion that the impugned judgment and award needs to be set-aside. Hence, the following order :

ORDER

- i. First Appeal is allowed.
- ii. The judgment and award dated 17/08/2018 passed by the Member (Technical), Railway Claims Tribunal, Nagpur in Case No. OA(IIu)/NGP/188/2016 is quashed and set-aside.
- iii. The respondent shall deposit compensation of Rs.8,00,000/- with the Registry of this Court within a period of

twelve weeks from the date of communication of this order to the concerned authority. After deposit of the same, the appellant Nos.1 and 4 are permitted to withdraw their share, i.e., Rs.2,00,000/- each.

iv. Share of appellant Nos.2 and 3, i.e., Rs.2,00,000/- each shall be deposited in a fixed deposit until they attain the age of majority in any nationalised bank, and they would be entitled to withdraw the periodical interest accrued on such deposit.

JUDGE

Sumit