

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

**FIRST APPEAL NO. 781 OF 2022**

**APPELLANTS**

:

**ON R.A.**

**(ORI. APPLICANT**  
**ON RA)**

- 1] Shrawan s/o Prayag Jadhav,  
Aged 60 years, Occu: Retired.
- 2] Sau. Sagunabai w/o Shrawan Jadhav  
Aged 54 years, Occu: Household.  
Both r/o Swami Plat No. 24, Dheku  
Sim Road, Shriram Nagar Gabaseth  
Build, Amalner Tah. Pachora,  
Dist. Jalgaon.

**..V E R S U S..**

**RESPONDENT**

**ON R.A.**

**(ORI. RESPONDENT**  
**ON R.A.)**

Union of India, through  
It's General Manager,  
Western Railway, Churchgate,  
Mumbai.

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Ms Sumesha Choudhary, advocate for the appellants.

Ms Neerja Chaubey, advocate for the respondent.  
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**CORAM : URMILA JOSHI-PHALKE, J. .**

**DATE : 06/04/2023**

**ORAL JUDGMENT :**

1. The present appeal is preferred against the judgment and award passed by the Railway Claims Tribunal in case No. OA(IIu)/

NGP/2012/0336 dated 22/03/2017 by which the claim of the claimants of compensation was rejected on the ground that he was not a bonafide passenger and the injuries sustained by the deceased was self inflicted injuries.

2. The brief facts which are necessary for the disposal of the appeal are as under:

On 18/10/2011, the deceased purchased a Railway ticket from Kalyan to Mumbai Central. On 19.10.2011, he purchased a railway ticket from Mumbai Central to Navsari. He reached Navsari and on 20.10.2011 he started his return journey from Navsari to Mumbai. He boarded the train at Navsari but due to the heavy crowd, he was thrown from the train i.e. he fell down from the running train and died on the spot. The claimants are the parents of the deceased. As per the contention of the claimants, their son had been to Navsari to take the Darshan of Maharaj, and while returning he obtained the ticket and boarded in the train, but due to a crowd in the bogey, he was thrown and sustained injuries and died on the spot. Thus the death of the deceased was caused in an untoward incident which is caused on 20/10/2011. Therefore, the claimants are entitled to receive compensation.

3. In response to the notice, the Railway Administration denied the claim of the claimants, on the ground that the deceased was not at all the bonafide passenger. Alternatively, it is the contention of the railway that the deceased had sustained the injuries as he was knocked down by an unknown train. Thus

injuries sustained by the deceased are self inflicted injuries and claimants are not entitled for compensation.

4. Before the Tribunal, the claimant No.1-Shrawan s/o Prayag Jadhav examined himself vide Exhibit No. A-107 and narrated the alleged incident. Besides his oral evidence, no other evidence is adduced by the claimants. The claimants are also relied upon the Police Papers i.e. Marg Report registered at Navsari Police Station, Spot Panchanama, and Inquest Panchanama as well as DRM Report. On the basis of said oral as well as documentary evidence, the claimants claimed that the death of the deceased is caused in an untoward incident that took place on 20/10/2011 at about 09:50 a.m. As the death of the deceased is caused in an untoward incident, they are entitled to receive the compensation.

5. On the other hand, the contention of the Railway is that the claimants fail to prove the deceased was a bonafide passenger and his death is caused in an untoward incident and therefore, the claimants are not entitled for compensation. The Railway Claims Tribunal considered the evidence and came to the conclusion that the deceased was not a bonafide passenger and the injuries sustained by the deceased are self inflicted injuries. Therefore, the claim of the claimants is rejected.

6. Being aggrieved and dissatisfied with the judgment and award passed by the Railway Claims Tribunal, the present appeal is preferred by the claimants/appellants on the ground that learned Tribunal had not considered the evidence in proper perspective,

merely because, the ticket was not found along with deceased is not sufficient to reject the claim of the claimant. The mere absence of the ticket is not sufficient to negate the claim of the claimant. Moreover, the Railway Administration has not adduced any evidence to show that the deceased was knocked down by an unknown train. The burden on the claimants is to prove the facts on the basis of an affidavit of evidence which is discharged by the claimants and therefore, the judgment and award passed by the Railway Claims Tribunal deserves to be quashed and set aside.

7. Heard learned advocate Ms Sumesha Chaudhari for the claimants, she reiterated the said contentions and placed her reliance on *Union of India Vs Prabhakaran Vijaya Kumar and others reported in 2008 ACJ 1895* and *Union of India vs Rina Devi reported in (2019) 3 SCC 572*. She submitted that in view of the judgment of the *Union of India Vs Prabhakaran Vijaya Kumar and others* referred (supra) being the claimants have claimed the compensation under the beneficial legislation, the liberal construction is to be considered and if liberal construction is taken into consideration, the claimants are entitled to receive the compensation.

She further submitted that in view of the judgment of the Hon'ble Apex Court in *Union of India V/s Rina Devi* referred (supra) mere absence of the ticket is not sufficient to discard the evidence of the claimants. To attract the self inflicted injuries, intention to inflict such injuries is required. Mere negligence of any particular degree is not sufficient.

She submitted that in view of the two judgments of the Hon'ble Apex Court, the claimants have discharged the burden, if the accident occurred while boarding or de-boarding from the train, or if a persons thrown from the train while travelling covers under the untoward incident. Thus, claimants are entitled to receive the compensation under the provisions of beneficial legislation.

8. Per Contra, the learned counsel Ms. Neerja Chaubey submitted that there is absolutely no evidence to show that the deceased was travelling by train from Navsari to Mumbai. No ticket was found along with the deceased. The claimants have not proved that the deceased was travelling by train. In fact, the deceased was knocked down by an unknown train. Thus injuries inflicted to the deceased are self inflicted injuries and therefore, the claimants are not entitled for any compensation.

9. After hearing both the sides and on perusal of the record with the able assistance of learned advocates of both sides, the following point arises for my determination.

*a) Whether the Railway Claims Tribunal is justified in rejecting the claim of the claimants holding that the deceased was not bonafide passenger and injuries sustained by the deceased are self inflicted injuries ?*

10. There is no dispute that on 18/10/2011, the deceased had purchased the Railway Ticket from Kalyan to Mumbai Central, and on 19/10/2011, the deceased has purchased the ticket from Mumbai Central to Navsari. Both tickets are found along with the

deceased when the dead body was found. It is also not in dispute that while drawing the inquest panchanama, the Railway ticket traveling from Navsari to Mumbai Central is not found. On the basis of the said evidence that the ticket was not found, Railway Administration has claimed that the deceased was not traveling by train but he was knocked down by some unknown train and sustained the injuries. Admittedly, the Railway Administration has not adduced any evidence to prove the same. To prove the contention that the deceased was travelling by train and was thrown out of the train and sustained the injuries. Shravan Prayag Jadhav father of the deceased stepped into the witness box and testified that his son had purchased the ticket from Kalyan to Mumbai Central on 18/10/2011 and by purchasing the ticket on 19/10/2011, he went to Navsari to have a Darshan of one Maharaj. While returning, he started his journey from a train by purchasing valid tickets. Admittedly, he could not state the name of the train, by which the deceased was travelling. The dead body of the deceased was found on the Railway Track. Alongwith the deceased, two tickets i.e. Kalyan to Mumbai Central and Mumbai Central to Navsari was found, at the time of inquest panchanama. The claimants have also referred the said tickets during his examination-in-chief before the Tribunal. The inquest panchanama also refers about the said tickets which were found on his person. Admittedly, the ticket from Navsari to Mumbai was not found along with the deceased.

11. As per the contention of the claimants, the deceased boarded the train but due to the crowd in the train, he was thrown

out from the train and sustained injuries, and died on the spot. The P.W. 1- Shrawan Prayag Jadhav was cross-examined by the Railway Administration. During cross-examination, admittedly it came on record that claimant No.1 has not witnessed the accident as he was not travelling along with the deceased. His admissions on record shows that the police found two tickets dated 18/10/2011 from Kalyan to Mumbai Central and a ticket dated 19/10/2011 from Mumbai Central to Navsari but the police did not show him the ticket dated 20.10.2011. Except this cross-examination, nothing incriminating came on record. Undisputedly, the ticket showing that the deceased was travelling from Navsari to Mumbai Central was not found either on the person of the deceased or in his luggage. The DRM Report is also on record. The DRM report is on the basis of an investigation carried out by the Railway Administration which shows that from the scrutiny of the documents, it is found that the Station's Superintendent did not mention the cause of the incident but GRP mentions in inquest panchanama, the deceased was knocked down by unknown train. Admittedly, the concerned person who took the entry that the deceased was knocked down by an unknown train is not examined by the Railway Administration. The D.R.M. Report shows that the accident took place due to his own negligence and carelessness. However, there is no evidence on record to show that either deceased have attempted to commit suicide or his death was caused, as he was knocked down by any train.

12. From the available evidence on record, except the

evidence of the claimant that the deceased was travelling from Navsari to Mumbai, no other evidence is brought on record to show that deceased was travelling by train. At the same time, there is also no evidence to show that the deceased was knocked down by any train. The spot panchanama shows that the dead body of the deceased was found on the Up line at Km No. 235/23 -15 at the Western Railway Line. It is at the southern end of platform No.2 of Navsari Railway Station. At the eastern side, nearly at a distance of 7 feet a platform No.2 and a board of Navsari Station is located. The Down-line is on the western side. The accident site shows blood stains on the track which were dried. Thus, the spot panchanama sufficiently shows that at a short distance from platform No.2 of Navsari Railway Station, the dead body of the deceased was found.

13. The claimants have claimed compensation under the beneficial legislation. As observed by the Hon'ble Apex Court in the case of *Union of India Vs Prabhakaran Vijaya Kumar and others* referred (supra), wherein it is held that it is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation. It is further held by the Hon'ble Apex Court that if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of

the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

14. In the light of the above principles, if the facts and evidence in the present case is appreciated there is no dispute that the deceased has obtained a ticket on 18/10/2011 and traveled from Kalyan to Mumbai Central. It is also not in dispute that on 19/10/2011, he obtained the ticket from Mumbai Central to Navsari and reach at Navsari. The spot of the accident show near Navsari Railway Station at a distance of 7 to 8 feet from platform No. 2. Though the Railway Administration claimed that he was knocked down by some unknown train but neither the person who took entry regarding knocked down of a person by unknown train is examined by the railway nor any other official was examined to substantiate the contention.

15. By applying the principle of literal construction, the burden can be discharged by the claimant by narrating the facts in the affidavit. The Hon'ble Apex Court has already held in ***Union of India V/s Rina Devi*** cited (supra) that the initial burden will be on the claimants which can be discharged by filing an affidavit of the relevant facts and the burden will then shift on the railways and the issue can be decided on the fact shown or attending circumstances.

16. Here in the present case, the fact shows that initially, he has obtained the tickets. So, an inference can be drawn that the person who travelled from Mumbai to Navsari by obtaining a ticket definitely he travelled in the return journey by obtaining the ticket. Merely because the ticket was not found along with the deceased is not sufficient to draw an inference that he was not a bonafide passenger. This aspect is also dealt by the Hon'ble Apex Court which held that the mere absence of the ticket with the deceased is not sufficient to hold that he was not a bonafide passenger. The missing of tickets during the untoward incident, cannot be ruled out. Considering the condition of the dead body which was completely damaged, the possibility that the ticket was misplaced cannot be ruled out.

17. So far as the question of the untoward incident is concerned, the attending circumstances, that the dead body of the deceased was found at a very small distance from the platform, is sufficient to infer that the deceased boarded in the train but due to rush in the train, he was thrown out as soon as the train started and fell down on the track near to the platform. As already observed that

the Railway Administration has not adduced any evidence in support of the contention. Thus, in the absence of any evidence, the contention of the railway that the deceased died due to self inflicted injuries is not sustainable and difficult to accept. The Hon'ble Apex Court in the case of ***Union of India Vs Rina Devi*** referred (supra) had also dealt with the issue regarding the self inflicted injuries and in para-25, it is held that "We are unable to uphold the above view as a concept of 'self inflicted injury' would require the intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principles of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. We may in this connection refer to judgment of this Court in ***United India Insurance Co. Ltd. versus Sunil Kumar reported on (2019)12SCC 398***, laying down that plea of the negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold 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 124A merely on the plea of the negligence of the victim as a contributing factor.

18. In view of the above observations and considering the facts and circumstances in the present case, the dead body of the deceased was found at a distance of 7 to 8 feet from platform No. 2, from which it can be inferred that the deceased was travelling by train and he was thrown out of the train and sustained the injuries

in the absence of any other evidence to show that the deceased either committed suicide or was knocked down by any unknown train. Considering the evidence on record, it can be sufficiently inferred that the death of the deceased is caused in an untoward incident and therefore, claimants are entitled to receive compensation. The plea of self inflicted injury raised by the railway is not acceptable in the absence of any evidence. As far as the aspect of the bonafide passenger is concerned, the possibility that the ticket might have been misplaced during the untoward incident cannot be ruled out. The plea of negligence by the Railway is not established by the Railway.

19. The alleged accident took place on 20/10/2011 i.e. before the issuance of the notification dated 22/12/2016. The revised notification came into effect from 01/01/2017. In view of the revised notification, the claimants are entitled to receive the compensation of Rs. 8,00,000/-, but in view of the judgment of the Hon'ble Apex Court in the case of ***Union of India V/s Radha Yadav reported in(2019)3 SCC 410***, the claimants are not entitled to claim the interest as the highest amount of compensation is Rs. 8,00,000/-.

20. Hence, in light of the above discussion, I have no hesitation to hold that there is no merit in the contention of the railway that the death of the deceased is not caused in an untoward incident but he was knocked down by an unknown train. The Railway Tribunal has committed an error while rejecting the claim petition. At this juncture, I am of the opinion that the claimants

have proved that the death of the deceased has caused in an untoward incident and therefore, claimants are entitled to receive the compensation.

21. In the light of the above discussion, the appeal deserves to be allowed, I proceed to pass following order:

- (1) The First Appeal is **allowed**.
- (2) The judgment and award dated 22.3.2017 passed by learned Member of the Railway Claims Tribunal at Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/2012/0336 is hereby quashed and set aside.
- (3) The respondent/Railway Administration is directed to pay the amount of compensation Rs.8,00,000/- to claimants within a period of 60 days from the date of receipt of copy of this judgment.

With this, the First Appeal is **disposed of** with no order as to costs.

**JUDGE**