



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

FIRST APPEAL NO. 947 OF 2018

APPELLANTS : 1. Shri Bharat S/o. Zibal Shende, Aged 60 Years, Occ. Labour.
 [Deleted as per order of this Court Dt. 27.09.2023]
 2. Smt. Malan W/o. Bharat Shende, Age 50 Years, Occ. Labour, R/o. Masla Post Kuchurwahi, Tah. Ramtek, Distt. Nagpur.

//VERSUS//

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

Mr. R.G. Bagul, Advocate for the Appellants.

Mr. P.V. Navlani, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 27th SEPTEMBER, 2023.

ORAL JUDGMENT

In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as “the Act of 1987” for short), challenge is to the judgment and order dated 19th January, 2016, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby learned Members of the Tribunal dismissed the claim application filed by the appellants under Section 16 of the Act of 1987.

02] BACKGROUND FACTS :-

Appellant No.1/father of the deceased died during the pendency of the appeal on 31.03.2023. His name has been deleted. Appellant No.2 is the mother of the deceased. Deceased Arju Bharat Shende was their son. It is stated that on 27th April, 2012, the deceased was travelling by Train No.58112 Itwari Tatanagar Passenger from Tharsa to Bhandara Road Railway Station. It is stated that due to sudden jerk to the train, he fell from running train before arrival of the Bhandara Railway Station. He sustained injuries. He was shifted to the hospital. He died in the hospital. He was travelling with a valid journey ticket. The journey ticket was lost after the accident. It is stated that the deceased died in an untoward incident. He was a *bona fide* passenger. The appellants, being the parents of the deceased, claimed the compensation.

03] The respondent/Railway filed the written statement and opposed the claim. It was contended that death was not in an untoward incident. The deceased was negligent and as such responsible for the accident. The deceased was not a *bona fide* passenger. The journey ticket was neither recovered from the spot nor from the pocket of the deceased at the time of inquest panchanama.

04] In the claim, as many as four issues were framed. Appellant No.1/father of the deceased was examined as AW-1. The respondent/Railway examined two witnesses. Learned Members of the Tribunal, on consideration of the evidence, dismissed the claim application. The appellants, being aggrieved by the judgment and order, are before this Court.

05] I have heard Mr. R.G. Bagul, learned advocate for the appellants and Mr. P.V. Navlani, learned advocate for the respondent/Railway. Perused the record and proceedings.

06] Following points fall for my determination:

- (a) Whether the deceased died due to fall from running train and as such the death was in an untoward incident?
- (b) Whether the deceased was a *bona fide* passenger of the relevant train with a valid journey ticket?.

07] Learned advocate for the appellants submitted that there is ample evidence on record to prove that the deceased fell from running train and died due to the injuries sustained in the accident. Learned advocate took me through the contents of the panchanama to substantiate this fact. Learned advocate submitted that it is not the case of the respondent/Railway that the deceased died due to run over of train. Learned advocate further submitted

that the father of the deceased has filed an affidavit and in the said affidavit, he has categorically stated that the journey ticket was lost in the accident. Learned advocate submitted that in view of the law laid down in the case of *Union of India Vs. Rina Devi [AIR 2018 SC 2362]*, the affidavit filed by the father of the deceased is sufficient to discharge the initial burden that the deceased was travelling with a valid journey ticket. Learned advocate further submitted that the defence of negligence/contributory negligence is not available in such a case because the liability is based on 'no fault theory'.

08] Learned advocate for the respondent/Railway submitted that the journey ticket was neither recovered from the spot nor from the pocket of the deceased at the time of inquest panchanama. Learned advocate submitted that the affidavit filed by the father of the deceased is not sufficient to discharge the initial burden. Learned advocate took me through the evidence of the Loco Pilot and Guard of the train in question and submitted that this evidence is sufficient to negative the claim of the appellants that the deceased died due to fall from running train. Learned advocate submitted that the learned Members of the Tribunal have taken the entire evidence into consideration and have come to just and proper conclusion.

09] First and foremost, it would necessary to see whether the deceased died in an untoward incident or not. It is undisputed that the deceased was found lying in injured condition in the railway premises. It is not the case of the respondent/Railway, neither pleaded in the written statement nor stated in the evidence by RW-1 and RW-2, that the deceased was dashed by the train in question while crossing the railway line or otherwise. Considering the injuries sustained by the deceased, the case of run over by train is completely ruled out. The deceased was found lying in injured condition. He was shifted to the Government Hospital by the Station Master. The deceased succumbed to the injuries while taking treatment in the Government Hospital. RW-1 and RW-2 are not the witnesses to the actual incident. They reported to the Station Master that one person had fallen near the railway track. Their evidence is, therefore, not sufficient to accept the defence.

10] In this case, learned advocate for the appellants took me through the contents of the spot panchanama and pointed out that the spot of the incident was shown by the eye witness to the incident. The name of the eye witness was Aslam S/o. Isib Khan. At the relevant time, he was Vendor at Bhandara Railway Station. It is recorded in panchanama that he had seen the deceased falling

from the train and therefore, he helped the police to identify the spot. The panchanama is at page A-45 of the record and proceedings. The police did not record the statement of Aslam. However, the statement recorded by the police in panchanama cannot be discarded. The statement supports the contention of the appellants that the deceased while travelling from the train fell near Bhandara Railway Station. It is the defence of the respondent/Railway that there was no jerk to the train as alleged by the appellants. It is further stated that the deceased might have stood at the gate of the train and fell from the train due to his negligence.

11] The question is whether the defence of negligence or contributory negligence is available in such cases or not. In this context, it would be profitable to refer the decision of the Hon'ble Supreme Court in the case of *Rina Devi* (supra). In this case, the Hon'ble Supreme Court has held that the liability in such cases is based on 'no fault theory'. The injury sustained due to negligence could not be said to be self-inflicted injury. It is held that the 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

negligence of the victim as a contributory factor.

12] In my view, considering the facts, circumstances and evidence on record, the learned Tribunal was not right in holding that the death was not in an untoward incident. The case would fall in first part of Section 124A of the Railways Act, 1989. In this case, therefore, the evidence is sufficient to conclude that the deceased died in an untoward incident.

13] The next important issue is as to whether the deceased was a *bona fide* passenger or not. The father of the deceased had filed the affidavit. In his affidavit, he has stated that the deceased was travelling by the train in question. He has stated that he was travelling with a valid journey ticket, but in the accident the journey ticket was lost. The question is whether the statement in affidavit coupled with other evidence is sufficient to discharge the initial burden cast upon the appellants. In this context, it would be necessary to consider the law laid down in the case of *Rina Devi* (supra). Paragraph 17.4 is relevant for the purpose of addressing this issue. It is reproduced below:

“17.4. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence

of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. 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. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

14] It is held that initial burden would 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. It is further held that this will have to be dealt with from case to case on the basis of the facts found.

15] In this case, apart from the statement of the father of the deceased in his affidavit that the ticket was lost in the accident, there is ample circumstantial evidence to accept the case of the appellants. It is undisputed that the deceased fell from running train at 11:30 p.m. of 26th April, 2012. From the spot, he was carried to the hospital. He died on 27th April, 2012 at 3:00 a.m. The inquest panchanama was drawn on 27th April, 2012 at 4:00 p.m. The spot panchanama was drawn on 15th May, 2012. It is not the case of the respondent/Railway that immediately after the incident, the inspection of the spot was carried out and on the spot

the ticket was not found. The deceased had sustained serious injuries after fall from the train. Therefore, the possibility of loss of ticket in such an incident cannot be ruled out. This possibility can be negated by placing on record the evidence that immediately after the incident, the spot was inspected and the ticket was not found on the spot. Similarly, the deceased was admitted in the Government Hospital. He died there. The persons, who attended him, are not before this Court. The circumstances under which he was shifted to the hospital and treated in the hospital are not before the Court. Therefore, in my view, the affidavit of his father coupled with the circumstances would be sufficient in this case to discharge the initial burden. No evidence has been adduced to disprove this fact. Therefore, in my view, on both the counts, the learned Members of the Tribunal were not right in rejecting the claim. Accordingly, I record my findings to the points in the affirmative.

16] Appellant No.2/mother is the only surviving dependent. She is entitled to get the compensation. The incident had occurred in 2012. The claim was dismissed on 19th January, 2016. Learned advocate for the appellants submits that in view of the law laid down in the case of *Union of India Vs. Radha Yadav [(2019) 3 SCC 410]*, the appellants would be entitled to get the

compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest. Learned advocate has relied upon a Notification issued by the Ministry of Railways (Railway Board) dated 22nd December, 2016, wherein it is stated that in case of death claim, the claimants are entitled to get the compensation of Rs.8,00,000/-. In view of the decision in the case of **Radha Yadav** (supra), appellant No.2/mother is entitled to get the compensation of Rs.8,00,000/- (rupees eight lakhs only). She is not entitled to get the interest.

17] The respondent/Railway shall pay the compensation of Rs.8,00,000/- (rupees eight lakhs only) to the appellant No.2 within four months. The compensation be directly deposited in the bank account of appellant No.2. Appellant No.2 shall provide particulars of the bank account to the respondent/Railway. If the amount is not deposited within four months, then the respondent/Railway shall pay interest @ 7% per annum from the date of this order till realization.

18] The appeal is **allowed** and disposed of accordingly. No order as to costs.

(G. A. SANAP, J.)