

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
FIRST APPEAL NO. 561 OF 2021

APPELLANTS 1. **ASHOK S/O BABURAO PARDE,**
(Orig. Claimants) Age about 32 years, Occ : Labour
on R.A.

2. **SUDAM S/O BABURAO PARDE,**
Age about 32 years, Occ : Labour

Both R/o Angalgaon, Tq & Dist.
Parbhani

..VERSUS..

RESPONDENT **UNION OF INDIA,**
(Orig. Resp.) through the General Manager,
on R.A. South Central Railway,
 Secunderabad. (A.P.)

Shri R. G. Bagul, Advocate for the Appellants.
Ms N. G. Chaubey, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.

DATE : 20.10.2022.

ORAL JUDGMENT :

1. Being aggrieved by the judgment dated
02.02.2017, passed by the Railway Claims Tribunal (the
“Tribunal”), Nagpur, in a claim petition for compensation,

which was rejected by the Tribunal, the sons of the deceased have preferred this appeal under Section 23 of the Railway Claims Tribunal Act, 1987.

2. Brief facts are that the deceased Dhondabai, mother of the Appellants, while going from Gangakhed by train to meet her daughter at Jalna, fell down and succumbed to her injuries. It emerges from the statement of the Gangman/Keyman, Shri Santu Raoji Sawant that on 04.10.2012 at about 07:00 hours on the day of the incident, he was checking the railway track from Gangakhed Railway Station to Kilometer No.301 and while coming back, at about 13:00 hours, he came to know from some person that one lady was lying in a dead condition between the two lines at Kilometer No.299/1-2 and that, he informed the Station Master of the same at around 15:00 hours. Thereafter the Station Master has informed the Gangakhed Police for further action, after which, the Spot Panchanama, Inquest Panchanama and Postmortem proceedings were

undertaken.

3. Thereafter, a claim petition was preferred by the Appellants on 23.11.2012 to claim compensation from the Respondent/Railway on account of the death of Dhondabai, widow of Baburao Parde, in a purported untoward incident, which occurred on 04.10.2012.

4. It is observed from the record that the deceased fell down at Kilometer No.299/1-2, Gangakhed, District Parbhani. Although, the inquest panchanama shows that in the personal search of the deceased, one Railway Ticket bearing No.63249273 Gangakhed to Jalna dated 04.10.2012, was recovered and the Tribunal has also observed that the journey ticket at A-1 of the Record and Proceedings had been purchased at 05:03 hours on 04.10.2012, but it has gone ahead and concluded that the mere recovery of a journey ticket, by itself, was not sufficient to show that the deceased was traveling from Gangakhed to Jalna by Passenger train. Further on the basis

of the statement of RW-2 viz. Amareshkumar Shrivastava, Station master, Selu that no untoward incident of accidental fall down from the said train of any passenger was noticed or occurred or reported, the Tribunal has observed that the facts stated in the claim application are in contradiction to the journey ticket. On the basis of the documents placed before the Tribunal viz., the examination of Shri. Sudam, son of the deceased as AW-1 and documents at A-1 to A-11 as well as the examination of the Keyman/Gangman as well as the Station Master of Selu, Nanded division and the DRM's Inquiry report, the Tribunal concluded that the story put forth by the Appellants was a mere concoction only to get false compensation. According to the Tribunal, the Claimants or the Appellants have on the strength of a valid railway journey ticket placed on record, which is a procured one, made the claim.

5. On the issue, whether the incident was an untoward incident, the Tribunal has observed that the onus

to prove the same is upon the Appellants. The Tribunal has observed that AW-1 Sudam, who is the younger son of the deceased, is not an eyewitness to the incident and he has no personal knowledge about the incident. That, the Appellants have neither examined any eyewitness, which could establish the circumstances under which the death of Dhondabai had occurred nor have they stated that there was any eyewitness to the incident. The fact that Dhondabai died on account of an untoward incident, the Tribunal observed, must be proved by the Appellants in order to claim compensation under Section 124-A of the Railways Act, 1989 (the “Railways Act”), and there is no such presumption that the death had occurred on account of an untoward incident, merely because the deceased has died in a train or due to sudden illness while traveling in the train. The Tribunal, further observed that, in every case of death of a passenger, which occurs during the course of journey by train, no compensation can be given unless the death has occurred on account of an untoward incident

within the meaning of Section 123(c) of the Railways Act. That therefore, the burden of proof rests on the Applicants to prove that the death of a passenger had occurred on account of an untoward incident to claim compensation under Section 124-A of the Railways Act. Observing that the same must not necessarily be proved by direct evidence and the same can be proved by circumstantial evidence, the Tribunal merely observed that in the present case, the witness AW-1 was neither direct nor a circumstantial witness.

6. The Tribunal also observed that mere finding of a dead body on the side of a track does not *ipso facto* prove that the deceased had fallen down from the train. The Tribunal observed that, if the deceased had fallen down from the train, which is nearby Gangakhed Railway Station, then surely there would be, if not few, at least one eyewitness, who would have made a statement before the Railway Authorities including the Railway Police that the

deceased had fallen down from the train. The Tribunal has also found that Train No.57553 does not go to Jalna.

7. Holding thus, the Tribunal gave a finding that the death of the deceased was not established due to an accidental fall from the train and the incident was not an untoward incident within the meaning of Section 123(c) read with Section 124-A of the Railways Act, and decided the claim petition against the Appellants, rejecting the claim for compensation made by them.

8. Aggrieved by the rejection, the Appellants are before this Court in this appeal.

9. I have heard Shri R. G. Bagul, learned counsel for the Appellants as well as Ms N. G. Chaubey, learned counsel for the Respondent/Railway and with their able assistance, I have perused the papers and proceedings in the matter.

10. Let us first examine, the issue relating to the deceased holding a valid journey ticket. The document at

A-1 of the Record and Proceedings as examined by the Tribunal and in the Tribunal's own words is a Railway Ticket bearing No.63249273 for a journey from Gangakhed to Jalna, purchased at 5:03 hours on the date of the incident viz. on 04.10.2012. This ticket has admittedly been recovered from the body of the deceased in the personal search of the deceased as recorded in the inquest panchanama at A-8 of the Record and Proceedings. Although, the younger son of the deceased viz. Sudam being AW-1 has not personally witnessed the purchase of the said ticket by his deceased mother, he has deposed to the said fact in his affidavit as well as in his cross-examination before the Tribunal. The Tribunal has observed that mere recovery of the journey ticket by itself is not sufficient to show that the deceased was travelling from Gangakhed to Jalna by passenger train. Therefore, although the Tribunal expresses its doubts on the basis that the journey ticket was of 2nd Class Mail/Express Train and that the Appellants have claimed that the deceased was having a

valid passenger train ticket, nowhere the Tribunal has found that the deceased did not have a valid journey ticket, on the basis of the facts adduced before it. The Railways, in my view, did not have any material to demonstrate that the deceased was not holding a valid journey ticket. Once a document of a valid journey ticket has been found to be in possession of the deceased, it is for the Railway Authorities to prove otherwise or to prove that the deceased was not a *bona fide* passenger. The mere fact that the journey ticket was of 2nd Class Mail/Express Train cannot be a ground to deny that.

11. The Tribunal has also concluded that mere recovery of a journey ticket was not sufficient to show that the deceased was travelling from Gangakhed to Jalna by passenger train. This, in my view, is a fallacious conclusion as after a journey ticket was found on the person of the deceased, it was for the Railway Authorities to prove the fact that the deceased was not travelling from Gangakhed

to Jalna by passenger train, which the Railway Authorities have miserably failed to do. There is also no allegation that the ticket was invalid or fake : Once the existence of a valid journey ticket is self evident, it is for the Railway Authorities to adduce evidence to demonstrate that the deceased did not travel from Gangakhed to Jalna by passenger train. Apropos the above discussion, it becomes pertinent here to refer to the definition of “passenger” contained in Section 2(29) of the Railways Act as well as that contained in Explanation to Section 124-A of the said Act, which are quoted as under:

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

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

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)

As can be seen, the definition of a passenger in general clearly means a person travelling with a valid pass or ticket. In this case, indubitably a valid ticket was found on the person of the deceased for the journey from Gangakhed to Jalna. Explanation (ii) to Section 124-A, which provides for compensation on account of untoward incident is relevant and clearly defines a passenger for the purposes of the said section to include a person, who has purchased a valid journey ticket for travelling by a train carrying passengers on any date and becomes a victim of an untoward incident. There is no evidence to establish that the deceased was not travelling with a valid ticket by a train carrying passengers on 04.10.2012 or that the said ticket was not purchased. The ticket at A-1 of the Record and Proceedings clearly indicates the number to be 63249273 for a journey from Gangakhed to Jalna on 04.10.2012,

purchased at 5:03 p.m. for Rs.44/-. Even the Untoward Incident Report from A-21 to A-22 of the Record and Proceedings clearly records that during the investigation, the aforesaid ticket was found on the deceased. Therefore, for the Tribunal to hold otherwise is clearly untenable.

12. Let us now come to the finding of the Tribunal that the death of the deceased is not established due to an untoward incident, within the meaning of Section 123(c) read with Section 124-A of the Railways Act. The Tribunal has observed that the only fact that has been proved is that one lady aged about 50 to 60 years was lying dead at Kilometer No.299/1-2 near Gangakhed Railway Station; however, that does not prove that she died because of an accidental fall from a running train. As mentioned earlier, the Tribunal has referred to the evidence of the Keyman Shri Santu Raoji Sawant being RW-1, who stated that he has not personally witnessed the incident or that the deceased was hit by any train or that she fell down from a

running train at Kilometer No.299/1-2 near Gangakhed Railway Station. The Tribunal has also referred to the evidence of RW-2 i.e. the Station Master of Gangakhed Railway Station and recorded that he was informed by the Keyman, about the dead body of unknown a lady lying on the track. It is recorded in the said evidence that he was not informed about the lady being hit by the train. Further that, it was not true to suggest that the deceased fell down at Kilometer No.299/1-2 near Gangakhed Railway Station, while performing the journey and as a result died. The Tribunal has also referred to the Statutory Investigation statements of the Guard and the Loco Pilot of Train No.57553 that between 4:30 hours and 6:35 hours on 04.10.2012, there was no information received regarding jerk, ACP, chain pulling, untoward incident or fall down of any passenger. In fact the finding by the Tribunal that Train No.57553 does not go to Jalna renders the evidence of the Loco Pilot and the Guard of the said train, which have been relied upon by the Tribunal, wholly irrelevant.

13. The Tribunal has also relied upon the DRM's report and held that although, the same was given to the Appellants, no plausible rebuttal was received in view of which, an adverse inference had been drawn against the Appellants. The Tribunal has found that the Appellants had examined only one son of the deceased and no other witness was examined. That there was no eyewitness to the incident.

14. The Tribunal observing that the genuineness and veracity of documents prepared in the ordinary course of duties by the Government Officials could not be doubted, went on to uphold the submission of the Railway Authorities that the story put forth by the Appellants was a mere concoction only to get false compensation and that the valid journey ticket placed on record was a procured one and rejected the claim of the Appellants. In my view, in the absence of any evidence to support the same, and in view of what has been observed by me in the earlier

paragraphs, it is incorrect, rather baseless on the part of the Tribunal to hold that the story is a concocted one and the valid journey ticket is a procured one. I, therefore, reject as completely misplaced and erroneous, the finding of the Tribunal that the valid railway journey ticket placed on record is a procured one only to get false compensation.

15. The Tribunal, as mentioned above, has also observed that the fact that the deceased Dhondabai died on account of an untoward incident must be proved by the Appellants in order to claim compensation under Section 124-A of the Railways Act and there is no such presumption that the death had occurred on account of an untoward incident merely because the deceased died in the train due to sudden illness, while travelling in the train. That every case of death of a passenger, which occurs during the journey by a train would not be entitled to claim compensation unless the death is occurred on account of an untoward incident, within the meaning of Section 123(c) of

the Railways Act. That the burden of proof rests on the Appellants that the death of the passenger had occurred on account of an untoward incident. The Tribunal has also observed that even though the direct evidence may not be necessary to prove the same, the same must be proved by circumstantial evidence. That in the present case, AW-1 was neither the direct nor the circumstantial witness. The Tribunal observed that if the deceased had fallen down from the train, then there surely would have been few eyewitnesses, who would have made statement before the Railway Authorities including the Railway Police of the falling down of the deceased from the train, holding that since the Appellants had failed to establish the accidental falling of the deceased, the question of untoward incident would not arise, and therefore, there would be no question of payment of any compensation to the Appellants.

16. No doubt there is no eyewitness to the incident. It is also true that no other witness was examined by the

Railway Authorities other than AW-1, who is Appellant No.2. The Keyman/Gangman has only seen the body of the deceased after receiving information that a body of one lady was lying in a dead condition between the tracks at Kilometer No.299/1-2. There is no record of any jerk, ACP, chain pulling or falling down of a passenger from train No.57553. All these may be a result of the various statements of the Keyman, Station Master, the Loco Pilot and the Guard of Train No.57553, however, what the Tribunal has failed to consider is the Crime Details Form at A-4, the Inquest Panchanama from A-8 to A-9 and the Postmortem Report from A-14 to A-17 of the Record and Proceedings. All these three documents are of the same date i.e. 04.10.2012 i.e. the date of the incident. All these three documents are very crucial part of the evidence as they are recorded by the statutory authorities on the date of the incident, which the Tribunal has failed to consider.

17. The Crime Details Form from A-4 to A-7 clearly

records in columns 5(11) and 5(12) about the “injury” and the “means”. For the injury, it records “fall down from train, while travelling by train and died” and for “means” it refers to “railway incident”. In column 6 with respect to motive of crime, it again refers to “fall down from train and died due to railway incident.” The filing of these forms is not a mere formality, but it is done by experienced personnel trained for recording of such incidents. The Inquest Panchanama at A-8 to A-9 also dated 04.10.2012 clearly records that there was serious injury to the left side s head and the right foot. The Postmortem Report at A-14 to A-17 also dated 04.10.2012 in column 5 records the supposed cause of death as “railway accident, concussion on the front of the head and the right foot”. In column 22, the cause of death is recorded as “railway accident with head injury with hemorrhagic shock”. All this material has been ignored by the Tribunal. Even the conclusion on page A-22 of the Record and Proceedings confirms that the death of the lady was due to a running train. The Tribunal has clearly ignored

this critical evidence, which suggests that the death of the deceased was due to an accident by a running train. The medical experts can always determine the cause of death due to their vast experience. When the postmortem report has clearly indicated the cause of death as railway accident, in the absence of any other evidence to the contrary brought to my notice, it would be a travesty of justice to deny a claim for compensation on a mere submission that the untoward incident as defined in Section 123(c) of the Railways Act has not been proved.

18. It is true that the burden to prove the untoward incident is upon the claimants, but, once a valid ticket has been found on the deceased and an affidavit also having been filed by AW-1 confirming the same supported by a finding by experts that the death was due to a railway accident, then just because there was no eyewitness and the Loco Pilot and Guard of a particular train that does not go to Jalna did not report any jerk, ACP, chain pulling or fall

down of any passenger cannot lead to a conclusion that the untoward incident did not take place. In the facts of this case, the burden had clearly shifted upon the Railway Administration to prove that it was not an untoward incident or that the case fell within the exceptions to Section 124-A, which burden in my view, the Railway Authorities have failed to discharge. The Railway Authorities have nowhere proved this as a case of a suicide or attempted suicide or self inflicted injury or her own criminal act or act committed in a state of intoxication or insanity or death by any natural cause or disease or any medical or surgical treatment.

19. It is also true that the nature of injury or the condition of the body cannot be the sole consideration to allow or reject a claim. The nature of injury is not the sole criterion on which this Court is basing its conclusion. This is a case where a valid journey ticket has been found on the body of the deceased, and the Railway has not been able to

prove that it was because of sudden illness while travelling in a train that Dhondabai had died or that the same was due to the exceptions referred to above.

20. In the case of *Union of India ..V/s.. Prabhakaran Vijaya Kumar and Others, 2008(2) T.A.C. 777 (S.C.)*, the Hon'ble Apex Court has observed that 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. The Hon'ble Supreme Court goes on to observe that it is well known that in our country, there are crores of people who travel by railway train since everybody cannot afford travelling by air or in a private car and by giving a restrictive and narrow meaning to the expression, we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act.

In the opinion of the Apex Court, the expression accidental falling of passenger from a train carrying passengers includes accidents when a *bona fide* passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. That a purposive and not a literal interpretation should be given to the expression.

21. It is pertinent to mention here that the Apex Court in the above case has read the word “means” in the said Section 123(c) to be “includes”. In that case also the deceased who was held to be a *bona fide* passenger was trying to get into a running train when she fell down and died. The Apex Court observing that it would not legally 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, held that either case would be an accidental falling of a passenger from a running train carrying passengers and an

untoward incident as defined in Section 123(c) of the Railways Act. The Hon'ble Court emphasized that even though two interpretations were possible to the said expression, since the provision for compensation in the Railways Act was a beneficial piece of legislation, the same should receive a liberal and wider interpretation and not a narrow or technical one. The interpretation which advances the object of the statute and serves its purpose should be preferred in the case of beneficial or welfare legislation. The Apex Court held that the accident in which the deceased died was clearly not covered by the proviso to Section 124-A. The accident did not occur because of any of the reasons mentioned in Clauses (a) to (e) of the proviso to Section 124-A and was clearly covered by the main body of the Section 124-A of the Railways Act, and not its proviso. Since Section 124-A lays down strict liability or no fault liability in case of railway accidents, if a case comes within the purview of Section 124-A, it was wholly irrelevant as to who was at fault. The following paragraphs

of Union of India ..V/s.. Prabhakaran Vijaya Kumar and Others (supra) are relevant and are quoted as under :

“14. In our opinion, 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. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling 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 poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

15. Section 2 (29) of the Railways Act defines

'passenger' to mean a person traveling with a valid pass or ticket. Section 123 (c) of the Railways Act defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act with which we are concerned states :

“124-A. 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 traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident".

16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124-A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124-A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124-A of the Railways Act, and not its proviso.

17. Section 124-A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124-A it is

wholly irrelevant as to who was at fault.

(Emphasis Supplied)

22. In the facts of this case also, neither the Railway Authorities nor the Tribunal have not found that the deceased fell within any of the exceptions to Section 124-A. Only on the basis that there was no eyewitness, who saw the deceased falling down from the train nor any other witness other than AW-1, who was examined and that none of the statutory authorities have reported that Train No.57553 had a jerk or ACP or chain pulling or untoward incident or falling down of any passenger and that Train No.57553 did not go to Jalna and on a baseless assumption that the ticket was a procured one, the Tribunal came to a conclusion that the Appellants failed to prove that this was a case of an untoward incident.

23. In the facts of the case at hand, in accordance with the principles elucidated by the Apex Court in the case of Union of India ..V/s.. Prabhakaran Vijaya Kumar and

Others (supra), that Section 124-A being a beneficial and welfare legislation, the definition of untoward incident deserves a liberal and purposive interpretation, in my view, this is a case of an untoward incident in which, the deceased Dhondabai had died. The Tribunal has merely on the basis of conjectures and surmises and on irrelevant considerations unfairly denied the claim of compensation to the Appellants, who are the sons of the deceased mother, who died in an untoward incident on 04.10.2012. The journey ticket does not mention the Train No.57553; The Tribunal has itself found that the Train No.57553 did not go to Jalna. A valid journey ticket has been found on the person of the deceased, which only refers to the point of boarding as Gangakher and the destination as Jalna and not the train name or number. It was quite possible that the deceased would have travelled by another train. Therefore even, if the Appellants have made a claim referring to a wrong train that cannot be used to deny the fact that Dhondabai was holding a valid journey ticket for

04.10.2012 from Gangakhed to Jalna and that her body was found on the tracks at Kilometer No.299/1-2 with railway accident injuries as stated in the reports of the experts and the authorities cited above.

24. In this view of the matter, the impugned decision of the Tribunal dated 02.02.2017, deserves to be set aside and is hereby set aside. The Appellants are entitled to a claim of Rs.8,00,000/- to be paid to the Appellants in equal proportion by the Respondent/Railway authorities within a period of six weeks by depositing the same in their respective savings bank account after due verification.

25. The Appeal accordingly stands **allowed** in the above terms. No costs.

(JUDGE)