

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

FIRST APPEAL NO. 211 OF 2021

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| <p>1) Smt. Meenabai Wd/o Dilip Gaikwad
Aged about 40 years, Occ. Household,
(Widow of deceased)</p> <p>2) Avinash S/o Dilip Gaikwad,
Aged about 22 years, Occ. Education
(Son of deceased)</p> <p style="padding-left: 40px;">Both R/o Khobragade Nagar,
Nanded – 431 602</p> <p>3) Wachalabai Wd/o Maroti Gaikwad,
Aged about 61 years, Occ. Nil
(Mother of deceased)</p> <p style="padding-left: 40px;">R/o Dr. Abedkar Nagar,
Purna (Mah) – 431 511</p> | } | .. Appellants |
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Versus

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| <p>Union of India
through its General Manager
South Central Railway, Secunderabad</p> | } | .. Respondent |
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Mr. N. R. Mankar, Advocate for appellants
Ms. Neerja Choube, Advocate for respondent.

CORAM : SMT. M.S.JAWALKAR, J.

PRONOUNCED ON : 20/07/2023

ORAL JUDGMENT

Heard finally at the request and by the consent of the
learned counsel appearing for the parties.

(2) The present appeal is filed by the appellants being aggrieved by the Judgment and order dated 22/12/2020, passed in Case No.OA(IIu)/NGP173/2019 by Railway Claims Tribunal, Nagpur Bench, Nagpur. The claim petition of the appellants came to be dismissed by the said Tribunal.

(3) The facts of the case are that on 26/04/2019, deceased Dilip S/o Maroti Gaikwad came to Gangakhed Railway Station along with his son Avinash and obtained one railway ticket for travelling from Gangakhed to Purna. Avinash handed over the said original ticket to his father and he kept the said ticket in his pocket and boarded in Parli Vaijnath to Akola Passenger (Train No.57540). After boarding his father in train, Avinash left Gangakhed Railway Station and returned to the place of marriage at Gangakhed. Deceased Dilip accidentally fallen down at Gangakhed Railway Station in untoward incident at KM No.297/4-5 between platform and running train and came under the wheels of the said running train and seriously injured. Concerned Police Officer admitted deceased Dilip in the Government Hospital Parbhani and then to Government Hospital, Nanded for further treatment, where the injured Dilip died on 28/04/2019 during

the course of treatment.

(4) It is contended by the claimants that railway ticket has lost from the pocket of deceased during the course of accident at Gangakhed Railway Station. It is further contended that the deceased died due to untoward incident and that he was travelling from train as a bona fide passenger with a valid journey ticket. Learned counsel for the appellant relied upon **Union of India Vs. Rina Devi reported in AIR 2018 SC 2362.**

(5) The respondent railway opposed the claim application on the ground that no railway ticket was recovered from the body of deceased. It is also a case of self inflicted injury due to the negligent act of the deceased. Tribunal held that the deceased himself was responsible for the incident. The Tribunal dismissed the claim petition of the claimants on the ground that there was no journey ticket on the body of the deceased. Therefore, he was not a bona fide passenger and the said accident does not come within the purview and meaning of “untoward” incident, but it is sheer negligence and therefore, it amounts to self inflicted injury. The Railway Claims Tribunal dismissed the claim petition on the ground that there are

contradictions in the statement of Avinash before the Police Authority and before the Tribunal.

(6) I have heard both the learned counsel at length. Perused the records and considered the submissions advanced by the learned counsel for the respective parties. On perusal of the statement of Avinash Gaikwad recorded by the Railway Police on 21/09/2019, clearly shows that he had been to Gangakhed Railway Station and he obtained railway ticket for travelling from Gangakhed to Purna and returned to marriage place to attend the program. Similar is the statement he has made before the Tribunal. If cross-examination is perused, there is no question put to the witness Shri. Avinash Gaikwad in respect of purchase of ticket. Moreover, statement recorded by Police would not admissible in evidence and even if it is admitted, he has deposed in his statement that he has purchased ticket for his father. As such initial burden is discharged by the claimants in respect of purchase of journey ticket by filing affidavit of Avinash son of deceased.

(7) In the case of *Union of India Vs. Rina Devi* (supra)

the Hon'ble Supreme Court on burden of proof has held as under :-

“Re : (iii) Burden of Proof When Body Found on Railway Premises – Definition of Passenger :

17.1 *Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In Raj Kumari (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in Gurcharan Singh (supra) held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost.”*

(8) In my considered opinion there is no case of even self inflicted injury. There has to be intention to cause injury to oneself. The Railway Claims Tribunal totally erred in holding it as a self inflicted injury and denied the claim of the appellants. On the concept of self ‘inflicted injury’ in the case of ***Union of India vs. Rina Devi*** (supra) the Hon'ble Supreme Court held as under :-

“16.3Therefore, the two limbs of the Proviso should be construed to have two different objectives to be achieved. We can understand the meaning of the term "self-inflicted injury" not only from the sources provided by the dictionaries, but also from the context in which it is used in the statute. The term "self-inflicted injury" used in the statute can be deduced as one which a person suffers on account of one's own action, which is something more than a rash or negligent act. But it shall not be an intentional act of attempted suicide. While there may be cases where there is intention to inflict oneself with injury amounting to self-inflicted injury, which falls short of an attempt to commit suicide, there can also be cases where, irrespective of intention, a person may act with total recklessness, in that, he may throw all norms of caution to the wind and regardless to his age, circumstances, etc. act to his detriment. ”

(9) As held in *Union of India Vs. Prabhakaran Vijaykumar and others reported in (2008) SCC 527*, 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. Once initial burden is discharged, it is strict liability of railway to pay compensation. As such, I am satisfied that claimants are entitled for compensation as prayed for. Accordingly, I proceed to pass following order :-

ORDER

- (i) The first appeal is allowed.
- (ii) The Judgment and order dated 22/12/2020, passed in Case No.OA(IIu)/NGP173/2019 by Railway Claims Tribunal, Nagpur Bench, Nagpur is hereby quashed and set

aside.

(iii) The appellants are entitled for getting compensation of Rs.8,00,000/-(Rupees Eight Lakhs only) along with interest @6.00%p.a. from the date of filing of petition till its realization.

(iv) The respondent – Union of India to pay amount of compensation within a period of **three months**.

(v) The Registry is directed that after depositing the amount by the respondent, it shall be disbursed amongst the appellants in equal proportion on due verification of documents.

The appeal stands disposed of.

[SMT. M. S. JAWALKAR, J.]