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

FIRST APPEAL NO.948 OF 2018

1. Shri Babulal s/o Kosa Uike,
Age 55 years, Occ. Labour,

2. Smt. Sombati w/o Babulal Uike,
Age 52 years, Occ. Labour,

Both R/o. Panchera, P.O. Samanapur,
Tah. and District Balaghat (M.P.)

...APPELLANT

VERSUS

Union of India,
through the General Manager,
South East Central Railway,
Bilaspur (C.G.)

...RESPONDENT

Shri R.G. Bagul, Advocate for the appellant.
Ms Neerja Choubey, Advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : FEBRUARY 27, 2023.

ORAL JUDGMENT :

Heard finally with the consent of learned Counsel for the parties.

2. The appellants who are the original claimants have challenged the judgment and award passed by the Railway Claims

Tribunal, Nagpur in Claim Application No.OA(llu)/NGP/2012/0190 dated 17/12/2015.

3. Brief facts giving rise to the present appeal can be summarized as under:

A] On 27/01/2012, the deceased was travelling by train No.68716 – Itwari-Gondia-Memu from Ex-Chacher to Gondia. While travelling, he accidentally fell down from the running train due to heavy and sudden jerk and died on the spot at railway station Tumsar road before any medical treatment is given. As per the contention of the claimants deceased was holding second class ticket from Ex-Chacher to Balaghat bearing No.E-36880160 dated 27/01/2012. The applicants are the parents of the deceased.

4. As per the contention of the applicants, the deceased person was travelling along with his friends. They all went to Mouda, District Nagpur on 23/01/2012 for doing labour work. After completing the labour work they all reached at railway station Ex-Chacher and purchased one ticket for four adults for returning back to Balaghat on 27/01/2012. They boarded at Itwari-Gondia train bearing No.68716 in general compartment. However, there was a heavy crowd in the train. Due to the heavy crowd deceased fell down from the running train at

Tumsar Road railway station and died on the spot. Police have registered merg No.5/2012 under Section 174 of the Code of Criminal Procedure. As per the contention of the claimants, as the death of the deceased was caused in an untoward incident, the appellants who are the parents of the deceased claimed compensation.

5. The respondent-railway has contested the claim application by filing the written statement. As per the contention of the Railway, no such incident causing death of the deceased within the meaning of the provision of Section 123(c) read with Section 124A of the Railways Act, 1989 has taken place and as such, the claim application is not maintainable.

6. As per the contention of the Railway, after 5 days the train ticket was produced which was managed by the relatives and friends of the deceased. Mere recovery of the dead body near the railway track is not sufficient proof to claim the compensation. The allegations of heavy rush/jerk in the alleged train is not tenable as no such incident of jerk had happened and supported by the fellow passengers after the incident. It is further the contention of the Railway that the appellants plotted a story based on false and forged that the deceased accidentally fallen from the train to claim the compensation from the railways but in reality

the deceased has lost his life due to his negligence hence, the appellants are not entitled for any compensation.

7. After considering the rival submissions of the parties, the Railway Claims Tribunal framed necessary issues. On behalf of the claimants, claimant No.1 – Shri Babulal Kosa Uike stepped into the witness box and filed affidavit of examination-in-chief. Besides his oral evidence, he placed reliance on DRM report, the statements recorded during the investigation, inquest panchnama, spot panchnama, post-mortem report. He was also cross-examined by the Railway. During his cross-examination he admitted that he was not travelling along with the deceased. He came to know about the incident by Nandkishor Selokar. He denied the suggestion that the deceased came under the wheels of Memu Local when he was crossing the track at Line No.2 at Tumsar road railway station.

8. To rebut the evidence of claimants, on behalf of railway Shri Surendrakumar Krishna Prasad was examined by the Railway. Said Surendrakumar Krishna Prasad was working as a Deputy Station Manager at Tumsar Road Railway Station. His duty hours was 6.00 pm to 2.30 am at Tumsar road railway station. As per his evidence, train No.68716 Memu Local Itwari-Gondia arrived at Tumsar railway station

and departed at about 20.42 hours. No one has informed to him about accidental fell down of any passenger from the train. There was no information of ACP and jerk to the said train. He further testified that Porter Shri Chaitram has informed to him at about 21.00 hours that dead body of one unknown person was lying on a track at Tumsar yard. He immediately informed to the RPF, Tumsar for further course of action. During his cross-examination he specifically admitted that he had not received any memo from Itwari-Memu that someone came in front of his engine and as a result there was a dash or while crossing the track. Thus, the evidence shows that he has not received any information that any person came in front of the engine of the train and he has also not received the information that any dash was given to any person by the said train while cross-examining the track. Another witness examined by the Railway is Ram Narayan Bholanath. As per his evidence, he was working as a Guard of train No.68716 down Itwari-Gondia Local train. His train arrived at Tumsar road railway station at 20.40 hours and departed at 20.42 hours. He has not noticed or reported about the falling of any passenger from his train. There was no ACP, jerk or rush to his train. He has brought the original Guard memo book. As per his evidence the witness is confronted with the statement. In his cross-examination he admitted that he is not aware whether any passenger fell down from any train at Tumsar road railway station. Loco pilot has not

informed to him about dash of any person or passenger from his train. Thus, the evidence of both these witnesses shows that they have not received any information that train has dashed against any person or passenger.

9. After hearing both the sides, the Railway Claims Tribunal rejected the claim of the claimants by observing that the applicants failed to prove that the deceased died as a result of untoward incident. Even the bona fide of a deceased as a passenger are doubtful, and therefore, it can be concluded that the deceased was not involved in an untoward incident as defined in Section 123(c)(2) of the Railways Act. The Tribunal had not accepted that the deceased Mukesh Babulal Uike had met with an accident which can be held as an untoward incident, and therefore, is not liable to pay any compensation.

10. Being aggrieved and dissatisfied with the judgment and award passed by the Railway Claims Tribunal, the present appeal is preferred by the original claimant on the ground that the observation of the Tribunal that as the dead body of the deceased was found on the track is not sufficient to held the Railway liable to pay compensation. The observation of the Railway that the applicants failed to prove that the deceased died as a result of untoward incident is wrong and erroneous.

11. It is the contention of the claimants that the deceased was having valid ticket. Though said ticket was produced after 5 days is not sufficient to prove that it was managed by the friends and relatives of the deceased. The DRM report also shows that the death of the deceased is caused and his dead body was found on the track. The observation of the Railway Claims Tribunal is erroneous and liable to be set aside.

12. Heard Shri Bagul, learned Counsel for the claimants. He reiterated the contention and submitted that there is no dispute that the deceased died in an incident on 27/01/2012. He was travelling by local train Itwari-Gondia-Memu. He has obtained the ticket from the station Ex-Chacher to Gondia. The DRM report also shows that the deceased was having valid ticket. The cross-examination of both the witnesses examined by the Railway stated that they have not came across any incident to show that the deceased came under the wheels of Memu Local when he was crossing the track at line No.2 of Tumsar road Railway station. It is admitted by the witness No.2 of the railway that he is not aware whether any passenger fell down from his train. Loco Pilot has not informed him about dash of any person or passenger by his train. On the contrary, the valid ticket which was produced subsequently is sufficient to show that deceased was travelling by the said train. The

death of the deceased has taken place in an untoward incident and the claimants are entitled for compensation.

13. Per contra, Ms Choubey, learned Counsel submitted that claimants failed to prove and discharge the burden to show that deceased died in an untoward incident. The ticket which was produced was managed by the relatives and the friends of the deceased who were travelling along with him. The death of the deceased has occurred due to his own negligence, and therefore, Railway is not liable to pay compensation.

14. After hearing both the sides and perusal of the evidence on record, the following point arise for my consideration :

(i) Whether the Railway Claims Tribunal is justified in rejecting the application of the claimant for compensation.

15. To substantiate the claim, claimant No.1 – Babulal Kosa Uike stepped into the witness box and filed affidavit of examination-in-chief in support of the contention. He is cross-examined at length. Admittedly, he was not the eyewitness of the said incident however, nothing is transpired during his cross-examination. He specifically denied that the deceased came under the wheels of Memu Local when he was crossing the track of line No.2 of Tumsar road railway station.

16. Besides the oral evidence of claimants, claimants relied upon DRM report as well as spot panchnama, inquest panchnama, various statements recorded during the investigation. As per the DRM report in compliance to the letter, the investigation was carried out and during investigation statement of Shri Surendra Kumar – Station Master, was recorded. As per his statement after departure of the train No.68716 Memu Local, Porter Shri Chaitram reported him that one dead body is lying in between the track. He attended the spot and found the dead body lying in between the track under the bridge. Accordingly, he made an entry. Another statement of Shri Chaitram Waghmare was also recorded. As per his statement during his duty period after departure of train No.68716 Memu Local and when he had exchanged the train, one person came to him and informed that one person run over and lying in a dead condition at line No.2. He immediately informed the above incident to the Station Master. He accompanied the Station Master attended the spot and found that one person is dead. During cross-examination, he disclosed that he was not aware by which train the incident was occurred. During the course of inquiry, statement of Shri Ram Narayan – train Guard was also recorded. As per his statement on 27/01/2012 he was on duty in train No.68716 Itwari to Dongargarh Memu Local. His train left from Itwari station at about 18.30 hours and

giving stoppage on scheduled station and arrived Tumsar road railway station at 20.40 hours on Platform No.2 and left at 20.42 hours for destination. He has not received any information about falling of any passenger from the said train. The statement of Shri D. Bhattacharya train driver was also recorded. As per the DRM report, Station Master and Porter were not aware about from which train the incident was occurred. As per the statement of train guard and driver no any jerk or ACP was happened. Thus, from the DRM report, it is crystal clear that immediately after the departure of train No.68716 dead body of the deceased was found on the track. It is nowhere contention of the Railway that after departure of train bearing No.68716 any other train passed from the same track. The evidence of the witnesses of Railway shows that as soon as the train No.68716 was departed, the said dead body was found. Spot panchnama and inquest panchnama is also on record. As per the spot panchnama alleged spot of incident of untoward incident is shown at over bridge at Tumsar railway station on track No.2. As per the inquest panchnama deceased has sustained injury on his head. The post-mortem report also shows that the deceased has sustained crush injury on face, skull, crush injury on right hand, lacerated wound over right shoulder 8 x 1 x 1 cm, lacerated wound over both knee joint 5 x 2 x 2 cm skin deep, abrasion present over thigh, hip and left shoulder, chest and amputation or separated of skull and brain

from remaining body. The death of the deceased is caused due to the head injury due to accidental injury. Thus, the post-mortem report shows that the deceased had sustained the head injury in the alleged incident.

17. To resist the claim of the claimant, Railway has examined two witnesses who are Surendra Kumar Krishna Prasad working as a Deputy Station Manager at Tumsar road Railway station. As per his evidence at about 21.00 hours he was informed that one unknown person was lying on the track of Tumsar yard. He had also admitted during cross-examination that he has not received any memo from Itwari-Memu that someone came in front of engine and as a result there was a dash or while crossing the track the alleged incident had happened. AW-2 – Ram Narayan Bholanath had also admitted that Loco Pilot has not informed to him about dash of any person or passenger from train. Thus, the evidence of Railway witnesses specifically shows that the dead body was found as soon as the train No.68716 passed from the Tumsar Railway station.

18. Before entering into the merits of the case, it is necessary to see the definition of untoward incident :

Section 123(c) of the Railways Act, 1989 defines 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; 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, cloak room 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.*

19. Now by considering the definition of the untoward incident it is to be seen whether the deceased was travelling by the train which was carrying the passenger and whether he was holding valid ticket, and therefore, he was a bona fide passenger. As regards the contention of the Railway is concerned, the train ticket was produced after five days of the incident. It is vehemently submitted by Ms Choubey, learned Counsel that the said ticket was managed by the claimants and friends of the deceased. Exhibit A-34 is the train ticket which shows that the said train ticket is dated 27/01/2012. The recitals of the said train ticket shows that the said train ticket was issued for four persons. The story narrated by the claimant is also that the deceased had been to Mouda to attend the labour work. He and other three boys returned back and while returning back they boarded in the train i.e. Ex-Chacher to Balaghat. The train ticket also shows that it was issued for four persons.

No other evidence came before us to show that this train ticket was managed by the claimants or the friends of the deceased. There is no reason for them to manage the said ticket which is back dated. The date mentioned in the said train ticket shows that it was obtained on 27/01/2012 at about 19.07 i.e. before departure of the said train from the station.

20. As per the claimants evidence, deceased and others were boarded in the said train from the Ex-Chacher railway station. They reached at Tumsar road railway station where an untoward incident took place. The evidence of railway witness also shows that on 27/01/2012 he was working as a Guard on train No.68716. Their train arrived at Tumsar road railway station at about 20.40 hours and departed at about 20.42 hours. The DRM report also shows that the statement of Shri D. Bhattacharya – train driver was also recorded and he stated in his statement that on 27/01/2012 train left from Itwari station at 18.30 hours and halted at scheduled stations and arrived at Tumsar road railway station at about 20.40 hours. Thus, the recitals of the train tickets sufficiently shows that it was obtained on 27/01/2012 and the deceased was travelling by the said train. The observation of the railway administration while conducting the inquiry is sufficiently shows that the deceased had obtained the ticket to travel from the said train.

Thus, the evidence on record is sufficient to hold that the deceased was a bona fide passenger. So far as the issue regarding the untoward incident is concerned, the DRM report also shows that the dead body of the deceased was found at Tumsar road railway station near the over bridge on the track.

21. As per the contention of the claimants, the deceased was travelling by said train bearing No.68716 proceeding from Itwari to Gondia. It is nowhere the case of the railway that the said train has no stoppage either at Ex-Cacher railway station or Tumsar road railway station. It is an admitted position that the train passed through the Tumsar road railway station at about 20.42 hours. Immediately thereafter the dead body of the deceased was found on the track. The evidence of railway witnesses sufficiently shows that after departure of the said train immediately the dead body of the deceased was found. The injuries sustained by the deceased also plays vital role. It shows that the deceased has sustained head injury and head was cut from the rest of the body. Said injury is possible due to fell down from the train. Thus, the evidence on record sufficiently shows that the deceased fell down from running train and sustained the head injury.

22. Admittedly, there was no eyewitness of the incident. The ticket which was produced on record sufficiently shows that deceased

was holding a valid ticket. The railway has not adduced any evidence to show that the deceased has attempted to commit suicide. On the contrary, the witnesses of the Railway D-1 and D-2 shows that no incident of dash by the railway to any person while crossing the track happened. The railway has not adduced the evidence to show that while crossing the track, train has dashed any person and caused injuries. Railway has not also adduced the evidence that the deceased has attempted to commit suicide, therefore, the conclusion of the Tribunal that the claimants failed to prove that the death of the deceased is not caused in an untoward incident is misconceived conclusion because the types of injuries along with other facts pertain to decide whether the accident is of a fall from the train or injuries were on account of a person being run over by the train. It is not unknown that a body may badly cut up and crushed up after falling from the train either on account of bona fide passenger getting entangled in the place of the train, and thereafter in the wheels or other equipments of the train in which he was travelling or that the deceased on account of fallen down from the train dashed by the various equipments of the railway which are joined to the track such as poles, wires, etc. Therefore, in the facts of the present case, the observation of the Tribunal that the death of the deceased was not possible by falling from the train is completely unjustified.

23. As observed in the present case, there is no evidence to show that the deceased was crossing the railway track, and therefore, he was run over by coming train. There is no evidence that the deceased has attempted to commit suicide, therefore, he was run over by coming train. On the contrary, the evidence that railway ticket produced by the friends of the deceased shows that he was bona fide passenger. Thus, the contention of the claimant is supported by the fact that the deceased has obtained the ticket from Ex-Cacher to Balaghat. Thus, the evidence of the claimants is supported by the circumstances that the deceased has to travel from Ex-Cacher to Balaghat, and therefore, he obtained the ticket and was travelling along with his friends. Thus, the evidence is also sufficiently shows that the deceased died due to the injuries sustained by him as he fallen down from the train. The injuries sustained by him is the head injury which also supports the contention of the claimants.

24. It cannot be said that the deceased had committed suicide , and therefore, was run over by train. The railway ticket produced is sufficiently shows that the deceased was travelling in the train and he fell down from the running train. Thus, it is an untoward incident as defined in Section 123(c) of the Railways Act.

25. The Hon'ble Supreme Court of India in the case of ***Union of India vs Prabhakaran Vijaya Kumar and others 2008 ACJ 1895*** has held thus:-

> *13. In Hindustan Lever Ltd. v. Ashok Vinshu Kate this Court observed:*
>
> *41"In this connection, we may usefully turn to the decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations: (SCC p.76)*
>
> *'4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds10). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court we had occasion to say: (SCC p.447, para 6)*
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> *"6. … Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not*

to make inroads by making etymological excursions."

42. Francis Bennion in his Statutory Interpretation, 2nd Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

At p. 661 of the same book, the author has considered the topic of 'Purposive Construction' in contrast with literal construction. The learned author has observed as under:

'Contrast with literal construction - Although the term "purposive construction" is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: "If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions". The matter was summed up by Lord Diplock in this way -

> *...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing*

so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it.'" (emphasis supplied)

26. In the light of the above principles, the evidence in the present case is to be appreciated. There is no dispute that deceased was travelling in a train by holding a valid ticket. The claimants have proved that the deceased fell from the train while travelling, sustained injuries and succumbed to the death. The burden of the claimants to prove that the deceased died in an untoward incident and said burden can be discharged by the claimants by filing an affidavit of the relevant facts. Thereafter, burden will shift on the railways and the issue can be decided on the facts shown or the attending the circumstances.

27. The Hon'ble Supreme Court of India in the case of ***Union of India vs Rina Devi 2018 (3) T.A.C. 26 (S.C.)*** held that: 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.

28. The next contention raised by the railway is that the act of the deceased standing on the entrance covered under the self inflicted

injury. It is settled by the Hon'ble Apex Court in the case of *Union of India vs Rina Devi (supra)* that for attracting the provisions of Section 124A of the Railways Act, intention of the person who had sustained a self inflicted injury is to be proved. It is further held that 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. The Hon'ble Apex Court has referred the earlier decision in ***Union of India vs Sunil Kumar 2017 (13) SCALE 652*** wherein it is held that the plea of negligence of the victim cannot be allowed wherein the claim based on 'no fault theory' under Section 163 A of the Motor Vehicle Act, 1988 and 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 the victim as a contributory factor.

29. In the present case, admittedly, initially the onus which is on the claimant is discharged by the claimant by adducing reliable evidence, whereas railway fails to prove that the deceased sustained injury while crossing the track, therefore, I have no hesitation to hold that the burden shifted on the railway is not discharged by them. The claimants have

also proved that the deceased was a bona fide passenger and his death was caused in an untoward incident.

30. Learned Advocate Ms Choubey vehemently submitted that the claimants are not entitled for any interest on the compensation amount. The Hon'ble Apex Court in the case of *Union of India V/s Rina Devi (supra)* has dealt the said aspect of interest and observed as follows :-

> *"15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount 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(AIR 2001 SC 1333) (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (AIR 1976 SC 222) (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given."*

31. Thus, the Hon'ble Apex Court has held that the compensation as applicable on the date of incident has to be given with reasonable

interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of the award of the Tribunal is higher than revised amount with interest the higher of the two amounts has to be given.

32. The alleged incident occurred on 27/01/2012. The Railway Administration issued a notification dated 22/12/2016. In view of that notification the claimants are entitled for compensation of Rs.8,00,000/- with interest @ 6% per annum. In the decision of the Calcultta High Court in ***Bandana Mishra vs Union of India 2017 ACJ 2447*** wherein, relying upon the said notification dated 22/12/2016, held that claimants are entitled to get the compensation of Rs.8,00,000/- with interest @ 6% per annum from the date of lodging of claim till payment. This Court has also in First Appeal 878/2009 decided on 17/02/2020 and in First Appeal 924/2010 decided on 06/08/2019 granted the compensation of Rs.8,00,000/-along with interest. In view of the above discussion, I pass the following order:-

i) The judgment and order passed by the learned Railway Claims Tribunal, Nagpur dated 17/12/2015 is quashed and set aside.

ii) The respondent is directed to pay compensation of Rs.8,00,000/- to the claimants within a period of 60 days.

Modified as per Court's order dated 16/02/2024.

33. The First Appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

*Divya