

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

FIRST APPEAL NO. 113 OF 2022

APPELLANT : The Union of India,
(Original Respondent on RA) through General Manager Central
Railway, Mumbai.

//VERSUS//

RESPONDENT : Reena D/o Kishor Kharwade, age 27
(Original Applicant On RA) years, Occ. - Service, R/o. Shivaji
Lanjewar House No.66/A, Tulsibagh
Road, Behind Kureshi House, Rahatekar
Wadi, Mahal, Nagpur,
Maharashtra – 442505.

WITH

FIRST APPEAL NO. 114 OF 2022

APPELLANT : The Union of India,
(Original Respondent on RA) through General Manager Central
Railway, Mumbai.

//VERSUS//

RESPONDENT : 1. Kishor S/o., Gajananji Kharwade, age 57
(Original Applicant On RA) years,
2. Reena D/o. Kishor Kharwade, age 27
years,
3. Sneha D/o. Kishor Kharwade, age 25
years,

4. Manisha D/o. Kishor Kharwade, age 21 years,
5. Rahul S/o. Kishor Kharwade, age 19 years,

All are R/o. Shivaji Lanjewar House
No.66/A, Tulsibagh Road, Behind
Kureshi House, Rahatekar Wadi, Mahal,
Nagpur, Maharashtra – 442505.

Mr. N.P. Lambat, Advocate for the Appellant in both Appeals.
Mr. N.R. Mankar, Advocate for the Respondents in both Appeals.

CORAM : ABHAY AHUJA, J.
DATE : 11th NOVEMBER, 2022.

ORAL JUDGMENT

These are two appeals filed by the Union of India, through General Manager, Central Railway, Mumbai, impugning the decision dated 1st September, 2021 awarding compensation of Rs.8,00,000/- in Claim Petition No.OA IIu/168/2019 (First Appeal No.113/2022) to the respondent-Reena Kharwade along with interest at the rate of 9% per annum from the date of the incident i.e. 5th January, 2019 till realization for injury of having lost her both legs and also compensation of Rs.8,00,000/- in Claim Petition No.OA IIu/169/2019 (First Appeal No.114/2022)

to the respondents along with interest at the rate of 9% per annum as dependants of the deceased mother of Reena Kharwade.

02] The factual background is that Reena Kharwade, the sole respondent in First Appeal No.113/2022, who was about to be married, being desirous of travelling from Nagpur to Pandhurna alongwith her mother for making marriage purchases, both holding valid railway tickets, boarded GT Express Train going towards Chennai instead of a train going towards Hazrat Nizamuddin, Delhi. Admittedly, the daughter and the mother boarded a wrong train going in the opposite direction. When it was realized that they had boarded a wrong train, and when the train slowed down near Ajni Railway Station, which is though not a scheduled stop for GT Express, both the mother and the daughter while attempting to deboard the moving train, slipped and fell down, as a result of which, the mother sustained injuries to which she succumbed and died and the respondent-daughter was grievously injured in both her legs resulting in double amputation. Thereafter, the two claim petitions referred to above were preferred before the Railway Claims Tribunal, Nagpur (the “Tribunal”) under Section 16 of the Railways Claims Tribunal Act, 1987 read with Section 125 of the Railways Act, 1989 (the

“Railways Act”) for compensation together with interest. Claim Petition No.OA Iiu/168/2019 was preferred by the daughter for claiming compensation for the injury of double amputation suffered by her and the other was a claim by the dependants including the daughter being Claim Petition No.OA Iiu/169/2019.

03] The Tribunal allowed the claim petitions filed by the respondents. Aggrieved by the same, the Railways are in appeal by filing these two appeals being First Appeal Nos.113/2022 and 114/2022.

04] There is no dispute on the facts in the matter. Since the basic facts in both the appeals are same, for the sake of convenience, Record and Proceedings, pagination with respect to First Appeal No.113/2022 is being referred to.

05] Mr Lambat, learned counsel for the Railways would submit that the only issue that arises for consideration of this Court is, whether the act of the mother and the daughter of whom the daughter was highly educated to first board the GT Express Train going in the wrong direction and then to alight from the running train and that too at a station not having a scheduled halt

would be a case firstly of not holding a valid ticket and secondly whether such an act would be a case of self-inflicted injury or a criminal act as per the exceptions contained in the proviso to Section 124-A of the Railways Act. He would submit that the scope of self-inflicted injury in the Railways Act cannot be placed in a narrow compass, but has to have a wide connotation. He would submit that the cross-examination of the respondent (A-79 of the Record and Proceedings in First Appeal No.113/2022) clearly indicates that the Respondent has studied up to Master of Computer Application; that being so highly qualified, the Respondent was intelligent enough to understand that the train which they got into was not the train going towards Pandhurna, but since they were negligent, they not only boarded the wrong train but despite knowing that for stopping the train, there is an arrangement in the compartment to pull the chain, if required, and despite the speed of the train being 50 to 60 kms. per hour, they alighted the running train at Ajni Railway Station, and then the Respondent fell down first and thereafter the mother fell down. Learned counsel would submit that the cross-examination of Mr. Anil Dorlikar, working as a Trackman (A-81 of the Record and Proceedings in First Appeal No.113/2022) would suggest that there was no jerk to the said train, as a result of which, the mother

and the daughter fell down. He would submit that this is a case where the respondent and her mother have invited disaster knowing fully well the consequences of having boarded the wrong train even after hearing the railway announcements and despite being an educated person. He would submit that therefore, this is a clear case of self-inflicted injury and this Court should set aside the judgment of the Tribunal.

06] Mr. Lambat relies upon a decision of this Court in the case of *Fakira Mangal Gautel Vs. Union of India (judgment dated 4th December, 2009 in First Appeal No.406/2002)* in support of his contentions and submits that in a similar case where the Appellant who was the Railway employee while attempting to board a moving train, which had no stop at Itwari Railway Station and in that process, he fell down and lost his legs, this Court observed that the Appellant used to habitually board this train, but on that unfortunate day, he could not succeed in boarding the train, this Court observed that there was no scheduled halt at Itwari Railway Station and therefore, the Appellant-railway employee was not a *bona fide* passenger and not entitled to any compensation as the Appellant endeavoured to board the moving train.

07] On the other hand, Mr. Mankar, learned counsel for the Respondents in both the appeals would submit that due to track maintenance, when the train was passing from Ajni Railway Station, there was an unexpected jerk, due to which, both the mother and the daughter fell down and grievously injured themselves. He would submit that from the cross-examination, it is also clear that, as they realized that they had boarded a wrong train, they wanted to alight the train whenever the train would stop but not particularly at Ajni Railway Station. He would submit that both the mother and the daughter had a valid journey ticket and as such were *bona fide* passengers. He would submit that the journey ticket only mentions the point of boarding as Nagpur and the destination as Pandhurna and the date, but does not mention the train for which the same is valid. He would submit that there was no intention on the part of the mother and the daughter to self-inflict, but only because they wanted to get off the wrong train, they alighted and fell down.

08] He relies upon the decision of this Court in the case of *Union of India Vs. Anuradha Narendra Deshmukh, 2013(6) Mh.L.J. 242* in support of his contention, he submits that in a similar case, this Court has dismissed the appeal of the Railways.

09] I have heard learned counsel for the parties and with their able assistance, I have perused the record and proceedings in the matter.

10] Before proceeding further, it would be apposite to set forth the relevant provisions of the Railways Act as under:

(I) Section 2(29) of the Railways Act defines “passenger” as under:

“2. Definitions.- In this Act, unless the context otherwise requires,-

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

(II) Section 123(c) of the Railways Act defines “untoward incident” as under:

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

xxxxxx

[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”

(emphasis supplied)

11] Section 124-A of the Railways Act is also usefully quoted with respect to compensation on account of untoward incident as under:

“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 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)

12] As mentioned above, facts are not in dispute. The first question that arises for my consideration is whether in the facts and circumstances of this case, the mother and the daughter can be said to be the passengers under the provisions of the Railways Act. Section 2(29) as quoted above, generally defines a passenger to mean a person travelling with a valid pass or ticket. Since we are concerned with compensation under Section 124-A of the Railways Act, the explanation to the said Section with respect to

passenger also becomes relevant. As quoted above under the said explanation “passenger” includes a person who has purchased a valid ticket for travelling by a train carrying passengers on any date and becomes the victim in an untoward incident. Nowhere the above said two provisions which define “passenger” stipulate that to be a passenger one has to hold a ticket only for any particular train on which the person is to travel. The Section merely requires a valid ticket for travelling by train carrying passengers on any date. Both the mother and the daughter were admittedly holding a valid ticket for travelling by train from Nagpur to Pandhurna on 5th January, 2019. A perusal of the ticket (A-58 of the Record and Proceedings in First Appeal No.113/2022 and A-131 of the Record and Proceedings in First Appeal No.114/2022) only indicates the point of boarding as Nagpur, destination as Pandhurna, the date of travel as 05.01.2019 and the cost of Rs.130/-; it does not indicate the train by which the person has to travel. Even assuming for a moment, for argument sake that since the GT Express Train in which the mother and the daughter got in was not going from Nagpur to Pandhurna, but was going in an opposite direction from Nagpur towards Chennai, and therefore, the tickets were not valid for the journey, however, the two above quoted definitions of passenger

under the Railways Act do not suggest this. All that is required for availing of the benefit under Section 124-A of the Railways Act is that the person should have purchased a valid ticket for travelling by train carrying passengers on any date and has become a victim of an untoward incident. There is no dispute that the mother and the daughter had the ticket, but what is being disputed is that they did not have tickets to travel from Nagpur towards Chennai; but then the fact is that they did not want to go towards Chennai but wanted to go to Pandhurna and had mistakenly boarded the wrong train. Section 124-A of the Railways Act, as observed by the Apex Court in the case of Union of India ..Vrs.. Prabhakaran Vijaya Kumar and others, 2008 (2) T.A.C. 777 (SC) is a beneficial piece of legislation and the provisions have to be interpreted in a liberal and purposive manner, such that the benefits of the provisions of Section 124-A of the Railways Act are received by the Claimants and not in a literal or restrictive manner. The mother and the daughter in this case purchased a valid ticket. They were in a train; they were travelling by a train carrying passengers on the date mentioned on the ticket and they became victims while trying to alight at Ajni Railway Station. The ingredients of the definition in the explanation (ii) to Section 124-A having been met, in my view, both the mother and the daughter

were passengers holding a valid ticket for travelling by train on 5th January, 2019 and as such both were *bona fide* passengers.

13] The next question that arises for consideration is whether they became victims of an untoward incident or not. “Untoward incident” has been defined under Section 123(c) as above. From a bare perusal of the said provision, it is clear that the incident would not fall under Section 123(c)(1) of the Railways Act. That would leave us with the provisions of Section 123(c)(2) of the Railways Act, which defines an untoward incident to mean the accidental fall in of any passenger from a train carrying passengers.

14] At this stage, it would be pertinent to refer to the decision of the Apex Court in the case of **Union of India ..Vrs.. Rina Devi, AIR 2018 SC 2362**, has held 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 Kumar³⁴ 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 de-boarding 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.”

(emphasis supplied)

15] As can be seen, the Apex Court in the case of Union of India Vs. Rina Devi (supra), clearly held that death or injury in the course of boarding or deboarding a train will be an untoward incident entitling the victim to compensation and will not fall under the proviso to Section 124-A of the Railways Act merely on the plea of negligence of the victim. In the facts of this case also the death of the mother and the injury to the daughter have occurred in the course of deboarding a train and therefore, clearly the incident is an untoward incident entitling the respondent to compensation under Section 124-A of the Railways Act.

16] It is also pertinent here to consider whether the facts of this case fall within the concept of self-inflicted injury as is claimed by the learned counsel for the Railways. As can be seen from the proviso to Section 124-A that the said proviso excludes payment of compensation under that Section, if a passenger dies

or suffers injury due to suicide or attempt to suicide or self-inflicted injury or his own criminal act or any act committed in a state of intoxication or insanity or any natural cause or disease or medical or surgical treatment. It is settled law that to deny compensation under these exceptions, it is the Railways that has to prove that the case falls under these exceptions and there is no presumption. Neither it has been alleged nor it has been proved that this is a case of a suicide or attempt to suicide or that it was an act committed in a state of intoxication or insanity or due to any natural case or disease or medical or surgical treatment, even the claim that it is a self-inflicted injury has not been proved.

17] Learned counsel has argued that despite the daughter being an educated person traveling with her mother and despite having heard the Railway announcements and despite Ajni not being a scheduled stoppage, invited disaster by jumping out of a running train and therefore, this is a case of self-inflicted injury or their own criminal act.

18] In this context, once again reference to paragraph 16.6 of the decision in the case of **Union of India Vs. Rina Devi** (supra) becomes relevant where the Apex Court has held that the concept of self-inflicted injury would require intention to inflict such

injury and not a mere negligence of any particular degree. So would a criminal act also require intention. Both the mother and the daughter wanted to go to Pandhurna to make marriage purchases and purchased the railway tickets for the said journey. It is clear from the depositions on record that they heard the public announcement of the arrival of the GT Express at Nagpur Railway Station and boarded the GT Express Train. However, after departure of the GT Express Train from Nagpur, they came to know that the train was going in an opposite direction and after enquiring from the passengers, whether or not the said train was having a scheduled halt at Ajni Railway Station, when the train was slowing down, they tried to alight and they fell down. The daughter fell down first and then the mother fell down due to which, the daughter sustained injuries in both her legs and the mother died after being grievously injured. It is also clear from the evidence of the Trackman that the train was going at slow speed. When a passenger realizes that he has got into a wrong train, the natural thought that would come to her mind is to somehow or other get off that train and that is exactly what the daughter and her mother did when they got off the GT Express Train going in the wrong direction, when the train slowed down near Ajni Railway Station. While doing so, both of them fell and the mother

died and the respondent-daughter has injured herself having both legs amputated. The entire factual matrix nowhere suggests that the mother and the daughter had any intention to self-inflict an injury upon themselves or that it was their own criminal act. From the evidence placed on record, it is clear that the respondent was about to get married on 28th January, 2019 and the unfortunate incident has occurred on 5th January, 2019. By no stretch of imagination, it can be said to be a case of self-inflicted injury or their own criminal act.

19] Coming to the decision in the case of **Fakira Mangal Gautel Vs. Union of India** (supra) relied upon by learned counsel for the Railways, I am of the view that the said decision is clearly distinguishable on facts. That was a case where a Railway employee who would habitually board the said train, which had no stop at Itwari Railway Station and on one unfortunate occasion, fell down in that process and lost his legs. Also in that case being an employee of the Railways, he was suitably compensated under the Workmen's Compensation Act. The said Railway employee had knowing fully well of the consequences self-inflicted upon himself the injury which caused the loss of his legs. That clearly is not the case here. In my view, the said decision

is not applicable to the facts of this case.

20] In the case of *Union of India Vs. Anuradha Narendra Deshmukh* (supra), where the respondent had boarded the wrong train and fell down from the said train, this Court went on to hold that the Railway Administration was liable for compensation as even though it may be a rash and negligent act, but certainly it was not a criminal act so as to exempt the Railway Administration from paying compensation. It was observed that if a passenger unguided by security personnel/ticket checkers mistakenly boarded a wrong train and on realizing his mistake due to panicky situation accidentally fell down from the train, he cannot be deprived of the compensation under Section 124-A of the Railways Act.

21] The facts in the present case are different and distinguishable. In the facts of the case at hand, the mother and the daughter were not guided into the train carrying passengers by any Railway Authority/RPF Personnel or warned or prevented from alighting/deboarding the train at Ajni Railway Station. Naturally being anxious to get off of the wrong train, they met with the unfortunate consequences and cannot be said to have intentionally or deliberately inflicted injury upon themselves. It

would be preposterous to suggest that they self-inflicted injury or committed a criminal act.

22] This, therefore, is a case of untoward incident as elucidated by the Apex Court in the case of *Union of India Vs. Rina Devi* (supra) entitling the respondents, who were *bona fide* passengers, to compensation under Section 124-A of the Railways Act.

23] There being neither any perversity nor any error in the judgment of the Railway Claims Tribunal warranting any interference, the appeals deserve to be dismissed and are hereby dismissed. No costs.

24] All to act on an authenticated copy of this decision.

(ABHAY AHUJA, J.)

Vijay