

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

FIRST APPEAL NO.62 OF 2019

1. Smt. Nanda wd/o Durgaprasad Dixit
Aged about 48 years,
Occupation – Household,
(wife of deceased)
2. Shri Chandu s/o Durgaprasad Dixit
Aged about 30 years,
Occupation – Student,
(son of deceased)
3. Shri Sachin s/o Durgaprasad Dixit
Aged about 28 years,
Occupation – Student,

All appellants R/o. Ward No.4,
Tuljai Nagar, Sindhi (Meghe),
Post – Hindnagar,
Tah. & District Wardha (Mah) – 442 001

...APPELLANTS

VERSUS

Union of India,
through its General Manager,
Central Railway,
Mumbai CST – 01

...RESPONDENT

Shri R.G. Bagul, Advocate for the appellants.
Ms N.G. Choubey, Advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 20, 2023.

ORAL JUDGMENT :

Heard learned Counsel for the parties.

2. By this appeal, the appellants/claimants have challenged the judgment and award dated 22/10/2018 passed by the Member, Railway Claims Tribunal, Nagpur in Claim Application No. OA(llu)/NGP/204/2017 whereby the learned Member of the Tribunal rejected the claim of the claimants is under challenge.

3. The facts giving rise to the present appeal are as under :

A] On 26/10/2014, the deceased had purchased a ticket from Wardha to Dhamangaon and boarded a passenger train. During his journey he fell down from the running train at km. No.707/8 Down line between Dhamangaon and Dipori railway station and died on the spot.

4. As per the contention of the claimants, as the said accident took place when the deceased was travelling by Wardha-Dhamangaon train and as the death of the deceased is caused in an untoward incident, the claimants are entitled to receive the compensation.

5. In response to the notice, the respondent-railway has contested the claim application by filing the written statement. As per

the defence of the railway, no such incident causing death of the deceased within the meaning of the provisions of Section 123(c) read with Section 124A of the Railways Act, 1989 (hereinafter referred to as 'the said Act' for short) has been taken place and as such, the claim application is not maintainable. It is further raised that the deceased was not a *bona fide* passenger and hence, railway is not liable to pay compensation.

6. The contention of the claimants is that the death of the deceased is caused in an untoward incident. The Railway Claims Tribunal recorded the evidence of the claimants as well as the witnesses of the railway and also considered the relevant documents such as police papers, i.e., merg report, spot panchnama, inquest panchanama and DRM report and come to the conclusion that the death of the deceased is not caused in an untoward incident. The deceased was not a *bona fide* passenger and hence, Railway is not liable to pay compensation.

7. After having heard both the sides, learned Member of the Railway Claims Tribunal rejected the claim of the claimants. Being aggrieved and dissatisfied with the judgment and award passed by the learned Member of the Tribunal, the present appeal is preferred by the claimants on the ground that the Tribunal had not considered that the

deceased was travelling by the train. The approach adopted by the Tribunal in the impugned judgment and order was not only erroneous but it was hyper technical in nature. It was submitted that the ticket found along with the deceased is sufficient to show that the deceased was a *bona fide* passenger. It is not in dispute that the deceased was travelling by the train and his dead body was found on the track which is sufficient to show that the deceased died in an untoward incident.

8. Heard Shri Bagul, learned Counsel for the appellants. He reiterated the contentions and placed reliance on the decision of the Hon'ble Apex Court in the cases of ***Union of India Vs. Prabhakaran Vijaya Kumar & Ors., 2008 ACJ 1895*** and ***Union of India Vs Rina Devi 2018 (3) T.A.C. 26 (S.C.)***.

9. *Per contra*, Ms Choubey, learned Counsel appearing on behalf of the respondent-Railway submitted that the impugned judgment and order passed by the Tribunal did not deserve interference because it was based on proper appreciation of the oral and documentary evidence on record. It was submitted that the material on record is insufficient to come to the conclusion that the victim had died in an untoward incident as defined under the provisions of the said Act. It was further submitted that there was no eye-witness to the said incident. The dead body of the

deceased was found on the down-track when the deceased was travelling towards up-track. She further submitted that the evidence of the claimant is not sufficient to prove that the death of the deceased is caused in an untoward incident.

10. Having heard the learned Counsel for the parties and upon perusal of the evidence and material on record, the point arise for consideration in this appeal is :

(i) Whether the Tribunal was justified in holding that the claimants are not entitled for compensation as the death of the deceased is not caused in an untoward incident?

11. A perusal of the evidence and material on record shows that the dead body of the deceased was found lying on the railway track and it's intimation was given to the railway administration. To substantiate the contention, claimant No.1 examined herself and reiterated the contention as to the occurrence of the incident. Besides her oral evidence she placed reliance on merg report, spot panchnama, inquest panchanama, post-mortem report etc. The railway administration has adduced the evidence of Rajeshkumar Nandkishor Tiwari who was Station Master at Dahegaon railway station. The railway administration also placed reliance on the DRM report. Admittedly, claimant No.1 was

not the eye-witness of the incident. She also admitted during her cross-examination that she has not witnessed the alleged incident. There is no dispute that the deceased was travelling by train Wardha to Dhamangaon. As per the evidence of the claimant, her husband had purchased the second class journey ticket from Wardha to Dhamangaon on 26/10/2014 and boarded in a passenger train. This fact is substantiated by the railway ticket which was recovered from the deceased. The DRM report shows that the said railway ticket was verified from Commercial Supervisor, Central Railway, Wardha and found to be genuine one. In view of the evidence of the claimant that the deceased had obtained the ticket, the ticket was found along with the deceased, and the said railway ticket was verified from Commercial Supervisor, Central Railway, Wardha and which was found to be genuine is sufficient to show that the deceased was a *bona fide* passenger. No contrary evidence is adduced by the railway to show that the deceased was not having a valid ticket, and therefore, he was not a *bona fide* passenger. The Tribunal had not considered this fact.

12. Admittedly, the dead body of the deceased was found on the railway track at the down side. As per the submission of the learned Counsel for the railway that the deceased was travelling towards the Upside and the dead body was found towards the Downside. Admittedly,

the evidence adduced by the railway nowhere shows that the dead body of the deceased was not found towards the Upside but it was towards Downside. The spot panchnama shows that the dead body of the deceased was found on the railway track and it was cut into the two pieces. The recitals of the panchanama shows that the said dead body was found at Pole No.707/8 to 707/6 towards east side. The spot panchnama further shows that the dead body was cut into two pieces. If the evidence of witness of the railway was appreciated, his evidence is only to the extent that on the day of incident driver of Maharashtra Express informed him on walkie-talkie that unknown person's dead body is lying at km No.707/8 between Dipori-Dhamangaon railway station. Immediately, he informed to Jitendra Kumar for clearing the track. At about 14.35 hours the track-man removed the dead body from the track and cleared the track for travelling. The said fact was informed to the RPF. The dead body of the deceased was found on down track i.e. the Wardha-Dhamangaon railway route is on upper track. During his cross-examination, he admits that he did not visited the spot of incident. No Loco-pilot has given him any information about dash, crossing or suicide. He further admits that Loco-pilot of PSNG Goods train which arrived at 14.02 hours just before Maharashtra Express on Down main line did not intimate anything about lying of dead body. The passenger train on Up line towards Dipori, which departed before 14.20 hours was 11040

which departed from Dhamangaon at 13.21 hours. Two Goods train also departed on Up track at 13.40 hours and 14.01 hours. None of the Loco-pilot of above mentioned Upline trains has intimated me about lying of any body on the track. Thus, this cross-examination sufficiently shows that before finding of the dead body the two Goods train passed from the Up-track as well as the passenger train on Up-track Dipori was departed before 14.20 hours which was numbered as 11040 which departed from Dhamangaon at 13.21 hours. The evidence shows that the Loco-pilot of Goods train which arrived at 14.02 hours just before the Maharashtra Express on Down main line did not intimate anything about lying of dead body. Thus, it is apparent that the dead body of the deceased was found after passing of Up-line train which proceeded towards the Dipori. His evidence further shows that the passenger train applying towards Dipori was departed before 14.20 hours and thereafter, the dead body was noted on the track. This cross-examination sufficiently shows that the deceased fell down from the train in which he was travelling, i.e., towards Up line. It is the common knowledge that as the deceased was thrown from the train, and therefore, his dead body was found on the track. In what manner he thrown from the train for which no evidence is available. The dead body was cut into the two pieces sufficiently shows that the deceased was thrown from the train in a force which is sufficient to show that the reason behind the finding of

the dead body towards the down track. The attending circumstances shows that the deceased has obtained the ticket, the ticket was proved to be a valid ticket during the verification by the railway administration. The oral evidence of the claimant shows that he was proceeding from Wardha to Dhamangaon. Thus, the evidence on record is sufficient to show that the deceased was travelling by the train and during his journey he fell down from the train and sustained the injuries. The Tribunal has analyzed the aforesaid material on record to arrive at conclusion and observed that the record produced by the applicant themselves would show that the dead body of the deceased was cut from the neck. This would clearly indicates that the deceased must have been run over by the train as otherwise the body of the deceased could how have been separated from the neck. The nature of injuries sustained by the deceased and the manner in which the parts of the body of the deceased were lying will be suggestive of the fact that the deceased must have been run over. This observation of the Tribunal itself is misconceived. The conclusion of the learned Member of the Tribunal that the nature of injuries shows that it is the case of the deceased coming under the wheels of train is misconceived conclusion because types of injuries along with other facts pertain to decide whether the accident is of a fall from the train or injuries were on account of a person being run over by the train.

13. It is not unknown that a body may badly cut up and crush up after falling from the train either on account of *bona fide* passenger getting entangled in the place of the train and thereafter in the wheels or the equipment of the train in which he was travelling or that the deceased on account of fall from the train dashed by the various equipment of the railways which are joined to the tracks, such as poles, signals, wires etc. Therefore, in the facts of the present case, the observation of the Tribunal that the death of the deceased is not possible by falling from the train merely because he was cut into pieces, is completely unjustified. The observation of the Tribunal that as the dead body was found on the Down line when the deceased was travelling towards Up line is also misconceived as there may be several reasons for finding the dead body on the Down line. It is possible that the deceased was thrown by force, and therefore, his dead body was found on the down line cannot be ruled out.

14. As observed in the present case, there is no evidence to show that the deceased was crossing the railway track, and therefore, he was run over by coming train. On the contrary, the evidence of the railway officer shows that the dead body of the deceased was not located by the Loco-pilot of earlier trains who passed before the train Wardha-Dhamangaon passes from the Up line. The dead body of the deceased

was located after passing of Wardha-Dhamangaon railway. The railway officer has admitted these facts in the cross-examination. Thus, the evidence on records sufficiently shows that the deceased was travelling by the Wardha-Dhamangaon train by obtaining the ticket and he fell down from the train and sustained the injuries. So far as burden on the claimant is concerned, it is held by the Hon'ble Apex Court in Union of India Vs Rina Devi (supra) that the burden on the claimants is to be discharged on the basis of affidavits of the relevant facts and burden will then shift on railways and the issue can be decided on the fact shown on the attending circumstances.

15. In the present case, the facts narrated by the claimants and the attending circumstances sufficiently shows that the deceased was travelling by the train and while the travelling, he sustained the injuries and died on the spot. The evidence on record is sufficient to held that the death of the deceased is caused in an untoward incident while travelling in the train.

16. Before commenting on the evidence regarding the untoward incident it is necessary to see the principle laid down by the Hon'ble Apex Court in the case of Union of India Vs. Prabhakaran Vijaya Kumar & Ors. (supra) wherein the Hon'ble Apex Court held that "it is well

settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation.” By referring various judgments Hon’ble Apex Court further held that the principles of statutory constructions are well settled. 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 travelling 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 person 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. In other words, a purposive, and not literal, interpretation should be given to the expression.

17. Thus, the contention raised by the railway administration that the death of the deceased is not caused in an untoward incident, is not acceptable. The oral evidence of the claimant and the attending circumstances clearly shows that the death of the deceased is caused in an untoward incident while travelling by the train. There is no contrary evidence that the deceased was run over by the train while crossing the road or he was dashed by the train. The plea of negligence of the victim raised by the railway is also not sustainable for attracting the self-inflicted injuries, the intention of the victim is required.

18. In the present case, admittedly, initial onus is discharged by the claimant by adducing reliable evidence whereas the railway administration failed to prove that the deceased had sustained the injuries as run over by the another train. Thus, in view of the observation of the Hon'ble Apex Court that liberal view is to be taken, the Hon'ble Apex Court has taken a liberal view and it has been laid down that if a restricted meaning is adopted in interpreting Section 123(c) of the said Act, it would amount to depriving a large number of railway passengers from getting compensation in railway accident. Applying the aforesaid position of law to the facts of the present case, it would be evident that the Tribunal has taken a hyper technical view in

the matter and the evidence and material on record has not been properly construed while dismissing the petition of the appellant.

19. In my opinion, there was sufficient material on record to show that the deceased was travelling on the railway ticket placed on record and that his death did occur while travelling in the train and the appellants are entitled for compensation under Section 124A of the Railways Act.

20. In the light of the above, it is evident that the appellants deserve to succeed on both grounds; firstly, that they are entitled to receive the compensation; secondly, they are entitled to receive the compensation in view of the revised Notification issued by the Railway on 22/12/2016 which came into effect from 01/01/2017.

21. In the light of the observation of the Hon'ble Apex Court in *Union of India Vs. Radha Yadav (2019) 3 SCC 410*, the claimants are entitled to receive the highest amount and not entitled to receive any interest on that amount. The Hon'ble Apex Court has held that the issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in *Rina Devi* (supra) is very clear. What this Court has laid down is that the amount of compensation payable on

the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. Thus, in view of that the claimants are entitled to receive the highest amount of compensation, i.e., Rs.8,00,000/- (Rs. Eight lacs). In the result, the appeal deserves to be allowed.

22. In view of that I proceed to pass the following order.

- (i) The appeal is allowed.
- (ii) The respondent-Railway is directed to pay amount of Rs.8,00,000/- towards the compensation.
- (iii) The respondent-Railway shall deposit the said amount within three months.
- (iv) The amount of compensation be apportioned equally between all the claimants.
- (v) Appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)