

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

FIRST APPEAL NO.1311 OF 2018

APPELLANTS : 1. Ramesh s/o Soman Markhande,
(On R.A.) age about 42 years, Occ. Labour,
2. Smt. Sukham w/o Ramesh Markhande,
Age about 39 years, Occup. Housewife,

Both R/o Ward No.32, Lakholi
Baigapara, Tah. and Dist. Rajnandgaon.

//VERSUS//

RESPONDENT : Union of India,
(On R.A.) through the General Manager,
South East Central Railway,
Bilaspur (C.G.).

Shri R.G. Bagul, Advocate for the Appellants.
Shri N.P. Lambat, Advocate for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 11th FEBRUARY, 2022.

ORAL JUDGMENT

01] This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987, assailing the judgment dated 18.01.2018, whereby learned Member, Railway Claims Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as the "Tribunal") dismissed the Claim Petition No.OA (Ilu)/NGP/2016/0027 filed by the Appellants, who are the parents of the deceased Vilash Markhande.

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

The Appellants, who shall be hereinafter referred as the Claimants, had filed a claim petition before the Tribunal alleging that the deceased Vishal Markhande, his grand-mother and cousin were travelling from Kalumna to Rajnandgaon by Train No.68744 with valid train ticket. It was alleged that the deceased Vishal Markhande fell down from the train due to heavy rush and died as a result of the injuries sustained in the said untoward incident. The Claimants, therefore, claimed statutory compensation by filing Claim Petition under Section 124-A of the Railways Act, 1989 (for short "the said Act").

03] The Respondent denied that the death of the deceased was caused in an untoward incident. It was alleged that the deceased was standing on the foot-board and that the death was due to his gross negligent act. The Respondent, therefore, denied its liability to pay any compensation to the Claimants.

04] The Tribunal, after considering the evidence adduced by the respective parties, held that the deceased was a *bona fide* passenger. The Tribunal however held that the deceased was standing on the foot-board of the train, which is a penal act under Section 156 of the said Act. The Tribunal held that the person who travels on the foot-board cannot be

termed as a passenger. The Tribunal has further held that travelling on the foot-board is a gross violation of safety rules. The death of the deceased was due to his own criminal negligence. Hence, the Respondent is not liable to pay the compensation.

05] Shri R.G. Bagul, learned counsel for the Claimants submits that the deceased was a *bona fide* passenger. He fell from a running train due to heavy rush and sudden jerk. He further submits that the report prepared by the Railway Police does not in any manner indicate that the deceased had sustained injuries due to his own negligence or criminal act. He, therefore, contends that the Tribunal has erred in holding that the deceased was not a passenger and that he had expired as a result of his own negligence.

06] *Per contra*, Shri N.P. Lambat, learned counsel for the Respondent submits that the deceased was standing on the footboard and he fell down from a train due to his own negligence. He, therefore, contends that the Railway Authority is not liable to pay any compensation to the Claimants.

07] 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.

08] The evidence of the Claimant No.1-Ramesh Markhande reveals that on 05.05.2015, he purchased train tickets for train travel from Kalumna to Rajnandgaon. He with his mother, nephew and son Vishal Markhande boarded on Train No.68744. There was rush in the train. His mother sat in between the two seats and he and his son were standing near the door. He has deposed that when they reached Kachewani Railway Station, several passengers entered the train. His evidence indicates that after some while, when the train started moving towards the next station, the deceased fell from the train. The deceased was taken to the KTS Hospital, Gondia by the same train, but he was declared dead.

09] The evidence on record amply proves that the deceased was travelling by Train No.68744 under a valid train ticket. The deceased does not cease to be a passenger within the meaning of Section 2(29) of the said Act, merely because he was standing on the foot-board. The finding that the deceased was not a passenger is perverse and cannot be sustained.

10] It is not in dispute that the deceased, who was travelling on a valid ticket, fell down from a running train and died due to the injuries sustained in the said incident. The Respondent has sought to avoid liability of paying compensation under Section 124-A of the said Act on the ground that the deceased died due to his own negligence. The Respondent has

examined D.N. Singh, who was working as a Guard on Passenger Train No.68744. He claims that on 05.05.2015, the train left Itwari Station at about 14:40 hrs. and arrived at Kachewani at 17:30 hrs. and left at 17:33 hrs. He states that after passing advance starter signal in yard, he saw one boy, who was standing on the foot-board of the train, falling from the train.

11] It is to be noted that this witness had not given a report alleging that the deceased was standing on the foot-board. The preliminary report indicates that the train had stopped after fall of the deceased. The contention of this witness that he had seen the deceased standing on the foot-board of the train and that he had stopped the train is an afterthought and cannot be believed.

12] The evidence on record sufficiently proves that the deceased, who was travelling by the train had fallen down from a running train due to heavy rush of passengers. Such accidental fall cannot be construed as self inflicted injury. In the case of Jameela & Ors. Vs. Union of India (UOI) reported in AIR 2010 SC 3705, the Hon'ble Apex Court has observed thus:

“9. ... Negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in Clause (c) to the proviso to section 124-A. A criminal act envisaged under Clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the

compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the railway must fail even after assuming everything in its favour.”

13] Thus, even if it is assumed that the deceased was standing at the open door of the compartment of the running train, such act would not absolve the Respondent of its liability to pay compensation under Section 124 of the said Act.

14] Under the circumstances and in view of the discussion (supra), the impugned judgment cannot be sustained. Hence, the Appeal is allowed. The impugned judgment is quashed and set aside. It is held that the Claimants are entitled for compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only).

15] The Claimants shall furnish the bank account details to the Respondent within a period of two weeks. The Respondent to deposit the compensation in the bank account of the Claimants in equal proportion within two months thereafter.

16] The Appeal stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)