



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

FIRST APPEAL NO. 31 OF 2012

APPELLANT : The Union of India,
(Original defendant on General Manager,
R.A.) Central Railway, Mumbai

//VERSUS//

RESPONDENT : 1A Shri Haribhau s/o Daulatrav Dekate,
(Original Applicant on (Dead) through L.R.
R.A.) Dnyaneshwar s/o Haribhau Dekate,
Age 40 years, Occupation : Labour
R/o Sirsi, Tehasil Umred, District
Nagpur

2. Smt. Chandrakalabai w/o Haribhau
Dekate,
Aged 56 years, Occupation-
Household
All R/o Sirsi, Tah. Umrer, Dist.
Nagpur

Mrs. Neeraja Chaubey, Advocate for appellant.
Shri R.S. Charpe Advocate for respondent Nos.1 and 2.

CORAM : G. A. SANAP, J.
DATED : 21st 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 02.02.2011 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the Tribunal allowed the claim filed by the respondents for compensation.

2. Background facts:-

Respondent No.2 is the mother of deceased Eknath. During the pendency of appeal, father of the deceased i.e. respondent No.1- Haribhau s/o Daulatrav Dekate died and therefore, deceased brother i.e. Dnyaneshwar s/o Haribhau Dekate was brought on record as respondent No.1-A. It is the case of respondents that on 14.06.2008 deceased Eknath was coming to Nagpur from Agra by unknown super fast train by purchasing ticket No.17496854 dated 14.06.2008. It is stated that when the train was passing from Mania Railway Station in Dhaulpur district of Rajasthan due to heavy rush and sudden jerk to the train the deceased fell from running train. He sustained serious injuries to his head. He died on the spot. The deceased could not get seat in the train and therefore, he was standing at the door. It is stated that deceased died in an untoward incident. He was travelling on valid journey ticket and as such, he was a *bona fide* passenger.

3. The appellant-Railway filed written statement and opposed the claim. It is contended that deceased was dashed and run over by the train at KM 1298/17-15 near gate No.1467. On receipt of the information of his death the GRP Mania conducted further procedure. It is contended that there was no untoward incident of accidental fall of any passenger from the running train. The train ticket relied upon by the respondents was planted. In order to cover up this plantation, the amendment was carried out and it was stated that the deceased was travelling by train No.7022 Up i.e. Dakshin Express. The deceased, according to the appellant was not a *bona fide* passenger travelling with a valid journey ticket.

4. Learned Member of the Tribunal framed as many as four issues. Learned Member of the Tribunal on consideration of the evidence recorded the findings in favour of the respondents and allowed the claim. Being aggrieved by this judgment and order, the appellant-Railway has come before this Court.

5. I have heard Mrs. Neeraja Chaubey, learned Advocate for the appellant and Shri R.S. Charpe, learned Advocate for the respondents. Perused the record and proceedings.

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

(i) Whether the deceased fell from running train and as such the death was in an untoward incident?

(ii) Whether the deceased was travelling as a *bona fide* passenger with valid journey ticket?

7. Learned Advocate for the appellant submitted that in the report of DRM, he has categorically stated that ticket was planted in order to claim the compensation. Learned Advocate submitted that considering the time and date of the journey mentioned on the ticket the deceased could not be said to be passenger travelling in a Dakshin Express. Learned Advocate further submitted that therefore, learned Member of the Tribunal has failed to take available evidence into consideration and came to a wrong conclusion. Learned Advocate submitted that factual position recorded in the panchanama would indicate that deceased was run over by the train. Learned Advocate submitted that there is no evidence on record to prove that deceased died due to fall from running train and as such, it could not be covered by definition of untoward incident provided under the Act of 1987. Learned Advocate submitted that the learned Member of the Tribunal on

both the issues has not properly appreciated the material on record.

8. Learned Advocate for the respondents submitted that on the basis of the available evidence the findings of fact recorded by the learned Member of the Tribunal are fully justified. Learned Advocate took me through the judgment and order and pointed out that learned Member of the Tribunal has recorded cogent reasons in support of his findings. In short, learned Advocate for the respondents supported the judgment and order passed by the Tribunal.

9. In order to prove that deceased was a *bona fide* passenger the deceased original applicant No.1 has stated that deceased was travelling by unknown super fast train on valid journey ticket 17496854 from Agra to Nagpur. It is undisputed that the respondents were not eye witnesses to the incident. It is also undisputed that no other member of the family or any other friend of the deceased was travelling with him. However, the fact remains that on the given date the deceased was travelling from Agra to Nagpur. The evidence of Haribhau on the point of journey by unknown super fast train was not challenged. In order to seek corroboration to the oral evidence the respondents have relied

upon the documentary evidence. The main evidence relied upon is a DRM report. In his report, DRM has stated that in the Jama Talashi of the deceased the journey ticket No.17496854 from Agra to Nagpur was recovered. It is pertinent to mention that since this fact has been admitted by DRM, the case of the appellant-railway that deceased was travelling without journey ticket cannot be accepted. Even if it is assumed for the sake of argument that deceased was not travelling in Dakshin Express, in my view, in the teeth of this evidence it would not make any difference. The dead body of the deceased was found between two stations. Therefore, the only possible inference is that deceased was travelling in a train from Agra to Nagpur. It is undisputed that deceased was travelling on a general ticket. It has been stated that he was travelling with this ticket in a general bogie. It is further seen that the ticket in question was issued from counter at Agra Cantontment for journey to Nagpur. The defence of the appellant that ticket was planted to claim the compensation cannot be accepted for more than one reason. It has come on record that family members and relatives of the deceased had no knowledge of the accident until they were informed by the police. GRP personnel went to the spot on receipt of information first in point of time. It is not the case of the railway that GRP personnel had planted the ticket to support the

family members of the deceased. In my view, therefore this defence of the appellant-railway that ticket was planted by someone cannot be accepted. Learned Member of the Tribunal has properly considered the evidence and accepted the case of the respondents that deceased was a *bona fide* passenger.

10. The next important issue is whether the deceased died due to fall from running train and as such the death was in an untoward incident? Postmortem report is on record. The cause of death mentioned in the postmortem report is due to fracture of skull bone and injury to the head. The spot panchanama, wherein the actual position found on the spot has been recorded, clearly indicates that case in question was not of run over. If it was the case of run over then the body of the deceased would have been cut into pieces. Except the injury to head the remaining body of the deceased were intact. It is pertinent to mention that there is no report of loco pilot of any train or any passenger to prove that deceased was dashed by the train while crossing the railway line.

11. Exh. AW-1/1 is the accidental death report of Rajasthan Police. In this report, it was recorded that on 14.06.2008 one unknown passenger died due to fall from train near Idlapur within

Dhawalpur. Dead body was found at KM No.1298, pole No.15 to 17 on the up line. It is further seen that specific information was given to the police by the concerned officials of Railway that due to fall from the train the person had died. The injury was caused to the skull and brain. It is to be noted that such injuries could be possible only due to fall from the running train. In this case, there is ample evidence to prove that the deceased was travelling in a train from Agra to Nagpur. On the way from Agra to Nagpur, he fell from running train and sustained injury to his head. Therefore, the defence of the appellant-railway that deceased died due to dash of engine while crossing the railway line is not at all possible and acceptable.

12. Even if it is assumed that deceased was standing at the door while travelling, the defence of the railway that deceased died due to his negligent act and as such, it would be self inflicted injury could not be accepted. The legal position has been well settled by the Hon'ble Supreme Court in the case of *Union of India Vs. Rina Devi* reported in *AIR 2018 SCC 2362*. In this case Hon'ble Apex Court has held that in order to cover the case under the head of 'self inflicted injury' it would require intention to inflict such injury and not mere negligence of any particular degree. It is held that in

the railway claim cases, the liability is based on the principle of 'no fault theory'. It is held that when the liability is strict liability or based on 'no fault theory' the principle of contributory negligence cannot be invoked. 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 victim as a contributing factor. In my view, therefore, I do not see any substance in the appeal. Accordingly, I record my findings in the affirmative to the above points.

13. In this case, the accident had occurred on 14.08.2008. Learned Advocates for the parties submit that in view of the Notification issued by Ministry of Railways (Railway Board) dated 22.12.2016, came into effect from 01.01.2017, in case of death claim the claimants are entitled to get compensation of Rs.8,00,000/- (Rs. Eight Lakhs Only). Before issuance of this notification, in case of death claim, compensation provided was Rs.4,00,000/- (Rupees Four Lakhs only). As per the old provisions, the claimants would have been entitled to get Rs.4,00,000/-. Learned Advocates drew my attention to the decision of the Hon'ble Apex Court in *Union of India Vs. Radha*

Yadav, reported at *(2019) 3 SCC 410*, wherein Hon'ble Supreme Court has held that in case of old claim after this notification, the claimant/respondents would be entitled to get compensation of Rs.8,00,000/-, without interest, if the compensation provided earlier with interest is less than Rs.8,00,000/-. Learned Advocate submitted that the compensation of Rs.4,00,000/- with interest would not be more than Rs.8,00,000/-. Therefore, in this case, the respondents/claimants would be entitled to get Rs.8,00,000/- (Rs. Eight Lakhs only), without interest.

14. Accordingly, the appeal is dismissed with above directions.

i) The appellant-Central Railway, is directed to pay Rs.8,00,000/- (Rupees Eight Lakhs only) towards compensation to the respondents.

ii) The amount be deposited within four months from today in the bank account of respondents/claimant directly. The respondents shall provide the particulars of their bank account to the appellant.

iii) Learned Advocate for the respondents submits that after

death of the father $\frac{1}{4}$ amount be paid to son of respondent No.1 Dnyaneshwar s/o Haribhau Dekate and balance $\frac{3}{4}$ amount be paid to the respondent No.2 i.e. Smt. Chandrakalabai w/o Haribhau Dekate. Accordingly, the amount be paid to them.

iv) The respondents will not be entitled to get any interest on the said amount. However, the respondents 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.

v) If any amount is paid or deposited before trial Court pursuant to the judgment and order 02.02.2011 the same shall be adjusted.

vi) The First Appeal stands disposed of. No order as to costs.

(G. A. SANAP, J.)