

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

FIRST APPEAL NO.63 OF 2020

1. Babulal s/o Ramshahay Chakole
Aged 57 years, Occ. Rickshaw Puller,
R/o. 180, Gangabagh, Pardi,
Tah. & District Nagpur
2. Mantorabai w/o Babulal Chakole,
Aged 46 years, Occ. Household,
R/o. 180, Gangabag, Pardi, Nagpur

...APPELLANTS

VERSUS

Union of India,
through the General Manager,
South East Central Railway,
Bilaspur, C.G.

...RESPONDENT

Shri S.R. Charpe, Advocate for the appellants.
Shri P.V. Navlani, Advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 05, 2023.

ORAL JUDGMENT :

Heard.

2. **ADMIT.**

3. By this appeal, the appellants have challenged the judgment and award dated 11/01/2017 passed by the Railway Claims Tribunal,

Nagpur in Case No.OA/(llu)/NGP/2012/0141 by which the learned Member of the Tribunal rejected the claim of the claimants.

4. The facts giving rise to filing of the present appeal can be summarized as follows :

A] The claimants are the parents of the deceased. As per their contention on 02/12/2011, the deceased was travelling from Kalamna to Kamptee railway station by Itwari-Durg passenger train no.58706 after purchasing a valid journey ticket bearing No.34385960 issued at 7.25 hrs. in the morning on 02/12/2011. When the said train reached to the military area of Kamptee, the deceased fell down from the running train due to heavy rush and sudden jerk to the train and received serious injuries on his person. After the incident he was immediately removed to the Mayo Hospital, Nagpur by his relatives who were also travelling along with the deceased in the said train. Due to the accidental injuries deceased succumbed to the death on 06/12/2011.

5. As per contention of the claimants the death of the deceased is caused in an untoward incident which took place on 02/12/2011. The claimants being the parents of the deceased are entitled to receive the compensation under the provisions of Railway Claims Act.

6. In response to the notice, the respondent-Railway has contested the claim by filing written statement wherein the Railway has denied all the allegations and raised the defence that the deceased was not a *bona fide* passenger of any train. The death of the deceased is covered under Section 124-A of the Railways Act as the deceased was negligent. It is further the contention of the Railway that the deceased was not at all travelling by the said train, thus, he did not died in an untoward incident, and therefore, the claimants are not entitled to receive any compensation.

7. Learned Tribunal recorded the evidence of the claimants as well as the witness of the Railway namely Ranjeetsingh s/o Tulshiramsingh Gautam vide Exhibit A-69. Besides the oral evidence, the claimants placed reliance on merg report, spot panchnama, inquest panchnama, post-mortem report as well as DRM report. The claimants has also placed reliance on one certificate issued by the Railway showing that the ticket bearing No.34385960 of second class from Kalamna to Kanhan was issued for one person on 02/12/2011 at about 7.25 a.m. On the basis of this evidence, the claimants claimed that they have proved that the deceased was *bona fide* passenger and died in an untoward incident whereas it is submitted by the Railway that best evidence of the eye-witness is not adduced by the claimants. Thus, the claimants had not

proved that the deceased died in an untoward incident, therefore, the claimants are not entitled to receive the compensation. The Railway Claims Tribunal accepted the contention of the respondent-Railway and rejected the claim by holding that the deceased was not a *bona fide* passenger and his death is not caused in an untoward incident hence, not entitled for compensation.

8. Being aggrieved and dissatisfied with the judgment and award passed by the Railway Claims Tribunal, present appeal is preferred on the ground that the Railway Claims Tribunal had not considered the evidence on record and erroneously rejected the claim. In fact, only burden on the claimants is to show that the deceased died in an untoward incident on the basis of affidavit of evidence. The claimants had proved the death of the deceased in an untoward incident by adducing the evidence by way of affidavit which is supported by the merg report as well as spot panchnama and inquest panchnama.

9. Heard Shri Charpe, learned Counsel for the appellants. He reiterated the same contentions and invited my attention towards the police papers i.e. merg report, inquest panchnama and spot panchnama and submitted that these documents are sufficient to show that the death of the deceased is caused due to the accidental injuries sustained

by him in an untoward incident. In support of his contention he 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.)*.

10. Per contra, Shri Navlani, learned Counsel for the respondent vehemently submitted that the best evidence of the eye-witness is not adduced by the claimants in support of the contention. In fact, that train did not pass from the said track between Kalamna to Kamptee at 8.00 a.m. He further submitted that the claimants failed to prove that the deceased was a *bona fide* passenger and he sustained the injuries in an untoward incident. In view of that the Tribunal has rightly dismissed the claim of the claimants and no interference is called for.

11. After hearing both the sides and perusal of the evidence on record following point arise for my consideration :

(i) Whether the Railway Claims Tribunal is justified in rejecting the claim petition of the claimants.

12. In support of the contention, the claimant No.1 entered into the witness box by examining himself and reiterated the contention as per his pleading. The sum and substance of his evidence is that the deceased was his son, he obtained the valid railway ticket bearing No.34385960 to travel from Kalamna to Kanhan on 02/12/2011,

accordingly he was travelling by the said train. When the said train reached in the army area Kamptee his son fell down from the running train in between the railway station Kamptee and Kanhan and sustained grievous injuries. Some of his relatives were also travelling by the said train. They rushed him to the hospital. During the treatment on 06/12/2011 he died. Thus, the death of the deceased is caused in an untoward incident. He is cross-examined by the Railway. During his cross-examination claimant No.1 had admitted that he has not personally witnessed the incident so also purchase of the journey ticket. Rest of the cross-examination is in the suggestion form.

13. Besides the oral evidence of the claimant no other evidence is adduced by the claimant. On behalf of the Railway, affidavit of Ranjeetsingh Tulshiramsingh Gautam was adduced. As per his evidence, train No.58706 Itwari-Durg passenger arrived at Kamptee railway station at about 14.57 hrs. and departed at 14.59 hrs. He was working as a Guard of train No.58706 Nagpur-Gondia express. He further testified that no untoward incident of accidental fall down of any passenger was reported to him by Loco Pilot and Station Master of the train. During his cross-examination, he admitted that the Guard brake van is on the rear side of the train. He is able to see both sides as there is a rear view window. He specifically stated during the

cross-examination that he is not aware whether any person fell down from his train. Thus, he has not denied but shown his unawareness regarding the incident of any person fell down from the train. Besides the oral evidence, police papers i.e. the merg report is on record at Exhibit A-57. The merg report is prepared by the Railway police shows that on 01/12/2012 one person fell down from the train Itwari-Durg passenger and sustained grievous injuries and immediately removed to the hospital. The spot panchnama is also on record which shows that the alleged spot of incident is at crossing KM No.1114/10 to 111/8 and the injured was found in an injured condition in between the two lines. He had sustained the grievous injuries and he was lifted and shifted to the hospital in an unconscious condition. After his death inquest panchnama was also drawn. Post-mortem report shows that the death of the deceased is due to the head injury sustained by him. The DRM report is also on record. The DRM report is prepared by the Railway administration on the basis of various statements of the witnesses. The conclusion of the DRM report shows that the deceased was not travelled by train. If any passenger falls down from the train, the co-passengers could have pulled the chain on humanity ground to save the life but nothing was happened. The ticket was managed by the appellants. Thus, the contention of the railway is that deceased never travelled by the said train and it was the ticket which was managed by the applicant.

14. So far as the submission of the learned Counsel Shri Navlani is concerned that the said train did not pass at 8.00 a.m. from the said track cannot be taken into consideration as no such defence is raised by the Railway in the written statement. The issue of *bona fide* ticket is concerned, the said ticket is verified by the railway administration and certificate is issued vide Exhibit A-29 which shows that the ticket bearing No.34385960 is issued on 02/12/2011 at about 7.25 a.m. Said ticket is also produced on record which shows that the ticket was obtained by the deceased and it was produced after the accident by the claimants. Thus, nothing is on record to show that the said ticket was managed by the applicant subsequently after the accident. As far as the issue of *bona fide* passenger is concerned, the Hon'ble Apex Court in the case of Union of India Vs. Rinadevi (supra) observed that the burden is on the claimants which is to be discharged by the claimants on the basis of affidavit.

15. By referring the judgment of Delhi High Court in ***Gurcharan Singh Vs. State of Punjab (2020) 10 SCC 200*** it is held by the Hon'ble Apex Court 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. It is further held that mere the absence of a ticket is not sufficient to show

that the deceased or the injured is not sufficient to hold that he was not a *bona fide* passenger for which claim for compensation could be maintained. It is further held that mere absence of ticket with such injured or deceased will not negate his claim that he was a *bona fide* passenger. In the present case, the ticket is produced by the claimants which is verified by the railway administration, thus, it is sufficient to show that deceased was a bonafide passenger.

16. So far as the contention of the railway is concerned that the death of the deceased is not caused in an untoward incident, 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.

17. Now by considering definition of the untoward incident it is to be seen whether the deceased was travelling by the train which was carrying passengers and whether he was holding a valid railway ticket. It is already observed that he was holding a valid railway ticket. The police papers which are filed on record that is merg report shows that one person fell down from the train and sustained the injuries. This fact is also supported by the spot panchnama. The post-mortem report also shows that injured has sustained the injuries and his death is caused in an untoward incident. The Hon'ble Apex Court in case of ***Union of India Vs. Prabhakaran Vijaya Kumar and ors., (2008) 9 SCC 527*** 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”.

It is further held that the principles of statutory constructions are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions.

‘A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-

and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

It is further held that 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 passenger 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.

18. In view of the principles laid down by the Hon'ble Apex Court in the above referred case, if the facts of the present case are appreciated

admittedly there is an evidence on record to show that the deceased was travelling by the train i.e. Itwari-Durg passenger bearing No.58706. The injured was found lying in between the track and removed to the hospital. The merg report shows that the injured had sustained the injuries due to the felling down from the train and injured succumbed to the death due the head injury. The burden of the claimants to prove that the deceased died in an untoward incident is discharged by the claimants by filing an affidavit of the relevant facts. Thereafter burden will shift on the railway administration and issue can be decided on the facts shown or the attending circumstances. Admittedly, the contention raised by learned Counsel Shri Navlani that the train did not passes at 8.00 a.m. from the said track is not raised in the written statement. So at the appellate stage without any pleading it cannot be taken into consideration.

19. In view of the above discussion, the claimants have proved that the death of the deceased is occurred in an untoward incident. Claimants have further proved that the deceased was bonafide passenger. In view of that claimants are entitled to receive the compensation as per the new Notification issued on 22/12/2016. In view of that Notification the claimants are entitled for the compensation of Rs.8,00,000/- (Rs. Eight lacs) as the alleged incident has taken place

in the year 2011 i.e. prior to the Notification, therefore, the claimants are only entitled to receive the compensation of Rs.8,00,000/- (Rs. Eight lacs) without any interest.

20. In view of that appeal deserves to be allowed. Hence I proceed to pass the following order :

- (i) The First Appeal is allowed.
- (ii) The judgment and award dated 11/01/2017 passed by the Member, Railway Claims Tribunal, Nagpur in Case No.OA/(llu)/NGP/2012/0141 is hereby quashed and set aside.
- (iii) The respondent/Railway Administration is directed to pay compensation of Rs.8,00,000 (Rs. Eight lacs) to the claimants within a period of 60 days from the date of receipt of copy of this judgment.
- (iv) The amount of compensation be equally apportioned between claimant Nos.1 and 2.
- (v) The appeal stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*