



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

FIRST APPEAL NO. 481 OF 2019

- APPELLANTS** : 1. Smt. Sharda Wd/o. Srikant Wadkar,
 Aged about 50 years, Occ. Household,
 (Widow of deceased).
2. Megha D/o. Srikant Wadkar, Aged
 about 26 years, Occ. Nil,
 (Daughter of deceased).
3. Vaibhav S/o. Srikant Wadkar, Aged
 about 24 years, Occ. Labour,
 (Son of deceased).
4. Ku. Tapsya D/o. Srikant Wadkar, Aged
 about 21 years, Occ. Nil,
 (Daughter of deceased).

All R/o. Village Sindhi Meghe, Tah. &
 Dist. Wardha (Mah).

//VERSUS//

RESPONDENT : Union of India, through its General
 Manager, Central Railway, Mumbai
 CST-01.

Mr. R.G. Bagul, Advocate for the Appellants.

Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 13th OCTOBER, 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 17.03.2017, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby learned Member of the Tribunal dismissed the claim filed by the appellants under Section 16 of the Act of 1987.

02] BACKGROUND FACTS :-

Appellant No.1 is the wife of deceased Shrikant Wadkar. Appellant Nos.2 to 4 are the children of the deceased. It is the case of the appellants that on 07.02.2011, the deceased was travelling by Vidarbha Express Train No.12106 with a valid journey ticket from Wardha to Badnera. It is stated that there was heavy rush in that bogie. It is stated that due to heavy rush and jostling of passengers, the deceased fell from running train at KM No.756/7-5. He sustained serious injuries and died on the spot. It is stated that death was in an untoward incident. The journey ticket was lost in the accident. On these averments, the appellants claimed the compensation.

03] The respondent/Railway filed the written statement and opposed the claim. It was contended that the deceased was not a *bona fide* passenger. He was travelling without a valid journey ticket. It was also contended that the incident occurred due to negligent act of the deceased. Death was not in an untoward

incident. The injuries sustained by the deceased were, therefore, self-inflicted injuries.

04] Learned Member of the Tribunal framed as may as four issues. Appellant No.1 examined herself as AW-1. AW-2 is the appellant No.3. The respondent/Railway has examined RW-1 Sub-Inspector of R.P.F. Learned Member of the Tribunal, on consideration of the evidence, found that there was no substance in the claim and ultimately dismissed the claim. Being aggrieved by this judgment and order, the appellants are before this Court.

05] I have heard Mr. R.G. Bagul, learned advocate for the appellants and Ms. Neerja Chaubey, learned advocate for the respondent/Railway. Perused the record and proceedings.

06] Following points fall for my determination:

- (a) Whether the deceased died due to fall from running train and as such the death was in an untoward incident?
- (b) Whether the deceased was a *bona fide* passenger of the relevant train with a valid journey ticket?.

07] Learned advocate for the appellants submitted that the deceased had sustained injury to his head in the accident. Learned

advocate submitted that considering the injuries sustained by the deceased, possibility of the deceased being run over by the train has been completely ruled out. Learned advocate submitted that there was no report by Loco Pilot of any train about run over of any passenger or person between Wardha and Badnera. Learned advocate submitted that the dead body was found by the side of the railway track between two railway stations and this indicates that the death was due to fall from running train. Learned advocate further submitted that the deceased was a *bona fide* passenger travelling with a valid journey ticket. Learned advocate pointed out from the evidence that the ticket was purchased by the deceased, but it was lost in the accident. Learned advocate submitted that appellant No.3 has filed an affidavit and stated that his father had purchased the railway ticket at Wardha Railway Station in his presence and had boarded Vidarbha Express. Learned advocate submitted that this evidence is sufficient to discharge the initial burden cast on the appellants. In order to seek support to this submission, learned advocate has relied upon a decision in the case of *Union of India Vs. Rina Devi [AIR 2018 SC 2362]*.

08] Learned advocate for the respondent/Railway submitted that there is no eye witness to the incident. Learned advocate

pointed out that train pulling of Vidarbha Express was not reported to the Station Master at Badnera as well as at Wardha. Learned advocate submitted that neither the Loco Pilot of Vidarbha Express nor the Guard of Vidarbha Express reported that any passenger fell from running train. Learned advocate submitted that, therefore, the evidence is not sufficient to accept the case of the appellants that the deceased died due to fall from running train and as such the death was in an untoward incident. Learned advocate submitted that the facts and circumstances indicate that this act was due to criminal negligence of the deceased and as such amounts to self-inflicted injury. Learned advocate further submitted that other articles belonging to the deceased were found on his person at the time of inquest panchanama, but journey ticket was not found. Learned advocate submitted that, therefore, this material is sufficient to conclude that the deceased was travelling in Vidarbha Express without a valid journey ticket.

09] It is pertinent to mention that the journey ticket was not found on the person of the deceased at the time of inquest panchanama. Similarly, the journey ticket was not found on the spot at the time of spot panchanama by the police. It is seen that other belongings of the deceased were found with him. AW-1 in

her evidence has stated that on the given date the deceased after purchasing journey ticket was travelling from Wardha to Badnera. She was not an eye witness to the purchase of the ticket or actual boarding of the train by the deceased. AW-2, son of the deceased, has been examined. In his evidence, he has stated that on the given date, he had accompanied his father to Wardha Railway Station. He has stated that his father had purchased the ticket of general class and on arrival of Vidarbha Express boarded Vidarbha Express at Wardha Railway Station. In his cross-examination, he has admitted that he had purchased the ticket for his father. He has stated that he does not remember the cost of the ticket. He has stated that he had handed over the ticket to his father and the ticket was for journey from Wardha to Badnera. In his cross-examination while narrating the purpose of journey, he has stated that his father was going to visit his relative at Badnera. It is seen that there is contradiction in his evidence as to the actual purchase of the ticket by him or by his father. In his examination-in-chief, he has stated that it was purchased by his father, but in his cross-examination he has stated that it was purchased by him. The question is whether this contradiction is sufficient to discard his evidence. In my view, it would not be sufficient to discard his evidence. Perusal of his cross-examination would show that there

was no denial to his statement that he had accompanied his father on the given date and saw his father boarding Vidarbha Express Train. As far as the evidence of AW-2 is concerned, it is sufficient to prove that he had accompanied his father and after purchasing the ticket, his father had boarded Vidarbha Express Train at Wardha Railway Station.

10] The moot question that needs to be addressed is whether this statement on affidavit is sufficient to discharge the burden cast on the appellants to prove that the deceased was a *bona fide* passenger travelling with a valid journey ticket. At this stage, it would be appropriate to make a profitable reference to the decision in the case of ***Rina Devi*** (supra). Paragraph 17.4 is relevant for the purpose of addressing this issue. It is reproduced below:

“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.”

11] The Hon'ble Supreme Court in this case has held that mere presence of body on the Railway premises will not be conclusive to hold that the injured or deceased was a *bona fide* passenger. It is held that mere absence of ticket with such injured or deceased will not negative the claim that he was a *bona fide* passenger. It is held that initial burden would 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. It is further held that this will have to be dealt with from case to case on the basis of the facts found.

12] In this case, in my view, the facts stated in the affidavit by AW-2 are sufficient to discharge the initial burden cast on the appellants. It is sufficient to accept their contention that the deceased was a *bona fide* passenger travelling with a valid journey ticket, but in the unfortunate incident the ticket was lost. In my view, therefore, in this case learned Member of the Tribunal was not right in rejecting this contention of the appellants.

13] The next important question is whether the death was in an untoward incident as understood by Section 123(c)(2) of the

Railways Act, 1989 (for short “the Act of 1989”). The evidence of AW-2 is sufficient to conclude that the deceased had boarded Vidarbha Express at Wardha Railway Station. The circumstances obtained on record need to be juxtaposed with the oral and documentary evidence. The dead body was found by the side of the railway track between two railway stations. It is not the case of the respondent/Railway that the body was found in the railway yard of any station. It is also not the case of the Railway that the deceased was run over by Vidarbha Express. Even if it was the case of the Railway that he was run over by Vidarbha Express, in my view, the evidence on record would not have supported this contention. If the deceased was run over by train, then his body would have been cut into pieces. If he was dashed by train in high speed, he would have been thrown away at some distance and in that situation he would have sustained multiple injuries including fractures. The Post Mortem Report is on record. The deceased, as can be seen from the Post Mortem Report, had sustained injury to his head. The cause of death is due to head injury. The actual condition of the dead body and the situation prevailing on the spot have been reflected in the spot panchanama. In the facts and circumstances, therefore, the case of the appellants that the deceased fell from running train and died due to the injuries

sustained by him cannot be discarded and disbelieved.

14] It is the case of the respondent/Railway that the deceased might have acted in negligent manner and solely responsible for his fall from running train. In my view, this defence cannot be sustained. It is to be noted that the accident claim is based on 'strict liability' or 'no fault theory'. In a case based on 'no fault theory,' the defence of contributory negligence is not available. The Hon'ble Supreme Court in the case of *Rina Devi* (supra) has 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 124A merely on the plea of negligence of the victim as a contributory factor.

15] The claimants can be denied the compensation, if the respondent/Railway is able to establish any of the clauses of the proviso to Section 124A of the Act of 1989. If the case falls in first part of Section 124A of the Act of 1989, then the Railway is liable to pay the compensation. In this case, it is noticed that the learned Member of the Tribunal has not properly appreciated the facts and evidence. He has come to a wrong conclusion. As such, I record my findings on the above points in the affirmative.

16] Learned advocate for the appellants submits that in view of the law laid down in the case of *Union of India Vs. Radha Yadav [(2019) 3 SCC 410]*, the appellants would be entitled to get the compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest. Learned advocate has relied upon a Notification issued by the Ministry of Railways (Railway Board) dated 22nd December, 2016, wherein it is stated that in case of death claim the claimants are entitled to get the compensation of Rs.8,00,000/-. In view of the decision in the case of *Radha Yadav* (supra), appellants are entitled to get the compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest.

17] In view of the facts and circumstances and in view of the submissions advanced by the learned advocate for the appellants, the respondent/Railway shall pay the compensation of Rs.8,00,000/- (rupees eight lakhs only) to the appellant No.1 within four months. The compensation be directly deposited in the bank account of appellant No.1. Appellant No.1 shall provide particulars of the bank account to the respondent/Railway. If the amount is not deposited within four months, then the respondent/Railway shall pay interest @ 7% per annum from the date of this order till realization.

18] The appeal is **allowed** and disposed of accordingly. No order as to costs.

(G. A. SANAP, J.)

Vijay