

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

FIRST APPEAL NO.282 OF 2020

- 1] Mukta wd/o Narayan Kurtadikar,
Aged 36 years, Occupation-Household.
- 2] Shrikant s/o Narayan Kurtadikar,
Aged 17 years, Occupation-Education.
- 3] Kaustubh s/o Narayan Kurtadikar,
Aged 13 years, Occupation-Education.

(Applicant No.2 & 3 through applicant
No.1 mother - the natural guardian)

All Resident of -

C/o. Smt. S.Y. Puranik, Plot No.15,
Shriram Nagar, Chetakghoda,
Aurangabad-431001.

.. Appellants

.. Versus ..

Union of India,
Through its General Manager,
South Central Railway,
Secunderabad-500071 (A.P.)

.. Respondent

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

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CORAM : SMT. M.S. JAWALKAR, J.
RESERVED ON : 17.08.2022
PRONOUNCED ON : 20.08.2022

JUDGMENT

Present appeal is filed challenging the judgment and order passed by the Railway Claims Tribunal, Nagpur dated 06.12.2019, by which the claim petition was dismissed.

2] The brief case of the applicants/claimants was that on 11.09.2016, the deceased was standing on Platform No.2 of Nanded Railway Station and watching the railway traffic by bending forward, when Nanded-Daund Passenger Train No.57516 suddenly came from reverse direction and hit his head. Neither he nor his relatives accompanying him heard any whistle, horn etc. of the train. The Railway Police took him to Sant Guru Govindsingh Memorial Hospital, Nanded and after examining him, the doctor declared him dead. Deceased along with a few other relations had a journey ticket No.96516195 from Nanded to Belapur for his journey to commence on 11.09.2016.

3] The respondent-railway contested the claim by filing written statement. It is averred that the case is not at all about accidental falling from the running train, but the deceased was

carelessly crossing the platform of Nanded Railway Station, during which he was run over by Train No.57516 (Nanded Daund Passenger). The learned Tribunal rejected the claim only on the ground that it was not a case of any accidental fall from any passenger train nor a case as claimed by the applicants in their claim application. The deceased was waiting on Platform No.2. As AW-2 admitted in her cross-examination that the deceased was dashed by empty rake of Train No.57516 at Platform No.2 of Nanded Railway Station. The learned Tribunal held that the journey ticket placed on record by the applicants does not accord the deceased the status of a bona fide passenger for the spot of incidence considering the manner in which the incidence has happened.

4] Learned counsel for the appellants submitted that the Railway Claims Tribunal totally erred in holding that the deceased was not the passenger.

5] Admittedly, the ticket was recovered from the person of the deceased along with other persons. As per inquest, memo issued by Station Master Nanded. It is mentioned that as per evidence of Pointsman at Nanded Shri G. Ramakrishna, while

bringing Empty Rake of Train No.57516 Nanded-Daund Passenger from Shunting Neck to Platform No.2 of Nanded Railway Station, one unknown male person, aged about 50 years, suddenly run over by the rear side of the rake and killed. The Loco Pilot examined by respondent-railway. He deposed that on 11.09.2016 Train No.57516 was stationed at Nanded Yard due to maintenance work. At about 20.00 hours, he received order from S.M. Nanded that Train is ok and ordered him to bring the said train from Pit Line to Platform No.2 of Nanded Railway Station. While bringing the Train, the Pointsman was on the rear side showing signal and when the said train entered Platform no.2, the Pointsman informed him on walkie-talkie to stop the train. He further deposed that during shunting, his train was empty. The Pointsman also deposed to similar line, however, he added that there was no rush on Platform No.1. Thus, from these facts, it is clear that the train was coming in reverse direction from the Pit Line to Platform No.2, whereas the appellant was waiting on Platform No.2 in proper direction. So it is probable that he was looking for the train coming in proper direction, but the train arrived in reverse direction from his back side, the empty rake at the rear side. Now the question is, whether in such circumstances it can be concluded

that the deceased died in an untoward incident within the meaning of Section 123 (c) (2) of the Railways Act, 1989 and secondly, whether he was a bona fide passenger. Section 124 (A) of the Railway Act reads as under :

Section 124-A. Compensation on account of untoward incident.—*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 dependent 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.*

Section 123 (c) (2) reads as under :

Definitions.—In this Chapter, unless the context otherwise requires,—

- (a)*
- (b)*
 - (i)*
 - (ii)*
 - (iii)*
 - (iv)*

(c) “untoward incident” means—

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.

6] Learned counsel for the appellants relied on the judgment of **High Court of Punjab and Haryana at Chandigarh in First Appeal No.5696/2009 dated 1.5.2017**, wherein similar facts were involved. Punjab and Haryana High Court held that when a

person has purchased a valid journey ticket and is waiting for the train, he is deemed to be a bona fide 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'. Relying on the judgment of **Union of India .vs. Ahalya Prusti and another, 2010 (1) AICJ 653**, wherein it is held that when a man was crossing the railway track in a hasty manner and was fatally injured, he was held entitled for compensation by the Single Bench of Orissa High Court, holding that it is an untoward incident. In the present matter, in fact, the deceased was waiting for the train to come from its right direction, however, it came from opposite direction with reverse engine and empty rake of rear side which is unexpected and, therefore, the railway is responsible for taking due care while bringing train from Pit Line to Platform.

7. As held in **Union of India .vs. Rina Devi, reported in AIR 2018 SC 2362**, in para 16.6, the Hon'ble Apex Court held as under :

***16.6 :** We are unable to uphold the above view as the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory*

*negligence which cannot be done in the case of liability based on “no fault theory”. We may in this connection refer to judgment of this court in **United India Insurance Company Limited .vs. Sunil Kumar** laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that 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 the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor”.*

8. Thus, the plea of negligence of the victim cannot be allowed in the claim based on no fault theory. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Thus, if a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. As deceased was possessing valid ticket and waiting for arrival of his train, the said incident occurred. As such, it is clearly covered under the definition of untoward incident. The finding of the Tribunal is perverse and contrary to the settled principle of law and needs to be set aside. Accordingly, I proceed to pass the following order :

ORDER

(1) The appeal is allowed. The impugned judgment and order dated 06.12.2019 passed by the Railway Claims Tribunal in Case No.OA (llu)/NGP/186/2017 is hereby quashed and set aside.

(2) The respondent is directed to pay to the appellants the sum of Rs.8,00,000/- (Rs. Eight Lacs only). The amount of compensation be distributed equally to all the appellants.

(3) The appellant no.1 is further directed to invest the amount in the share of minor appellant no.3 in any Nationalized Bank, till he attain the age of majority.

(4) Appellant no.1 is at liberty to receive quarterly interest on the said fixed deposit in the name of appellant no.3.

(5) Appeal stands disposed of accordingly.

[SMT. M.S. JAWALKAR, J.]

Gulande