

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

FIRST APPEAL NO. 710 OF 2014

APPELLANTS:
 (On R.A)

Amended as per order dt.
 14.10.2022 and 16.11.2022
 Sd/-
 Adv.

1. Yogeshwari wd/o Raju Gajapure,
 Aged about 28 years,
 Occupation: Household.
2. Divyansh s/o Raju Gajapure,
 Aged about 7 Years.
3. Bhaiyaji s/o Baliram Gajapure, } Deleted
 Aged about 61 years.
4. Shardabai w/o Bhaiyaji Gajapure,
 Aged about 57 years, Occu: Household.

Appellant No.2 is minor son thr. Natural
 Guardian of Appellant No.1, All
 R/o Shivasi Ward, Sakoli,
 District Bhandara.

..VERSUS..

RESPONDENT

Union of India, through its General
 Manager, South East Central Railway,
 Bilaspur.

 Mr Kunal Mirache, counsel for the appellants.
 Mrs Suhasini N. Deshpande, counsel for the respondent.

CORAM

: URMILA JOSHI-PHALKE, J.

DATE OF RESERVE

: 03/05/2023

DATE OF DECISION

: 07/06/2023

ORAL JUDGMENT :

1. This appeal takes an exception to the judgment and order dated 29/04/2008 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No. 09/OA-II/RCT/ Ngp/2006.

2. The facts giving rise to the appeal wherein stated in nutshell as under.

On 21/08/2004 the deceased Raju Bhaiyaji Gharpure purchased the general class ticket No. 83845 for the journey from Sondad to Gondia and boarded in a passenger train. In the course of a journey, the deceased while brushing his teeth at the wash basin, fell down from the running train, due to jerk and died on the spot. As per the contention of the claimants, the death of the deceased is caused in an untoward incident and therefore, they are entitled to receive compensation.

3. Respondent/railway resisted the claim on the ground that no untoward incident has occurred on 21/08/2004. It is further contention of the railway that, as per the Marg report, the date and time of the accident was 21/08/2004 at 8.00 hours. The statutory investigation report says that train No. 3GC running towards Gondia arrived at Sondad at 11.16 hours and at Khodseoni at 11.27 hours. However, the dead body of the deceased was noticed at 8.45 hours. It means the alleged incident has not occurred by the morning train passed through Sondad Railway Station. It is further contention of the railway/respondent that the deceased was not a bonafide passenger as the ticket produced is filed on record is dated

20/08/2004 Sondad to Gondia.

4. To substantiate the contention, the claimants have adduced the evidence by examining Yogeshwari wd/o Raju Gajapure, who narrated the untoward incident that on 21/08/2004, the deceased was travelling from Chandrapur towards Gondia by the Passenger train. In the morning, while the deceased was brushing teeth near the basin, the train has jerk and the deceased fell down from the train and died on the spot. Besides her oral evidence, she relied upon the Police Papers, Marg report, Spot Panchanama etc., and submitted that the death of the deceased is caused in an untoward incident.

5. To rebut the evidence of the claimants, the respondent cross-examined the claimants and admitted during the cross-examination that she was not travelling with the deceased on 21/08/2004 by local train. She had no personal knowledge of the incident in which Raju died. She stated that Raju was travelling from Sondad to Gondia. She is not aware of the exact distance between the two stations. To rebut the evidence of the claimants, the Railway Administration has examined Krishna Mohan Choudhary, Deputy Station Superintendent of Sondad Railway Station. As per his evidence, train no. 2GNB arrived at Sondad Station at about 8.40 hours. He received a message from the same train, stating that one dead body was lying on a track at K.M. No. 1041/14/15 at 8.45 hours. He has not received any message of unaccepted jerks to the train during his duty hours. Train No. 3GC arrived at Sondad Station at 11.48 hours and departed at 11.50

hours, and no information about any untoward incident was given by any guard. Another witness examined by the railway is Shravan Jayram Ramteke. As per his evidence, he was a Guard on train No. 3GC - Chandrapur to Gondia. This train arrived at Sondad Railway Station at about 11.43 hrs and departed on 11.53 hrs. During cross-examination of this witness, it came on record that no untoward incident to Train No. 3GC during his working from Chandrapur to Gondia. Thus, as per the evidence of Railway Administration that the dead body of the deceased was found on the Railway track on 21/8/2004 at 8.00 hours. As per the contention of the claimants, the deceased travelled on 21/08/2004 from Sondad to Gondia and boarded in a passenger train. The evidence shows that train 3GC arrived at Sondad Railway Station at about 11.16 hours and departed from the Sondad Railway Station at about 11.53 hours. Thus, it is contended that timings of the train does not match and the burden of proof to establish that the deceased travelled by the said train is not discharged by the claimants.

6. Heard learned counsel Mr P.S. Mirache for the claimants. He submitted that denial of compensation to the claimants on the basis of hyper technical approach is unjustified. He placed reliance on *Surekha Rajendra Nakhate vs Santosh Ramdeo Rathod reported in 2020 (2) TAC 44*, *Union of India v/s Rina Devi 2018 (3) TAC 26*, *Dalit and others Vs Union of India, 2019 (6) BCR 444*, *Rathi Menon v/s Union of India, reported 2001 AIR SC 1333* and *Union of India vs Anita Pradeep Meshram reported 2019 (2) ACC 582..*

7. Per contra, learned counsel Ms Suhasani Deshpande for the respondent supports the judgment and submitted that the initial burden to prove that the deceased died in an untoward incident is on the applicant, and soon the burden is discharged by applicants, the onus shifts to the railway to prove that deceased was travelling without ticket and was not a bonafide passenger.

8. According to the learned counsel, the dead body was found actually prior to the arrival of the 3GC train at Sondad Railway Station. The claimants failed to prove that the deceased was travelling by said 3GC train Gondia to Chandrapur. In fact, the train arrived at the Sondad Railway Station at about 11.43 hours i.e. much after the dead body was found. The dead body was found at about 08:05 hours. The train ticket found along with the deceased is of dated 20/08/2004, whereas as per the pleading of the claimants, the deceased was travelling by the said train on 21/08/2004. Therefore, the facts narrated by the claimants which are not matching with the timing of the train. Thus, the claimants failed to prove the nexus between the two incidents that he was travelling by train i.e. 3GC Gondia Chandrapur train from Sondad to Gondia. As per the pleadings, he was travelling from Sondad to Gondia in the morning whereas, the train arrived at Sondad Railway Station at about 11.43 hours, much prior to that dead body of the deceased was found.

9. The only witness examined by the claimants is the claimant - Yogeshwari Raju Gajapure, she is not an eyewitness to the accident. She admitted in cross-examination that she does not

know, how her son met with an accident. She produced copies of Police Papers including Marg report, Spot panchanama, and Inquest Panchanama. The evidence adduced by the railways/respondent shows that the dead body of the deceased was found at about 8.45 hours, whereas train No. 3GC arrived at Sondad Railway Station at about 11:00 to 16:00 hours.

10. As per the pleading and evidence of the claimants, the deceased was travelling on 21/08/2004, whereas the ticket was found on 20/08/2004. The distance between the Sondad to Gondia is two hours. Therefore, it cannot be interfered that the deceased travelled by the said train, and therefore, his dead body was found on the track in the morning. In fact, the evidence adduced by the claimant, nowhere shows that he was travelled by train 3GC which runs from Gondia to Chandrapur. If the contention of the claimants is accepted that the deceased was travelling in a local train as a passenger from Sondad to Gondia, then the said train reached at about 11.43 hours at Sondad Railway Station as per the evidence of the railway officials and it departed from Sondad Railway Station at about 11.53 hours. Needless to state, the initial burden to establish that the deceased died in an untoward incident is on the applicants, that the death was the result of the untoward incident. Thereafter, the onus shift on railways to establish the defence that the deceased was travelling without a ticket and was not bonafide passenger. In the present case, the ticket found was dated 20/8/2004 and not dated 21/8/2004. As per the contention of the claimants, the deceased was travelling in the morning time and therefore, he was

brushing his teeth near the basin, the train has a jerk, and the deceased fell down from the running train. Whereas the evidence of the Guard of Chandrapur-Gondia train, the train arrived at Sondad Railway Station at about 11.43 hours. Admittedly, the dead body of the deceased was found at the track at about 8;05 hours, whereas the alleged train arrived at Sondad Railway Station at about 11:43 hours. As per the evidence of Krishna Mohan Chaudhary /Deputy Station Superintendent, the dead body was lying on the track at about 8.45 hours, which is much prior to the arrival of the train i.e. Chandrapur -Gondia Passenger train.

11. 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. At the same time, the initial burden is on the claimants to prove that the deceased was a bonafide passenger and his death is caused in an untoward incident. The said burden can be discharged by the claimants by filing an affidavit narrating the relevant facts. It is held by the Hon'ble Apex Court that the mere presence of a dead body near the railway track is not enough to maintain the claim. The compensation is payable for the death or injury of a passenger. The mere presence of a body on the railway premises will not be conclusive to hold that the injured or deceased was a bonafide passenger for which the claim for compensation could be maintained.

12. The Hon'ble Apex Court in the case of ***Union of India V/s Rina Devi*** (supra) has dealt with the issue and held that, the initial burden would be on the claimants to prove that death or an injury to a bonafide passenger is caused in an untoward incident. At the same time, the mere presence of the dead body on the track is not sufficient to show that the death of the deceased is caused in an untoward incident. The claimants have to discharge the initial burden. The claimants placed reliance on ***Union of India vs Rina Devi*** referred (supra) wherein also it has held that the mere presence of the dead body, found on the railway premises is not sufficient to hold that, the death of the deceased is caused in an untoward incident. The learned counsel relied upon ***Surekha vs Rajendra Nakhate*** referred (supra) which is regarding the right of the claimants for enhancement of the compensation.

In the above facts and circumstances, the said judgment is not helpful to the claimants. The claimants further relied upon ***Union of India V/s Vanita Krishna*** and ***Lalit and others*** referred (supra) wherein also, the facts are not identical with the present case. Thus, the various case laws can be differentiated as not identical with the present case.

13. In the decisions relied upon by the learned counsel for the claimants, the factum of the death of the deceased as a result of an untoward incident was established. Therefore, it was held that the onus to prove that the injured/deceased were the passengers travelling without the ticket was on the respondent. In the present case as discussed above, the claimants have failed to establish that

the deceased was travelling by a passenger train Gondia to Chandrapur and met with an untoward incident as defined under Section 123(c) (2) of the Railways Act. The claimants further failed to prove that while travelling by the passenger train Chandrapur to Gondia, he fell down from the train, and the death of the deceased is caused. In fact, the evidence adduced by the claimants and the timing of the train do not match. The dead body of the deceased was found much prior to the arrival of the train 3GC Chandrapur to Gondia at Sondad Railway Station.

14. In view of the failure of the claimants to prove that the death or a result of an untoward incident while travelling by the train Sondad to Gondia, the other questions does not deserve consideration. As such, the onus would not shift on the respondent, as the initial burden on the claimants is not discharged.

15. Considering the above, no case for interference is made out. Therefore, the claimants are not entitled for any compensation. In view of the above deserves to be dismissed. Hence, First Appeal No. 710/14 stands **dismissed** with no order as to costs.

JUDGE

RKN