

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

FIRST APPEAL NO.588 OF 2021

1. Smt. Vishakha wd/o Vishveshwar @
Baban Gajbhiye
Aged about 43 years,
Occupation – Household
2. Anukul s/o Vishveshwar @
Baban Gajbhiye
Aged about 22 years,
Occupation – Student,
3. Ku. Nilima d/o Vishveshwar @
Baban Gajbhiye
Aged about 17 years,
Occupation – Student
4. Smt. Gangabai wd/o Rambhau Gajbhiye
Aged about 75 years,
Occupation – Household

The applicant no.3 is minor
through next guardian mother i.e.
applicant no.1

All R/o. Kharsoli, Tah. Narkhed,
District Nagpur – 441 304

...APPELLANTS

VERSUS

Union of India,
through General Manager,
Central Railway,
C.S.T. Mumbai

...RESPONDENT

Mrs. H.S. Dhande, Advocate for the appellants.
Ms N.G. Chaubey, 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 22/12/2020 passed by the learned Member of the Railway Claims Tribunal at Nagpur in Claim Application No.OA(llu)/NGP/247/2017 by which the claim of the claimants was dismissed by the Railway Claims Tribunal.

3. The brief facts which are necessary for the disposal of the appeal are as under :

A] On 20/8/2017, at about 7.10 p.m. the deceased has purchased the ticket from Nagpur to Narkhed. The deceased boarded the train and proceeded towards Narkhed. But due to sudden jolt and jerk to the train, the deceased accidentally fell down and died on the spot between Pole No.960/7-9. As per the contention of the claimants who are the wife, mother and minor children of the deceased - Vishweshwar that the death of the deceased is caused in an untoward incident, and therefore, the claimants are entitled to receive the compensation.

4. The claim of the claimants was resisted by the Railway in response to the notice by filing written statement on record. As per the contention of the Railway, death of the deceased is not caused in an untoward incident as there is no eye-witness to the said incident. The Railway administration also challenged that the deceased was a *bona fide* passenger. It is further the contention of the Railway that the death of the deceased is caused due to self-inflicted injuries, and therefore, the Railway is not liable to pay compensation.

5. To substantiate the contention that the death of the deceased is caused in an untoward incident. The claimant Smt. Vishakha Vishweshwar Gajbhiye stepped into the witness box vide Exhibit-A-84 and deposed about the occurrence of the accident. The sum and substance of her evidence is that her husband had been to Nagpur for purchasing some articles on account of festival of Pola which is to be celebrated on 21/08/2017. After returning from Nagpur he purchased the ticket and was travelling by train to reach at Narkhed. On the way, he fell down from the train and his dead body was found at Km.No.960/7 - 9 in between Narkhed to Tinkheda. Thus, the death of the deceased is caused in an untoward incident, and therefore, the claimants are entitled to receive the compensation. Besides her oral evidence, claimants relied upon the DRM report, merg report, spot panchnama, inquest panchanama and various investigation papers. To

rebut the evidence of claimants Railway has also adduced the evidence of Shri Abhijit Lahiri working as a Station Master at Narkhed railway Station vide Exhibit – A-91. One Shri Dashrat Pancham Bhijhade who was working as Keyman, Unit No.14, Narkhed Central Railway. The railway administration have also placed reliance on the DRM report and submitted that merely because the dead body was found on the track is not sufficient to hold that the death of the deceased is caused in an untoward incident.

6. Heard Mrs. Dhande, learned Counsel for the appellants. She submitted that the approach of the Tribunal in the impugned judgment and order was not only erroneous but it was hyper technical in nature. The railway ticket was recovered from the deceased. The communication of the railway administration also shows that deceased was having ticket and said ticket was genuine one. So far as the observation of the railway Tribunal is concerned that there was no eye-witness to the incident, and therefore, the claimants failed to prove that the death of the deceased is caused in an untoward incident is not acceptable and liable to be quashed and set aside. She submitted that the railway ticket found along with the deceased and dead body of the deceased was found on the track and the evidence of the claimant that her husband had been to Nagpur to purchase some articles, are sufficient to show that the

deceased was travelling by the train and during the journey he fell down from the train and sustained injuries and died on the spot. In support of her contention she placed reliance on ***Kavita wd/o Sanjay Awachare and ors. versus Union of India 2018 (4) Mh.L.J. 466*** wherein this Court has considered that the dead body of the deceased was found lying on railway track between two stations and inquest panchnama held on same day recorded that the dead body of the deceased was found on the track, merely because seizure of ticket was not mentioned in spot panchnama would not render same suspicious. On the basis of material on record held that the deceased was travelling on railway ticket and his death did occur while travelling in a train and that appellants are entitled for the compensation. She further placed reliance on ***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.)***.

7. *Per Contra*, Ms Chaubey, learned Counsel appearing on behalf of the respondent submitted that the impugned judgment and order passed by the Tribunal did not deserve interference because it was based on proper appreciation on the oral as well as documentary evidence on record. It was submitted that the dead body of the deceased was found on the middle of the track which is sufficient to show that the death of the deceased is not caused in an untoward incident as defined under the

provisions of the Railways Act. It was further submitted that there was no eye-witness to the incident and it could not be said that the deceased had fallen from running train when the incident occurred.

8. Having heard learned Counsel for the parties and upon perusal of the evidence and material on record the point arise for my consideration is :

(i) Whether the Railway Claims Tribunal is justified in rejecting the claim of the claimants by holding that the death of the deceased is not caused in an untoward incident?

9. 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 its intimation was given to the station Superintendent at Narkhed railway station. The evidence of the claimants is to the effect that her husband had been to Nagpur for purchasing some articles on account of festival of Pola which is to be celebrated on 21/08/2017. Admittedly, she was not the eye-witness of the incident. Though she is cross-examined nothing incriminating is brought on record to falsify her version.

10. Her evidence further shows that the place of incident is approximately 5 to 6 km away from her residence. She further admitted

that one tobacco box which was found along with the dead body of the deceased was handed over to her by the police. The contention of the claimant was resisted by the Railway on the ground that as the dead body of the deceased was found on the middle of the track, therefore, interference can be drawn that the death of the deceased is not caused in an untoward incident.

11. So far as the contention of the Railway that the deceased was not a *bona fide* passenger, is not supported by their own investigation papers. During investigation, the genuineness of the ticket which was found along with the deceased was verified and it revealed that the ticket which was found along with the deceased was a genuine ticket and it was issued to travel from Nagpur to Narkhed. That communication is at Exhibit-A-39. The communication at Exhibit-A-40 also shows that the railway ticket bearing No.A154910277 was issued from the Nagpur railway station to travel from Nagpur to Narkhed. Thus, finding of the ticket with the deceased itself is sufficient to show that the deceased was a *bona fide* passenger and he was travelling from the train Nagpur to Narkhed to reach at his village at Narkhed. Thus, as per the communication itself, it is crystal clear that the deceased was a *bona fide* passenger has obtained the valid ticket and was travelling by the train as a *bona fide* Passenger.

12. The Tribunal has analyzed the aforesaid material on record and arrived at a conclusion that there was no eye-witness to the said incident. The dead body of the deceased was found on the middle of the track which is sufficient to show that the deceased has not died in an untoward incident.

13. Before entering into the merits of the case, it is necessary to see the definition of untoward incident :

Section 123(c) of the Railways Act, 1989 defines 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; 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.

14. Now by considering the definition of the untoward incident, it is to be seen whether the deceased was travelling by the train which was

carrying the passengers and whether he was holding a valid ticket. As already observed that the deceased was travelling by a railway which was used for carrying the passengers and valid ticket was also found along with the deceased. The investigation papers clarifies the fact that one tobacco box was found along with the deceased as well as one ticket was also found with the deceased. Thus, the fact that deceased was a *bona fide* passenger is proved by the claimant.

15. As far as the aspect regarding the untoward incident is concerned, the principles while appreciating the evidence in railway accident claims, the Hon'ble Apex Court in Prabhakaran (supra) held 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.

16. In view of the above principles laid down by the Hon'ble Apex Court, the evidence in the present case is to be appreciated. Section 2(29) of the Railways Act, 1989 defines "passenger" to mean a person travelling with a valid pass or ticket. Section 123(c) of the Railways Act 1989 defines the untoward incident as above. Admittedly, there is no eye-witness to the said incident. In such circumstances, the evidence is to be appreciated by considering the attending circumstances which are brought on record.

17. To rebut the evidence, the railway administration has examined two witnesses namely Dashrat Pancharam Bijhade who was

serving as a Keyman at Narkhed-Tinkheda station. As per his evidence, one Gateman informed him that one dead body is lying at Km.No.960/ 7 - 9 uptrack. Therefore, he visited the said place and saw the dead body. His evidence further shows that he had lifted the said dead body from the uptrack for clearing the track and deceased was only having pant on his person and on the rest of the portion of the body was not having any clothes. He was not wearing any shirt. Thus, his evidence is only to the extent that one dead body was found on the track. Another witness examined by the railway is Shri Rajesh Gajananrao Haware who was a Police Naik of police station Narkhed. His evidence is only to the extent that the dead body was lying besides the track and there was a lot of blood on the track. During the inquest panchanama railway ticket was found with the deceased. These both the witnesses are not cross-examined and their evidence remain unchallenged.

18. Now it is well settled that the claimants have to prove the contentions on the basis of their affidavit mentioning the relevant facts. The burden on the claimant is to prove the facts on the basis of the affidavit. The claimant No.1 has entered into the witness box and narrated all the relevant facts. The relevant facts narrated by her are also supported by the police papers that is merg report, spot panchnama and inquest panchanama. As per the merg report, dead body of one

unknown person was found on the track. The spot panchnama also shows that the dead body was found on the midst of the track and one railway ticket was also found along with the deceased. The railway administration have also carried out the investigation regarding the alleged incident. As per the DRM report dead body of the deceased was admittedly found on the track but as there is no eye-witness to the incident railway administration come to the conclusion that the allegation of falling down due to jolt and jerk of the train is not established. Admittedly, though the railway administration have adduced the evidence but their evidence is also not sufficient to show that the deceased either died as he committed the suicide or he was dashed by any train while crossing the track. The defence of the railway administration is also not to the extent that the deceased was dashed by any other train while he was crossing the track. Thus, considering the facts on record that the deceased had obtained the ticket from Nagpur to come at Narkhed. Thus, the facts that the ticket obtained by the deceased found along with the deceased and his dead body found at some distance from the Narkhed railway station sufficiently establishes that deceased had obtained the ticket and he was travelling by the Nagpur-Narkhed by the train and on the way he fell down from the train, and therefore, his dead body was lying on the track.

19. Mrs. Dhande, learned Counsel placed reliance on the Rinadevi (supra) wherein also the Hon'ble Apex Court held that the burden of proving the facts on the claimant and claimant to show that there is a death due to untoward incident and that burden can be discharged by filing of the affidavit by narrating the facts of the particular case. Thus, initial onus on the claimant is light. If the claimants discharged the initial burden on the basis of the affidavit then burden will shift on the railways and the issue can be decided on the facts shown on the attending circumstance. Here the attending circumstances sufficiently shows that the deceased has obtained the ticket and he was travelling as a passenger from Nagpur to Narkhed and on the way he fell down and sustained the injuries. No other reason came forward before the Court to infer that death of deceased is caused due to the suicide attempt or due to the accident. Only inference can be drawn that the death of the deceased is caused as he fell down from the train and sustained the injuries and succumbed to the death.

20. As far as the defence of the railway that deceased died due to his own negligence is also not supported by any other evidence. I am unable to uphold that the deceased died due to the self-inflicted injuries as the concept of self-inflicted injury as interpreted by the Hon'ble Apex Court in Rina Devi (supra) states that 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 dealt in the case of liability based on no fault theory. The Hon'ble Apex Court has referred the judgment of *Union of India Vs Sunil Kumar 2017 (13) SCALE 652* wherein it is laid down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold 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 124A merely on the plea of negligence of the victim as a contributing factor.

21. Thus, the Hon'ble Supreme Court has taken a liberal view and it has been laid down that if a restricted meaning is adopted in interpreting the Section 123(c) of the said act, it would amount to depriving large number of railway passengers from getting compensation in railway accidents. Applying the aforesaid position of law to the facts of the present case, it would be evident that the Tribunal has not taken into consideration the evidence and material on record and has not been properly construed while dismissing the claim petition of the appellants. In my opinion, there was sufficient material on record to show that the

deceased was travelling on the railway ticket placed on record that his death occur while travelling in the train and that the appellants were entitled for compensation under Section 124A of the Act.

22. In view of the above discussion, the appeal of the appellants deserves to be allowed by a holding that the appellants are entitled to receive the compensation as the death of the deceased is caused in an untoward incident.

23. The alleged incident has occurred on 20/08/2017 i.e. after the issuance of the Notification dated 22/12/2016. In view of that Notification the claimants are entitled for compensation of Rs.8,00,000/- (Rs. Eight lacs) with interest @ 6% per annum.

24. In view of that the claimants are entitled to receive the compensation at the rate of Rs.8,00,000/- along with the interest from the date of application.

25. In the light of the above discussion, I proceed to pass the following order :

(i) The appeal is allowed.

(ii) The judgment and order passed by the learned Railway

Claims Tribunal, Nagpur in Claim Application No.OA(ltu)/NGP/247/2017 dated 22/12/2020 is quashed and set aside.

(iii) Out of the compensation amount of Rs.8,00,000/- the amount of Rs.2,50,000/- along with accrued interest is to be disbursed to claimant No.1, the amount of Rs.2,50,000/- is to be disbursed to claimant No.4 and Rs.1,50,000/- each to be disbursed to the claimant Nos.2 and 3.

(iv) The amount of compensation be disbursed on depositing the amount on due identification and verification.

(URMILA JOSHI-PHALKE, J.)

**Divya*