



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.
FIRST APPEAL NO. 643 OF 2019

Corrected as
per C.O. order
dated
17.12.2024

APPELLANT
(On R.A. Original
Claimant)

- : 1. Godavari wd/o Namdeo Gavai,
Aged 44 years, Occ: Household
2. Ananda s/o Sabharat Gavai,
Aged 70 years, Occu: NIL
3. Mainabai w/o Ananda Gavai,
Aged 64 years, Occu: Household
All r/o. Kalwad, Tah. Shegaon,
Dist. Buldhana

//VERSUS//

RESPONDENT
(Original Respondent)
(On R.A.)

: The Union of India,
through the General Manager,
Central Railway, Mumbai (CST).

Shri Mahesh Rai , Advocate for appellants.
Mrs. Neeraja Chaubey, Advocate for respondent.

CORAM : G. A. SANAP, J.
DATED : 12th SEPTEMBER, 2023.

ORAL JUDGMENT

In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short “the Act of 1987”), challenge is to the judgment and order dated 22/11/2017 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the Tribunal dismissed the claim application made by the appellants

on account of death of husband of the appellant No.1- Godavari wd/o Namdeo Gavai.

2. Background facts:-

Appellant No.1 is wife of deceased Namdeo. It is the case of the appellants that on 04/10/2013, appellant No.1 and deceased boarded Bhusawal-Nagpur Passenger Train at Jalamb Railway Station for coming to Nagpur. At Dhamangao Railway Station deceased got down from the train to drink water at the common water tap. In the meanwhile, the train started moving from the platform, deceased therefore, came running and tried to board the moving train. In this process, while boarding the train, he fell down. He sustained serious injury. He was admitted in Primary Health Centre, Dhamangaon. The police conducted the investigation. It is the case of the appellant that at Jalamb Railway Station, the deceased had purchased a ticket for himself as well as appellant No.1. The ticket was lost in the incident. It is stated that deceased was a *bona fide* passenger. He died due to fall while boarding the train. It is stated that on account of death in an untoward incident, the appellants are entitled to get the compensation.

3. The respondent-Railway has filed the written statement and opposed the claim. It is contended that death was not in an untoward incident. The death was due to negligence of the deceased. He tried to board the running train and fell from running train. Therefore, his case would not fall within first part of Section 124-A of the Railway Act, 1989 (for short "the Act of 1989). It is stated that his case would be covered by the proviso to Section 124-A of the Act of 1989.

4. The appellant No.1 examined herself as a sole witness. She relied upon police case papers and other documents. Respondent-Railway relied upon the record of DRM inquiry. The learned Tribunal on consideration of the evidence recorded the findings on all the issues against the appellants and dismissed the claim. The appellants have therefore come before this Court in appeal.

5. I have heard Shri Mahesh Rai, learned Advocate for the appellants and Mrs Neeraja Chaubey, learned Advocate for the respondent. Perused the record and proceedings.

6. In view of the facts and circumstances following points fall for my determination.

i) Whether the deceased was travelling in Bhusawal-Nagpur Passenger Train No.51285 as a *bona fide* passenger with a valid journey ticket?

ii) Whether the deceased died due to fall while boarding in the running train and as such, it was an untoward incident?

7. Learned Advocate for the appellants submitted that in such a claim defence of negligence is not available. He submitted that liability is based on no fault theory. Learned Advocate relied on the decision of the Hon'ble Apex Court in the case of ***Union of India vs. Rina Devi*** reported in ***AIR 2018 SCC 2362***. Learned Advocate further submitted that appellant No.1 was witness to the accident. She has placed on record the first hand account of the incident. Learned Advocate further submitted that she has filed the affidavit and categorically stated that her husband had purchased a journey ticket for himself as well as for her at Jalamb Railway Station. She has stated that in the incident, the ticket was lost. Learned Advocate submitted that affidavit filed by the appellant No.1 is sufficient to take care of this issue. On this point also he has relied upon the decision in the case of ***Rina Devi***

(*supra*). Learned Advocate submitted that Tribunal has not properly appreciated the evidence on record and has come to a wrong conclusion.

8. Learned Advocate for the respondent-Railway submitted that incident occurred due to sheer negligence of the deceased. Learned Advocate on the basis of the record pointed out that deceased tried to board the running train and therefore, the incident occurred. Learned Advocate submitted that therefore, the death could not be said to be in an untoward incident. Learned Advocate further submitted that journey ticket was not found. The Tribunal therefore, has not committed any mistake in holding that he was not a *bona fide* passenger.

9. Admitted facts having bearing with the issues need to be stated at the threshold. Appellant No.1 was travelling with the deceased. This fact has been established on the basis of contemporaneous documentary evidence. She has stated that at Dhamangaon Railway Station deceased had got down from the train to drink water at tap. It is undisputed that deceased after drinking water realized that train had started running and therefore, he tried to board the train and in this process, fell down

and died due to the injuries sustained by him.

10. It is the case of the respondent-Railway that death was due to sheer negligence of the deceased and therefore, would squarely fall within the proviso to Section 124-A of the Act of 1989. The question is whether such a death could be said to be in an untoward incident. In order to support his submission, learned Advocate has placed reliance on the decision in the case of *Union of India vs. Rina Devi* reported in *AIR 2018 SCC 2362*. The Hon'ble Supreme Court in the case of *Rina Devi* (supra) has answered this question. Para No.16.6 relevant for the purpose of addressing this issue is extracted 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 reported in 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 163-A 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."

11. In this case, the deceased tried to board the running train after drinking water. In that process, he had sustained the injury. In view of the law laid down above, the defence of negligence is not available. DRM report is on record. In the report, DRM has categorically stated that passenger had fallen down while boarding the running train. The police report is also there. In my view, therefore, this act of falling down of the deceased while boarding the train will be in an untoward incident. This act will not fall under the proviso to Section 124-A of 1989 merely on the plea of negligence of the deceased as a contributing factor. Therefore, in my view, Tribunal has failed to consider the evidence and legal position properly.

12. The next question is as to whether the deceased was a *bona fide* passenger or not. It is undisputed that ticket was not recovered from the deceased. The appellant No.1 and deceased were travelling together. They were proceeding from Jalamb to Nagpur. The appellant has filed the affidavit and categorically stated that ticket was lost in the incident. She has stated that

deceased, at Jalamb Railway Station, had purchased joint ticket for them. The question is whether mere absence of ticket with the deceased would be sufficient to negative the claim. The answer to this question can be found in the decision of Apex Court in the case *Union of India Vs. Rina Devi* (supra). Para No.17.4 has sufficiently dealt with this point. Para No.17.4 is extracted below:-

“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 the facts found. The legal position in this regard will stand explained accordingly.”

13. In this case, appellant No.1 who was co-passenger has filed the affidavit. She has placed on record first hand account as to how and when the ticket was purchased by the deceased. She has stated in the affidavit that the ticket was purchased by the deceased for journey from Jalamb to Nagpur. She has stated that ticket was

lost in the incident. The question is whether this evidence is sufficient to discharge the burden in view of the law laid down in the case of ***Rina Devi*** (*supra*). In my view, this evidence is sufficient to shift initial burden cast on the appellants. This evidence is therefore, sufficient to conclude that deceased was a *bona fide* passenger. The respondent-Railway has relied upon the documentary evidence which states that during search the railway ticket was not found. The question is whether this statement would be sufficient to disprove the facts proved on the basis of the evidence. The Supreme Court has held that such issue can be decided on the facts shown or the attending circumstances. It is further held that this would have to be dealt with from case to case on the basis of facts found. In this case, in my view, evidence is sufficient to discharge the burden. Evidence is sufficient to accept the contention of the appellant that deceased was a *bona fide* passenger. Accordingly, I answer both the points in affirmative.

14. The appellants are entitled to get the compensation. The claim was filed prior to 16.10.2014. In this case, therefore, in view of the law laid down in ***Rina Devi and Union of India Vs. Radha Yadav***, reported in ***(2019) 3 SCC, 410*** the appellants would be entitled to get the lump sum compensation of Rs.8,00,000/-

(Rs. Eight Lakhs Only). Learned Advocate for the appellants submits that compensation awarded at the rate prevailing on the date of the filing of the claim with interest would not be more than Rs.8,00,000/-.

15. Accordingly, appeal is allowed.

16. The appellants are found entitled to get compensation of Rs.8,00,000/- (Rs. Eight Lakhs Only).

i) The appellant No1.-Godavari wd/o Namdeo Gavai shall get 50% of the amount of compensation.

ii) Appellant Nos.2-Ananda s/o Sabharat Gavai and 3-Mainabai w/o Ananda Gavai shall get compensation of 25% each.

iii) The amount of compensation be deposited in the bank accounts of appellants.

iv) The respondent-Railway is directed to deposit the amount of compensation within four months.

v) The appellants shall provide bank account details to the respondent-Railway.

(G. A. SANAP, J.)