

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

FIRST APPEAL NO. 08 OF 2021

APPELLANTS

(Ori. Claimants on R.A.)

- : 1. Soma s/o Nago Baisane,
age about 60 years, Occ. Retired
2. Aakabai w/o Soma Baisane,
age about 53 years, occ. Teacher
- Both R/o 74, Ganesh Colony, Shirpur,
Tah. Shirpur, Dist. Dhule.

--VERSUS--

RESPONDENT

(Ori. Resp. on R.A.)

- : Union of India,
through the General Manager, Western
Railway, Churchgate, Mumbai.

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

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 25th JANUARY, 2022.

ORAL JUDGMENT

This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1989, assailing the judgment dated 15.12.2015 in Case no. OA (Ilu)/NGP/2010/0291, whereby the Railway Claims Tribunal, Nagpur has dismissed the claim petition filed by the appellants.

2. The brief facts leading to this appeal are as under :

The appellants are the parents of the deceased Kailash. They filed a claim petition before the Railway Claims Tribunal at Nagpur, alleging that on 13.08.2010, their son Kailash was a bona fide passenger on Surat-Bhusawal Passenger Train No.113 DN. He fell down from the train due to heavy rush and sudden jerk. He was shifted to the Hospital but succumbed to the injuries on the same day. The claimants alleged that the death of their son was caused in an untoward incident.

The respondent denied that the deceased was a bona fide passenger. It was alleged that no journey ticket was recovered from the deceased for travel from Nandurbar to Jalgaon. The respondent also denied that the appellants are the dependents of the deceased Kailash. The respondent therefore denied its liability to pay any compensation to the appellants.

3. The Railway Claims Tribunal, Nagpur, upon considering the evidence adduced by the appellants as well as by respondent, held that the deceased Kailash was not a bona fide passenger. The Tribunal has also recorded a finding that the appellants are not the

dependents of the deceased Kailash, and hence, dismissed the claim petition. Being aggrieved by this judgment and order, the appellants have preferred this appeal under Section 23 of the Railway Claims Tribunal Act, 1987.

4. Shri. R. G. Bagul, learned Advocate for appellants submits that the deceased Kailash was to go to Vadodara in search of job. Hence, he had purchased a ticket for train travel from Nandurbar to Vadodara. However, the brother of the deceased called him to Jalgaon stating that work was available at Jalgaon. Hence, the deceased purchased a ticket for train travel from Nandurbar to Jalgaon. He submits that the deceased fell down from the train due to heavy rush in the bogie of the train and died due to the injuries sustained in an untoward incident. He has brought to my notice the memo of Station Master, Dondaicha, which states that he had received an information about fall of an unknown person from a train at Dondaicha. The Inquest Panchanama also reveals that the deceased had fallen from a running train. Moreover, ticket for the travel journey from Nandurbar to Vadodara was recovered from the body of the deceased. He has relied upon the decision of the learned Single Judge of this Court in First Appeal No.297 of 2013 (**The Union of India .vs. Mangalabai w/o Manohar Darunde and Ors.**), wherein this Court (CORAM : A. P BHANGALE, J.) has observed that failure to produce the ticket cannot lead to an inference that the said

passenger was traveling without ticket. It is held that since ticketless travel is liable for penal action, unless contrary is proved, the presumption of innocence would be in favour of the passenger.

5. Learned Advocate for the appellants has also relied upon the decision of the Madras High Court in **S. Vijayalaksmi and Ors. .vs. Union of India, I(2019) ACC 177** to contend that when the deceased has died in an untoward incident, the onus is on the Railway Administration to prove that the deceased was not a bona fide passenger. He contends that the evidence on record clearly proves that the deceased had died in an untoward incident. The respondent has not adduced any evidence to prove that the deceased was not holding a valid ticket. He therefore submits that the presumption is that the deceased was traveling on a valid ticket and he was a bona fide passenger.

6. Shri. N. P. Lambat, learned Advocate for respondent submits that the deceased was found lying in an injured condition in railway yard at Dondaicha. He did not possess a valid ticket to travel from Nandurbar to Jalgaon. Though the appellants had claimed that the deceased had changed his plan at the instance of his brother to travel from Nandurbar to Vadodara, they have not examined the said brother to support the said contention. He therefore contends that the story propounded by the claimants is highly suspicious. He

further submits that the Surat-Bhusawal Passenger Train No.113 DN had reached Dondaicha Railway Station at 4.30 hours, whereas the deceased was found in a yard of the same Railway Station at 8.30 hours. He submits that it is not possible that the deceased would be lying in an injured condition in a yard without being noticed by any person. He also submits that the appellants have not proved that they are the dependents of the deceased Kailash, and hence, the learned Member of the Tribunal was perfectly justified in dismissing the claim petition.

7. I have perused the record and considered the submissions enhanced by learned Advocate for the respective parties.

8. The short point falling for consideration is whether the deceased was a bona fide passenger, and whether he had expired as a result of the injuries caused in an untoward incident.

9. The appellant no.1, the father of the deceased Kailash had filed his affidavit at Exh-A-61, wherein he had stated that on 13.08.2010, the deceased had purchased a ticket to travel from Nandurbar to Vadodara. The deceased did not undertake the said journey because his brother had called him to Jalgaon. He therefore purchased a ticket for train travel from Nandurbar to Jalgaon and

boarded Surat-Bhusawal Passenger Train No.113 DN. He fell down from the train at Dondaicha Railway Station.

10. It is pertinent to note that the report of the Station Master, Dondaicha clearly indicates that one unknown person had fallen from a train in a yard at Dondaicha Railway Station. Report therefore corroborates the contention of AW1 that the deceased had fallen from a running train.

11. It is not in dispute that the deceased Kailash, who was found lying in the yard near Platform No.1 at Dondaicha Station was shifted to Dhule Civil Hospital on 13.08.2010 and that he expired a day later. The Inquest Panchanama reveals that the deceased Kailash had expired as a result of the injuries sustained in railway accident. The Police records also indicate that the death of the deceased Kailash was due to a fall from a running train. The aforesaid evidence therefore clearly indicates that the deceased Kailash had died in an untoward incident.

12. The claim petition has been dismissed mainly on the ground that no journey ticket of Surat-Bhusawal Passenger Train was found with the deceased Kailash. In this regard, it would be relevant to refer to the decision of the Hon'ble Supreme Court in **Union of India .vs. Rina Devi, AIR 2018 SC 2362**, wherein it is held that mere

absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. It is held that the initial burden is 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.

13. It is the case of the claimants that the deceased was to proceed from Nandurbar to Vadodara in search of work. Accordingly, he purchased a ticket for train travel from Nandurbar-Vadodara. He did not proceed to Vadodara since his brother had told him that the work was available at Jalgaon. Hence, the deceased purchased a ticket and boarded Surat-Bhusawal Passenger Train No.113 DN to proceed to Jalgaon.

14. It is not in dispute that the journey ticket dated 13.08.2010 for Nandurbar-Vadodara Train was recovered from the body of the deceased. This fact substantiate the contention of the claimant that the deceased was to travel by Nandurbar-Vadodara Train. Instead he boarded Surat-Bhusawal Passenger Train. The reasons for boarding a different train could be either because of the instructions given by the brother of the deceased to proceed to Jalgaon as deposed by AW1 or could be that the deceased had boarded a wrong train. The mere fact that he was not in possession

of the ticket of Surat-Bhusawal train or that he had boarded a wrong train would not per se lead to an inference that he was not a bona fide passenger, particularly, in the absence of rebuttal evidence by the Railway Authorities. Under the circumstance, the Tribunal has erred in holding that the deceased was not a bona fide passenger.

15. The appellants are the parents of the deceased Kailash. The learned Member of Tribunal has held that they are not the dependents of the deceased merely because of the age discrepancy in ration card. It is well known that often the age in ration card is usually given by approximation. Hence, the discrepancy in the age as recorded in the ration card or as recorded in the Inquest Panchanama could be no ground for holding that the appellants are not the dependents of the deceased. For the aforesaid reasons, the impugned judgment cannot be sustained. Hence, the following order:

- i) The appeal is **allowed**.
- ii) The impugned judgment of the Railway Claims Tribunal, Nagpur, dated 15.12.2015 in Case No. OA (IIu)/NGP/2010/0291 is quashed and set aside.
- iii) The appellants are held to be entitled for compensation of Rs.8,00,000/-.

iv) The appellants shall furnish their individual account numbers to the respondent/Railway Administration within a period of two weeks. The respondent thereafter to deposit the compensation in their individual account in equal share, within a period of eight weeks.

JUDGE

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by ASHISH
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