

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

FIRST APPEAL NO. 347 OF 2022

1. Ganesh s/o Waman Waghmare Aged about 42 years, Occ.: Nil. 2. Kusum w/o Ganesh Waghmare Aged about 37 years, Occ.: Nil. Both R/o at Post – Village – Veda, Tehsil Hinganghat, Dist. Wardha (M.S.)	}	... Appellants
--	----------------------------------	------------------------------

Versus

Union of India, Through The General Manager, Central Railway, Mumbai CST.	}	.. Respondent
--	----------------------------------	-----------------------------

Ms. Gayatri Dive, Advocate h/f Mr. P.R. Agrawal, Advocate for appellants.

Ms. N.G. Chaubey, Advocate for respondent.

<u>CORAM</u>	:	<u>ABHAY AHUJA, J.</u>
<u>RESERVED ON</u>	:	06/10/2022
<u>PRONOUNCED ON</u>	:	09/11/2022

JUDGMENT

This is an appeal filed by the parents of one deceased, Shubham Ganesh Waghmare under Section 23 of the Railway Claims Tribunal Act, 1987, read with Section 96 of the Code of Civil Procedure, 1908. The appellants herein had filed a claim for

grant of compensation on account of death of their son Shubham in a purported untoward incident on 24.07.2016. The claim of the appellants was rejected by the Railway Claims Tribunal, Nagpur, by judgment and order dated 13.07.2018.

(2) Earlier on 25.07.2016 at 06:50 hours, the Loco Pilot of Train No.51195 Wardha – Ballarshah passenger had informed the Deputy Station Superintendent of Wagholi Railway Station on walkie-talkie that one dead body of an unknown person was lying at KM No.784/04 near DN track, Wagholi yard. After getting the said information, he had made an entry of the said incident in the Station Master's diary and also informed the Deputy Station Superintendent, Wardha railway station, through railway auto phone. Thereafter, Railway Police Force/Personnel visited the incident spot where a crowd of people had gathered. The father of the deceased who being the resident of a nearby village had also come there, and identified the body stating that the dead person was his son Shubham Ganesh Waghmare. The inquest panchnama was conducted and it is stated therein that the head was broken by the impact of railway, left and right legs were amputated below the knee. Thereafter, the body was sent for postmortem and the postmortem report in Columns 16 to 18

confirmed the same. The conclusion drawn by the police authority is that the deceased was grievously injured at the head and his legs were amputated due to being run over by the train, while crossing the railway track. The spot panchnama, as well as the inquest panchnama recorded that nothing was found in the personal search of the deceased and that nothing including any ticket had therefore been seized by the Investigation Officer.

(3) The appellants claimed that the deceased was travelling from Wagholi to Hinganghat by an unknown train on 24.07.2016, after purchasing a valid and proper journey ticket at Wagholi railway station.

(4) The statement of the father suggests that at around 7:00 p.m. on 24.07.2016, the deceased had left for Mohta Soot Girni at Vani, in Hinganghat along with his cousin brother for searching a job and later on 25.07.2016, his body was found in Wagholi yard. It is claimed that the deceased purchased a valid computerized unreserved second class ticket at Wagholi railway station, ex-wagholi to Hinganghat railway station and boarded an unknown train, but due to heavy rush and sudden jerk to the train, the deceased accidentally fell

down from the said unknown train at KM 784/04 at Wagholi yard section beside the DN track due to which he sustained serious head injury and both his legs were amputated and eventually he died. It is claimed that the journey ticket and personal belongings of the deceased including the railway ticket have been lost/misplaced during the incident and therefore, could not be found on the person of the deceased.

(5) The claim application was filed by the appellants who are parents of the deceased, which was contested by the railway authorities stating that the application was not sustainable as no such untoward incident causing the death of the deceased within the meaning of Section 123 (c) read with Section 124-A of the Railways Act had taken place and further that the deceased was not a bonafide passenger of any train as no journey ticket was found on the person of the deceased.

(6) The Tribunal observed that the only witness examined by the applicants was the mother of the deceased and that she was neither an eye witness to the incident, nor to the alleged purchase of the journey ticket. That in her cross examination, she

clearly stated that she did not know the name and number of the train by which the deceased was travelling. She had also stated that the deceased was in search of a job and that it was not true to suggest that the deceased used to go in search of a job by crossing the railway track. That the place of the incident was approximately 1 or 1.5 kilometers away from appellants/deceased's village named Veda and that she came to know about the incident on 25.07.2016 in the morning.

(7) The Tribunal also analyzed the statement of the then Deputy Station Superintendent of Wagholi railway station, as well as the memo issued by the Deputy Station Superintendent, Wardha railway station, the Panchanamas, the postmortem report and came to a conclusion that the injuries were due to hit or dash by a train. That the opinion of the police authority in the inquest panchnama clearly indicated that the deceased had been grievously injured in the head, as well as in the legs, which were amputated due to run over by the train while crossing the track which resulted in the death.

(8) The Tribunal has also observed that since the deceased was a resident of Veda village which is near Hinganghat and

Wagholi railway track, as admitted by the mother of the deceased in her cross examination, the scene of the incident being close to the village there was every possibility of the deceased moving to the said spot at the time of occurrence and being hit by a train at KM 784/04 while trying to cross the track and therefore, this was not a case of an accidental fall as claimed by the appellants. The Tribunal observing that there was no other eye witness to the incident, nor any other witness having been examined, held that there was nothing on record to bring the claim within the provisions of Section 124-A of the Railways Act.

(9) The Tribunal also observed that there was no presumption under Section 124-A of the Railways Act, that the death of a person had occurred on account of untoward incident, merely because the deceased was found lying near the railway track. The Tribunal therefore, dismissed the claim application of the appellants, holding that the burden of proving an untoward incident was on the appellants.

(10) Aggrieved by the dismissal, the appellants have filed this appeal.

(11) Ms. Diwe, learned counsel for the appellants has vehemently argued that if this was a case of run over, then it was incumbent upon the railway authorities to examine the other witnesses as the appellants had discharged their burden by filing an affidavit as required pursuant paragraph 17.4 of the decision of the Apex Court in the case of *Union of India Vs. Rina Devi, 2018 AIR (SC) 2362*.

(12) Learned counsel would submit that Wagholi to Hinganghat is a distance of 1 to 1.5 KM and therefore, it cannot be said that the deceased could not have fallen down from the passenger train on the spot where his body was found on the pretext that he was a resident of a nearby village. She would submit that once an affidavit of relevant facts has been filed by the mother of the deceased, then it is upon the railway authorities to rebut the evidence.

(13) Learned counsel for the appellants has very painstakingly taken this Court through the record and proceedings and in particular the conclusion of the DRM report, the postmortem report, the evidence on affidavit of the mother of the deceased, her deposition and submits that neither the Loco pilot was examined, nor any medical expert was examined. She would submit that the evidence of AW-1

(mother) as well as her deposition in the cross-examination has remained unshaken. Learned counsel also submits that the statement of the Deputy Station Superintendent is contradictory, inasmuch as in her affidavit, there is no mention of run over. She submits that the case of run over as alleged by the railway authority, as also held by the Tribunal should be positively established to deny the claim of the appellants, which has not been done in this case.

(14) Learned counsel refers to the decision in the case of *Union of India Vs. Rina Devi (supra)* to submit that only because of non-recovery of the ticket, the claim cannot be rejected. She further submits that the Railways Act is a beneficial legislation and its provisions deserve to be construed liberally and relies upon the decision in the case of *Union of India Vs. Prabhakaran Vijaya Kumar and Ors, 2008 (2) T.A.C. 777 (S.C.)*.

(15) She further submits that even if there is some negligence on the part of the deceased that cannot be taken as an excuse to deny the claim as there has to be an intention on the part of the deceased to self inflict. Further that the nature of the injuries viz. skull being crushed and both legs been amputated cannot be used to

reject the claim.

(16) The learned counsel has relied upon the following decisions in support of her contentions.

i) Megha w/o. Bijay Thakur and Others ..Vs.. Union of India, 2020 (3) AIR Bom.R 284,

ii) Smt. Ranjana Wd/o Santosh Devtale and Ors. ..Vs.. Union of India, (First Appeal No.272 of 2019, decided on 05.03.2020 by the Co-ordinate Bench of this Court) ,

iii) Mr. Sadashiv Ramappa Kotiyan ..Vs.. Union of India, (First Appeal No.658 of 2018, decided on 15.03.2021, decided by the Principal Bench of this Court).

iv) Suchitra As (Ash) ..Vs.. Union of India, 2019(2) TAC 787, decided by the Calcutta High Court.

(17) Learned counsel also submits that the appellants have no other source of income and were solely dependent on the earnings of the deceased who was aged about 19 years and unmarried at the time of the incident. She therefore, prays that the judgment of the Tribunal be set aside and a compensation of Rs.8,00,000/- be awarded to the appellants.

(18) On the other hand, Ms. Chaubey, learned counsel for the railways supports the decision of the Tribunal. She submits that the claim of the appellants be rejected on two counts : firstly that there has been no ticket recovered on the body of the deceased and as such, the appellants would not be entitled to any compensation. Secondly, this is not a case of an untoward incident, whereas a case of run over due to crossing of the railway tracks. That the appellants have not been able to prove that this is a case of an untoward incident under Section 123(c) of the Railways Act. Without prejudice, she submits that under the proviso to Section 124-A, this would be a case of self inflicted injury and the appellants are not entitled to the compensation under that section.

(19) Learned counsel submits that there is neither any eye witness, nor any evidence which supports the case of the appellants and therefore, the railways are not liable. Learned counsel relies upon the deceased's father's statement as referred to the conclusion of the RPF report dated 10.01.2017 at page A-28 of the record and proceedings to submit that the house of the deceased was near the railway track and he would frequently pass from there. She

also submits the statement that his son went for a job at about 7:00p.m. in the evening also looks highly improbable. She also relies upon the conclusion of the RPF Thana that from the nature of the injuries, it appears that the deceased was hit by some train while crossing the Railway line in the evening of 24.07.2016. She submits that moreover the cousin with whom he purportedly left has also not been examined by the appellants nor has he filed any affidavit. That therefore, this is clearly a case not entitling the appellants to any compensation under Section 124-A of the Railways Act and that the Tribunal, has rightly rejected their claim.

(20) I have heard learned counsel for the parties and with their able assistance, I have perused the papers and proceedings in the matter.

(21) It is not in dispute that no journey ticket nor any belongings were recovered from the body of the deceased. There is also no evidence to suggest that any ticket was ever purchased by or for the deceased to travel from Wagholi to Hinganghat by any train. There is no proof that the deceased travelled from Wagholi to Hinganghat by any train. From the evidence on record, it is only

gathered that the information that one dead body of an unknown person lying at KM No.784/04 near DN track, Wagholi Yard was given by the Loco Pilot of Train No.51195 Wardha-Ballarshah passenger on walkie-talkie to the Deputy Station Superintendent of Wagholi Railway Station, who then made a diary entry and informed the Deputy Station Superintendent of Wardha Railway Station through Railway Auto Phone, after which the Railway Police Force visited the incident spot. That is all. There is neither any eye witness, nor any other witness to the accident that may have led to the Shubham's death. It is settled law that onus to prove an untoward incident is on the claimants. It is only when the initial burden is discharged that the burden shifts on the Railways. There is only a suggestion that at around 7.00 pm, the deceased had left for Mohta Soot Girni for work along with his cousin brother but there is no affidavit of the cousin nor was he ever examined. No other witness has been examined to demonstrate or establish that the deceased had boarded any train at Wagholi Station on an unreserved second class ticket purchased by the deceased and that due to heavy rush and sudden jerk to the train, the deceased accidentally fell down at KM 784/04 at Wagholi Yard section beside

the DN track due to which he sustained serious head injury and both his legs got amputated and eventually he died. It is also not in dispute that there is hardly any evidence to demonstrate that deceased travelled by any train or deceased died due to any fall accidentally from a train. The affidavit filed by the mother in my view does not contain relevant facts. There is no statement in her affidavit with respect of the purchase of the ticket or to the proposed travel of the deceased by train. The mother in her cross examination has clearly stated that she did know the name and number of the train by which the deceased was travelling.

(22) There is no material to demonstrate that the deceased would regularly use the train from Wagholi to Hinganghat for work or otherwise. But, it is undisputed that the deceased was a resident of Veda village near Wagholi Railway Station and the entire body of evidence including the conclusion of enquiry by the Railway Police Force at page A-27 of the record and proceedings would suggest that the boy in search of a job would regularly cross the track and that on one such crossing on 24.07.2016 of the track, he was hit/run over by a train by which he was grievously injured in the head and the legs also got amputated resulting in his death.

Therefore, the opinion of the police authority in the inquest panchnama that the deceased has been grievously injured in the head as well as in the legs, which were amputated due to run over by train while crossing the track cannot be ignored. Merely because the dead body of Shubham was found near the railway track, there is no presumption of an untoward incident under Sections 123(c)(2) read with Section 124-A of the Railways Act, the initial burden of proving an untoward incident always being on the claimants. For the sake of convenience, Section 124-A is quoted as under :

“Section 124A - 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 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)

(23) It is therefore clear that for claiming compensation under Section 124-A of the Railways Act, the happening of an untoward incident is a sine qua non.

(24) Section 123(c) which defines an untoward incident is also quoted as under:

“(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.”

(25) Learned counsel for the appellant has relied upon the case of Union of India Vs. Rina Devi (supra), however, in my view the ratio in that case would not be applicable in the facts of the case inasmuch as this is not a case of boarding or de-boarding of a train.

(26) It is not that if the Railways are not able to prove any of the exceptions in the proviso to Section 124-A that every such case of an accident on the railway premises would entitle a dependant to compensation even if, there was no untoward incident within the meaning of Section 123(c) of the Railways Act.

(27) The said section becomes applicable only if there is an untoward incident. Here it has already been observed that there has been no untoward incident. Even assuming for a moment that this was the case of an untoward incident, even then since the deceased

did not hold any ticket, he will not be a passenger under Explanation (ii) to Section 124-A and therefore, the appellant are not entitled to any compensation under the said section.

(28) Coming to the decisions relied upon by the learned counsel for the Appellants, I am of the view that the decision of this Court in the case of Megha w/o Bijay Thakur and others ..Vs.. Union of India (supra), is distinguishable on facts inasmuch as in that case, it has been held on the basis of evidence that the deceased was a *bona fide* passenger who was travelling in the train and fell down from the running train and the ticket might have been lost during the accident. In the facts of the present case, this Court has already observed that the deceased has not undertaken any journey by any train. The evidence in the present case, nowhere suggests that the deceased was travelling from one place to another. The Tribunal, in my view, has considered the nature of the injuries only to corroborate its finding that the deceased may have been run over or hit by a running train. Based on the circumstantial evidence including the nature of the injury that the Tribunal has come to the conclusion of a possibility of a run over. As observed, this would not be a case of an untoward

incident or an accidental fall down from a train carrying passengers as the evidence nowhere suggests that the deceased undertook any train travel.

(29) The decision of this Court in the case of Smt. Ranjana Wd/o Santosh Devtale and Ors. ..Vs.. Union of India (supra), also in my view would not apply to the facts of this case as there is no finding in the present case that the evidence of the railways is not reliable. In my considered view, mere filing of an affidavit without relevant facts would not amount to discharge of a burden by the Appellants. The Appellants have to file an affidavit of a relevant facts : facts which show that the ticket was either purchased by or for the deceased or that the accident was witnessed and some details thereof have been furnished. For example, if the mother of the deceased would have stated in her affidavit that someone she knew had witnessed the accident and called her giving graphic details, then such an affidavit could be considered to be an affidavit on relevant facts, but simply stating that the body was found and that he had gone for a job along with his cousin without the cousin's affidavit or his evidence and that too at 7:00 p.m. in the evening, coupled with the uncontroverted RPF

report that the deceased would regularly cross the tracks, his village being nearby, goes to suggest that the affidavit is not on relevant facts to prove the case of the Appellants with respect to the deceased's death in an untoward incident under Section 123(c) of the Railways Act or under law settled by any of the decisions of this Court or the Apex Court. The evidence has to be cogent and such that a reasonable person of ordinary prudence could draw a conclusion that the circumstances suggest that the deceased was travelling by the train and had met with an accident in the course of such a journey. Merely, a statement that the railways have not disproved the facts, cannot be a ground to accept the affidavit of the Appellants to shift the burden on the railways.

(30) Coming to the decision of this Court in the Case of Mr. Sadashiv Ramappa Kotiyan ..Vs.. Union of India (supra), in my view, this case is also clearly distinguishable on facts. That is because in that case, the deceased was found to be a *bona fide* passenger travelling by a local train on the strength of a 2nd Class ticket, whereas in the facts of the present case, it has already been observed that the deceased did not undertake any journey and was not also found to

have a ticket on his body during the personal search conducted at the behest of the Railway Authorities.

(31) Coming to the decision of the Calcutta High Court in the case of Suchitra As (Ash) ..Vs.. Union of India (supra), relied upon by the learned counsel for the Appellants to submit that although, there may be a number of theories as to how the deceased suffered death, but the theory which is in consonance with the evidence on record has to be accepted. In my view, even this decision would not lend any assistance to the case of the Appellants, inasmuch as, that was a case, where it was held that the deceased had a *bona fide* ticket in the form of a monthly ticket with an identity card, whereas that is not the case here. Though, it must be stated here that the principle canvassed by the learned counsel relying upon this decision cannot be disputed ; the theory which is in consonance with the evidence on record has to be accepted.

(32) What needs to be considered in the facts of the present case, is the overwhelming lack of direct or circumstantial evidence to support the theory that the deceased actually undertook a journey by the said train, or any train for that matter. When the

evidence or lack of it on a logical and rational application of mind, suggests that it was highly unlikely or improbable that the deceased had undertaken the journey as claimed resulting in the accident and the death, the question of granting compensation cannot arise. It must be said at the cost of repetition that not every case of death or finding of a dead body in the premises of the Railway Administration, would entitle a dependent to succeed in a claim against the Railway Administration inasmuch as, the provisions of Section 124-A, although imposing an absolute/strict liability upon the railways, clearly requires the occurrence of an untoward incident as defined in the Railways Act, not falling within the five exceptions cited in the proviso therein as a condition precedent for claim under that section.

(33) It is not unknown that people, who live close by to railway tracks regularly cross those railway tracks for one reason or another during the course of their daily affairs, but that cannot saddle the Railway Administration with a liability for compensation in the event a person gets hit or run over by train, while doing so. A perusal of the statements, evidence and depositions, nowhere suggests that the deceased had undertaken a journey. The circumstances as observed by

the Tribunal suggest that although the deceased was hit by a train, but he cannot be said to have met with an accident during a journey undertaken by him by a train carrying passengers. The Railways Act, though a beneficial legislation, provisions whereof have undoubtedly to be construed liberally and not narrowly, however, cannot be used to allow claims in all cases, where the death occurs in a railway premises by casting a negative burden on the Railway Administration. There is no such presumption in Section 124-A of the Railways Act, which needs to be rebutted by the Railway Authorities.

(34) In view of the above discussion, I do not find any merit in this appeal. There is no perversity or error apparent in the decision of the Tribunal.

(35) The appeal is **dismissed**. No costs.

[ABHAY AHUJA J.]

Prity