

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH, NAGPURFIRST APPEAL No. 68 OF 2021

Sm. Mina w/o Punamchand Shahare,
 Age 45 years, Occ. Labour,
 R/o Ghoti, Post and Taq. Goregao,
 Dist. Gondia

... APPELLANT

...VERSUS...

Union of India,
 Through The General Manager,
 South East Central Railway,
 Bilaspur (C.G.)

...RESPONDENT

 Shri R.G. Bagul, Advocate for the appellant
 Ms Nisha Burange, Advocate for the respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 08/09/2022

DATE OF PRONOUNCING THE JUDGMENT :10/10/2022

JUDGMENT

Heard.

2. **Admit.**

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

4. Being aggrieved by the judgment passed by Railway

Claims Tribunal, Member (Judicial) and Member (Technical) Nagpur Bench, Nagpur, in Claim Application No. OA (Iiu)/NGP/2011/335 on 23/08/2013 dismissing the claim of the appellants for Rs.8,00,000/- along with interest from the date of accident.

5. The original applicant has filed the Claim Application on account of death of her father namely Shri Suraj Ganvir in an untoward incident. On 14/04/2011 deceased was travelling from Gondia to Wadsa by passenger train by purchasing valid railway ticket for Gondia to Wadsa. As there was heavy rush of the passengers in the train and the deceased was standing near the door of the coach, when the train reached in between Hirdamali to Pindkepar at KM No. 1020/12-13, the deceased fell down from running train and sustained injuries and died on the spot.

6. The respondent railway has resisted the claim application by filing the written statement and stated that it is not untoward incident and the deceased was not bonafide passenger of the train.

7. The Tribunal observed that the deceased was not a bona

fide passenger as no ticket was found with him and held that the claimant had made false claim and railway is not responsible for the incident. It is also held that the present incident is not covered within the term “untoward incident”, as defined under Section 123(c)(2) of the Railways Act. Hence, dismissed the claim of the appellant.

8. It is the contention of the appellant that the deceased was travelling by passenger train from Gondia to Wadsa fell down from the running train and died on the spot. The learned Tribunal erred in not considering that railway ticket has been lost in an untoward incident and specifically contended that the burden lies on railway to prove that deceased was ticketless passenger. The learned Counsel for the appellant relied on the following citations :

1. *Smt. Manjiri Bera Vs. Oriental Insurance Co. Ltd., reported in AIR 2007, SC 1474.*
2. *Union of India Vs. Prabhakaran Vijayan Kumar and others, reported in 2008 ACJ 1895.*
3. *Union of India Vs. Rina Devi reported in AIR 2018 SC 2362*

9. It is the contention of the learned Counsel for the respondent that the deceased was neither a bona fide passenger, nor fell down from the train in question, the alleged incident took place due to sole negligent, careless and wrong act on the part of the deceased, the alleged incident is not covered under Section 123 & 124 of the Railways Act, 1989 and the present appellant-claimant is not the dependant on the deceased as she is married daughter therefore the Railway Administration is not liable to pay any compensation to the appellant.

10. 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 present appellant is the 'dependant' on the deceased, whether the deceased was a 'bonafide passenger' and whether his death was caused in an 'untoward incident'.

11. Admittedly there was no railway ticket found for the journey from Gondia to Wadsa at the time of preparing of spot panchanama and during the inquest panchanama.

12. So far as question whether the present appellant is the dependant of the deceased is concerned, admittedly she is married. In view of the judgment Smt. Manjiere Bera (supra), though claimant is not dependant on deceased, she is entitled for compensation being legal representative of the deceased. She cannot be denied compensation on the ground that she is not dependant on the deceased. Section 123(b) (i) in The Railways Act, 1989 reads as under:

“Section 123:

(b) “dependant” means any of the following relatives of a deceased passenger, namely:—

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;”

If Section 123(b)(i) of the Railway Act is perused, it is the definition of dependant wherein daughter is included. There is no qualification either married or unmarried daughter. As such claimant is entitled for compensation. So far as whether deceased was bonafide passenger or not is concerned, admittedly there was no railway ticket found on the person of deceased for journey from Gondia to Wadsa.

13. The learned Counsel for appellants relied on ***Rina Devi*** (*supra*), the Hon'ble Supreme Court in paragraph no.17.4 held as under:

“17.4. We thus hold that the mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which the claim for compensation could be maintained. However, 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 the burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

In view of the judgment ***Rina Devi*** (*supra*), even if there is no ticket found on the person of deceased that cannot be the ground for denial of compensation.

14. Learned Counsel also relied on Union of India Vs. Mangalaben (*supra*) wherein this Court relied on the judgment passed in ***Rajkumari Vs. Union of India 1993 ACJ 846*** held that

"since ticket less travel is an illegal act and exposes such traveler to penal action, there is presumption

of innocence in favour of the passenger traveling in train unless contrary is proved by the Railway Administration that the passenger was, in fact, ticket less traveler and not a bona fide passenger. Nothing had prevented the Railway Administration from checking and detecting any unauthorized person travelling without a ticket/pass or permission of Railway Administration."

15. This Court while deciding First Appeal No.382/2018 (supra) relied on judgment passed in *S. Vijayalaxmi* by the Madras High Court wherein it is held that when a person died in an accident by falling down from train, it is not possible for the legal heirs to produce the ticket or valid authority to travel in the train. Next question arise for my determination is that whether the incident is 'untoward incident' within the meaning of Section 124(A) of the Railway Act.

16. The Hon'ble Apex Court in this case of **Prabhakaran (Supra)** held as under:

10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an "accidental falling of a passenger from a train carrying passengers". Hence, it is an 'untoward incident' as defined in section 123 (c) of the Railways Act.

11. No doubt, it is possible that two interpretations can be given to the expression ‘accidental falling of a passenger from a train carrying passengers’, the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion, the latter of the above – mentioned two interpretations, I.e, the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation.

17. As held by the Hon’ble Apex Court in **Rina Devi** (supra) in para 16.6 which read 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 Co. Ltd. v. 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 deboarding 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."

18. As such there cannot be said to be negligence on the part of deceased when it is strict liability of railway. In view of the fact that there is no evidence laid by the railway to establish that there was any negligence on the part of the deceased. The claimant is legally entitled to claim for compensation. In view of the above referred judgments, it has to be inferred that deceased was a bonafide passenger and he fell down from running train was an untoward incident. As such, I am inclined to allow the first appeal. Accordingly, I proceed to pass the following order:

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment dated 23/08/2013 in Claim Application No. OA (IIu)/NGP/2011/335 passed by the Railway Claims Tribunal, Nagpur Bench 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/-.

iv) The said amount shall be deposited in the account of claimant/appellant after verification of identity and bank details within three months.

The appeal stands disposed of accordingly.

(Smt. M.S. Jawalkar, J.)

R.S. Sahare