

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

**FIRST APPEAL NO.458 OF 2021**

1. Ramadhan s/o Gondu Tayade,  
Aged about 47 years, occupation labour.

2. Chhayabai w/o Ramdhan Tayade,  
Age 44 years, occupation housewife.

Both r/o at Po.Waghari, taluka Jamner,  
District Jalgaon (M.S.) 424206. .... **Appellants.**

**:: V E R S U S ::**

The Union of India,  
General Manager, Central Railway, CSMT, Mumbai. .... **Respondent.**

=====

Ms S.Chaudhari, Counsel for Appellants.  
Shri N.P.Lambat, Counsel for the Respondent.  
=====

**CORAM** : **SMT.ANUJA PRABHUDESSAI, J.**  
**DATE** : **FEBRUARY 04, 2022**

**ORAL JUDGMENT**

1. Hearing was conducted through Video Conferencing and learned counsel for parties agree that Video and Audio quality was proper.

2. The appellants have filed this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 assailing judgment dated 29.10.2020 passed by learned Member (Technical), Railway Claims

Tribunal, Nagpur in Case No.OA(IIu)/NGP/248/2018. By the impugned judgment, learned Member of the Tribunal has dismissed the claim petition under Section 124-A of the Railways Act, 1989 filed by appellants for statutory compensation, in view of death of their son in an untoward incident.

3. The appellants, (hereinafter referred to as, “the claimants”) are the parents of the deceased. It was case of the claimants that on 1.10.2018 the deceased had undertaken train journey from Pune to Bhusawal. He accidentally fell from a running train at Chalisgaon, between Nyaydongri to Hirapur in Talegaon Shivar. He died as a result of the injuries sustained in the said accident. It was case of claimants that the deceased was a *bona fide* passenger and that his death was caused in an untoward incident. Hence, they claimed statutory compensation of Rs.8.00 lacs from the Railway Authority.

4. The respondent denied the claim mainly on the ground that the deceased was not a *bona fide* passenger and that his death was not caused in an untoward incident. Upon considering the evidence on record, the Tribunal held that no journey ticket was recovered from the deceased. The Tribunal further held that there is no evidence to prove that the deceased was travelling by train and his death was caused in an accident. The Tribunal further observed that the dead body was found

on 2.10.2018 during after afternoon hours. The Tribunal has observed that it is not possible that the body lying beside the tracks would remain unnoticed by any Loco Pilots or Guards for such a long period. The Tribunal, therefore, disbelieved the claim and dismissed the petition. Being aggrieved by this judgment, claimants have filed this appeal under Section 23 of the Act.

5. Learned counsel for claimants submits that Anand Sapkale (AW2), the friend of the deceased, in his evidence has stated that the deceased had purchased a train ticket and that he had undertaken the train journey. The dead body of the deceased was found by the side of the railway tracks on the next day. She submits that the respondent has not adduced any evidence to prove that the deceased had unauthorizedly entered the railway property. She further submits that the fact that the dead body was not seen by Loco Pilot, cannot be a ground to disbelieve the case of claimants. She relied upon the decision of learned Single Judge of this Court (Coram :A.P.Bhangale, J.) in **New India Assurance Company Ltd. Vs. Baby Nanda wd/o. Devidas Salunke and Ors.** reported in **2016(2) Mh.L.J. 469** to contend that the fact that train ticket was not recovered from the dead body is not ground to hold that the deceased was not a *bona fide* passenger.

6. Learned counsel for the respondent submits that evidence

of AW2 is contradictory and cannot be relied upon. He further submits that claimants have not proved that the deceased was a *bona fide* passenger. Referring to the report, he submits that the dead body of the deceased was found by the side of the railway tracks and as rightly held by the Tribunal it is not possible that the body could have remained unnoticed for such a long time. He contends that claimants have failed to prove that the death of the deceased was caused in an untoward incident and hence they are not entitled for any compensation.

7. I have perused records and considered submissions advanced by learned counsel for respective parties. The short point for consideration is, whether the deceased was a *bona fide* passenger and whether his death was caused in an untoward incident and answer to which, in my view, is nothing but in affirmative for the following reasons.

8. It is the case of the claimants that on 1.10.2018 the deceased had boarded a train from Pune to Bhusawal. The father of the deceased has no personal knowledge about the incident. Nevertheless, claimants have examined AW2 Anand Sapkale, the friend of the deceased. This witness has stated that on 1.10.2018 he had received a call from the deceased that he was going to see his parental home. He dropped the deceased at Pune Railway Station. He has specifically

stated that he had seen the deceased purchasing a train ticket for journey from Pune to Bhusawal. The evidence of this witness thus amply proves that the deceased had gone to the Railway Station to undertake train journey from Pune to Bhusawal and that he had purchased the train ticket.

9. The evidence on record reveals that on the next date i.e. 2.10.2018 at about 13:50 hours the dead body of the deceased was found at Chalisgaon by the side of the railway tracks. The statement of Rahul Chauhan reveals that he was informed that a dead body of an unknown person was lying by the side of the railway tracks near poll No.317/03. He accordingly lodged a report. A perusal of the spot panchnama reveals that the dead body was lying by the side of the railway tracks between Nyaydongri to Hirapur in Talegaon Shivar. The panchnama further reveals that there was Bajra and Cotton cultivation on either side of the spot of the incident. The inquest panchnama was conducted and wherein it was recorded that the death of the deceased was due to falling from the running train. The postmortem report also indicates that death of deceased Shubham was caused due to head injuries. The postmortem report also records that as per the inquest panchnama death of Shubham was caused due to injuries sustained in a train accident.

10. The evidence of AW2 Anand clearly proves that the deceased had undertaken train journey from Pune to Bhusawal and that he had purchased a train ticket for the said journey. The claim petition has been dismissed for want of recovery of the train ticket. In this regard, it is relevant to refer to the decision of the Hon'ble Apex Court in the case of **Union of India vs. Rina Devi**, reported at **2018 SC 2362** wherein the Apex Court has held that 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.

11. In the instant case, as noted above, the evidence adduced by claimants amply proves that the deceased had purchased a train ticket for train journey from Pune to Bhusawal. The respondent has not adduced any rebuttal evidence. In the absence of such rebuttal evidence, the Tribunal was not justified in holding that the deceased was not a *bona fide* passenger.

12. The body of the deceased was found by the side of the tracks at Chalisgaon on the following afternoon. The lapse in time in noticing the body is main ground for rejecting the claim that the death

was caused in an untoward incident. It is pertinent to note that the Spot Panchanama reveals that there was bajra and cotton plantation on either side of the tracks. It is thus possible that the body was not visible. Moreover, the said spot and a mid-section where the trains usually pass at a fast speed. This yet another possibility for not noticing the body. It is also to be noted that the evidence of AW2 Anand Sapkale reveals that the deceased was going to meet his parents and he had undertaken train journey by Pune-Bhusawal Train. His body was found by the side of the tracks at Chalisgaon, even before reaching the scheduled destination. These facts and circumstances only had to an inference that the death of the deceased was due to the accidental fall from the train, which is nothing but an untoward incident within the meaning of Section 123(c) (2) of the Railways Act, 1989.

13. The claimants, who are parents of the deceased, have proved that the deceased was a *bona fide* passenger and that his death was caused in an untoward incident. The claimants are, therefore, entitled for statutory compensation of Rs.8.00 lacs.

14. The issue is no longer *res integra*. The Hon'ble Apex Court in **Rina Devi** (*supra*) has held that :

*“We are of the view that law in the present context should be taken to be that the liability will accrue on*

*the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of Workmen Compensation Act can certainly be applied and judgment of 4-Judge Bench in Pratap Narain Singh Deo (supra) will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation.”*

15. *In the instant case, the accident was on 1.10.2018 i.e. subsequent to the notification dated 22.12.2016, which came into force on 01.01.2017. The claimants are therefore entitled for revised rate of compensation with interest payable from the date of the accident till its realization.*

16. *Under these circumstances and in view of discussion supra, the following order is passed:*

**(a)** *The appeal is allowed.*

.....9/-

(b) The impugned judgment and order is quashed and set aside.

(c) The respondent is directed to pay to the claimants compensation of ₹ 8,00,000/- with interest @ 6 % per annum from the date of the accident till the date of payment.

(d) The claimants to give details of bank account to the respondent-Union of India, within two weeks.

(e) *The respondent-Union of India, to deposit the compensation with proportionate interest in the respective accounts of the claimants in equal proportionate within eight weeks thereafter.*

17. *The appeal stands disposed of in the above terms. Pending application(s), if any, stand(s) disposed of.*

**JUDGE**

!! BRW !!