



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

FIRST APPEAL NO. 1365 OF 2018

APPELLANTS

(Original applicants)
(on R.A.)

: 1. Smt. Rajabai Rajreddy Akitwar,
W/o Late Rajreddy Akitwar,
Aged 31 years

2. Master Navin Rajanna Akitwar,
S/o late Rajreddy Akitwar,
Aged 16 years,

3. Master Pravin Rajanna Akitwar
S/o late Rajreddy Akitwar,
Aged 10 years

Appellant No.2 & 3 are minor
through their natural guardian mother,
appellant No.1,

4. Smt. Chinubai Linganna
Akitwar w/o late Linganna

All R/o No.231, Village – Yetala,
Tahasil – Dharmabad, District -
Nanded, State- Maharashtra

//VERSUS//

RESPONDENT

(Original Respondent)
(On R.A.)

: The Union of India,
through General Manager, South
Central Railway, Secuderabad

Shri A.B. Deshpande, Advocate h/f Shri Vilas Deshpande
Advocate for appellants.
Smt. Neeraja Chaubey, Advocate for respondent.

CORAM : G. A. SANAP, J.

DATED : 12th 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 08.12.2015 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants for compensation was dismissed.

2. Background facts:-

The appellant No.1 is the wife of deceased Rajanna Linganna Akitwar. Appellant Nos.2 and 3 are the children of the deceased. The appellant No.4 is the mother of the deceased. It is stated that on 23.04.2012, the deceased after purchasing the journey ticket had boarded the train at Basar Railway Station for Dharmabad. It is stated that on the way near K.M. No.427/700-800 due to sudden jerk to the train the deceased fell from running train. He sustained injuries to his head and died. The dead body was noticed by the keyman on the next day near the railway track. It is stated that the deceased was a *bona fide* passenger. He fell from running train and as such death in was an untoward incident.

3. The respondent-railway has filed the written statement and opposed the claim. It was contended that the deceased was not a *bona fide* passenger. The ticket recovered from the person of the deceased was not for journey from Basar to Dharmabad. It is further stated that the deceased never boarded the train at Basar. The body was found by keyman near the railway track. According to the railway, it was the case of the run over of the deceased by some train while crossing the railway line.

4. In the claim application, as many as four issues were framed. The appellant No.1 examined herself as a sole witness. One witness was examined by the railway. The learned Member of the Tribunal on consideration of the evidence recorded the findings on all issues against the appellants and dismissed the claim. The appellants are therefore, before this Court against the judgment and order.

5. I have heard Shri A.B. Deshpande, learned holding Advocate for Shri V. Deshpande, Advocate for the appellants and Ms 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 appellants are dependents of the deceased?
- ii) Whether the deceased died due to fall from running train and as such in a untoward incident.
- iii) Whether the deceased was a *bona fide* passenger who travelling from the train with valid journey ticket.

7. Learned Advocate for the appellants submitted that the undisputed facts are sufficient to accept the case of the appellant that deceased died due to fall from running train on the way to Dharmabad from Basar. Learned Advocate submitted that body was found near the railway track. Learned Advocate pointed out that the considering the injury sustained by the deceased to his head the possibility of run over of the deceased by train is completely ruled out. Learned Advocate submitted that death was in an untoward incident. Learned Advocate further submitted that when the report was made to the police, the inquest panchanama of the dead body was conducted by the police and at the time of

inquest panchanama, the ticket was found on the person of the deceased. Learned Advocate submitted that one digit of number of the ticket was wrongly mentioned by the police while drawing the inquest panchanama and on the basis of the same the Tribunal discarded this journey ticket. Learned Advocate submitted that it is not the case of the respondent that ticket was planted on the person of the deceased after the accident. Learned Advocate therefore, submitted that the Tribunal was not right in rejecting the claim.

8. Learned Advocate for the respondent-railway in short supported the judgment and order passed by the Tribunal. Learned Advocate submitted that evidence placed on record indicates that journey ticket was not for journey from Basar to Dharmabad. Learned Advocate submitted that there is a report of Ticket Controller that such a ticket was not issued for journey from Basar to Dharmabad. Learned Advocate submitted that there was no eye witness to the incident and therefore, the case of the appellant that deceased fell from running train and died due to injuries sustained by him cannot be accepted.

9. In order to appreciate the rival submissions, I have gone

through the record and proceedings. Appellant No.1 is the wife of deceased. Appellant Nos.2 and 3 are the children of the deceased. Appellant No.4 is the mother of the deceased. The relationship between appellants and deceased has not been challenged. It therefore, goes without saying that their statement that they are dependent of the deceased cannot be denied. According to the appellants the deceased was travelling from Basar to Dharmabad. The village of the deceased is near to Dharmabad. AW.1 has stated in her evidence that the deceased was working in Yogesh Chandra Maheshwari Trading Company at Dharmabad as a clerk. It is stated that on 24.04.2012 the railway police Nizamabad informed that one person died in an accident of fall from train at KM 427-700-800 between Dharmabad to Basar railway stations. She has stated that on the date of accident her husband was travelling from Basar to Dharmabad on railway ticket. The question is whether any railway ticket was found on the person of the deceased at the time of the inquest panchanama?. According to the appellants railway ticket bearing No.53043626 for Rs.30. was found on the person of the deceased at the time of the inquest panchanama. The inquest panchanama (Exh.5) is at Page A-43 of the record and proceeding. Perusal of this panchanama would show that police found railway ticket in the pocket of his trouser. The number of the said ticket

was 58043626 from Basar to Dharmadabad dated 23.04.2012. It was issued at 16.40 hrs. The number of ticket mentioned in the claim application is different. In place digit 8 the digit 3 has been mentioned. It was stated in the report of Chief Reservation Inspector, S.C. Railway Secunderabad that journey ticket bearing no. 58043626 was not issued on 23.04.2012 for Basar to Dharmadabad. But railway journey ticket bearing No.53043626 for 1 Adult for Rs.14 was verified. The railway ticket is at Page A36. In my view, the perusal of this ticket indicates that 2nd digit was not clearly printed. On a bare look it appears to be 3 and not 8. The ticket was admittedly found on the person of the deceased. It appears that this number seems to have created a confusion. It is not the case of the railway that this ticket was planted either by police or by the appellants. In the facts and circumstances, therefore, I do not see any reason to discard and disbelieve the case of the appellants that deceased was travelling from Basar to Dharmadabad with valid journey ticket. The Members of the Tribunal, in my view, have not properly appreciated this aspect.

10. The next important aspect is whether the death was due to fall from running train and as such in an untoward incident. In this case, in my view, the evidence in the form of the undisputed

circumstances would speak volumes about the case of the appellants. The dead body was found lying by the side of the track. The deceased had sustained injury to his head. The cause of death was due to cardio respiratory failure due to multiple injuries (polytrauma) and injury to head. It is not the case of the respondent-railway that loco pilot of any train had reported that the deceased was run over while crossing the railway line or walking on the railway track. The possibility of the deceased having been run over by a train has been completely ruled out in this case. The spot where the dead body was found was far away from the railway station. Deceased was doing work at Dharmabad. If the deceased was dashed by the running train then he would have been thrown away at some distance from the track or on the track. In that situation, he would have sustained multiple injuries all over his body including fractures. The postmortem report indicates that not a single fracture was noticed. It is further pertinent to mention that if deceased was run over by any train then his body would have been cut into pieces. In this case therefore, the possibility of run over of the deceased by any train has been completely ruled out.

11. The next possibility with regard to the fall of the

deceased from running train as sought to be contended has to be appreciated. It is not the case of the railway that deceased had died elsewhere and for the purpose of claiming compensation either by police or by his family members, body was thrown near the railway track. The injuries sustained by the deceased could be possible due to fall from the train. The incident occurred on 23.04.2012. The dead body was found by keyman in the early hours of 24.04.2012. It therefore, indicates that dead body was lying on the spot during the night. The possibility of the deceased falling from running train is not therefore, completely ruled out. In my view, on the basis of the evidence and material placed on record this is the only possible inference that can be drawn in this case. The place where the dead body was found was far away from the station. Therefore, the possibility of fall of deceased while boarding the running train is also beyond question.

12. In the facts and circumstances, in my view this case would be squarely covered by first part of Section 124-A of the Railways Act, 1989 (for short 'the Act, 1989). In this case, clauses of the proviso to Section 124-A would not be applicable. In the facts and circumstances, I conclude that appellants have proved that the deceased died due to fall from running train and as such

the death was in an untoward incident. The Members of the Tribunal have not properly appreciated the evidence and circumstances and as such has come to a wrong conclusion. In my view, therefore, the judgment and order passed by the Tribunal cannot be sustained. I record my findings on the above points in the affirmatives.

12. The impugned judgment and order dated 08.12.2015 passed by Railway Claims Tribunal, Nagpur is quashed and set aside. The appeal is allowed. The claim application is allowed

13. The respondent-railway is directed to pay compensation of Rs.8,00,000/- (Rs. Eight Lacs Only) to the appellants.

14. The amount be deposited within four months from today in the bank account of claimants, directly. The appellants shall provide the particulars of their bank accounts to the respondents.

15. The appellants will not be entitled to get any interest on the said amount. However, the appellants would be entitled to get interest @ 7% per annum from the date of this judgment till

realization of the amount, if the amount is not deposited within four months.

16. If any amount is paid or deposited before the Trial Court pursuant to the judgment and order dated 08.12.2015 the same shall be adjusted.

17. First Appeal stands disposed of accordingly.

(G. A. SANAP, J)

