

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

FIRST APPEAL NO.417 OF 2011

The Union of India,
General Manager,
South Central Railway,
Secunderabad.

APPELLANT

// VERSUS //

1. Sulochanabai wd/o Dattarao Kadam,
Aged 45 years,
Occupation : Nil.
2. Hanuman s/o Dattarao Kadam,
Aged 22 years, Occ.: Agri.,
3. Krishna S/o. Dattarao Kadam,
Aged 20 years, Occ.: Education,

All R/o. Sukapurwadi,
Tq. and Dist. Parbhani (MS).

RESPONDENTS

Mrs. Neerja Chaubey, Advocate for the appellant.
Mr. R. G. Bagul, Advocate for respondent Nos.1 to 3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/02/2023

ORAL JUDGMENT

1. This Appeal is directed against the Judgment and Award dated 22.10.2010 passed by the Railway Claims Tribunal, Nagpur granting sum of Rs.4,00,000/- towards compensation along with the interest at the rate of 6% per annum to the

claimants/respondents.

2. The facts leading to the present appeal are that:

The respondent/claimants who is the widow and two sons of the deceased Dattarao Sitaram Kadam filed a claim petition under Section 16 of the Railway Claims Tribunal Act, 1987 (hereinafter referred as “Act 1989”) before the Railway Claims Tribunal, seeking compensation on account of death of Dattarao Sitaram Kadam in an untoward incident.

3. As per the contention of the claimants deceased Dattarao Sitaram Kadam and one Pratap Padode had been to Aurangabad on 08.12.2007 early in the morning by Marathwada Express. Both of them went there to bring seeds for agricultural operations. After completing the work, both of them boarded in the Train No.350 Aurangabad – Hyderabad passenger by purchasing the ticket for their destination at Parbhani. However, due to the heavy crowd of the passengers in the train, before arrival of the train at Parbhani Station Dattarao had left his seat for urinal. However, due to sudden jerk in the train, he lost his balance and fell down from the train near Parbhani railway

station and train was run over in between kilometer 289/9 – 290/0. Due to the said dash, Dattarao died on the spot. After arrival of the train at Parbhani Railway Station, his companion Pratap Padode did not see the deceased. It is further contention of the claimant that on the next day, Pratap came to know about the death of Dattarao and identified his dead body in the General Hospital at Parbhani. It is contention of the applicants that as the death of the deceased was caused in untoward incident when deceased was travelling in a train Aurangabad – Hyderabad passenger, and therefore they are entitled for the compensation.

4. The said claim is resisted by the Railway, on the ground that no cause of action is arose to file this claim petition. The claim does not fall within the ambit of Section 123(c)(2) of the Railways Act. It is further contention of the Railway that deceased was not a *bona fide* passenger as railway ticket was not found along with him. It is further contended by the Railway that as per the investigation report by the railway officials, deceased was a trespasser and while crossing the track, he met with an accident and succumbed to the death. Thus, he is not died due to the accidental injuries but he died due to self-

inflicted injuries, and therefore his case does not cover under Section 123(c)(2) of the Railways Act.

5. The Railway Claims Tribunal has recorded the evidence. After hearing both the sides, Tribunal please to award the compensation at the rate of Rs.4,00,000/- to the claimants. Being aggrieved and dissatisfied with the Judgment and Award passed by the Railway Claims Tribunal, present appeal is preferred by the appellant/railway on the ground that the Railway Claims Tribunal has not considered the investigation report which categorically mentioned that deceased died while crossing the railway track at kilometer No.289/9 – 290/0 by coming under the wheels of the engine of Train No.350 and cut into the pieces. Therefore, the award passed by the Tribunal is wrong, illegal and liable to be set aside.

6. Heard learned Advocate Mrs. Chaubey for the appellant – Railway and Mr. Bagul learned Advocate for the respondents.

7. Learned Advocate Mrs. Chaubey for the

appellant/railway submits that merely because dead body was lying on the railway track, it cannot be presumed that deceased died in untoward incident. She further submitted that the injuries on the deceased were self-inflicted, and therefore grant of compensation under Section 123(c) and under Section 124-A of the Act 1989 is erroneous. She submitted that investigation report of the railway authorities shows that deceased was crossing the railway track and he met with an accident. Therefore, deceased died due to the self-inflicted injuries and not in untoward incident and hence railway is not liable to pay compensation to the claimant.

8. Per contra, learned Advocate Mr. Babul submitted that there is absolutely no evidence on record to show that deceased was crossing the railway track and met with an accident. On the contrary, evidence on record sufficiently shows that deceased was travelling in Aurangabad – Hyderabad Passenger. Applicant has examined his companion passenger Pratap Padode who specifically stated that deceased was travelling along with him and he left the seat to attend the urinal call. He met with an accident as he fallen from the entrance of

the Bogie due to the crowd of people in the passenger and succumbed to the death. Thus, he died in untoward incident. Hence the Tribunal rightly allowed the application, hence there is no merit in the appeal, appeal deserves to be dismissed.

9. Heard both the sides. Perused the record and after hearing both sides following points arise for my determination.

- (i) Whether the death of the deceased Dattarao is caused in an untoward incident?
- (ii) Whether deceased was *bona fide* passenger?
- (iii) Whether Judgment and Award passed calls for any interference?

10. To consider the rival contention for the parties, I have gone through the record and the impugned Judgment, with the help of the learned Advocate for the parties. The Hon'ble Apex Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar and others**, reported in (2008 ACJ 1895) has 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 a strict interpretation.” By referring various Judgments, the Hon’ble Apex Court further held that the principles of statutory construction 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 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.”

11. In the light of the above principles, the evidence in the present case is to be appreciated. To prove that deceased was travelling by train namely Aurangabad – Hyderabad Passenger, applicant No.1 Sulochanabai wife of the deceased stepped into the witness box and testified that deceased was her husband and she and other appellants are legal representatives. As per her evidence, deceased had been to Aurangabad on the date of incident and while returning from Aurangabad, he boarded in a train along with one Pratap Padode. While travelling in a train, he left the seat and went for urinal purpose. There was a crowd in the train. In the said crowd, he thrown out of the train and sustained injuries and died on the spot. She is cross-examined by the railway. During her cross-examination, nothing incriminating is brought on record to falsify her version. Only admission brought on record is that her husband was cut into two pieces as the wheels of the train was passed over. Admittedly, she is not the eye witness of the incident to prove the contention that the deceased was travelling in the Aurangabad – Hyderabad Passenger. Applicant has examined Pratap Dattarao Padode who testified that he along with the deceased had been to Aurangabad for purchasing seeds. After completing work they

boarded in the train No.350 Aurangabad – Hyderabad Passenger by obtaining valid ticket. He purchased the said ticket. There was rush in the passenger train. Shortly before the train reaching the railway station Parbhani, deceased left his seat to attend the urinal call and not returned back. After train reached at Parbhani Railway Station, he alighted from the train and searched for the deceased, but he could not find him. The platform was over crowded with the passengers, therefore he thought, he might have left the station. Hence, he left the station for his village. Next day, he came to know that Dattarao died in a railway accident. During his cross-examination also, it came on record that he was accompanying the deceased in the journey from Aurangabad to Parbhani and he had not witnessed the alleged incident. Thus, the contention of the applicant that deceased was travelling by the train is supported by AW No.2 Pratap Dattarao Padode. The defence taken by the railway is that deceased has not died in an untoward incident but he was crossing the road and while crossing the road, he came in front of the train and met with an accident. To support the contention on behalf of railway witness R.W.No.1 namely Sambha Jalba Kapure is examined who was working as Station Master at

Parbhani Railway Station. His evidence is to the extent that he has received the information by the Guard and he has taken the entry. Admittedly, the Guard namely Mr. S. Saibaba is not examined by the railway. As per the railway, investigation report, the railway official has recorded the statement of Mr. S. Saibaba and Mr. S. Saibaba has also submitted a written report. The statement of S. Saibaba has recorded by the railway officials. The report of S. Saibaba is only to the extent that a person aged about 40 years trespasser run over and killed at kilometer No.289/9 and 290/00. His statement is also on record, which also nowhere states that deceased was crossing the track and came in front of the train and as the wheels of the train run over him, he succumbed to the death. Thus, the evidence of railway witness Mr. Kapure is not sufficient to come to the conclusion that deceased was crossing the road. Admittedly, the Guard who reported the incident to the Station Master i.e. witness Kapure is not examined by the railway.

12. It is vehemently submitted by the learned Advocate Mrs. Chaubey, for the appellant that deceased has not died due to the untoward incident and therefore claimants are not entitled

for the compensation. She has also raised the defence that deceased was not a *bona fide* passenger and on that count also claimants are not entitled for the compensation. Learned Tribunal appreciated the evidence and observed that the applicants/claimants have examined alleged co-passenger and his evidence is cogent and reliable and granted the compensation.

13. Before entering into the merits of the case, it is necessary to see the definition of untoward incident defined in Section 123(c) of the **Railways Act, 1989** which reads as under:

Section 123(c)

“(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 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 passenger and whether he was holding valid ticket and therefore he was a *bona fide* passenger. As regards the contention of the railway is concerned, that the train ticket is not found along with the deceased. Neither it is produced by AW No.2. The Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** reported in **2018 ACJ 1441** has held that initial burden to prove that injured or deceased was a *bona fide* passenger for which claim for compensation could be maintained, is 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. Para 17.4 of the said judgment is relevant which reads as follows:

“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.”

15. In view of above observation 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.

16. In Judgment of **Union of India Vs. Smt. Rani and others** wherein Hon'ble Allahabad High Court reported in **2005 (2) T.A.C. 11 (All.)** has held that burden lies on railway to prove any of the circumstances mentioned in proviso 124-A of the

Railways Act, 1989. In para No.13 of the said Judgment, it is held that “now, coming to settled position regarding payment of compensation, we may mention that the Railway Administration shall not be liable to pay compensation on account of the death, if the passenger dies or suffers injury due to suicide or attempted suicide by him, self-inflicted injury; own criminal act; any act committed by him in a state of intoxication or insanity or any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Therefore, the Railway can escape liability of payment of compensation, only, if the aforesaid circumstances are proved by them. Incidences mentioned in proviso to Section 124-A of the Railway Act, 1989 being exception to the general rule for payment of compensation for the death, the burden lies on the Railways to prove any of these circumstances, which may fall within the exceptions. In the absence of any proof by the Railway Administration, it shall be presumed that the accident occurred on account of untoward incident. The Tribunal in its judgment has observed that no cogent evidence was lead by the appellant to prove its version that the case does not fall within the definition untoward

incident.”

17. The law thus emerge from the judgment is that the incident mentioned in the clause (a), (b), (c), (d) and (e) of the proviso below Section 124-A of the Act being exception to the general rule for payment of compensation for the death. Railway can escape liability or shall not be liable to pay compensation on the account of death, if the passenger dies and or suffers injury due to suicide or attempted suicide by him, self-inflicted injury, own criminal act or any act committed by him in a state of intoxication or insanity or any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident. Thus the claimant can be deprived of the claim for compensation only if the respondents leads and proves that the passenger suffers injury or died because of the incident as stated in the above clause of the proviso below Section 124-A of the said Act. In the absence of any proof by the Railway Administration, it shall be presumed that the accident occurred on account of untoward incident.

18. Now, on considering the matter on merit, it is

revealed that the claimants have discharged their burden by examining co-passenger to prove that the deceased was the *bona fide* passenger, by filing an affidavit and stating *inter alia* the relevant facts about the incident in question. Therefore, the burden shifts on the railway to prove the case of the claimants that the deceased was not a *bona fide* passenger. To discharge the said burden, the railway has examined one witness Mr. Kapure but his evidence is not sufficient to show that deceased was travelling without ticket of the train. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** (supra) 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 shifts on the Railways and the issue can be decided on the facts shown or the attending circumstances.

19. Here the evidence of AW No.2 Pratap Padode shows that the deceased was holding valid ticket. The possibility that ticket has been misplaced during the accident cannot be ruled out. Therefore, there is no reason to discard the evidence of

Pratap Padode. The evidence on record is sufficiently shows that deceased was a *bona fide* passenger.

20. So far as the issue regarding untoward incident is concerned, though the railway has claimed that deceased was crossing the track and came in front of the train, but the evidence of the railway adduced is not sufficient. Railway placed reliance the report of Mr. S. Saibaba Guard who was on duty. Said Mr. S. Saibaba is not examined by the railway. Moreover, his report is only to the extent that trespasser was run over by the train. He nowhere stated that, Dattarao was crossing the track and came in front of the train. The next contention of the railway is that deceased died due to the self-inflicted injury. Now, only question arises is whether the act of the deceased is covered under the self-inflicted injury or not. The Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** (supra) dealt with the said issue and held that provisions of Section 124-A of the Railways Act would be attracted if the intention of the person to have a self-inflicted injury is proved. It is further held that self-inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. It is further

held that invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. The Hon'ble Apex Court has referred the earlier decision in **United India Insurance Co. Ltd. Vs. Sunil Kumar**, reported in **2017 (13) SCALE 652** wherein it is laid down that plea of negligence of the victim cannot be allowed in a claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988 and it is held 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 124-A merely on the plea of negligence of the victim as a contributing factor.

21. Here in the present case, admittedly, the initial onus lies on the claimant is discharged by the claimants by adducing reliable evidence. The law only expects that claimants to discharge the burden on the basis of preponderance of probability by filing affidavit. Here not only the affidavit of the claimants but the claimants have adduced the evidence which sufficiently shows that claimants have discharged the burden to prove that deceased was a *bona fide* passenger and his death was

caused in an untoward incident.

22. In the light of the above evidence and in view of the above discussion, it is apparent that the Railway Claims Tribunal rightly come to the conclusion that the case of the claimants is covered under the untoward incident and granted compensation to the claimants.

23. At this juncture, Mr. Bagul learned Advocate for the respondents/claimants argued that, in view of the notification dated 22.12.2016 the respondents are entitled for compensation of Rs.8,00,000/- from the date of filing of the claim for compensation before the Tribunal, till the date of death. He had drawn the attention of this Court to the notification. He also placed reliance in the case of **Bandana Misra Vs. Union of India**, reported in **2017 ACJ 2447** wherein relying upon the said notification dated 22.12.2016 the claimants were entitled to get the compensation of Rs.8,00,000/-. He further relies upon the Judgment of this Court in **First Appeal No.878 of 2009 and 924 of 2010** decided on 17.02.2020 and 06.08.2009 respectively by which compensation of Rs. 8,00,000/- was granted.

24. Accordingly, the Judgment and order passed by the Railway Claims Tribunal, Nagpur dated 22.10.2010 is modified and thereby the appellant is directed to pay compensation of Rs.8,00,000/- to the respondents within a period of 60 days from the date of receipt of the copy of the judgment and after deducting the amount which was already paid to the respondents.

25. Thus, the appeal of the appellant/Railway is devoid of merits and liable to be dismissed. In the result, I proceed to pass following order.

ORDER

- (i) Appeal is hereby dismissed.
- (ii) No order as to costs.
- (iii) The Judgment and order passed by the Railway Claims Tribunal, Nagpur dated 22.10.2010 is modified and thereby the appellant is directed to pay compensation of Rs.8,00,000/- to the respondents within a period of 60 days from the date of receipt of the copy of the Judgment and after deducting the amount which was already paid to the respondents.

(URMILA JOSHI-PHALKE, J.)