

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

FIRST APPEAL NO.1286 OF 2019

APPELLANTS
(On R.A.)

- : 1. Neeta Wd/o Prakash Nanware,
aged about 42 years, Occ: Nil,
2. Gajanan s/o Prakash nanware,
aged about 18 years,
3. Rakhi D/o Prakash Nanware,
aged about 14 years,
4. Prashant S/o Prakash Nanware,
aged about 12 years,

All R/o Near Jijamata School, Muslimpura,
Village Ansing, Tq and Dist. Washim.
appellant no 3 and 4 being minor same
are represented my appellant no.1 i.e. mother

//VERSUS//

RESPONDENT

: Union of India,
through its General Manager,
South Central Railway, Secunderabad.

Shri A.S. Deshpande, Advocate for the Appellants.
Shri N.P. Lambat, Advocate for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 23rd FEBRUARY, 2022.

ORAL JUDGMENT

01] This is an appeal under Section 23 of the Railway Claims
Tribunal Act, 1987, assailing the judgment dated 12.12.2018, whereby

learned Member, Railway Claims Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as the “Tribunal”) dismissed the Claim Petition No.OA (IIu)/NGP/44/2016 filed by the Appellants.

02] The brief facts, necessary to decide this Appeal, are as under:

The Appellant No.1 is the widow and the Appellant Nos.2, 3 and 4 are the minor children of the deceased Prakash Nanware and they shall be hereinafter referred as the “Claimants”. The Claimants had filed claim Petition before the Tribunal seeking compensation on account of death of the deceased Prakash Nanware, which was allegedly caused in an untoward incident. It is the case of the Claimant that on 21.08.2014, the deceased Prakash Nanware had boarded Train No.17639 Kacheguda-Akola Express for Hingoli to Washim on purchase of general class ticket. The Claimants had alleged that the deceased was standing near the wash basin. Due to sudden jerk and jostling of commuters, the deceased Prakash Nanware fell from the train and died in the said incident. The Claimants contended that the deceased was a *bona fide* passenger and that his death was caused in an untoward incident. The Claimants, therefore, claimed statutory compensation by filing Claim Petition under Section 124-A of the Railways Act, 1989.

In response, the Respondent denied that the deceased was a *bona fide* passenger. The Respondent also denied that the death of the deceased Prakash Nanware was caused in an untoward incident. It was specifically averred that it was a case of suicidal death. The Respondent therefore denied its liability to pay any compensation to the Claimants.

The Tribunal, after considering the evidence adduced by the respective parties, held that the deceased Prakash Nanware was not a *bona fide* passenger. The Tribunal relied upon the statement of the Claimant No.1 recorded by the Railway Police on 21.08.2014, wherein she had alleged that her husband was not keeping good health and he had committed suicide. The Tribunal, therefore, dismissed the claim Petition filed by the Claimants. Being aggrieved by this judgment, the Claimants have filed this Appeal under Section 23 of the Railway Claims Tribunal Act.

03] Shri Deshpande, learned counsel for the Claimants submits that the Claimants had examined AW-2 Babulal Gaware, who has categorically deposed that he had dropped the deceased to the railway station and that he had seen the deceased purchasing a ticket at the counter. He therefore contends that the evidence of this witness amply proves that the deceased had travelled by Train No.17639 under a valid train ticket and this supports the contention of the Claimants that death of the deceased was caused due

to accidental fall from the said train. He further submits that the Tribunal had erred in relying upon the statement of the Claimant No.1, which was recorded by the Railway Police on 21.08.2014, when in another statement recorded on the same date, she had categorically stated that her husband was traveling by Train No.17639 and that he had accidentally fallen from the said train. He further submits that the statement of the Locopilot and the other witnesses have been recorded in the year 2016 i.e. after filing of the claim Petition and there was no basis to arrive at the conclusion that the death of the deceased Prakash Nanware was suicidal.

04] *Per contra*, Shri N.P. Lambat, learned counsel for the Respondent submits that the statement of the Claimant No.1 sufficiently proves that the death of the deceased Prakash Nanware was suicidal. He further submits that the statement of the Locopilot vis-a-vis the other police records also amply proves that the deceased had committed suicide. He further contends that the deceased Prakash Nanware was neither a *bona fide* passenger nor his death was caused in an untoward incident. He therefore contends that the findings recorded by the Tribunal are based on the evidence on record and cannot be interfered with.

05] I have perused the records and considered the submissions advanced by learned counsel for the 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.

06] The records reveal that on 21.08.2014, the deceased had come under the wheel of Train No.17639 and he had died as a result of the injuries sustained in the said incident. It is true that no train ticket was recovered from his body. However, as held by the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi reported in AIR 2018 SC 2362**, mere absence of ticket with the deceased will not negative the claim that he was a *bona fide* passenger. The Hon'ble Apex Court has held that the initial burden will be on the Claimants which can be discharged by filing an affidavit of the relevant facts and burden then shift on the railways and the issue can be decided on the facts shown or the attending the circumstances.

07] In the instant case, the evidence of AW-2 Babulal Gaware clearly indicates that the deceased was known to him. He has stated that he and the deceased Prakash Nanware used to go to Hingoli for labour work. He has stated that on 21.08.2014, he had dropped the deceased Prakash Nanware at railway station. He has further stated that the deceased had bought train ticket from the ticket counter and thereafter he had left the station. He has further stated that on the next day, he learnt that the deceased had died in a train accident. In his cross-examination, he has denied the suggestion that

the deceased had not purchased the train ticket.

08] The statement of AW-2 Babulal Gaware clearly indicates that the deceased had in fact purchased a train ticket. The onus was therefore on the Railway Authority to prove that the deceased was not a *bona fide* passenger. In this regard, the Respondent has not adduced any evidence to controvert the statement of AW-2 Babulal Gavare that the deceased was a *bona fide* passenger. In the absence of such evidence, the Tribunal was not justified in holding that the deceased was not a *bona fide* passenger.

09] As noted above, the deceased Prakash Nanware, who was traveling by train, had come under the wheel of Train No.17639. This leads to an inference that the deceased had fallen from the said train and had thus died in an untoward incident. It is pertinent to note that the Tribunal has relied upon the statement of the Claimant No.1, which was allegedly recorded by the Railway Police Inspector, Nanded on 21.08.2014, wherein she had stated that her husband was Alcoholic and was having health issues. She had stated that her husband had committed suicide. It is to be noted that there is another statement of the Claimant No.1 on record, wherein she had specifically stated that she was informed by the Railway Police on 21.08.2014 that her husband had come under the wheel of Train No.17639 and had expired. She had stated that she had come from her village Anasi to Hingoli and that she identified the body. She had stated that postmortem was

conducted and after the postmortem, the dead body of the deceased was handed over to her and that funeral was conducted. In this statement, she had stated that on 21.08.2014 the deceased had phoned her that he was coming from Hingoli to Anasi by Train No.17639 via Washim. She had stated that her husband was standing near the wash basin. Due to heavy jerk of passengers, the deceased had fallen from the train and that he had expired as a result of the injuries sustained in the said incident. This statement was allegedly recorded on 22.08.2014. There appears to be overwriting wherein the date 21 has been changed to 22. The statement allegedly recorded on 21st appears to be fabricated. If at all the statement of AW-1 was recorded on 21st August, 2014, there was no need to record another statement on the very next day. Moreover, the statement dated 21st August, 2014 indicates that the same was recorded after the body was handed over and funeral was conducted. The evidence on record reveals that the postmortem was concluded at 9.15 p.m. and thereafter the body was handed over to the family and it was taken to the village at Anasi. It is extremely difficult to believe that AW-1 Neeta Nanware, the widow of the deceased, would return to Hingoli on the same date after the funeral to give her statement. Moreover, AW-1 has categorically denied in her cross-examination that her husband had committed suicide. Furthermore, the contents of the statement dated 21.08.2014, wherein she had allegedly stated that her husband had committed suicide was not brought to her notice. Under the circumstances,

the Tribunal could not have relied upon the said statement.

10] It is also to be noted that though it is contended that the death of the deceased was suicidal, the enquiry into unnatural death under Section 174 of the Code of Criminal Procedure, 1973 was conducted in the year 2016 i.e. after filing of the claim Petition. No reasons are assigned for not recording the statement of the witnesses including the statement of Locopilot immediately after the incident. There was thus no basis to arrive at the conclusion that the deceased had committed suicide or that the death of the deceased was suicidal.

11] As noted above, the evidence of AW-2 Babulal Gavare amply proves that he had brought the deceased to the railway station and he had seen the deceased purchasing a train ticket. The evidence of the Claimant No.1 also indicates that the deceased had phoned her and told that he was coming to village by the Express Train. These facts lead to the only inference that the deceased was a *bona fide* passenger and that the death of the deceased was caused in an untoward incident. Under the circumstances and in view of the discussion supra, the impugned judgment cannot be sustained. Hence, the following order is passed:-

(a) The Appeal is allowed.

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

- (c) It is held that the Claimants are entitled for compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only).
- (d) The Claimants shall furnish the bank account details to the Respondent within a period of two weeks from the date of this judgment.
- (e) The Respondent to deposit 40% of the compensation in the bank account of the Claimant No.1 and 20% of the compensation in the bank account of the Claimant No.2. Since the Claimant Nos.3 and 4 are minor, the balance compensation in equal proportion be invested in the names of the Claimant Nos.3 and 4 in any nationalized bank initially for a period of six years with further renewal till the date they attain the age of majority.

The Appeal stands disposed of in above terms. Pending application(s), if any, stand(s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

Vijay