

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

FIRST APPEAL NO.481 OF 2017

APPELLANTS:

ON R.A.

1. Malanbai Wd/o Shankar Dhotre,
Aged about 35 years,
Occupation : Labour.
2. Sitabai d/o. Shankar Dhotre,
Aged 13 years, Occ. Education,
3. Anil S/o. Shankar Dhotre,
Aged 12 years, Occ. Education,
4. Sachin S/o. Shankar Dhotre,
Aged 10 years, Occ. Education,

Applicants No.2 to 4 are minors
through their Natural Guardian
mother appellant no.1,

All R/o. Chinchala, Tah. Umari,
District : Nanded.

V E R S U S

RESPONDENT :

ON R.A.

Union of India,
through the General Manager,
Central Railway, C.S.T. Mumbai.

Ms. Sumesha Choudhari, Advocate for appellants.

Smt. N. G. Chaubey, Advocate for respondent-sole.

CORAM: ABHAY AHUJA, J.

DATE OF RESERVING JUDGMENT : 12/10/2022.

DATE OF PRONOUNCING JUDGMENT : 09/11/2022.

JUDGMENT :

1. Being aggrieved by the dismissal of their claim application filed before the Railway Claims Tribunal, the widow and children of one Shankar Gangaram Dhotre have preferred this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 against the judgment and order dated 28th October 2015, passed by the Railway Claims Tribunal, Nagpur. By this appeal, the appellants are seeking to set aside the said judgment and order and are seeking a compensation from the respondent Railways on account of the death of the said Shankar Gangaram Dhotre claiming that he died in an untoward incident on 4th April 2011.

2. The brief facts are that the deceased had undertaken a journey from Pandharpur to Mudkhed and boarded a train from Pandharpur along with his family. When the train reached Kurduwadi railway station, the deceased alighted to bring some water for his children. Soon thereafter, the train started moving and he tried to board the moving train and during this effort, he slipped and fell down under the train and both his legs were cut. In an injured state he was taken to the various hospitals and finally at one in Nanded where he died.

3. It is the case of the appellants that the deceased along with Malanbai – his wife, Sitabai – daughter, Anil and Sachin – sons as well as cousin brother in law of the deceased, Shri Uttam More, undertook this journey from Pandharpur to Mudkhed having a bonafide ticket which was purchased by the brother-in-law. As such, the deceased was a bonafide passenger. That at Kurduwadi railway station, he fell down while trying to re-board the train and his legs came under the train and got cut. That, this fact is substantiated by the Memo dated 4th April 2011 issued by the Deputy Station Manager, Kurduwadi at 8.30 hours, wherein it is mentioned that the guard of train no.51434 UP Pandharpur Nizamabad passenger informed through walkie talkie that one unknown person was run over by the train and his legs got cut off. That, therefore, this is an untoward incident and that appellants being dependants are eligible for compensation under Section 124-A of the Railways Act, 1989 (the "Railways Act").

4. The Tribunal rejecting the testimony of AW1 Malanbai, the widow of the deceased, as being contradictory, held that the deceased was not having a valid journey ticket in his possession and as such, was not a bonafide passenger of the train. With

respect to the journey ticket for the said journey, placed on record by the appellants before the Tribunal, it was observed that the ticket placed on record was a manipulated and a procured one. The Tribunal held that mere filing of a train ticket alleged to be of the deceased would not prove that the deceased was a bonafide passenger on the train in the facts of the case.

5. The Tribunal also rejected the claim of the appellants with respect to the incident being an untoward incident observing that if anybody attempts to board a moving train, it was nothing short of a suicidal act. It was observed by the Tribunal that the deceased tried to board the train which was already moving and had gained momentum and in normal circumstances any person would not risk his life in trying to get into a moving train which is leaving the platform and has gained momentum. This, the Tribunal held, is a suicidal act and a suicidal act could not be construed to be an untoward incident under any circumstance. The Tribunal observed that if suppose the train had just started and because of an untoward incident, death took place, then in accordance with the decision in the case of Jameela and others V/s Union of India [(2010) 12 SCC 443] may be on the facts of a case, there would be an untoward incident and compensation could be

awarded, however, if the train has gathered speed, like in the facts of the present case, it cannot be said that negligence is ordinary negligence. Holding thus, the Tribunal concluded that the deceased was not involved in an untoward incident as defined in Section 123(c)(2) of the Railways Act. Finding the deceased not to be a bonafide passenger with a valid ticket, and on the ground that the appellants not being able to prove that the death of the deceased had occurred as a result of an untoward incident, the Tribunal dismissed the claim of the appellants.

6. Ms. Sumesha Choudhari, learned counsel for the appellants would submit that the deceased had boarded Train No.51434 UP Pandharpur Nizamabad Passenger with a valid journey ticket from Pandharpur to Mudkhed on 4th April 2011. She would submit that although, it has been recorded that during the personal search of the deceased, nothing has been mentioned about recovery of the Railway Journey Ticket from the possession of the deceased, and that non-recovery of the railway ticket has been held to prove that the deceased was not having any journey ticket, the reply / statement of widow's cousin brother Shri Uttam More dated 04/04/2011 on the date of the incident at A-41 of the record and proceedings clearly records that Ticket No.16146428

for the deceased's travel from Pandharpur to Mudkhed was purchased by him. Since Shri More was travelling by the same train to Nanded, he was in the same train and has stated that during the journey when the train stopped at Kurduwadi Station, at 8.15 a.m., the deceased got down to bring water for the children and while he was returning with the water bottle, the train started moving and the deceased while trying to board the moving train, slipped and fell down. Both his legs were cut and he was grievously injured after which the train was stopped and with the help of police, he was urgently taken to the Sarkari Dawakhana at Kurduwadi for temporary treatment after which for further treatment, he was taken to Solapur and then to Nanded Hospital, when fell unconscious and upon examination at Nanded, he was declared dead before 10.30 p.m. Learned counsel submits that it is due to movement of the injured / deceased from Kurduwadi to Solapur and then to Nanded that the ticket got misplaced and was not found on the person of the deceased. She would submit that therefore, the deceased was a bonafide passenger holding a valid journey ticket and the Tribunal has erred in holding otherwise. She further submits that the Railways has not led any evidence to show that the deceased was without a

valid ticket or that the ticket placed on record is manipulated and procured one.

7. She would further submit that it is not in dispute that the Guard of Train No.51434 informed on Walkie - Talkie that one unknown person came under the train and his legs got cut.

8. Learned counsel draws the attention of this Court to document at A-73, which is the affidavit of Appellant No.1 who is the widow of the deceased, to submit that certified copy of Railway ticket had been filed. That she and her husband were going from Pandharpur to Mudkhed on 04/04/2011 and had purchased railway ticket, separately and had boarded Pandharpur to Nizamabad Passenger Train No.51434. That he fell down due to running train at Kurduwadi railway station. Learned counsel submits that the aforesaid contents remain uncontroverted by any cogent evidence.

9. Learned counsel also refers to the Inquest Panchnama at A-57 to A-58 of the record and proceedings and to Paragraph 10(vii) thereof to submit that on 04/04/2011 in the morning at Kurduwadi Station, the deceased fell and seriously injured his two

legs. She also refers to the Police Report at Page A-61 where it is recorded in response to Question 9 that in the morning on 04/04/2011, the deceased was seriously injured by the cutting of his legs after falling under a train. In answer to Question 15 it is stated that the deceased on 04/04/2011 at 8.15 a.m. fell down from train while boarding the train at the railway station and cut both the legs and was brought to Nanded Hospital and found dead after which his body was sent for post-mortem.

10. She submits that Post-Mortem Report at A-63 also refers to the cause of death as accidental injury.

11. Learned counsel submits that the facts of this case where the deceased passenger fell down while trying to board the train is clearly covered by the decision of the Apex Court in the case of Union of India V/s Rina Devi (AIR 2018 SC 2362) where the Hon'ble Supreme Court has held death or injury in the course of boarding or de-boarding a train to be an untoward incident entitling a victim to compensation under Section 124-A of the Railways Act.

12. She further submits that the Tribunal has erred in holding this to be a case of self-inflicted injury as for that there has

to be an intention to self-inflict which is missing here as the deceased was only trying to board the train with bottle of water for his children who were thirsty. She relies upon the decision in the case of **Union of India V/s Rina Devi** (supra) to support her contention. She submits that therefore, the appellants are entitled to a compensation of Rs.8,00,000/- and the Tribunal has erred in rejecting the claim.

13. On the other hand, Smt. Chaubey, learned counsel for the Railways supports the findings of the Tribunal.

14. Learned counsel for the Railways submits that the journey ticket placed on record by the appellants before the Tribunal was not found on the person of the deceased. She therefore, submits that the said ticket is a procured one and also manipulated. That the deceased was not a bonafide passenger. She further submits that the act of the deceased of attempting to board a moving train after the said train had gained momentum was a case of suicide or self-infliction. She submits that no sensible person would try to board a train after it had started moving. She supports the view of the Tribunal that such an act cannot be construed an untoward incident and would in fact fall within the

proviso to Section 124-A. She submits that the Tribunal has rightly rejected the claim for compensation.

15. I have heard learned counsel for the parties and with their able assistance, I have perused the impugned decision, as well as the record and proceedings referred to by them. I have also given my anxious and thoughtful consideration to the facts of this case and to the settled law applicable thereto.

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

17. Section 2 (29) defines "passenger" as under :

"passenger" means a person travelling with a valid pass or ticket".

18. Section 123(c)(2) defines "untoward incident" as under :

"(c) "untoward incident" means-

xxxxx

(2) the accidental falling of any passenger from a train carrying passengers."

19. Section 124-A of the Railways Act is also usefully quoted 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)

20. Section 2 (29) in general refers to a person travelling with a valid pass or ticket to be a passenger. The Explanation to Section 124-A provides that a passenger includes a person who has purchased a valid ticket for travelling by a train carrying passengers on any date and becomes a victim of an untoward incident. As long as there is a valid ticket for the journey that should be sufficient. The provisions nowhere preclude someone else purchasing a ticket. As found earlier, the deceased's brother-in-law had purchased the ticket. The statement of deceased's brother-in-law is not controverted by any evidence on record. In fact, it is for the Railways to demonstrate that the ticket was not valid or that the passenger was not a bonafide passenger or that the ticket was not purchased. Although the initial burden is always on the claimant but that can be discharged by filing an affidavit of the relevant facts and then the burden shifts on the Railways to prove otherwise. Paragraph 17.4 of the decision in the case of **Union of India V/s. Rina Devi** (supra) is apt in this context and is quoted as under :

"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)

21. In this case also, the first appellant viz. the deceased's widow has filed an affidavit submitting that a certified copy of the ticket has been filed. That she and her husband were going from Pandharpur to Mudkhed on 04/04/2011 and had purchased railway ticket separately. That they had boarded at Pandharpur to go to Mudkhed and that at Kurduwadi Railway Station, her husband fell down from the running train, was grievously injured and died. These are relevant facts which have been filed by way of an affidavit by the widow of the deceased and who can also said to be an eye-witness to the said incident as she was travelling with her husband. Therefore, in accordance with the decision of the Apex Court, the initial burden has been discharged by the claimants. In my view, once the ticket No.16146428 at A-1 of the record and proceedings has been

produced, the burden to prove that the deceased was not a bonafide passenger shifts on the Railways. The Railways have neither examined any witness nor adduced any evidence to demonstrate that the deceased was without a ticket or that the ticket was not purchased by the brother-in-law. The finding that the ticket placed on record is manipulated or procured one is also without any supporting evidence and is merely on the basis of surmises or conjectures and deserves to be rejected. There is neither any direct evidence nor a circumstantial one to support the case of the Railways. In fact, the statement of Mr. Uttam More dated 04/04/2011 which records that Ticket No.16146428 was purchased for the deceased for travel from Pandharpur to Mudkhed also supports the case of the appellants. There is no contrary evidence or material adduced by the Railway Authorities. The submission of the learned Counsel for the appellants that because the deceased had to be moved from Kurduwadi to Solapur and then to Nanded and the same has been misplaced in such a movement and therefore the ticket which has been produced was not found on the person of the deceased may have substance. From the above discussion, it emerges that the deceased held a valid journey ticket from Pandharpur to Mudkhed

and as such, he was a bonafide passenger, as defined in Section 2 (29) of the Railways Act as well as, pursuant to Explanation (ii) to Section 124-A of the Railways Act.

22. The issue whether slipping and falling down losing his legs and eventually dying while attempting to board a moving train would be an untoward incident or not, in my view, does not require much deliberation.

23. The Hon'ble Apex Court in Paragraph 16.6 of the decision in the case of **Union of India V/s Rina Devi** (supra) has observed 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 Kumar*³⁴ 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)

24. As noted above by the Hon'ble Apex Court in the above decision, fall or injury in the course of boarding or de-boarding the train will be an untoward incident entitling a victim to the compensation and will not fall under proviso to Section 124-A merely on the plea of negligence of the victim. Therefore, the finding of the Tribunal that trying to board a moving train, which is leaving the platform which has gained momentum is suicidal act which cannot be construed to be an untoward incident under any circumstance cannot be sustained, as there could not have been any such intention to commit suicide or self-inflict injury. The concept of self-inflicted injury would fall in the same class as suicide or an attempt to suicide, where without an intention to end one's life, it could not be held that the same was a suicide or an attempt to suicide. In the facts of this case where, a man holding a valid journey ticket, travelling with his wife, children and brother-in-law alights at a station for getting water for his children, when the train suddenly starts moving and he runs towards a moving train, then attempting to board the said train, slips and falls down, his legs get cut, moves three hospitals and eventually dies, by no stretch of imagination, can be said to have an intention to kill himself or to commit suicide or inflict

injury upon himself. In my view, the finding of the Tribunal is completely irrational and illogical. This is clearly a case of an accidental falling down within the definition of untoward incident as defined in Section 123(c)(2) of the Railways Act.

25. Therefore, the finding of the Tribunal that the deceased was not having a valid journey ticket or that he was not a *bona fide* passenger of the train or that the ticket placed on record was manipulated or a procured one cannot be sustained. Also the finding that just because the train had gained momentum/speed the deceased's attempt to board the moving train would be a suicidal act is completely misplaced. A father holding a water bottle for his children would naturally try to board the train whatever be the speed of the train to somehow or the other get back to his family and children who are waiting in the train. The decision in the case of **Jameela and others Vs Union of India** (supra) in my view and would in fact support the case of the appellants and the reliance on the said decision by the Tribunal also appears to be misplaced. Paragraph 12 of the said decision is usefully quoted as under :

"12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from

where he fell down, is called by the Railways itself as negligence. Now 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 Railways must fail even after assuming everything in its favour."

(emphasis supplied)

26. Further, unless there is an intention, as observed by the Hon'ble Supreme Court in the case of **Union of India V/s Rina Devi** (supra), negligence cannot take the form of self-inflicted injury. Therefore to say that once the train has gathered speed, it cannot be negligence in the ordinary sense is completely fallacious and cannot be considered to hold that the deceased was not involved in an untoward incident as defined in Section 123(2) of the Railways Act.

27. Apropos the above discussion, since the deceased has been held to be a bonafide passenger and since a bonafide passenger has lost his life in an untoward incident, not falling within the exceptions contained in the proviso to Section 124-A of

the Railways Act, the appellants would be entitled to compensation under that Section.

28. In this view of the matter, the impugned decision dated 28/10/2015 of the Railway Claims Tribunal, Nagpur is hereby set aside. The Railway Authorities are hereby directed to pay an amount of Rs.8,00,000/- to the appellants in equal shares by depositing the same in their Savings Bank Accounts after due verification.

29. The appeal accordingly stands allowed in the above terms. No costs.

[ABHAY AHUJA, J.]

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