

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

FIRST APPEAL NO. 419 OF 2019

APPELLANTS:

(On R.A.)

1. Smt. Sunita Wd/o Manohar Gajbhiye,
Aged 35 years, Occupation - Household
2. Akshay S/o Manohar Gajbhiye,
Aged 19 years, Occupation - NIL.
3. Purnabai Wd/o Tukaram Gajbhiye,
Aged 65 years, Occupation - NIL

All Resident of - Nilaj, Gondumbri,
At Po. Palsgaon, Tah. Sakoli,
Dist. Bhandara-441805.

VERSUS

RESPONDENT :

(On R.A.)

Union of India,
Through its General Manager,
South East Central Railway
(Bilaspur Zone),
Bilaspur-495001.

Shri R. G. Bagul, Advocate for appellants.

Mrs. Neerja Chaubey, Advocate for respondent-sole.

CORAM: ABHAY AHUJA, J.

DATE OF RESERVING JUDGMENT : 03/10/2022.

DATE OF PRONOUNCING JUDGMENT : 10/10/2022.

JUDGMENT :

1. By this first appeal, the appellants viz. the widow of the deceased Shri Manohar Gajbhiye, his son and the deceased's mother have challenged the decision dated 06/02/2019 of the Railway Claims Tribunal, Nagpur rejecting their claim made under the Railways Act, 1989 (the "Railways Act").

2. The deceased travelled from Gondia to Rewral in the general coach of a passenger train on valid journey ticket, and deboarded at Rewral. After alighting, as there was no foot overbridge, the deceased was walking along the track with head loads and got hit by Train No.18421 passing through Rewral in the UP direction. The evidence as analyzed and discussed by the Tribunal clearly establishes and concludes that the deceased died due to the hit from the fast moving Train No.18421 on the UP-line while walking beside the railway track at Rewral Station after travelling by the passenger train on a valid journey ticket. These facts are more or less well established and there is no error apparent or perversity in these findings of fact.

3. However, the Tribunal has observed that the deceased was carelessly walking on the track and died due to his own negligent act. The Tribunal also concludes that though the deceased was a bonafide passenger till he deboarded at Rewral Railway Station, while walking on the track when he got hit by a train, he was not a bonafide passenger at the time of said incident. The Tribunal also holds that this was not a case of an untoward incident as defined in Section 123(c)(2) of the Railways Act,

therefore, question of compensation under Section 124-A of the Railways Act would not be arise.

4. Shri Bagul, learned counsel for the appellants would submit that at the relevant time, there was no foot overbridge on the said platform at Rewral for the passengers to cross over and exit the station and therefore, the deceased had to walk along the railway track No.3. Learned counsel would submit that as per Right to Information (RTI) query, reply and information which has been filed in this Court vide pursis dated 02/02/2022, the work for the foot overbridge had commenced on 07/05/2016 and completed on 30/12/2018 and the same was opened for passengers on 31/12/2018. He would submit that pursuant to another communication filed by the Railways, it is confirmed that there was no foot overbridge at Rewral Station on the date of the incident. He would submit that therefore, prior to the foot overbridge being opened for passengers, every time, a passenger train came to Rewral Station, the passengers had to alight on the platform and then to exit the Station, they either had to walk along with the Railway track or cross it. He would submit that this clearly suggests negligence on the part of the Railway Authorities and the deceased died for no fault on his part. He would submit

that the deceased was a bonafide passenger and the Railway Authorities have nowhere proved that the passenger died or suffered injury due to any of the exceptions set out in the proviso to Section 124-A of the Railways Act.

5. Shri Bagul relies upon the decision of the Delhi High Court in the case of Rakesh Saini and others v/s Union of India and another, (AIR 2004 Delhi 107) to submit that when the overbridge was not provided and the deceased was compelled to cross the railway track and died, the Delhi High Court held that the applicants were entitled to compensation.

6. Learned counsel also relies upon the decision of the Punjab and Haryana High Court in the case of Budho Devi and others v/s Union of India, (III (2017) ACC 75 (P & H) to submit that when a person has purchased a valid journey ticket and is even waiting for the train, he is deemed to be a bonafide passenger and if something happens while he was at the railway platform and waiting for the train, the said act is to be covered within the definition of an untoward incident.

7. On the other hand, Mrs. Neerja Chaubey, learned counsel for the Railways would submit that considering that there

was no foot overbridge at the relevant time, the deceased should have been more careful while walking along the tracks. She submits that it is only because of his carelessness and negligence that he got hit by the train and died. That a prudent person would be more vigilant while crossing the railway track, particularly when there is no overbridge. She therefore submits that the order of the Tribunal is correct in denying the compensation to the appellants and that this appeal be dismissed.

8. I have heard Shri Bagul, learned counsel for the appellants and Mrs. Neeraja Chaubey, learned counsel for the Railways and with their able assistance, I have perused the papers and proceedings in the appeal.

9. In this case, the deceased who travelled by the Gondia - Itwari MEMU Train No.68715 in the General Compartment of the said passenger train from Gondia and alighted at Rewral Station has been found to be a bonafide passenger until the incident but not at the time of the said incident. It is borne out from the statements of the deceased's co-passengers that the deceased along with other villagers was travelling from Gondia to Rewral in search of a job and all of them boarded the General Coach of the

said passenger train which departs from Gondia Station at about 15.00 hours. After reaching Rewral, they all deboarded from the said train from both the sides, carrying their luggage walking along the track and suddenly one fast train viz. Train No.18421 passed from the railway track No.3 beside which the deceased was walking and he was hit by the said train and died. The other villagers / co-passengers were seriously injured during the process. The widow, son and the mother of the deceased preferred a claim under the Railways Act, but the Tribunal has rejected the same observing that the deceased was carelessly walking beside the railway track after completing his journey and that he was neither a bonafide passenger at the time of incident nor the incident can be considered to be an untoward incident and therefore, no claim could be allowed under Section 124-A of the Railways Act.

10. The questions that arise for my consideration are whether, when a bonafide passenger after alighting a train walks along the track as there was no foot overbridge, gets hit by a train, and dies then would (i) he cease to be a bonafide passenger, (ii) whether the incident would or would not be an untoward incident

and (iii) whether the dependents would or would not be entitled to compensation under Section 124-A of the Railways Act.

11. Before proceeding further, it would be apposite to dwell upon the relevant provisions of the Railways Act as under.

12. Section 2 (29) defines "passenger" as under :

"passenger" means a person travelling with a valid pass or ticket".

13. As can be seen, the aforesaid definition refers to a person travelling with a valid pass or ticket. It does not qualify that a person holding a ticket during journey, after alighting ceases to be ticketless or ceases to be a passenger just because he meets with an accident, which in the view of the Tribunal or any authority is not an untoward incident. Neither the above definition nor any of the provisions of the Railways Act suggest that a passenger ceases to be a passenger for this reason. The Railways Act does not contemplate or recognise this concept. Once it is held that a passenger was travelling with a valid ticket that fact cannot be negated on the purported ground that the incident is not an untoward incident. In fact, the Hon'ble Apex Court has in the case of **Union of India V/s Rina Devi** (supra) has gone to the extent of

observing that mere absence of a ticket with an injured or deceased will not negative the claim that he was a bonafide passenger. The initial burden will be always on the claimants but once that is discharged, the burden shifts on the Railways. In this case, the Railways has itself held the deceased to be a bonafide passenger. No evidence or material has been brought on record to demonstrate that the deceased was not a bonafide passenger at the time of the incident nor any circumstance has been shown to suggest the same. In the light of the above, in my view, the deceased - Shri Manohar Gajbhiye was a bonafide passenger and continued to be one at the time of the incident, as well.

14. Section 123(c)(2) defines “untoward incident” as under :

“(c) “untoward incident” means-

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

15. The Hon'ble Apex Court in Paragraph 16.6 of the decision in the case of **Union of India V/s Rina Devi (AIR 2018 SC 2362)** has widely interpreted the definition of "untoward incident" and held that the death or injury in the course of boarding or deboarding the train would be an untoward incident entitling the

victim to the compensation and will not fall under the proviso to Section 124-A, merely on the plea of negligence of the victim.

16. The Delhi High Court in the case of **Rakesh Saini and others V/s Union of India and another** (supra) (authored by Justice Shri A. K. Sikri, J. as His Lordship then was) in a similar case, where there was no overbridge and the deceased was compelled to cross the railway track and died, it was held that the deceased could not be held to be negligent, but it was the railway administration that was negligent and the dependents were entitled to compensation. Paragraph Nos.13, 14, 17 and 22 are relevant and are usefully quoted as under :-

"13. *Undisputedly no overhead bridge or subway to approach the train at Old Azadpur Railway Station for boarding the train coming from New Delhi side and going towards Ambala side was provided. Thus the passengers for boarding the said train had to cross the Railway Station. It is itself hazardous and would amount to negligence on the part of the respondents. It defeats the contention of the Court as to how the respondents could act in such a negligence by exposing the passengers to a grave risk in forcing them to cross the Railway track meant for incoming trains from Ambala side for boarding the trains which were to go towards Ambala. This fact alone is sufficient to fasten the respondents with the liability. There has to be safe passage in the form of over-bridge or sub-way for reaching the other side and not by means of crossing the Railway track which itself is dangerous. The Apex Court in the case of M. P. Electricity Board*

v. Shail Kumari, (2002) 2 SCC 162 : (AIR 2002 SC 551) made following pertinent observations fastening the respondents with 'strict liability' : "Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known in law as 'Strict Liability'. It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm, he cannot be held liable when the action is based on any negligence attributed. But, such consideration is not relevant in cases of strict liability where the defendant is held liable, irrespective of whether he could have avoided the particular harm by taking precautions".

14. *It is because the course of action required to be taken by the passengers boarding the train coming from New Delhi Railway Station and going towards Ambala side would depend on this crucial fact. If such a platform was in existence then passengers are supposed to wait on this platform for boarding the train going towards Ambala and what is suggested by the trial Court may be correct. On the other hand if there was no such platform then the only possible course to catch such a train was to cross railway track meant for incoming train from Ambala side and board the train towards Ambala side after crossing the track, particularly when admittedly there is no overbridge or subway for reaching the other side.*

17. *In their book of 'On Negligence' celebrated authors Charlesworth and Percy have defined 'negligence' in the*

following manner (7th Edition, p. 15) :- "Negligence is a tort which involves a person's breach of duty, that is imposed upon him, to take care, resulting in damage to the complainant". The essential components of the modern tort of negligence propounded by Percy and Charlesworth are as follows :- (a) the existence of a duty to take care, which is owed by the defendant to the complainant; (b) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and (c) damage which is both casually connected with such breach and recognised by the law, has been occasioned to the complainant. The law imposes a duty on everyone to conform to certain standards of conduct for protection of others. The need for existence of due care is illustrated by Lord Wright in well known judgment Grant v. Australian Knitting Mills Ltd. reported in (1936) AC 85 (103) in the following words :- "All that is necessary as a step to establish the tort of actionable negligence is to define the precise relationship from which the duty to take care to be deducted. It is, however, essential in English law that the duty should be established, the mere fact that a man is injured by another's act gives in itself no cause of action, if the act is deliberate, the party injured will have no claim in law even though the injury is intentional, so long as the other party is merely exercising a legal right; if the act involves lack of due care, again no case of actionable negligence will arise unless the duty to be careful exists."

The word 'duty' connotes the relationship between one party and another, imposing on the one an obligation for the benefit of that other to take reasonable care in the first instance. It was undoubtedly the duty of the respondents to provide for proper platform as well as over-bridge/subway to conform to standard of conduct for projection of passengers, having failed to discharge his duty respondents acted negligently.

22. *In view of the aforesaid discussion, we are of the opinion that finding of trial Court on issues Nos. 1 and 3 cannot be sustained. We hold that it is the defendants who were negligent. We also hold that it is not a case where there could be any contributory negligence on the part of the deceased. Appellants, therefore, shall be entitled to lay claim against the respondents".*

(Emphasis supplied)

17. The decision of the Punjab and Haryana High Court in the case of **Budho Devi and others V/s Union of India** (supra) is also worth referring to. That was a case where a person had purchased a valid journey ticket and was waiting for the train and when he saw a woman, who had tried to cross the railway line and the Shatabdi Express was approaching, he tried to save her and though he saved her, he himself got hit by the train and died. The Punjab and Haryana High Court held him to be a bonafide passenger and also held that the said act would be covered within the definition of untoward incident and allowed the claim under Section 124-A of the Railway Act. The decision of the Delhi High Court in the case of **Rakesh Saini and others V/s Union of India and another** (supra) was also relied upon by the Punjab and Haryana High Court. Paragraph Nos.8 and 9 are usefully quoted as under :-

"8. *I am of the view 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. For example, if a person at platform met with an incident which is attributed to the railways and dies, such incident is to be treated as untoward incident. In this case, the deceased was a humble man and was working as a Sweeper in Municipal Committee, Panipat. He had no relation with the said woman who was trying to cross the railway line. The deceased was present at platform No.3. When he saw that the life of the said woman was in danger, he acted bravely to save the life of the said woman. He was able to save the life of the said woman, but lost his own life. It can be mis-calculation on the part of the deceased as he might have thought that he will be able to save the said woman and will be able to save himself also. However, on account of the fact that the Shatabdi Express train was not to stop at Panipat railway station and might be at high speed, the calculation of the deceased proved to be incorrect. Therefore, the deceased Satpal laid down his life to save the life of another human being. Therefore, I am of the view that such incident is to be covered under the definition of untoward incident. Since the deceased was waiting for the train and was having valid monthly season ticket, he is deemed to be a bona fide passenger within the meaning of explanation to Section 124A of the Railways Act, 1989.

9. *In **Union of India v. Ahalya Prusti and Another, III** (2010) ACC 273=2010 (1) AICJ 653, 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. Similarly when the over bridge was not provided and the deceased was compelled to cross the railway track and died, the Division Bench of Delhi Court in **Rakesh Saini and Others v. Union of India and Another**, 2004 AIR (Delhi) 107 held that the applicants are entitled to compensation.*

It being so, the findings of the Tribunal on issue Nos.1 and 2 are reversed and these stand decided in favour of the applicants-appellants." (Emphasis supplied)

18. In the case at hand also, there was no foot overbridge at the time of the incident. The communications obtained on behalf of the appellants under the RTI Act clearly suggest, that at the relevant time, there was no foot overbridge. It is only after the subject incident that one foot overbridge has been opened for passenger traffic on 31/12/2018. When admittedly, as in this case, Rewral Station did not have an overbridge at the time of the incident, the passengers would have been forced to, after alighting a train, walk along the tracks or cross them. What other option would they have. While walking along railway track No.3, the deceased could not have imagined that a High Speed train would be approaching and then hit him. This was an untoward incident. No other evidence has been brought on record by the Railway Administration to prove or demonstrate otherwise. The Railways Act is a beneficial Legislation as held by several decisions of the Hon'ble Apex Court and this Court and the provisions should receive liberal and purposive interpretation and not a literal or a narrow or a hypertechnical one. Paragraph 14 of the decision in

the case of Union of India V/s Prabhakaran Vijaya Kumar (2008) 9 SCC 527) is apt and is quoted as under :

"14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

(Emphasis supplied)

19. In the light of the above discussion, I am of the view that the deceased Shri Manohar Gajbhiye was a bonafide passenger who was hit by Train No.18421 while walking along the railway track No.3 after alighting from the passenger train died in an untoward incident.

20. Section 124-A of the Railways Act is also usefully quoted as under :

124-A. Compensation on account of untoward incidents.-

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 dependant 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.*

(Emphasis supplied)

21. In the case of *Union of India ..v/s .. Prabhakaran Vijaya Kumar and others* (*supra*), the Hon'ble Supreme Court has observed that Section 124-A of the Railways Act lays down strict liability or no fault liability in the case of railway accidents. Therefore, once a case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. The said decision lays down the principle that unless the accident occurs due to reasons mentioned in Clauses (a) to (e) of the proviso to Section 124-A of the Railways Act, the case would be covered by the main body of Section 124-A and not its proviso. Paragraphs 16 and 17 of the said decision are relevant and are quoted as under :

“16. The accident in which Smt. Abja died is clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is wholly irrelevant as to who was at fault.”

22. The Apex Court in the case of Union of India V/s Rina Devi (supra) has observed that the concept of self-inflicted injury would require intention to inflict such injury and not a mere negligence of any particular degree. Although the deceased may have been negligent, it cannot be said that there was intention to inflict injury upon himself resulting in death. Therefore, even if the deceased may have been negligent or careless as observed by the Tribunal, no material has been brought on record to demonstrate or establish that there was any intention to self-inflict.

23. There is neither a plea nor any suggestion that the deceased had intention to inflict any injury upon himself. Neither the Railway Authorities have claimed nor is there any finding by the Tribunal that it was a case of suicide or attempt to commit suicide or self-inflicted injury or the deceased's own criminal act or any act committed by him in a state of intoxication or insanity or that the deceased died due to natural cause or disease or medical or surgical treatment not necessary due to injury caused by the said untoward incident. A person who comes from a village looking for a job, boards a passenger train holding a valid journey ticket, alights from the train and is trying to exit the Railway

Station in the absence of overbridge being forced to walk along the tracks and gets hit by another train and dies, cannot be said to be intentionally careless or negligent.

24. Ergo, this Court is of the view that the deceased, who was a bonafide passenger who died due to an untoward incident and the appellants being the dependents of the deceased would be entitled to compensation under Section 124-A of the Railways Act.

25. In the circumstances, the Judgment dated 06/02/2019 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No.OA (llu)/NGP/49/2018 deserves to be set aside and the same is accordingly set aside. The claimants shall be entitled to a sum of Rs.8,00,000/- as compensation in accordance with the new schedule effective from 01/01/2017.

26. The Respondent - Union of India / Railways are therefore directed to pay the appellants, in equal proportion, a sum of Rs.8,00,000/-, by depositing the same in the respective Savings Bank Account of the appellants within a period of six weeks subject to due verification.

27. The appeal is allowed in the above terms. No costs.

[ABHAY AHUJA, J.]

Choulwar