

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

FIRST APPEAL NO. 61 OF 2021

APPELLANTS: 1] Shri Aniruddha Roy s/o Mahendranath
 On R.A. Roy, Aged about 57 years,
 (Ori. Claimant) Occu: Agriculture.

2] Smt. Kanti Roy w/o Aniruddha Roy,
 Age 50 years, Occu: Housewife,
 R/o Birmapur, Bhartinowda, Shyamdasapur,
 Maldah (West Bengal)

..V E R S U S..

RESPONDENT Union of India,
 On R.A. through General Manager,
 (Ori. Respondent) Central Railway, Mumbai CST.

 Mr R.G. Bagul, advocate for the appellants.
 Ms Neerja Chaubey, advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J. .
DATE : 17/03/2023

ORAL JUDGMENT :

1. The appellants who are the original claimants have preferred this appeal challenging the judgment and award passed by the Railways Claims Tribunal, Nagpur in Claim Petition No. O.A (IIu)/NGP/158/2018, whereby the claim for compensation filed by the present appellants came to be dismissed. The parties are

here-in-after referred as per their original nomenclature before the Tribunal.

2. The present claimants are the parents of the deceased Susanta Roy who had filed the petition for compensation on account of the death of Susanta Roy in an untoward incident alleged to have occurred on 02/01/2018. When deceased Aakash was travelling in Danapur to Bengaluru Sanghmitra Express Train No. 12296, by purchasing a valid ticket, as per the contention of the claimants, as there was heavy rush in the train, the deceased was standing near the door. The train reached between Makudi-Sirpur (T) Railway station at KM No. 175/4-6, due to the crowd of passengers in the train, the deceased was pushed and fell down from the running train and died on the spot. As per the contention of the claimants deceased accidentally fell down and sustained injuries and died on the spot. As the death of the deceased is caused while he was travelling in the train, the claimants claimed compensation.

3. The Respondent/Railway contested the claim on the ground that no valid ticket is found along with the deceased, at the time of inquest panchanama. Thus, the deceased was not a bonafide passenger. It is further contention of the railway that the death of the deceased is not caused in an untoward incident. As there is no report either from the Loco Pilot or Guard of the Train that any jerk or ACP was recorded when the train was proceeding toward its destination. Thus, the alleged incident does not cover the untoward incident. Hence, claimants are not entitled to receive any compensation.

4. Taking into consideration the rival contentions, parties have led oral as well as documentary evidence. After hearing both the sides, the learned tribunal has come to the conclusion that deceased Susanta Roy was not a bonafide passenger of the train on the relevant day, and so also, it was held that the applicants have failed to prove that the deceased Susanta Roy died in an untoward incident. Therefore, the claim petition is dismissed. Hence this appeal.

5. Heard learned counsel R.G. Bagul for the appellants. He submitted that merely because the ticket was not found with the deceased is not sufficient to say that he was not a bonafide passenger. As the dead body of the deceased was found in drainage, there is every possibility that due to the Water in a drainage, the ticket must have been flown or damaged. There is every possibility that the ticket might have been misplaced in the untoward incident. He further submitted that the dead body of the deceased was found at Down Line at KM No. 175/4-6 in a drainage. The deceased was proceeding toward Chennai by Danapur Punjab Sanghmitra Express, otherwise, there was no reason for the deceased to visit the Makodi Sirpur Railway Station at Km No. 175/46. As the deceased was travelling by train he accidentally fell from the train and his dead body was found in the drainage which is sufficient to show that the death of the deceased is caused in an untoward incident. During the investigation, the railway officials as well as the Police recorded the statements of the witnesses. On the basis of the statement of the witnesses, D.R.M Report was prepared. On behalf

of the claimants, the claimants have examined Achinta Roy and Aniruddha Roy, who is the brother of the deceased. His evidence categorically stated that he along with the deceased had been to Pune to meet his parents. Thereafter, they came to Nagpur, and the deceased was travelling from Nagpur to Chennai by the Danapur Bengaluru Sanghmitra Express Train No. 12296. He had purchased the railway ticket for the deceased and in his presence, his deceased brother has boarded in the general coach of the said train.

6. Though this witness is cross-examined by the Railway, nothing is elicited from his cross-examination. Thus, the evidence of the brother of the deceased is sufficient to show that the deceased was travelling by Danapur Bengaluru Sanghmitra Express to reach at Chennai, he boarded in the train and on the way, he fell down from the train and sustained injury and died. He submitted that the onus on the claimant is discharged by the claimant on the basis of an affidavit of evidence of the brother. Thus the investigation report carried out by the Railway Authority as well as the evidence of the brother of the deceased sufficiently shows that the deceased was travelling by the said train and he fell down from the said train, sustained injury, and died on the spot. Therefore, the claimants are entitled to receive the compensation.

7. Per contra, Ms Chaubey, learned counsel for the Railway vehemently submitted that there is neither evidence of a valid ticket owned by the deceased, nor there is evidence that the deceased was travelling by the said train. Thus, the death of the deceased is not caused in an untoward incident and therefore, the railway claims

tribunal is not liable to pay compensation to the claimants. Hence, the claim deserves to be dismissed.

8. Heard both the sides. Perused the evidence on record and following points arise my determination :-

Whether the Railway Claims Tribunal is justified in rejecting the claim of the claimant for compensation?

9. The claimants have filed this petition, who are the parents on account of the death of the deceased Susanta Roy in an untoward incident that took place on 02/01/2018 when the deceased was travelling by Danapur Bengaluru Sanghmitra Express Train No. 12296. There is no dispute that the dead body of the deceased was found in a drainage near the Railway Track near Makodi-Shripur Railway Station Down Line at Km. No. 175/4-6 on 02/01/2018. Whether the deceased was bonafide passenger or not or whether the death of the deceased is caused in an untoward incident is required to be seen.

10. Before entering into merits of the case, it is necessary to see the definition of an untoward incident Section 123(c) of the Railways Act, 1989 defines the untoward incident as under:

“(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, cloakroom 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."

11. Now by considering the definition of the untoward incident whether the death of the deceased covers under the untoward incident. Admittedly, the ticket was not found along with the dead body of the deceased. The spot panchanama which is placed on record shows that the dead body of the deceased was found in a drainage which was adjacent to the railway track. The recitals of the spot panchanama show that the alleged spot of the incident was situated at Railway Pole No.1754, at a distance of 30 ft. from the said pole on a down track. The injuries are seen on the person of the deceased. Some articles are also found in his pocket but a train ticket was not found along with it. The map of the spot of the incident shows that the alleged drainage is adjacent to the railway track and the alleged spot of the incident is situated near Pole No.175 near Sirpur Railway Station. The map is at Exhibit A-31. The map clearly shows that the drainage is immediately adjacent to the down line from which the train was proceeded.

12. It is submitted by the learned counsel Mr Bagul that the possibility of misplacing the train ticket in the untoward incident or the train ticket was damaged when the deceased fell in the drainage cannot be ruled out. A perusal of the spot panchanama shows that the deceased fell down in a drainage. It is clear that the deceased died due to the felling of the train. Merely because the ticket was not found on the dead body of the deceased is not sufficient to infer that he was travelling without the ticket. The Hon'ble Apex Court in the case of *Union of India Vs Rina Devi reported in 2018 (3) PAC 26* held that the 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 the injured or a deceased was the bonafide passenger, for which the claim of the compensation could be maintained, even the ticket is not found along with. Mere absence of a ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. The initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances.

13. Here in the present case, the brother of the deceased is examined who himself has purchased the ticket. He was cross-examined at length by the railways. Nothing incriminating is brought on record to show that there is any ulterior motive for the brother of the deceased to speak lie regarding the ticket. He

categorically stated that they went to Pune to meet their old parents. Thereafter, they reached at Nagpur. He purchased the ticket for his brother. In his presence, his brother boarded in the train. This evidence is sufficient to show that the deceased was bonafide passenger. The Railway Administration has not brought any evidence on record to show that deceased was not having any ticket and he was travelling without the ticket. The evidence of the brother is sufficient to interfere that the deceased was travelling by train by holding a valid ticket. The possibility that the ticket was misplaced during the travelling or in the untoward incident cannot be ruled out.

14. The Hon'ble Apex Court in the case of *Union of India V/s Prabhakaran Vijaya Kumar and others reported in 2008 (2) T.A.C. 777 (SC)* has observed that Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one.

15. In view of the observation of the Hon'ble Apex Court in

the above said referred judgment. In the present case, admittedly, the ticket was not recovered from the possession of the deceased. However, the evidence of the brother of the deceased which categorically states that he purchased the ticket for his brother and in his presence his brother boarded in the train is sufficient to show that the deceased was a bonafide passenger. In view of the observations of the Hon'ble Apex Court in *Union of India V/s Rina Devi* cited (supra), the initial burden which is on the claimant, is discharged by the claimants. The mere fact that the ticket was not recovered from the possession of the deceased is not sufficient to infer that the deceased was not a bonafide passenger. The possibility that the ticket was lost or misplaced during the untoward incident or it was damaged when the deceased fell into the drainage cannot be ruled out. Therefore, the contention of the Railway that the deceased was not having a ticket and therefore, he was a bonafide passenger is not acceptable.

16. So far as the issue regarding the untoward incident is concerned, the investigation report of the railway is on record, which clearly shows that the dead body of the deceased was found in drainage by the side of the railway track of down line. The dead body was identified as Susanta Roy s/o Aniruddh Roy aged about 25 years. The evidence of the brother of the claimant shows that on the day of the incident, he purchased the ticket for his brother, and in his presence his brother boarded in the train i.e. Danapur Bengaluru which is also known as Danapur Bengaluru Sanghmitra Express. Thus, in view of the observation of the Hon'ble Apex Court, the

burden that the deceased was travelling by the said train is already discharged by the claimants by adducing the evidence of the brother. The brother of the deceased is cross-examined at length by the railway. Admittedly, the alleged incident has not occurred in his presence. But his evidence is material regarding the purchase of the ticket and the deceased was boarded in the train. Moreover, there is no occasion for the deceased to went at Sirpur Railway Station. He is neither resident of Sirpur nor he resident of Nagpur. He came to Nagpur to meet his brother. They both visited at Pune to meet their parents. From Pune they came to Nagpur, his brother purchased the ticket for him and in his presence, the deceased boarded in the train. Subsequent to these facts, the dead body of the deceased was found in the drainage. Thus, the contention of the claimants that while travelling in the train, as there was a crowd in the train, the deceased was pushed by the crowd. He fell down from the train and sustained injuries and died on the spot.

17. Thus, the evidence on record sufficiently shows that the death of the deceased is caused in an untoward incident. Though it is claimed by the railway that there was no jerk or ACP is recorded either by the Loco Pilot or the driver of the train but none of the witnesses is examined by the railway to substantiate the contention. In the case of *Union of India Vs Prabhakaran Vijaya Kumar and others reported in 2008 ACJ 1895* wherein the Hon'ble Apex Court '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'. By referring to the various judgments of the Hon'ble Apex Court, it is 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 traveling 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 traveling 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 light of the above principles, the evidence of the present case is to be appreciated. There is no dispute that the deceased was travelling by train - Danapur Bengaluru Sanghmitra Express by holding a valid ticket. It is also not disputed that the deceased fell down from the train while travelling, sustained

injuries, and succumbed to death.

19. The learned advocate Ms Chaubey vehemently submitted that there is no evidence that the deceased was holding a valid ticket as the ticket was not found along with the deceased. It is already observed that merely because the ticket was not found along with the deceased is not sufficient to say that deceased was not holding a valid ticket as there is every possibility that the ticket can be misplaced during an untoward incident or it might have damaged when deceased fell down in the drainage.

20. So far as the contention of the railway regarding the self inflicted injuries is concerned, which is also not sufficient and substantiated by the railway by adducing any evidence. For attracting the provision of Section 124-A of the Railways Act, the intention of the person to have self inflicted injury is to be proved. The Hon'ble Apex Court in the case of **Union of India V/s Rina Devi** referred (supra) dealt with the concept of 'self inflicted injury' and observed that self inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree.

21. Thus, the evidence on record is also not sufficient to show that, it was the deceased because of whose negligence death is caused while travelling in the train. Here in the present case, admittedly the initial onus lies with the appellant to show that there is death of a bonafide passenger due to an untoward incident that burden is discharged by the claimants by adducing reliable evidence. The law only expects the claimant to discharge the burden on the

basis of preponderance of probabilities by filing an affidavit. Here in the present case, the claimants have adduced the evidence of the brother who purchased the ticket and who saw the deceased boarding in the train. Thus the onus is discharged by claimants. The claimants have proved that deceased was travelling by the said train and his death is caused in an untoward incident.

22. The learned Tribunal has wrongly come to the conclusion that merely observing that claimants have not adduced any evidence to the effect that the deceased was a bonafide passenger and his death was caused in an untoward incident and dismissed the claim illegally and erroneously. The observation of the tribunal is without appreciating the evidence in a proper perspective. In view of the above discussion, the claim of the claimants deserves to be allowed. The claimants are entitled to receive compensation from the Railway. The alleged accident occurred on 02/01/2018 i.e. after the issuance of the notification dated 16/12/2016 which came into effect on 01/01/2017. The claimants are also entitled for interest.

23. Learned counsel Chaubey vehemently submitted that, in view of the observation of the Hon'ble Apex Court in *Rina Devi* the claimants are entitled to receive the highest amount of compensation. After perusal of the para-15.4 of the said judgment the Hon'ble Apex Court has observed that, "accordingly, we conclude that compensation will be payable as applicable on the date of the incident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If

the amount is so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon and Kalandi Charan Sahoo stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the incident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation. If compensation has provided on the date of award of the Tribunal is higher than unrevised amount with interest, that the higher of the two amounts has to be given.

24. In the present case, untoward incident occurred on 2/01/2018 i.e. after issuance of revised notification. The claimants are entitled to receive interest.

25. In view of the above discussion, in the present case also, the claimants are entitled to receive the amount of compensation of Rs. 8,00,000/- along with interest @ Rs. 6% per annum. Hence, I proceed to pass the following order:-

- a) The appeal is **allowed**.
- b) The judgment and order passed by the learned Railway Claims Tribunal, Nagpur dated 25/11/2019 is quashed and set aside.

- c) The respondent/railway is directed to pay compensation of Rs.8,00,000/-to the claimants within a period of 60 days from the date of receipt of the copy of the judgment along with accrued interest at the rate of 6% per annum.
- d) The amount of compensation be apportioned to the claimant Nos. 1 and 2 equally.
- e) Record and Proceedings be sent back to Railway Claims Tribunal, Nagpur.

The First Appeal is **disposed of** with no order as to costs.

JUDGE

RKN