

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

FIRST APPEAL NO. 67 OF 2018

1)	ASHA W/o. VASANTA KAJALE	)	
	Aged : 46 years, Occupation : Housewife	)	
		)	
2)	VASANTA S/o. KASHIRAM KAJALE	)	
	Aged : 50 years, Occupation : Labour	)	
		)	
3)	SHYAM S/o. VASANTA KAJALE	)	
	Aged : 23 years, Occupation : Student	)	
		)	
	All R/o. At Post Wakodi, Village Wakodi,	)	
	Taluka Malkapur, District Buldhana 443101	)...APPELLANTS	

V/s.

UNION OF INDIA	)	
Through the General Manager, Central Railway,	)	
CSTM, Mumbai	)...RESPONDENT	

Mr. R.G.Bagul h/f. Mr. P.S.Kshirsagar, Advocate for the Appellants.

Smt. N.G.Chaubey, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.

**RESERVED ON : 22nd SEPTEMBER 2022
PRONOUNCED ON : 19th DECEMBER 2022**

JUDGMENT :

1 This is an appeal filed under Section 23 of the Railway Tribunal Act, 1987, by the father, mother and brother of the deceased Ganesh

Vasanta Kajale, being aggrieved by the judgment passed by the Railway Claims Tribunal, Nagpur dated 22nd November 2016 dismissing the claim of the applicants.

2 Earlier, the appellants had filed claim application before the Railway Claims Tribunal on the death of Ganesh, purportedly, in an untoward incident that occurred on 8th February 2014. It is the claim of the appellants that the deceased Ganesh, having deep faith in Sant Gajanan Maharaj of Shegaon, left his home at Vakodi on 8th February 2014 to go to Shegaon for darshan of Gajanan Maharaj. That, during his return journey, he accidentally fell down in between Shegaon and Jalamb station, District Buldhana, near kilometer 545/33 and died on the spot, in an untoward incident.

3 It is submitted that the deceased Ganesh did not inform anybody that he was going to Shegaon. So his family members were waiting for his return but he did not return even on the next day. Thereafter, his family members and his father and his relatives tried to search him but did not find him anywhere. However, in the evening of 9th February 2014, one person in the village came to the house of the

deceased and informed that on 8th February 2014, he had seen Ganesh sitting in the auto beside the railway station at Shegaon. It is submitted that, after this, on 10th February 2014, the father and a cousin of the deceased Ganesh left for Shegaon on motorcycle in search of Ganesh. They enquired at Nandura bus stand, Khamgaon railway station and many other places and finally reached Shegaon. After reaching Shegaon, the father and cousin enquired at the temple, Anand Sagar and many hotels showing the photograph of the deceased Ganesh but they did not get any clue. It is submitted that, at that time, the cousin of the deceased, Santosh Kajale, informed that one person from Shegaon had informed him that, he had found documents besides the railway line in between Shegaon to Jalamb, in a pouch which belongs to the deceased. That, there was PAN card bearing the name of Ganesh, his Driving license, his ATM card of Bank of India as well as IDBI bank, his Election card, his Identity card of NCC Matoshree Cotton Pvt. Ltd., Nandura Road, NH6 Malkapur and one sim card of Reliance company was found on him, although no journey ticket was recovered. It is submitted that, thereafter, the father and cousin visited the spot where the documents were found, and thereafter they went to the railway police station and City police,

Shegaon for enquiry, after which, they received the information that on 8th February 2014, there was an accidental death which occurred at Shegaon railway station. Thereafter, the police sent them to Yashwant photo studio, Shegaon to see the photos of the deceased. Both of them went to the said photo studio and identified the photographs of the deceased Ganesh. Upon return, one Subhash Kharate informed that on 8th February 2014, he had met Ganesh at the temple of Gajanan Maharaj and he accompanied him upto the railway station Shegaon and purchased a railway ticket of Rs.45/- for him and boarded him in the Amravati – Mumbai Express in a general bogie and then left for his sister's home, as the electrical fitting work there was not complete. It is submitted that, thereafter, Prakash Kharate also gave his statement on 14th February 2014 at Shegaon Police Station. On this basis, the appellants submitted their claim petition before the Railway Claims Tribunal at Nagpur.

4 Mr. Bagul, learned counsel for the appellants, submits that the appellants are entitled for compensation on account of the death of Ganesh, who accidentally fell down in between Shegaon and Jalamb station near kilometer 545/33 and died in an untoward incident. He

submits that, as all the police papers clearly indicate that it is a railway accident and his postmortem report also clearly mentions the severe crush injuries and that the death was due to railway cutting and due to injury to vital organs, this is a clear case that the deceased Ganesh fell down from a running train. He would submit that despite such clinching evidence, the Railway Claims Tribunal has rejected the claim petition of the appellants holding that the incident is not an untoward incident within the meaning of Section 123(c) of the Railways Act.

5 The tribunal held that in order to avail of compensation under the provisions of Section 124A of the Railways Act, the person who has been killed in an untoward incident, should have been a passenger as defined under Section 2(29) of the Act, as a person traveling with a valid pass or ticket. It is only when the fact of the injured/deceased being a bonafide passenger of the train is established, the question of payment of compensation arises, in case the incident is held to be an untoward incident. The tribunal, therefore, held that, since no ticket was found on the body of the deceased, the first requirement for the applicants or the appellants to prove that the deceased was a bonafide passenger of the train, was unproved.

6 Further, the tribunal, on the basis that the body of the deceased was cut into two pieces, came to a conclusion that the deceased was run over by a train on 8th February 2014. The tribunal observed that there was no eye witness to the incident. The father of the deceased came to know of the incident after three days, after he received a call from an unknown person of Shegaon, after which he rushed to Shegaon. On the basis that the father of the deceased did not state when his son came from Aurangabad, where he was working, nor could he state the name or number of the train or when he had gone to Shegaon or the name and number of the train or when he boarded from Shegaon, the Tribunal came to a conclusion that the testimony of the father of the deceased being AW1 did not inspire any confidence and rejected the said evidence.

7 With respect to the testimony of Subhash Kharate, being AW2, the Tribunal rejected the testimony as not inspiring any confidence on the basis that he came to know of the incident only after 4 to 5 days; that, he did not call Ganesh's father informing him the purchase of the journey ticket for the deceased Ganesh; that he gave his statement only when the father of the deceased had taken him to the police

station. That, he informed about purchase of the journey ticket for the deceased only on 14th February 2014.

8 The tribunal, while recounting the facts, that although the incident took place on 8th February 2014, it is only in the evening on 9th February 2014, that one person in the village came to the house of the deceased and informed deceased's father that on 8th February 2014, he had seen Ganesh sitting in an auto besides the railway station at Shegaon, and that the father and cousin of the deceased went searching for Ganesh only on 10th February 2014, observed that the same creates a doubt about the story of the applicants. Based on the above, the tribunal rejected the claim made by the appellants which has necessitated the filing of this appeal.

9 I have heard the learned counsel for the parties and with their able assistance, I have perused the record and proceedings in the matter and also given my thoughtful consideration to the facts and pleadings herein. Before proceeding further, it would be useful to set out some of the provisions of the Railways Act as under :

“2(29) “passenger” means a person travelling with a valid pass or ticket.”

“123(c) “untoward incident” means -

- (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of Section 3 of Terrorist and Disruptive Activities (Prevention) Act, 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.”*

(emphasis supplied)

*“124A **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 purpose 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.*

10 Also before proceeding further, it would be pertinent to set out the relevant paragraphs of the decision in the case of **Union of India vs. Rina Devi**¹.

***"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'.....*

***17.4** We thus hold that 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 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 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."*

(emphasis supplied)

¹ AIR 2018 SUPREME COURT 2362

11 As can be seen, the Supreme Court has observed that mere presence of a body on the railway premises will not be conclusive to hold that the injured or deceased was a bonafide passenger, for which claim for compensation would be maintained. However, in the same breath, the Supreme Court also observes that mere absence of ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. The Apex Court goes on further to observe that the 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.

12 Since Ganesh did not inform anybody that he was going to Shegaon, obviously, the father could not have known the name or number of the train or when Ganesh had gone to Shegaon or the name or number of the train when he boarded from Shegaon. Also, to ask the father as to when Ganesh came back from Aurangabad would also be an irrelevant question with regard to the facts involved in this case. Therefore, to reject the father's (AW1) testimony as not inspiring confidence on this basis, in my view, is clearly erroneous.

13 A perusal of the statement by Subhash Prakash Kharate being AW2 as well as his affidavit in lieu of examination-in-chief and his cross would indicate that he had gone to Gajanan Maharaj temple at Shegaon on 8th February 2014 where he had met Ganesh who was doing a job at Aurangabad and they had met after a long time. AW2 has also stated on oath that, after that, Ganesh informed him that he had to board the train and so he accompanied Ganesh to the railway station. It is stated in the affidavit that it was around 4 O' Clock in the evening he purchased his platform ticket and a ticket of Rs.45/- of the Amravati-Mumbai express after which they went on to platform no.1 and he boarded Ganesh in the general compartment of the said train. Thereafter, on departure of the said train, he went to the house of his sister. When he met Ganesh's father, he told him that he had met Ganesh at Shegaon and boarded him in the Amravati Mumbai express by purchasing the railway ticket and that he had lodged the statement with the Railway Police Station, Shegaon on 14th February 2014.

14 In my view, the Tribunal has erred in rejecting the testimony of Subhash Kharate as not inspiring any confidence, on the ground that he came to know of the incident only after 4 to 5 days and did not call

Ganesh's father informing him of the purchase of the journey ticket, and that he disclosed this only in his statement taken on 14th February 2014, and that too, when Ganesh's father took him to the police station, which he ought to have done on his own. To impute motives to an important witness without any evidence and then to reject such testimony, in my view, is completely erroneous.

15 It is not in dispute that Ganesh went to Shegaon without informing anybody. Because he did not come back on 8th February 2014 and again on 9th February 2014, the family, after waiting till 9th February 2014 evening, went in search but could not find him. Then someone informed that they had seen Ganesh sitting in an auto beside the railway station at Shegaon; what is wrong or suspicious in this conduct. It is very natural for a family to wait for their near and dear ones to come back after a reasonable time, but when the person does not come back, it is a natural anxiety on the part of the family members to go looking for their dear one. It is surprising that the tribunal is looking at these facts in a mechanical and insensitive manner, rather than appreciating the evidence at hand with the empathy and consciousness, which one ought to have demonstrated in

cases like these. In my view, therefore, rejecting the claim on this basis, is erroneous.

16 On the basis of the principles settled by the Supreme Court in the case of **Union of India vs. Rinadevi (supra)**, once the affidavits with respect to relevant facts have been filed, then the burden would shift on the railways to rebut the same. The affidavits of AW1 and AW2 suggest that a ticket was purchased for the deceased Ganesh. Therefore, the initial burden has been discharged. Now, it is for the railways to negative such a claim by adducing evidence to the contrary. It is quite possible that the ticket that had been purchased for the deceased may have been lost. Therefore, as observed by the Supreme Court in **Union of India vs. Rina Devi (supra)** the mere absence of a ticket with the deceased Ganesh, in our view, cannot be the sole ground to negative a claim that Ganesh was a bonafide passenger.

17 The DRM Report on pages A-23 and A-24 of the Record and Proceedings would also suggest in its conclusion that the deceased Ganesh was traveling by the Amravati Mumbai express and the death

of the deceased has occurred during his journey by Amravati Mumbai express from Shegaon to Malkapur by falling down from a running train and getting run over.

18 The conclusion also records that on the basis of the complete inquiry and the received documents as well as the statements recorded and the investigation by the railway police force that the deceased Ganesh was either sitting or standing near the open door of the coach in complete violation of the directions and due to his negligence and carelessness, he endangered his life and lost his balance and fell down from the train and got run over. That, therefore, the deceased was himself responsible for his death and the railway authorities or the railway administration was not responsible for the same. That, therefore, the claimants viz. the appellants herein were not entitled to any compensation, in my view, has no basis.

19 The postmortem report at A39 of the Record and Proceedings also suggests that the death is due to railway cutting as the body was divided into two parts.

20 There is no doubt from the statements, the affidavits and the depositions that the deceased died due to a railway accident, though there is no eye witness or direct evidence, the plethora of circumstantial evidence would suggest that the deceased had fallen down from the train and got run over by it. Just because there is a possibility that death may have occurred due to a run over by the train cannot be the sole basis to decide whether the same was not an untoward incident. As observed earlier, the deceased had an accidental fall from a running train and thereafter, if he may have been run over and died, that cannot be used to deny the factum of an accidental fall.

21 At this stage, the decision of the Supreme Court in the case of **Union of India vs. Prabhakaran Vijaya Kumar and Others**² is worth adverting to.

22 In the facts of that case, the Supreme Court was of the opinion that it would not really 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. According to the

² 2008 (2) T.A.C. 777 (S.C.)

Supreme Court in either case, it would amount to an accidental falling of the passenger from the train carrying passengers and would be an untoward incident as defined in Section 123(c) of the Railways Act. In the facts of this case also, it would not make any difference if the death of the deceased had taken place either by a run over, which occurred after the falling down or whether it occurred simply by falling down from a running train. As held in the case of **Union of India vs. Prabhakaran Vijaya Kumar and Others (supra)**, since the provision for compensation in the Railways Act is a beneficial piece of legislation, the said Section 124A should receive a liberal and wider interpretation and not a narrow or a technical one. Infact, the Supreme Court goes on to say that the interpretation which advances the object of the statute and serves its purpose should be preferred. As observed by the Supreme Court in the said case, 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. Borrowing the language of the Apex Court, 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 the poor and middle class people from getting compensation under the Railways Act. A purposive and not a literal interpretation should be given to the expression. Therefore, in my view, the expression 'accidental falling of a passenger from a train carrying passengers' includes an accident of the nature described in this case.

23 The Supreme Court has in **Union of India vs. Prabhakaran Vijaya Kumar and Others (supra)** also interpreted the provisions of Section 124A of the Railways Act. The Apex Court clearly observed that the accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A and therefore in its opinion the case was clearly covered by the main body of Section 124A of the Railways Act and not its proviso. In the facts of this case as well, neither it has been claimed by the Railways nor the tribunal has held that clauses (a) to (e) of the proviso to Section 124A apply to the facts of this case. As also observed by the Supreme Court that Section 124A lays down strict liability or no fault liability in case of railway accidents, and therefore, if the case comes within the

purview of Section 124A, then it is wholly irrelevant who was at fault. Therefore the conclusion of the railway authorities in the report of the DRM that the deceased had been negligent would really have no meaning. Moreover, despite finding that Ganesh would have lost his balance and fallen down from the train, the DRM Report concludes that the same was due to his negligence and carelessness. This, in my view, is completely fallacious as the circumstantial evidence nowhere suggests his negligence or carelessness. In my view, therefore, Ganesh died in an untoward incident. Infact, in the case of any self inflicted injury as observed by the Supreme Court in the case of **Union of India vs. Rinadevi (supra)** as quoted in paragraph 16.6 above, it is very important for any such self infliction to have an intention to do so on the part of the doer. Clearly, that intention does not come out anywhere in the order of the tribunal or anywhere in the depositions or the papers, records and proceedings produced before me.

24 In the light of the above discussion, I am of the view that the deceased being a bonafide passenger, died in an untoward incident and therefore, the appellants would be entitled to compensation under Section 124A of the Railways Act.

25 In the circumstances, the impugned judgment dated 22nd November 2016 passed by the Railway Claims Tribunal, Nagpur, in Claim Application No.OA (II u)/NGP/2014/0107 deserves to be set aside and is hereby set aside.

26 The appellant would be entitled to a claim of Rs.8,00,000/- (Rupees Eight Lakhs Only) as compensation in accordance with the prevailing law.

27 The railways are directed to pay the appellants a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only).

28 The amount of compensation be distributed equally amongst the appellants.

29 The said amount shall be deposited in the respective savings bank account of claimants/appellants after verification of identity and bank details within a period of six weeks.

28 The appeal is allowed in above terms. No costs.

(ABHAY AHUJA, J.)