

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

FIRST APPEAL NO.261/2022

- 1) Vasanta s/o Namdeo Thutan
aged about 56 years, occ. Labour
- 2) Sagar s/o Vasanta Thutan
Age about 22 years, Occ. Student
- 3) Swapnil s/o Vasanta Thutan
Age about 20 years, Occ. Student

All R/o Near Mallogir Mandir,
Magalwari Peth, Tah. Umred,
Dist. Nagpur (Mah) 441203.

...APPELLANTS

VERSUS

Union of India,
Through the General Manager,
Western Railway, Head Quarters
Building, Church Gate Mumbai-
400020

...RESPONDENT

Shri R.G. Bagul, Advocate for Appellants,
Shri Neerja Chaubey, Advocate for Respondent.

CORAM ; SMT. M.S. JAWALKAR,

DATE OF RESERVING THE JUDGMENT : 13/07/2022

DATE OF PRONOUNCING THE JUDGMENT : 18/07/2022

ORAL JUDGMENT

Heard. Heard finally by consent of the learned Counsel for both the parties.

2. Present Appeal is filed by the claimant, aggrieved by the judgment passed by Railway Claims Tribunal, Member (Technical) Nagpur Bench, Nagpur in Claim Application No.OA (Iiu)/NGP/138/2019 on 18/03/2021 dismissing the claim of the appellants for Rs.8,00,000/- along with interest from the date of accident.

3. The brief facts necessary to decide this appeal are as under:

The appellant No.1 is the husband of the deceased and appellant Nos.2 and 3 are her children. The appellants shall be hereinafter referred to as the Claimants.

4. That the claimants filed the Claim Application on account of death of Gitaben w/o Vasanta Thutan in untoward incident occurred on 24/09/2015. The deceased Gitaben along

with her husband and son was travelling from Nagpur to Surat by Train No.18405 Puri- Ahmedabad Express by purchasing the separate ticket bearing No.AA-74744406. It is submitted that on 25/09/2015 in the early morning at about 3.00 hrs when the train reached near Udhna Railway Station, due to heavy rush of passengers the deceased accidentally and untowardly fallen down from running train at KM No.262/2020 near Udhna railway station and sustained severe injuries on body. When she was laying at railway track in injured condition a Train No.22901 Down Bandra-Udaipur train suddenly came there and gave dash to her due to which the deceased died on the spot.

5. The respondent railway has resisted the claim application by filing written statement and stated that it is not untoward incident and deceased was not bonafide passenger of the train. It is contended by the respondent that the deceased was dashed and run over by the Train No.22901 Down Bandra-Udaipur Train and therefore applicants are not entitled to any compensation.

6. The Tribunal upon considering the evidence on record

has held that the applicants have not able to prove that the deceased had fallen down from the alleged train No.18405 Puri-Ahmedabad Express and against the fact is that the decease while crossing the track was dashed by Train No.22901 Bandra-Udaipur Express. Such an act comes within the purview of self inflicted injury in accordance with the proviso (b) of the exemption clause of Section 124A of Railways Act, 1989 and the Railways are not liable to pay any compensation and hence dismissed the application. Being aggrieved by this judgment, the Claimants have filed this appeal.

7. The Counsel for the applicants submitted that the deceased was having valid journey ticket which was recovered during inquest panchanama and the same was placed on record by the applicants. It is contended by the applicants that the deceased was a bonafide passenger and the deceased died in an untoward incident at Udhana Railway station, hence the claim application deserves to be allowed and the applicants are entitled to compensation. The learned Counsel for applicants relied upon the judgment passed by this Court in case of Smt. Kamlabai wd/o Dhanraj Dhande and others Vs. Union of India in First Appeal

No.733/2012 and in case of Budho Devi and others Vs. Union of India passed by Hon'ble High Court of Punjab and Haryana at Chandigarh in FAO NO.5696 of 2009.

8. Per contra learned Counsel for the respondent Railway denied that the deceased was possessing the valid journey ticket and she was bonafide passenger. It is argued that the ticket filed on record is false, bogus and planted one. The Counsel for the respondent contended that the deceased died while she was crossing the railway track at Udhan. The learned Counsel for respondent relied upon the judgment passed by the Hon'ble High Court of Gujrat and Ahmedabad in case of Wasim Shamshulhak Shaikh Vs. Union of India in First Appeal No.3078 of 2018.

9. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The questions for consideration are whether the deceased was a bonafide passenger and whether his death was caused in an untoward incident.

10. The only witness of Applicant i.e Vasanta, the husband of the deceased has filed his affidavit, wherein he has stated that

the deceased was holding a valid train ticket no. AA744406 for train journey from Nagpur to Surat. A perusal of the inquest Panchnama shows that one Railway ticket No. AA744406, dated 24/09/2015 for the journey from Nagpur to Surat was found in the clothes of the deceased. Thus, the material on record clearly indicates that the deceased was holding a valid ticket No.AA744406 journey by train. The train was for journey Nagpur to Surat. Deceased was resident of Nagpur.

11. The Railway Tribunal failed to consider that the deceased was travelling with her family and possessing valid train ticket which was found in inquest panchanama. The learned Trial Court failed to consider that the incident occurred at 3.00 am and the deceased was pursuing her journey, she had no occasion to alight from the train at Udhna Railway Station and cross the railway track. Similarly the statutory report prepared by the Railway Officers in which they have clearly concluded that the deceased was run over by train and she was having the railway ticket of Puri Ahmedabad Express.

12. The learned Railway Tribunal erred in appreciating

inquest panchanama and evidence of complainant and only gave weightage to the evidence of Loco Pilot R.W.-1 and wrongly came to the conclusion that the deceased was crossing the Railway track. She was hit by side of engine of his train i.e. Train No.22901 learned Tribunal by solely relying upon evidence of Loco Pilot dismissed the claim application of the applicant.

13. The learned Counsel for claimants relied on judgment passed in case of *Smt. Kamlabai wd/o Dhanraj Dhande (supra)* wherein similar question was involved. The deceased accidentally fallen from the Durg to Nagpur Train. The deceased was holding the valid train ticket for train journey from Durg to Nagpur. Said ticket was seized at the time of inquest panchanama. Similar question made in evidence of Loco Pilot in which Loco Pilot deposed that the deceased was standing by side of the track and duly applied brakes, despite the deceased came under the train. It was held that the deceased was a bonafide passenger and that his death was caused in an untoward incident.

14. The learned Counsel also relied on Budho Devi and others (supra) in the Punjab and Haryana High Court while answering the question whether the untoward incident is to be

given in interpretation that only in case of a person falls from the train is to be included in the definition of untoward incident. This Court held that when a person has purchased a valid journey ticket and waiting for the train, he is deemed to be a bonafide passenger. If something happens while he was at the Railway platform while waiting for the train, the said act is to be covered within the definition of untoward incident.

15. The learned Counsel for respondent relied on judgment in Gujrat High Court in Wasim Shamshulhak Shaikh (supra), however, the Hon'ble Apex Court in Union of India Vs. Rina Devi, reported in AIR 2018 SC 2362, clarified what is untoward incident and self inflicted injury which may be called as injury to oneself. The said intention to cause injury to oneself is missing in case of untoward incident therefore the act of falling from the train amounts to untoward incident and will not fall within the meaning of Section 123 (c) (2) of the Railways Act, 1989. The learned Tribunal failed to appreciate this aspect and passed erroneous, impugned order.

16. Thus, for the reasons stated above order passed by the Railway Tribunal cannot sustain and deserved to be quashed and

set aside. Hence I pass the following order:

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment on 18/03/2021 passed by Railway Claims Tribunal, Member (Technical) Nagpur Bench, Nagpur in Claim Application No.OA (Iiu)/NGP/138/2019 is hereby quashed and set aside.
- iii) The respondent Union of India is directed to pay to the appellants the sum of Rs.8,00,000/-(Eight Lakhs).
- iv) The amount of compensation be distributed in the proportion of 2:1:1 amongst the applicants.
- v) The said amount shall be deposited in the account of claimant/appellant after verification of identity within three months.

The appeal stands disposed of accordingly.

(SMT. M.S. JAWALKAR, J.)