

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

FIRST APPEAL NO. 198 OF 2021

APPELLANTS : 1. Rukminibai wd/o Angad Keware,
(Ori. Claimant on R.A.) Age 40 years, occu. Household,
2. Kailash s/o Angad Keware,
Age about 22 years, Occp. Agri.
3. Vilas s/o Angad Keware,
Age 21 years, Occu. Labour
All R/o Anandwadi, Tq. Partue,
Distt. Jalna

--VERSUS--

RESPONDENT : Union of India,
(Ori. Resp. on R.A.) Through General Manager, South
Central Railway, Secunderabad.

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

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 22nd FEBRUARY, 2022.

ORAL JUDGMENT

This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987, assailing the judgment dated 05.05.2016 in Claim Application No.OA(IIu)/NGP/2012/0210, whereby the Railway Claims Tribunal, Nagpur has dismissed the claim application filed by the Appellants.

2. The brief facts, necessary to decide this appeal, are as under :

The Appellant No.1 is the widow and the Appellant Nos.2 and 3 are the children of the deceased Angad Keware. These Appellants, who shall be hereinafter referred to as the Claimants, filed a Petition under Section 124-A of the Railways Act, 1989 (hereinafter referred to as the "Railways Act"), alleging that on 23.12.2011, the deceased Angad Keware was traveling from Ranjani to Partur by Kachiguda-Manmad Down Passenger Train No.561 under a valid Train Ticket bearing no.00203. It is stated that the deceased fell down from a running train on loop line of Platform No.1 of Ranjani Railway Station. The Claimants claimed that the deceased was a *bona fide* passenger and that his death was caused in an untoward incident. The Claimants therefore claimed statutory compensation under Section 124-A of the Railways Act.

The Respondent contested the claim on the ground that the deceased was not a *bona fide* passenger and that his death was not caused in an untoward incident. The Respondent stated that the

deceased was holding a train ticket of Train No.57550, which was Aurangabad-Hyderabad Train, whereas he had come under the Train No.561, which was proceeding from Ranjani to Partur. The Respondent therefore denied its liability to pay any compensation to the Claimants under Section 124-A of the Railways Act.

The Tribunal after considering the evidence on record held that the ticket found on the dead body of the deceased was for Train No.57550 and the deceased came under the Train No.561. The Tribunal also held that the deceased was not holding a valid ticket for Train No.561. The Tribunal therefore concluded that the deceased was not a *bona fide* passenger and that his death was not caused in an untoward incident. The Tribunal, therefore, dismissed the Claim Petition filed by the Claimants. Being aggrieved by this order, the Claimants have filed this appeal.

3. Shri. R. G. Bagul, learned Counsel for the Claimants submits that the accident was not witnessed by any person. He submits that the deceased was admittedly found in possession of a valid train ticket for train journey on

the relevant date i.e. on 23.12.2011. He further submits that the Police record clearly indicates that the deceased Angad Keware had come under the Train No.561. He submits that the case of the Claimants is not covered by the proviso to Section 124-A of the Railways Act. He submits that it could be a case of boarding a wrong train, and hence, the case of the Claimants will come within the purview of untoward incident. Relying upon the decision of Punjab and Harayana High Court in **FAO No.5696 of 2009 (Budho Devi and Others .vs. Union of India)**, he submits that “when a person has purchased a valid journey ticket and he is waiting for the train, he should be considered to be a *bona fide* passenger. Even if something happens while he is at the railway platform waiting for the train, the said act would be covered within the definition of untoward incident”.

4. Shri. N. P. Lambat, learned Counsel for Respondent submits that though, it is claimed that the deceased was traveling from Ranjani to Partur, the train ticket was for Train No.57550, which was proceeding from Aurangabad to Hyderabad in opposite direction. He submits that the deceased had come under Train No.561. It is not in dispute that the deceased was not holding any valid train ticket for Train No.561. He therefore contends that the

deceased was not a *bona fide* passenger and that his death was not caused in an untoward accident.

5. I have perused the record and considered the submissions advanced by learned Counsel for the respective parties. The only question for my consideration is whether the deceased Angad Keware was a *bona fide* passenger and whether his death was caused in an untoward incident.

6. Before advertng to the facts of the case, it would be relevant to refer the provision under Section 124-A of the Railways Act, which provides for compensation on account of untoward incidents. Section 124-A reads thus :

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 incident.

7. The term “untoward incident” is defined under Section 123(c) of the Railways Act and the same reads thus :

123. Definitions.- In this Chapter, unless the context otherwise requires.

- (a) and (b)
- (c) Untoward Incident
 - (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; 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.

8. A plain reading of this provision would indicate that the Railway Administration is under obligation to pay compensation under Section 124-A for loss occasioned by the death of, or injury to, a passenger due to any of the acts specified in Clause 1 and 2 of Section 123(c) of the Railways Act. The Railway Administration is absolved of its liability of paying compensation only when the passenger dies or suffers injury due to the acts specified in Clauses (a) to (e) to the proviso to Section 124-A of the Railways Act.

9. In the instant case, the evidence of AW-1 Rukminibai wd/o Angad Keware, reveals that about 7 to 8 days prior to the incident, she and her husband had been to Karadgaonwadi to collect Cotton. On 23.12.2011, her husband told her that he was going to Anandwadi to meet their son. She later learnt that her husband came under the train and died as a result of the injuries sustained in the said incident.

10. AW-1 had not witnessed the incident. Nevertheless, she has placed on record the investigation report. A perusal of these records indicate that Train Ticket No.00203 of Train No.57550 of Aurangabad-Hyderabad Train

was found on the body of the deceased. The records further indicate that the deceased had come under the Train No.561. Accidental Death report records that the deceased, who was traveling by Train No.561, fell down from the train and got cut and died on the spot. Preliminary report also records that the deceased had fallen from the running Train No.561 from Kachiguda-Manmad Passenger Train. The inquiry report also indicates that the deceased had fallen from Train No.561.

11. The material on record indicates that the deceased was holding a valid train ticket for Train No.57550. He had either boarded a wrong train i.e. Train No.561 or he had purchased a ticket for a wrong train. He fell down from Train No.561 and died as a result of injury sustained in the said incident. The Respondent was unable to prove that the case is covered by any of the exceptions i.e. the deceased had died as a result of suicide or self-inflicted injury or due to his own criminal act, etc., as provided in proviso to Section 124-A of the Railways Act. In the absence of such evidence, the Railway Administration cannot be absolved of its liability solely on the ground that the deceased had boarded a wrong train or purchased a ticket for wrong train.

12. Considering the facts and circumstances of the case, in my considered view, the Tribunal has erred in holding that the deceased was not a *bona fide* passenger and that his death was not caused in an untoward incident. Under the circumstances, the impugned judgment cannot be sustained.

13. Hence, the appeal is allowed. The impugned judgment is quashed and set aside. The Respondent is directed to pay the compensation of Rs.8 lacs to the Claimants within a period of 8 weeks from the date of this order. The Claimants to furnish the details of their Bank Account to the Railway Administration within a period of two weeks. The Respondent shall deposit 50% compensation in the account of the Claimant No.1, who is the widow of the deceased and 25% each in the account of the Claimant Nos.2 and 3.

JUDGE

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