



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

FIRST APPEAL NO. 793 OF 2019

APPELLANTS
(Original Claimants on
R.A.)

- : 1. Shri Suresh S/o. Govindrao Vaknor,
Aged about 54 years, Occ. Labourer,
(Father of deceased).
2. Smt. Kusum W/o. Suresh Vaknor,
Aged about 47 years, Occ. Housewife,
(Mother of deceased).
- Both R/o. Malviya Ward, Warora, Tah.
Warora, Dist. Chandrapur (Mah.)

//VERSUS//

RESPONDENT
(Original Respondent on
R.A.)

: Union of India, through its General
Manager, Central Railway, Mumbai
CST.

Mr. R.G. Bagul, Advocate for the Appellants.

Ms. Neerja G. Choubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 14th SEPTEMBER, 2023.

ORAL JUDGMENT

In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987, challenge is to the judgment and order dated 6th October, 2017, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as “the Tribunal”) whereby the Tribunal dismissed the claim petition filed by the appellants.

02] BACKGROUND FACTS:

The appellants are the parents of deceased Ghanshyam Vaknor. It is their case that on 28th May, 2015, the deceased left home telling them that he was going to Nagpur for his private work by Secunderabad-Nagpur Superfast Express and would return back by Dakshin Express. It is stated that while travelling from Warora to Nagpur by Train No.12771, the deceased accidentally fell from the running train and sustained injuries. He died due to the injuries sustained by him to his head on the spot, which is near the Starter Signal of Platform No.3 Warora Railway Station. It is stated that in the accident, the ticket was lost. It is stated that he died in an untoward incident. He was *bona fide* passenger travelling with a valid journey ticket. They claimed the compensation from the respondent/Railway.

03] The respondent/Railway filed the written statement and opposed the claim. According to respondent, the death was due to negligence of the deceased. The deceased tried to cross the railway line and in the process he was run over by the train. The deceased was residing near the railway station. According to the respondent/Railway, the death was not in an untoward incident. It was further contended that the deceased was not a *bona fide* passenger. The ticket was not recovered at the time of inquest panchanama.

04] The Tribunal framed as many as four issues. The Tribunal, on consideration of the evidence, dismissed the claim application. The appellants, being aggrieved by this judgment and order, are before this Court.

05] I have heard Mr. R.G. Bagul, learned advocate for the appellants/claimants and Ms. Neerja G. Choubey, learned advocate for the respondent/Railway. Perused the record and proceedings.

06] In view of the facts and circumstances, following points fall for my determination:

- (a) Whether the deceased died in an untoward incident?
- (b) Whether the deceased was a *bona fide* passenger with a valid journey ticket?

07] Learned advocate for the appellants submitted that since the house of the deceased was situated at some distance from the railway station, the Tribunal has drawn an inference on surmises and conjectures that he, at the relevant time, was crossing the railway line and therefore, died. Learned advocate took me through the evidence and particularly the spot panchanama and submitted that the spot of the accident clearly indicates that the deceased had boarded the train and at the end of the platform, fell down near starter signal. Learned advocate submitted that the dead body was

noticed by the Loco Pilot of next coming train and therefore, he reported it to the Station Master. Learned advocate submitted that there is no evidence adduced by the respondent/Railway to establish that the deceased died in a railway accident while crossing the railway line. Learned advocate submitted that the Tribunal has not properly appreciated the evidence and has come to a wrong conclusion. As far as the journey ticket is concerned, learned advocate submitted that the mother of the deceased appellant No.2 has filed an affidavit and in her affidavit, she has categorically stated that he was travelling to Nagpur in the concerned train with a valid journey ticket. In order to seek support to this submission, learned advocate has relied upon a decision in the case of *Union of India Vs. Rina Devi [AIR 2018 SC 2362]*.

08] Learned advocate for the respondent/Railway submitted that the possibility of the deceased roaming at the railway platform and railway line could not be ruled out, because his house was situated at short distance from the railway station. Learned advocate submitted that, therefore, the inference drawn by the Tribunal is based on the proved facts. Learned advocate submitted that the case in question is the case of run over by a train and therefore, the death could not be said to be in an untoward incident. Learned advocate further submitted that in the search of

the body of the deceased, other articles were found but the journey ticket was not found. It is submitted that the affidavit filed by the appellant No.2 is not sufficient to seek support of the law laid down in the case of ***Rina Devi*** (supra)

09] In order to appreciate the rival submissions, I have gone through the record and proceedings. Section 123 of the Railways Act, 1989 (hereinafter referred to as “the Act of 1989” for short) defines the accident and untoward incident. Section 123 of the Act of 1989 is reproduced below:

“123. Definitions.- In this Chapter, unless the context otherwise requires,-

(a) “accident” means an accident of the nature described in section 124;

(b) “dependant” means any of the following relatives of a deceased passenger, namely:-

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child or a predeceased son, if dependent wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependent on the deceased passenger;

(iv) the paternal grandparent wholly dependent on the deceased passenger;

[(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 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.]”

10] Section 124-A of the Act of 1989 provides for compensation on account of untoward incident. It is reproduced below:

[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 traveling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]

11] First part of Section 124-A of the Act of 1989 indicates that in any of the eventuality set out therein, the Railway is responsible to pay the compensation. The Railway is not responsible to pay the compensation, if a case is covered by any of the clauses to the proviso.

12] In this case, it is the contention of the respondent/Railway that the deceased died due to self-inflicted injury or his own criminal act. It is the case of the respondent that he was crossing the railway line and therefore, he was run over by the train.

13] Before proceeding to appreciate the factual aspects, it would be necessary to consider the law laid down in the case of ***Rina Devi*** (supra). Paragraph 16.6 would be relevant for the purpose of addressing the issue. It is reproduced below:

“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 [AIR 2017 SC 5710] 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.”

14] In this case, it is held that unless and until a case is covered by the clauses of the proviso, the defence of contributory negligence is not available. It is held that the liability in such cases is based on ‘no fault theory’. It is held that the 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 124-A merely on the plea of negligence of the victim as a contributory factor.

15] In this case, there is no eye witness to the incident. It is not the case of the respondent/Railway that the deceased was run over by a particular train and particularly Secunderabad-Nagpur

Express in which he was travelling as per the case of the appellants. It has come on record that the Loco Pilot of Train No.7037 which came to the platform after Secunderabad-Nagpur Express, found the dead body near the Starter Signal of Platform No.3 Warora Railway Station. If the deceased was run over by Secunderabad-Nagpur Express Train No.12771, then the Loco Pilot of the said train would have noticed the same and reported it immediately to the Station Master. The possibility of run over of the deceased by Secunderabad-Nagpur Express is, therefore, completely ruled out. The next train came to the said platform was Train No.7037. The place where the body was found in my view would be very vital for the purpose of addressing the issue. If the deceased had sustained the dash while crossing the railway line, then he would have been thrown away at some distance and he would have sustained multiple fractures. It is not the case of the respondent/Railway that any fast train having no schedule halt passed through the platform in between. The deceased had sustained the injuries to his head. The injuries sustained to the head could be possible due to fall from a train. The body was found on the side of the track. This fact, therefore, completely rules out the possibility of run over of the deceased by the train. In my view, therefore, the inference drawn by the Tribunal that the deceased, a resident near the

railway station, might have been dashed by the running train while crossing the railway line, is totally misplaced. The evidence on record clearly indicates that the death was due to fall from the train. The evidence on record is sufficient to accept the contention of the appellants that the deceased died in an untoward incident. No evidence has been adduced to bring the case under the proviso to Section 124-A of the Act of 1989. On the basis of the available evidence and particularly in view of the spot where the dead body was found, there is no reason to discard and disbelieve the case of the appellants that the deceased fell from a running train and as such died due to the injuries sustained by him. In this case, the evidence is sufficient to conclude that the deceased died in an untoward incident.

16] The next important question is with regard to the journey ticket. It is true that in the search of the dead body, the journey ticket was not found. His mobile and other things were found. The mother of the deceased has filed the affidavit and categorically stated that the deceased was travelling by purchasing a valid ticket from Warora to Nagpur. She has stated that he was supposed to attend his work at Nagpur and come back by Dakshin Express. The question is whether mere absence of ticket in this situation, could be a ground to reject the claim. The question is

whether the evidence in the form of affidavit of the mother of the deceased would be sufficient to discharge the initial burden. In this context, it would be necessary to consider the law laid down in the case of **Rina Devi** (supra). Paragraph 17.4 is relevant for the purpose of addressing this issue. It is reproduced below:

“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.”

17] It is held that initial burden would 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. It is further held that this will have to be dealt with from case to case on the basis of the facts found.

18] The question is whether the affidavit is sufficient to discharge the initial burden. Appellant No.2 is the mother of the deceased. She has deposed on the basis of her personal knowledge.

She has categorically stated that the deceased was travelling from Warora to Nagpur by purchasing a journey ticket. She has stated that in the accident, the ticket was lost. In my view, this evidence on affidavit, is sufficient to discharge the initial burden. I do not see any reason to disbelieve her evidence. The respondent/Railway has not adduced any evidence in rebuttal. The evidence adduced by examining two witnesses is on different point. In the facts and circumstances, on the basis of the evidence, it has been proved that the deceased was a *bona fide* passenger travelling with a valid journey ticket. In the facts and circumstances, the issues are accordingly answered. The appellants are found entitled to get the compensation.

19] The accident occurred in 2015. The claim petition was filed in 2016. This claim petition would be covered by a Notification dated 26.12.2016 applicable w.e.f. 01.01.2017. As per this Notification, the appellants would be entitled to get the compensation of Rs.8,00,000/-.

20] Learned advocate for the respondent/Railway submitted that the compensation in terms of earlier rate of compensation with interest on the said compensation would not be more than Rs.8,00,000/-.

21] Accordingly, the appellants are held entitled to get the compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest. The respondent/Railway shall directly deposit the amount of compensation 50% each in the bank accounts of appellant Nos.1 and 2, within four months from today. If the amount is not deposited within four months, then the respondent/Railway shall pay interest @ 7% per annum from the date of this order till realization.

22] The appeal is **allowed** and disposed of accordingly. No order as to costs.

(G. A. SANAP, J.)

Vijay