

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

FIRST APPEAL NO. 417 OF 2022

Smt. Suman wd/o Sakharam Methkar,
Aged about 59 years,
Occupation-Housewife,
R/o. At Gram Jhakas, Post-Damjipura,
Tahsil-Bhainsdehi, District-Bettul.
(Madhya Pradesh) – 461 441. .. Appellant

..Versus..

Union of India,
Through General Manager,
Central Railway, Mumbai (CST) .. Respondent

.....
Mrs. Uma A. Bhattad, Advocate for Appellant,
Ms. N.G. Chaubey, Advocate for Respondent.
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CORAM : SMT. M.S. JAWALKAR, J.
DATED : 20.08.2022

JUDGMENT

The claimant-appellant filed present appeal being aggrieved by the impugned judgment dated 08.03.2018 passed by the Railway Claims Tribunal, Nagpur in Claim Application No.OA (Ilu)/NGP/2015/0252, by which the claim of the appellant was rejected.

2. The appellant/original applicant is the mother of the deceased namely Kamal Kishor Methkar and filed appeal on account of the death of Kamal Kishore in untoward incident alleged to have occurred on 30.03.2015. It is the case of the applicant-appellant that the deceased Kamal Kishor had purchased railway ticket of general class on 30.03.2015 for travelling from Nagpur Railway Station to Bhusawal Railway Station. The deceased came to the Railway Station along with his younger brother and purchased ticket in his presence. The deceased boarded in the Kamakhya Express (Train No.15612). When train was passing through Shegaon Railway Station, the deceased was accidentally fell down at Shegaon Station due to jerk of the train. It is contended that there was heavy rush in the train and therefore the deceased had accidentally fallen down from the train. After recording evidence and hearing of both the advocates, the Railway Claims Tribunal rejected the claim petition mainly on the ground that no bona fide ticket was in the possession of the deceased Kamal Kishor and secondly he fell down as he tried to deboard from the running train.

3. The learned counsel for the appellant argued that totally erroneous view is taken by the Railway Claims Tribunal while rejecting the claim petition. From the evidence and the case papers, it is very well clear that the deceased fell down from the running train. Section 124-A lays down strict liability or no fault liability in case of railway accidents, the Railway is liable to pay compensation.

4. Learned counsel for the appellant relied on citations in **Union of India .vs. Rina Devi, [2018 A.C. 897 (SC)]**, **Union of India .vs. Leelamma, 2009 (2) T.A.C. 385 (Kerala)** and **S. Vijaylakshmi and others .vs. Union of India, (2019) ACC 177 (Madras)**.

5. As against this, the learned counsel for the respondent-Union of India vehemently opposed the appeal and supported the judgment and order passed by the Railway Claims Tribunal. She has pointed out from the deposition of Inspector wherein he deposed that there was no stoppage of train at Shegaon Railway Station. So also the report of RPF wherein he reported that one unknown person fell down from the train while attempting to deboard from the running train No.15612 Up main

line. Therefore, she contended that the accident will not cover under the parameter of ‘untoward accident’ and he has negligent and is case of self inflicted injury.

6. I have heard the rival contentions of the learned counsel for the parties. There is no dispute that the deceased Kamal Kishor died due to accident as he fell down from the running train. Thus, this act of getting down from the train cannot be said to be self inflicted injury.

7. As held in **Union of India .vs. Rina Devi, reported in AIR 2018 SC 2362**, in para 16.6, the Hon’ble Apex Court 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 Company Limited .vs. Sunil Kumar, 2017 (13) SCALE 652** 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”.

The Apex Court also held in above mentioned judgment, in para 16.1 as under :

16.1 : *From the judgments cited at the Bar, we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and Section 124-A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an ‘untoward incident.’ Only exceptions are those provided under proviso to Section 124-A. In **Prabhakaran Vijaya Kumar** (supra) it was held that Section 124-A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in **Jameela** (supra).*

Section 123 (c) (2) of the Railway Act covers the accidental falling of any passenger from a train carrying passengers.

Section 123 (c) (2) reads as under :

Definitions.—In this Chapter, unless the context otherwise requires,—

(a)

(b)

(i)

(ii)

(iii)

(iv)

(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.*

8. In the case of **S. Vijaylakshmi and others** (supra), it was held by the Madras Court that when a person died in an accident by falling down from the train, it is not possible for the legal heirs to produce the ticket or valid authority to travel in the

train and if the person fell down from the train hold that the person is a bona fide passenger.

9. As such, I am satisfied that the Railway Claims Tribunal finding that the appellant was not the bona fide passenger and there was no untoward incident occurred is patently erroneous. Therefore, the impugned judgment is liable to be quashed and set aside. Accordingly, I proceed to pass the following order.

ORDER

(1) Appeal is allowed. The impugned judgment of Railway Claims Tribunal, Nagpur in Claim Application No. OA (IIu)/NGP/2015/0252, is hereby quashed and set aside. The appellant-claimant is entitled for the amount of compensation.

(2) The respondent-Union of India is liable to pay the compensation within two months from today. After depositing of the amount of compensation, the claimant is entitled to withdraw the same.