



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

FIRST APPEAL NO.393/2023

1. Bhagwan S/o Ghanshyam Bawala,
age 48 Yrs., Occ. Labour.
2. Sau. Krushna W/o Bhagwan Bawala,
age about 42 Yrs., Occ. Housewife.

Both R/o Vishnuwadi, Near City Police
Station, At Post Malkapur,
Dist. Buldhana.

... Appellants

- Versus -

Union of India,
through the General Manager,
Central Railway, CST Mumbai.

... Respondent

Mr. Ravindra G. Bagul, Counsel for the Appellants.

Ms. Neerja G. Chaubey, Counsel for the Respondent.

CORAM: MRS. VRUSHALI V. JOSHI,J.

DATE OF RESERVING THE JUDGMENT : 2.11.2023

DATE OF PRONOUNCING THE JUDGMENT : 8.11.2023

JUDGMENT

Heard Mr. Ravindra G. Bagul, learned counsel for the appellants and Ms. Neerja G. Chaubey, learned counsel for the respondent.

2. The appellants herein have challenged the judgment and award dated 2.9.2019 passed by the Railway Claims Tribunal, Nagpur in Claim Application O.A. (Ilu)/NGP/ No.139/2019. The claim application was filed by the father of the deceased. The accident took place on 18.6.2015. On 18.6.2015 the deceased Akshay along with one Vijay Ujjainkar was travelling from Malkapur to Shegaon by Ganga Nagar express after purchasing a valid railway ticket for Malkapur to Shegaon. As there was heavy rush in the train the deceased was standing near the door of the coach, when the train was passing from Nagzari railway station due to heavy rush of the passengers, the deceased lost his balance and fell down from running train and sustained injuries and died on the spot. Therefore, for “untoward incident” the respondent railway is liable to pay the

compensation along with interest and hence the appellants have filed the claim petition.

3. The respondent resisted the claim on the ground that death of deceased was not due to “untoward incident” as defined under Section 123(c)(2) read with Section 124A of the Railways Act as the deceased was not a bona fide passenger and he was not having valid ticket.

4. After framing the issues and considering the evidence on record the Tribunal had held that the appellants are dependents of the deceased as defined in Section 123(b) of the Railways Act. The Tribunal has recorded the finding that it is not a case where the deceased had accidental fall from the train during the course of travel nor it is a case of accidental fall while trying to alight the train which has halted at the station.

5. The learned Tribunal has observed that Akshay Bhagwan Sharma died on account of “untoward incident” which must be proved under Section 124A of the Railways Act. The appellants have not been able to discharge their burden in this regard. On the other hand, the respondent has proved that the deceased died due to self-inflicted injuries as defined in Section 124A(b) of the Railways Act, according to which no compensation shall be payable by the railway administration. No journey ticket was recovered from the deceased and he was not a bona fide passenger of the train at the time of occurrence and concluded that the deceased was neither a bona fide passenger nor involved in an “untoward incident” as defined under Section 123(c)(2) of the Railways Act.

6. While considering the “untoward incident” the manner and circumstances leading to the death of the deceased is required to be considered. The deceased was travelling from Malkapur to Akola by Ganga Nagar express. From the record it appears that

co-passenger who was travelling with deceased Mr. Vijay Ujjainkar has given statement immediately after the incident that they boarded a wrong train. They came to Malkapur railway station and the train had arrived there on the platform. They thought it is the Gitanjali express and they boarded Ganga Nagar express mistakenly. There is no halt of said train at Nagzira. When the train got slow down both have tried to alight. At Nagzira station before the station came they tried to alight from the train and while alighting from the train it is specifically stated by this witness that he got down first and when deceased was alighting, the train has taken a speed and he came under the wheels of the train and dragged for about 1 to 2 meters with said train. The story narrated by the eye witness is found in the enquiry report of the railway police. Though the ticket was not found on the person of deceased the witness has stated that they were having ticket of Gitanjali express. The appellants have relied on the judgment of this Court in the case of Union of India V/s. Anuradha W/o Narendra Deshmukh; Abhishek S/o Narendra Deshmukh

reported in **2013 LawSuit (Bom) 1136** wherein this Court has observed in paragraphs 5, 6 and 7 as under:-

“5. The crucial question is as to whether the deceased Narendra Deshmukh lost his life as a result of untoward incident and whether Railway Administration is answerable to compensate his dependents. The answer has to be given in the affirmative because if Railway Administration wants to claim exemption from liability to compensate the victim of an untoward incident, it is required to prove and establish exception or exceptions available to Railway Administration i.e. suicidal death, self inflicted injury, criminal act committed by the victim himself. In the present case no evidence was adduced by the Railway Administration to claim exemption from its liability to compensate the victim. The fact that deceased Narendra Deshmukh came to Nanded Railway Station and desired to go to Purna established. It may be that he had boarded into wrong train, assuming that it is the same train by which he wanted to go, but even on such assumption if untoward incident had occurred while passenger was boarding the train and due to sudden jerk, he fell down from the train, Railway Administration is liable for compensation. The incident is covered under Section 124A of Indian Railways Act as an untoward incident, unless any exception is pleaded and proved by the Railway Administration.

6. Learned Advocate for the respondents made reference to the ruling in Union of India V/s. Parameshwaram Pillai and another, 2013 ACJ 635.

In the identical case when passenger was travelling in the train and fell down due to sudden jerk

and died on the spot, the railway had defended on the ground that victim was not bona fide passenger and no railway ticket was produced by the claimants or recovered from his body. It was held that Railways have security personnel who can arrest unauthorized travellers and there are ticket examiners in the train.

Thus, the absence of any such detection of the victim as an unauthorised traveller, presumption would be in favour of the deceased that he was travelling by purchasing a valid ticket and was a bona fide passenger. Thus, it is a duty of the Railway Administration to establish, plead and prove that deceased had travelled without a valid ticket and was not a bona fide passenger at the time of his death. In the absence of any such evidence led on the part of Railway Administration, there would be no good ground to interfere the judgment and award granted compensation for an untoward incident.

7. *A reference is also made to the ruling in Jameela & Ors. v. Union of India, 2010 3 ACC 800 to argue that when Railway Administration is unable to prove any of the exception available to it e.g. victim died as a result of suicide or self inflicted injury, the presumption must go with the victim, who had accidentally fell down from the train. In a given case, it may be rash or negligent act to stand at the open door of the compartment of train. But certainly it is not a criminal act so as to exempt Railway Administration from paying compensation in such cases. In another ruling in Union of India v. Prabhakar Vijaya Kumar and others, 2008 ACJ 1895 it is held that Railway Administration was held liable to pay compensation for untoward incident because it will not make any difference whether deceased was actually inside the*

train or trying to get in such train when fell down. Thus, if victim died as a result of accidental falling from the train victim is covered within the meaning of untoward incident for which Railway is liable to compensate to the dependents of the victim in case of compensation for death claim in Prabhakaran's claim the 'of Strict Liability of the Railway Administration was considered on the ground that since Railway Administration undertakes hazardous activity, it must bear the burden of risk of damage on such activity, may generate."

In case in hand the deceased fell down when he tried to get down from the train as the speed of train was slow near the railway station and when he was alighting the train catch speed and he fell down, it can be a negligent act on the part of deceased but not a criminal act to exempt Railway administration from paying compensation. The Railway administration has not pleaded any exception nor proved hence the incident is covered under Section 124A of Indian Railways Act as "untoward incident" only because the ticket was not found he cannot be treated as unauthorised passenger. The evidence of co-passenger proves that they boarded wrong train and they have booked the ticket of Gitanjali express. It

is for the Railways to detect unauthorised travellers. In absence of any such efforts and evidence presumption is in favour of deceased.

7. The learned counsel for the appellant has also relied on the judgment of this Court in First Appeal No.259/2020 (Smt. Munnibai Wd/o Munnalal Chaube V/s. Union of India), dated 20.1.2021. On similar fact of boarding in the wrong train the passenger cannot be branded as an unauthorised passenger. The death of said passenger was due to the injuries sustained in accidental fall from a running train which was an “untoward incident”.

8. I have perused the record and considered the submissions advanced by the learned counsel for the respective parties.

9. It would be useful to refer to the decision in Union of India V/s. Rina Devi reported in **AIR 2018 SC 2362** wherein the Apex Court has observed that death 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 of Section 124A merely on the plea of negligence of the victim as a contributing factor. This Court has also relied on Anuradha's case (*supra*) as it has held that "the railway trains are used as a convenient and affordable means of conveyance by any commoner in our country. If a passenger unguided by railway security personnel, ticket checkers or in absence of the regular announcements mistakenly boards a wrong train halting on the platform, may on realizing his mistake fall off the train due to panicky situation or otherwise accidentally, the railway administration cannot feign ignorance about the untoward incident in such case in order to shirk away from its strict liability to compensate monetarily for the untoward fatal accidents".

10. In the present case though the ticket was not found on the person of the deceased the eye witness has stated that they were going for searching college. They have purchased the ticket for Gitanjali express and wrongly boarded in the Ganga Nagar express. Hence the deceased cannot be treated as an unauthorised passenger

merely because he had mistakenly boarded the train and the ticket was not found with him. The death of the said passenger was due to the injuries sustained in accidental fall from the running train. Accordingly, the death was an “untoward incident” and was not covered by proviso to Section 124-A of the Railways Act. The Tribunal was, therefore, not justified in rejecting the claim solely on the ground that the victim had boarded a wrong train. The appellant having discharged the initial burden of proving that Akshay was a bona fide passenger and that his death was in an “untoward incident”, the respondent cannot be absolved of its liability of paying the compensation to the dependents of the deceased. For the reasons stated above, the impugned judgment cannot be sustained. Hence the following order:-

- i. The appeal is allowed.
- ii. The impugned judgment dated 2/9/2019 is quashed and set aside.
- iii. The respondent Railway is directed to pay to the appellants a sum of Rs.8,00,000/- in equal share. As the accident took place

before the amendment of the Act, the appellants are not entitled for the interest on the amount.

iv. The said amount shall be deposited in the account of the appellants after verifying the identity within a period of three months.

v. The appeal stands disposed of. No costs.

(MRS. VRUSHALI V. JOSHI, J.)