



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

FIRST APPEAL NO. 684 OF 2010

APPELLANT : The Union of India, General Manager,
Central Railway, CST, Mumbai.

//VERSUS//

RESPONDENTS : 1. Smt. Suman Devi Rajesh Singh
Chauhan, Aged about 29 years,
Occupation : Housewife.

2. Master Sachin s/o. Rajesh Singh
Chauhan, Aged about 8 years, Occ.
Student.

3. Master Shubham s/o. Rajesh Singh
Chauhan, Aged about 2 years, Occ.
Student.

4. Kum. Shalu d/o. Rajesh Singh
Chauhan, Aged about 10 years, Occ.
Student.

5. Kum. Neha d/o. Rajesh Singh
Chauhan, Aged about 5 years, Occ.
Student.

The Respondent Nos. 2 to 5 are
Minors through natural guardian
through mother.

6. Tirathraj Singh Samarbhadur Singh
Chauhan, Aged about 55 years, Occ.

7. Smt. Saraswati Devi W/o. Tirathraj
Singh Chauhan, Aged about 50 years,
Occ. - Household.

All R/o. Thakur Kirana Stores, Ma
Ambe Nagar, Pardi, Nagpur.

Mr. N.P. Lambat, Advocate for the Appellant.

Mr. S.B. Bangde, Advocate for the Respondents.

CORAM : G. A. SANAP, J.

DATED : 4th OCTOBER, 2023.

ORAL JUDGMENT

In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short “the Act of 1987”), challenge is to the judgment and order dated 12th April, 2010, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the learned Member of the Tribunal allowed the claim application filed by the respondents under Section 16 of the Act of 1987.

02] BACKGROUND FACTS :-

Respondent No.1 is the wife of deceased Rajesh Chauhan. Respondent Nos.2 to 5 are the children of the deceased. Respondent Nos.6 and 7 are the parents of the deceased. It is stated that the respondents are the dependants of the deceased. Respondent No.1, deceased Rajesh Chauhan and Raghunath Yadav had gone to Allahabad to attend the marriage. On 26th June, 2007, they were returning to Nagpur from Allahabad by Train No.2144. They had purchased journey ticket. It is stated that there was rush in the concerned bogie of the train. The train had no scheduled

halt at Bharatwada Railway Station. The train was halted at Bharatwada Railway Station at about 5:30 p.m. At that time, deceased Rajesh Chauhan was standing near the gate of the compartment. One locomotive engine passed over from the adjacent tract in the same direction. The train in which the respondent No.1 and deceased were travelling started simultaneously with jerk and as a result thereof, the deceased was dragged out and fell under the wheels of the train and was run over. The body was cut into three pieces. The deceased died on the spot. It is the case of the respondents that the deceased was a *bona fide* passenger. He died in an untoward incident. The respondents claimed the compensation.

03] The appellant/Railway filed the written statement and opposed the claim. It is contended that the deceased was not holding a valid journey ticket. The Train No.2144 Diksha Bhoomi Express was proceeding from Allahabad to Nagpur. It is stated that the investigation revealed that the deceased with his family members was travelling in Diksha Bhoomi Express Train. This train was halted at Bharatwada Railway Station to give passage to Train No.2722. All the family members were sitting inside the coach, but the deceased was standing at the door. Suddenly, his wallet fell down. He got down to pick up the same. In the

meantime, AC Light Engine came from Itarsi and on the down line, the deceased was knocked down and run over by the said engine. It is stated that the accident occurred to negligence of the deceased. Death was not in an untoward incident as understood by the provisions of the Railways Act, 1989 (for short “the Act of 1989”). The deceased died due to his negligence.

04] Learned Member of the Tribunal framed as many as four issues. Learned Member of the Tribunal answered all the issues in favour of the respondents. Respondent No.1 examined herself as AW-1. The appellant/Railway has examined the Station Master as RW-1. Learned Member of the Tribunal, on consideration of the evidence, accepted the claim and awarded the compensation.

05] I have heard Mr. N.P. Lambat, learned advocate for the appellant/Railway and Mr. S.B. Bangde, learned advocate for the respondents. Perused the record and proceedings.

06] Following points fall my determination :-

- (a) Whether the deceased was a *bona fide* passenger travelling with a valid journey ticket?
- (b) Whether the deceased died in an untoward incident as understood by Section 123(c)(2) of the Act of 1989?

07] Learned advocate for the appellant/Railway submitted that the case in question was not an accidental fall from the train and therefore, it could not be covered under the definition of untoward incident. Learned advocate submitted that there is ample evidence to prove that the deceased got down from the train to pick up his wallet, which had fallen on the track and in the said process, he was run over by the locomotive engine, which was running on the next track. Learned advocate submitted that AW-1 was the co-passenger and at the time of recording of her statement by the police, she has admitted that the deceased got down from the train to collect his wallet, which had fallen on the track and in that process, he was run over by the train. Learned advocate, therefore, submitted that the learned Member of the Tribunal was not right in accepting the claim of the respondents. Learned advocate in support his contention placed reliance on two decisions in *First Appeal No.845/2014, decided on 01.02.2016 [Ramesh s/o. Jayram Lole @ Lore and Anr. Vs. Union of India]* and *First Appeal No.1294/2017, decided on 03.09.2018 [Isulal S/o. Domaji Barbate and Anr. Vs. Union of India]*. In the submission of learned advocate, the facts of the case on hand and the facts in these two appeals are identical.

08] Learned advocate for the respondents submitted that the learned Member of the Tribunal has properly appreciated the facts and evidence and has allowed the claim. Learned advocate submitted that there is no witness examined by the appellant/Railway, who had seen the actual incident. Learned advocate took me through the evidence of AW-1, who was the co-passenger with the deceased and submitted that she has narrated the first hand account of the incident. Learned advocate further submitted that Diksha Bhoomi Express Train had no scheduled halt at Bharatwada Railway Station, but to give passage/pass over to Dakshin Express and AC Light Engine, the train in question was halted at the said station without any intimation to the passengers. Learned advocate submitted that AW-1 has categorically stated that the deceased while spending anxious moments due to halt of the train at the said station, came near to the door and at the very moment that AC Light Engine passed in high speed and therefore, the deceased was knocked down and run over by the said engine. Learned advocate submitted that this case is fully covered by the definition of 'untoward incident' as provided under Section 123(c) (2) of the Act of 1989. Learned advocate in support of his contention placed heavy reliance on two decisions in the cases of *Union of India Vs. Prabhakaran Vijaya Kumar and Others*

[2009(1) Mh.L.J. 27] and *Union of India Vs. Rina Devi [AIR 2018 SCC 2362]*.

09] The undisputed facts need to be stated at the very outset. The deceased with wife and his friend Mr. Raghunath Yadav were travelling in Diksha Bhoomi Express as *bona fide* passenger. The ticket, which was recovered, is on record. Diksha Bhoomi Express had no scheduled halt at Bharatwada Railway Station. The said train was halted at Bharatwada Railway Station to give passage/pass over to Dakshin Express and AC Light Engine. It is undisputed that RW-1, who at the relevant time was Assistant Station Master at Bharatwada Railway Station, has not stated in his evidence that any warning was given to the passengers or any announcement was made about the unscheduled halt of the train at the said station and approximate time required for departure of the train. It has further come on record that there was ACP at 17:55 hrs. because of this incident and the train had then restarted at 18:00 hrs. This fact has been stated by RW-1. RW-1 is not an eye witness to the incident. He was informed by the Loco Pilot of the AC Light Engine about the run over of the locomotive engine over the deceased. It is undisputed that the body of the deceased was cut into three pieces.

10] It is the case of the appellant/Railway that when the train had stopped at Bharatwada Railway Station, the deceased stood near the door and at that time his wallet fell on the ground and in order to pick up the same, he got down from the train and by that time, the AC Light Engine came and run over him. It is to be noted that the Loco Pilot of the said AC Light Engine was not examined. If the deceased had got down from the train in the manner stated in the written statement, then the Loco Pilot would have been the best witness to depose about it. Much has been argued on the basis of the statement of AW-1 recorded by the police. It is sought to be contended that while recording the statement by the police, she has stated that the deceased had got down to pick up his wallet and in that process, he was run over by the train. She was confronted with this statement in cross-examination. AW-1 disowned this statement. The Police Officer, who had recorded the statement, was not examined. AW-1 has not admitted this fact. RW-1 in his evidence has not stated a word about this incident. So, there is evidence of AW-1 where she has narrated the first hand account of the incident and there is version of the appellant in the written statement and the reliance on the statement of AW-1. There is no corroborative evidence to substantiate the case of the Railway. If the deceased had got down

to pick up his wallet, then after this accident, the wallet would have been lying on the spot or around the spot. The spot panchanama was conducted. The wallet was not recovered. The recovery of wallet would have been the most vital corroborative circumstance. The evidence of AW-1 and the facts stated in the written statement as to the actual occurrence of the incident need to be juxtaposed. In my view, on doing so, in this case the evidence of AW-1 deserves weightage and acceptance inasmuch as she has placed on record first hand account of the incident.

11] The case of AW-1 is probable for more than one reason. The Assistant Station Master RW-1 has not stated that after the unscheduled halt of the train at Bharatwada Railway Station, any announcement was made with regard to the halt of the train and probable time required for departure of the train. In case of halt of the train, the passengers in such a situation are bound to spend anxious moments. AW-1 and Mr. Raghunath Yadav were sitting in the said bogie. AW-1 has stated that after halting of the train, the deceased went towards the door and was standing there and at that time the AC Light Engine passed on the next track in high speed and as such the deceased was dragged out and run over. In my view, the evidence of AW-1 as to the actual occurrence of the incident cannot be discarded and disbelieved. The defence of the

appellant/Railway that the deceased had got down from the train to pick up his wallet, which had fallen on the track and in that process he was dashed by the railway engine and run over, cannot be accepted for want of evidence. Therefore, this defence has to be rejected. The evidence of AW-1 as to the actual occurrence of the incident deserves acceptance.

12] The deceased with AW-1 and his friend Mr. Raghunath Yadav had boarded this train at Allahabad. They were having a valid journey ticket. The train was halted at unscheduled stop. The question is whether the incident had occurred in the working of railway. Undisputedly, the deceased with his wife and Mr. Raghunath Yadav were travelling in the said train to Nagpur. The deceased was standing at the door of the train at Bharatwada Railway Station where the train was halted without any intimation or warning. The facts, therefore, indicate that the incident had occurred in the working of railway. The question is whether the act on the part of the deceased standing at the door in the above situation would constitute negligent act resulting into fall at the said station and as such could be said to be self-inflicted injury. In my view, the settled legal position does not permit to accept this submission of the appellant/Railway.

13] In the case of ***Prabhakaran Vijaya Kumar*** (supra), the Hon'ble Supreme Court has held that the restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' as provided in Section 123(c) of the Act of 1989 has to be avoided, otherwise it will deprive a large number of railway passengers from getting compensation in railway accidents. It is held that the expression 'accidental falling of a passenger from a train carrying passenger' includes accidents when a *bona fide* passenger, travelling with a valid ticket or pass, is trying to enter into a train and falls down during the process. It is held that the purposive and not literal interpretation should be given to the expression.

14] In the case of ***Rina Devi*** (supra), the Hon'ble Supreme Court has held that the act of negligence could not be equated with the causing of self-inflicted injury. It is held that the principle of contributory negligence cannot be invoked in the case of liability based on 'no fault theory'. In case of strict liability, the plea of negligence of the victim cannot be allowed. 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. In my view, the legal position is squarely applicable to the facts of this case. The deceased fell from the train as stated by AW-1. This accidental fall from working train, in my view, would be covered within the definition of 'untoward incident'. Mere negligence of the passenger in this factual situation could not be said to be causing self-inflicted injury.

15] It is further seen that the incident in the ordinary circumstances would not have occurred, if the train had not halted at unscheduled halt. There is no evidence by the appellant/Railway to show that any precaution to avoid such incident was taken at the time of unscheduled halt of the train at the station. Accordingly, I record my findings to the points in the affirmative. In the facts and circumstances, I do not see any reason to disagree with the findings of fact recorded by the learned Member of the Tribunal. The appeal is, therefore, **dismissed**.

16] Learned advocate for the respondents submits that in view of the notification issued by Ministry of Railways (Railway Board) dated 22.12.2016 in case of death claim the claimants are entitled to get the compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only). Learned advocate for the appellant submits that

respondents are entitled to get compensation of Rs.8,00,000/- but without interest.

17] It is pointed out that in terms of the order of this Court, the appellant has deposited Rs.3,00,000/- (Rupees Three Lakhs Only) with the Registry of this Court.

18] In view of the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Radha Yadav [(2019) 3 SCC 410]*, the respondents may not be entitled to get the interest.

19] Since the appellant has deposited Rs.3,00,000/- (Rupees Three Lakhs Only), the appellant would be required to deposit the balance amount of Rs.5,00,000/- (Rupees Five Lakhs Only). The balance amount of Rs.5,00,000/- be deposited within four months from today with the Registry of this Court. If the amount is not deposited within four months from today, then the appellant/Railway shall pay interest @ 7% per annum from the date of this order till realization.

20] The respondents would be entitled to get the accrued interest on the already deposited amount, if not withdrawn. After deposit of the amount, the respondents are permitted to withdraw the entire amount, with accrued interest, if any. The entitlement of

the respondents to get share in the amount shall be as directed by the Tribunal. However, in view of the death of respondent No.6- Tirathraj Singh Samarbahadur, the amount of his share shall be paid to respondent No.7.

(G. A. SANAP, J.)

Vijay