

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

FIRST APPEAL NO. 763 OF 2011

APPELLANT: The Union of India,
(Ori.Def. On R.A.) General Manager, Central Railway, CST
 Mumbai.

..V E R S U S..

RESPONDENT Smt Chindhabai wd/o Sudamrao Pawar,
(Ori.Apli. On R.A.) Aged about 68 years, Occu: Housewife,
 R/o Yadav Nagar, Tah. and Dist. Nagpur
 (M.S.)

Mr N.P.Lambat, advocate for the appellant.

Mr S.B. Dhande, advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J. .
DATE : 12/04/2023

ORAL JUDGMENT :

1. The present appeal is preferred by the Union of India, through General Manager, Central Railway, CST Mumbai under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment passed on 17/02/2011 by the Member, Railway Claims Tribunal, Nagpur Bench Nagpur (hereinafter referred as the Tribunal). The Tribunal by the impugned judgment has awarded the compensation of Rs.4,00,000/-to the claimants along with the interest at the rate of Rs. 6% per annum.

2. Brief facts which are necessary for the disposal of the appeal are as under:-

Applicant No. 2 is the mother and solely dependent on the deceased along with her son preferred claim application in the Court of Railway Claims Tribunal, Nagpur for grant of compensation. As per the allegations, the deceased Gajanan s/o Sudamrao Pawar was travelling from Wardha to Dhamangaon on purchasing Second Class journey ticket No. G22159921. While travelling by train No.2860-Gitanjali Express, the deceased Gajanan Pawar fell down from the running train at Dhamangaon Railway Station on 22/11/2009 and died on 24/11/2009 in Acharya Vinoba Bhave, Rural Hospital, Sawangi (Meghe), Dist. Wardha. During the pendency of the application, the name of applicant No.1-Ishwar s/o Sudamrao Pawar was deleted and now only the applicant Chindhabai Sudamrao Pawar, who is the mother of the deceased is the only applicant. As per the contention, the death of the deceased was caused in an untoward incident when the deceased was travelling by Gitanjali Express, and she is entitled to receive compensation.

3. In response to the notice, the railway denied the contention of the claimant and raised the defence that the alleged incident occurred due to carelessness and negligence on the part of the deceased. It is the case of self inflicted injury. It is further contention of the railway that there was no scheduled halt for the Gitanjali Express at Dhamangaon Railway Station. Thus, it is the self-negligence of the deceased which caused the death, hence

Railway is not liable to pay compensation.

4. To substantiate the contention, the claimant Chindhabai Pawar stepped into the witness box and reiterated the contention. In view of her application, she deposed that the death of the deceased is caused by an untoward incident which took place while the deceased was travelling by the Gitanjali Express. Besides her oral evidence, she placed reliance on the police papers, regarding the untoward incident i.e. FIR, Spot Panchanama, etc. as well as the DRM report.

5. The Railway Administration has also adduced the evidence by examining Ashok Marotrao Bhandare, who was the guard on the train No.2860 on 24/11/2009, and Dau Dayal Sharma, who was on Mail Express Guard and was on duty of train on the day of the incident. The tribunal appreciated the evidence of both sides and come to the conclusion that the claimant has proved that the death of the deceased was caused in an untoward incident, hence the claimant is entitled to receive the compensation and awarded the compensation @ Rs.4,00,000/-along with interest @ Rs.6% per annum from the date of the application i.e. from 16/02/2010 till the date of the order.

6. Being aggrieved and dissatisfied with the judgment of the learned Tribunal, the present appeal is preferred by the Railway on the ground that the learned Tribunal had not considered that there was no scheduled halt at Dhamangaon Railway Station but it

was the self-negligence of the deceased, who alighted from train though there was no scheduled halt and sustained injuries and scummed to the death. Thus the death of the deceased is caused due to his own negligence and hence, Railway is not liable to pay the compensation.

7. Heard learned counsel Lambat for the appellant, he vehemently submitted that the facts on record sufficiently shows that the death of the deceased is caused due to his own negligence, and hence claimant is not entitled for compensation. This fact is not considered by the tribunal and awarded the compensation which deserves to be quashed and set aside.

8. Per contra, learned counsel Dhande submitted that now the issue regarding self-inflicted injury is settled by the judgment of the Hon'ble Apex Court in the case of ***Union of India vs Rina Devi reported in 2018(3) T.A.C. 26(SC)***, wherein it is held that to attract self-inflicted injury, intention to inflict such injury is required and mere negligence of any particular decree is not sufficient to attract self negligence of the deceased. He submitted that, in the present case, there is absolutely no evidence on record to show that deceased was negligent while alighting from the train but the facts on record and evidence on the record shows that the deceased fell down from the running train and sustained injuries and succumbed to the death. The learned Tribunal had considered this fact and awarded the compensation.

9. He further submitted that in view of the notification issued by the Railway Administration on 22/12/2016, the claimant is entitled to receive the compensation of Rs.8,00,000/-and therefore, he prayed for the enhancement of the compensation at the rate of Rs. 8,00,000/-.

10. After hearing both the sides and perusal of the record with the able assistance of both the sides, the following point arises my consideration.

a) Whether the tribunal is justified in awarding the compensation to the claimant?

b) Whether the judgment and award passed by the Railway Claims Tribunal call for any interference?

11. Before entering into merits of the matter, 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, 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.”

12. Now, considering the definition of the untoward incident, it is to be seen whether the deceased was travelling by train which was carrying the passengers, and whether he was a bonafide passenger. Admittedly, the issue regarding bonafide passenger is not raised by the Railway. The Railway ticket which is seized by the Railway Administration which is at Exhibit A-64 shows that the deceased has obtained the ticket from Wardha to Dhamangaon and was travelling by the Gitanjali Express. This fact is not at all denied by the Railway Administration. Thus, evidence on record sufficiently shows that the deceased was holding a valid ticket to travel from Wardha to Dhamangaon. Thus he was a bonafide passenger. The Railways Act, 1989, prior to the insertion of Section 124-A w.e.f. 01.08.1994, already contained a provision defining "passenger" in clause (29) of Section 2 therein. As per this definition, "passenger" means a person travelling with a valid pass or ticket. This definition presupposes that a person who undertakes a journey must travel with a valid ticket or pass.

13. In view of the said definition as the deceased has obtained a valid ticket, he comes under the definition of the passenger. The evidence produced on record showing the valid

ticket produced by the ticket itself is sufficient to show that deceased was a bonafide passenger, in view of the definition defined in Section 2 (29) of the Railway Act of 1989.

14. By preferring this appeal, the Railway has raised the issue that the deceased sustained the injuries while he was travelling in the train, due to his own negligence. He sustained the injuries as he alighted from the train though the train has no scheduled halt. As per the evidence of the claimant deceased was travelling from the train and he fell down from the train and sustained injuries. Though Railway has examined Ashok Marotrao Bhandare and Dau Dayal Sharma vide Exhibit A-80 and A-83, but there evidence no way shows that the deceased was alighting from the train at Dhamangaon Railway Station though there was no scheduled halt and while alighting, he fell down and sustained the grievous injuries. The evidence of Dau Dayal Sharma also shows that the passenger fells from the train at Dhamangaon Railway Station between the Railway Station Nagpur to Bhusawal. Thus, there is no evidence on record to show that deceased sustained the injuries as he was alighting from the train. The issue regarding the person alighting from the train when there was no scheduled halt is also considered by this Court in *Smt Ratta wd/o Subhash Meshram vs Union of India through its General Manager South East Central Railway, Bilaspur, C.G. in First Appeal No. 116/2022* and held that, it is common knowledge that the passengers, having valid journey tickets board a wrong train under some mistaken impression; illiteracy and panic leads a passenger holding a valid

travel ticket to board a wrong train; of course, the possibility of purposely boarding a wrong train for convenience without a proper ticket cannot be ruled out.

15. It is further observed by this Court that the underlying object of Section, 124-A is to compensate a bonafide passenger holding a valid journey ticket if he becomes a victim of an untoward incident. The proviso to Section 124-A has carved out circumstances under which the passenger is not entitled for compensation. As already observed that there is absolutely no evidence on record to show that the deceased was alighting from the Gitanjali Express at Dhamangaon which has no scheduled halt and therefore, he sustained the injuries. In fact, the evidence on record shows that the deceased was travelling by the Gitanjali Express but he fell down from the running train and sustained injuries. The issue regarding self-inflicted injuries is answered by the Hon'ble Apex Court in the *Union of India vs Rina Devi cited (supra)* wherein the Hon'ble Apex Court has held that the concept of self-inflicted injury would require the intention to inflict such injury and not mere negligence of any particular degree. It is further held that doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on the 'no fault theory'. The Hon'ble Apex Court has referred the judgment of *United India Insurance Company Ltd. vs Sunil Kumar reported in 2017(13) SCALE 652* laying down that plea of the negligence of the victim cannot be allowed in a claim based on 'no fault theory' under Section 163A of the Motor

Vehicles Act, 1988. Accordingly, 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 the negligence of the victim as a contributory factor.

16. The initial onus always lies with the claimants to show that the death of the deceased was due to the untoward incident as the deceased was travelling as a bonafide passenger. The said burden is to be discharged by the claimants on the basis of affidavit of relevant facts which is adduced by the claimant. As already observed that, the burden of the claimants which can be discharged by filing an affidavit of relevant facts when discharged then the burden will shift on the Railways and the issue can be decided on the facts shown or attending circumstances. Here in the present case, the Railway has not adduced the evidence to show that the deceased sustained the injuries while alighting from the train.

17. On the contrary, on the basis of the affidavits and the police papers filed on record as well as DRM Report shows that the deceased sustained the injuries when he was travelling and he failed down from the running train. Thus, the evidence on record sufficiently shows that the death of the deceased is caused in an untoward incident when the deceased was travelling in Gitanjali Express as a bonafide passenger. These all aspects are rightly considered by the Railway Claims Tribunal and awarded the compensation. The learned Railway Claims Tribunal has not

committed any error in law while allowing the claim petition and granting compensation to the tune of Rs. 4,00,000/- vide impugned judgment and award.

18. At this juncture, the learned counsel Shri Dhande for the respondents submitted that in view of the notification dated 22/12/2016, the respondents are entitled for compensation of Rs.8,00,000/- from the date of filing of the claim for compensation before the Tribunal till the date of payment. Admittedly, the notification was issued by the Railway on 22/12/2016 which came into effect from 01/01/2017, by which the claimants in case of death in an untoward incident are entitled to receive the compensation at the rate of Rs.8,00,000/- Though the learned counsel Dhande submitted that claimants are entitled to receive compensation of Rs. 8,00,000/-along with interest. The issue regarding the interest was considered by the Hon'ble Apex Court in the case of ***Union of India V/s Rina Devi cited (supra)*** and ***Union of India V/s Radha Yadav reported in (2019) 3 SCC 410*** wherein the Hon'ble Apex Court has held that during the pendency of the matter by way of amendment, the amount of compensation which was earlier at the level of Rs. 4,00,000/- in case of death was raised to Rs. 8,00,000/-, and in that case, the highest amount, the claimant is entitled, in case of revised the amount, the High Court has committed an error in awarding the interest on the same of Rs. 8,00,000/- The Hon'ble Apex Court clarified that the compensation will be payable as applicable on the date of accident with interest as may be considered reasonable from time to time on the same pattern as in the 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 the higher of the two amounts.

In view of this, the claimants are entitled to receive the highest amount, either the amount of compensation of Rs. 4,00,000/- along with accrued interest or the lump sum amount of Rs. 8,00,000/- without the interest.

19. In view of the above discussion, the appeal filed by the Union of India is devoid of merits and liable to be dismissed. Hence, I pass the following order:

- a) Appeal is **dismissed** with no order as to costs.
- b) The judgment of the learned Railway Claims Tribunal deserves to be modified and thereby the appellant is directed to pay compensation of Rs. 8,00,000/- to the respondent within a period of 60 days from the date of receipt of this judgment.
- c) The appellant has already deposited the amount of Rs. 4,00,000/- along with interest. Therefore, the appellant shall deposit the balance amount of compensation within a period of 60 days from the date of the receipt of copy of the judgment.

JUDGE