

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

FIRST APPEAL NO.834 OF 2022

1. Lala Prasad s/o Bahadur Prasad
Aged about 57 Years, Occu.: Labour,
2. Prabhavati Devi w/o Lala Prasad
Aged – 51 Years, Occu – Housewife,
Both R/o Near Brahmasthan,
At Basdila, P.O. Kopa Bazar,
Dist – Chapra (Saran) Bihar – 841214.

APPELLANTS

// VERSUS //

Union of India,
Through General Manager,
Central Railway, CSMT, Mumbai.

RESPONDENT

Ms. Somesha Chaudhari, Advocate for appellants.
Ms. Neerja Chaubey, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON 27/03/2023
PRONOUNCED ON 21/06/2023

JUDGMENT

1. The Judgment and Award passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No.OA(llu)/NGP/17/2021 dated 17.03.2022 is under challenged in this appeal. By the said Judgment and Award the Railway Claims Tribunal has rejected the claim of claimants for the compensation.

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

On 11.11.2019, the deceased Ravi Kumar s/o Lalaprasad was travelling from Sonpur to Pune by train No.11034 Pune – Darbhanga Express. While travelling in the train due to heavy rush of the passengers, he received push blow by passengers due to which, he lost his balance and fell down from the running train in between railway K.M. No.449/22-24, below the railway bridge of Tapi river at Duskheda Shivar, Taluka Yaval, District Jalgaon and sustained grievous injuries and died on the spot.

3. As per contention of the claimants, the deceased was travelling in the alleged train by reserving the ticket No.51052891 which was on waiting. Thus, deceased was a *bona fide* passenger of the alleged train. The death of the deceased is caused in an untoward incident, therefore the claimants are entitled to receive the compensation.

4. The Railway resisted the claim on the ground that deceased was not a *bona fide* passenger as he was not holding valid ticket. The death of the deceased is also not caused in an untoward incident, therefore claimants are entitled for compensation.

5. To substantiate the contention that deceased died in an untoward incident, the claimant No.1 Sanjaykumar Singh S/o

Lalaprasad adduced his evidence vide Exh.A146 and narrated about the occurrence of the incident. Besides his oral evidence, he placed reliance on Merg report, spot panchnama, inquest panchnama, postmortem report etc. The waiting list ticket was also seized during the inquest panchnama. The Railway Administration has not adduced any evidence. The learned Tribunal after appreciating the evidence held that deceased was not a *bona fide* passenger as he was not holding valid ticket as well as death of the deceased is not caused in an untoward incident and rejected the claim of the claimants.

6. Being aggrieved and dissatisfied with the Judgment and Award passed by the Railway Claims Tribunal, present appeal is preferred by the appellants on the ground that the Railway Claims Tribunal had not considered that deceased was travelling by the train by obtaining the ticket which was waiting. Thus, deceased was a *bona fide* passenger. Moreover, the death of the deceased is caused in an untoward incident which is substantiated by the FIR, spot panchnama and inquest panchnama. The observations of the Railway Claims Tribunal is erroneous and liable to be set aside.

7. Heard learned Advocate Ms. Chaudhari for the appellants. She reiterated the contention that deceased was a *bona fide* passenger. The Railway has not adduced any evidence to show that the death of the

deceased is caused either by accident or by suicide. The only evidence is available on record is of the claimants which shows that deceased was travelling by the said train by obtaining the ticket which was on waiting, thus he is a *bona fide* passenger. The dead body of the deceased was found on the railway track which sufficiently shows that death of the deceased is caused in an untoward incident, hence claimants are entitled to receive the compensation.

8. Per contra, learned Advocate Ms. Chaubey for the respondent vehemently submitted that the deceased was not holding valid railway ticket. The ticket which was found along with the deceased shows that the ticket was not confirmed. Thus, deceased was not a *bona fide* passenger. Hence claimants are not entitled to receive any compensation. The Tribunal has rightly rejected the claim of the claimants and no interference is called for.

9. Having heard both the sides and on perusal of the record with the able assistance of the learned Advocate of both the sides, following point arise for my consideration is –

- (i) Whether the Railway Claims Tribunal is justified in rejecting the claim of the claimants?

10. Before entering into the merits of the case, it is necessary to see the definition of an untoward incident defined in Section 123(c) of the Railways Act, 1989 which reads as under:

Section 123(c)

[(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.]

11. At the same time, it is necessary to see the definition of passenger also. The Railways Act, 1989 prior to the insertion of Section 124-A with effect from 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 pre-supposes that a person who undertakes a

journey must travel with a valid ticket or pass. Chapter II of the Railways Act contains provision regarding carriage of passengers. Section 55 is a prohibition against travelling without pass or ticket. Sub-section 1 of Section 55 provides that no person shall enter or remain in any carriage of a Railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket. For a person to enter or remain in any carriage on a Railway for the purpose of travelling therein as a passenger, he must have with him a proper pass or ticket. The definition is clear and unambiguous.

12. The liability of the Railway Administration for death and injury of the passenger is provided under Chapter XIII. The extent of liability in the course of working railway is provided under Section 124 of the Railways Act.

13. Now by considering the definition of the passenger it is to be seen whether deceased was a *bona fide* passenger. Admittedly, the evidence of the claimant as well as the document produced on record shows that deceased has purchased a ticket to travel from Pune to Sonpur by obtaining ticket of Pune – Darbhanga Express dated 08.11.2019 of Train No.11034. Admittedly, said ticket was not confirmed but the fact shows that the deceased has purchased the railway ticket which was on waiting. Thus, deceased was travelling by

the train by obtaining a ticket. The said ticket was seized during the inquest panchnama from the person of the deceased. It is vehemently submitted by the learned Advocate Ms. Chaubey that as the ticket was not confirmed therefore, deceased ought not to have board in the train. Deceased boarded in the train though he was not having confirmed ticket and therefore, he is not a *bona fide* passenger. Learned Advocate Ms. Chaudhary placed reliance on **Shri Birendra Kumar Mishra Vs. The Union of India through the General Manager, South Eastern Railway reported in Law Finder Doc Id 1262510** wherein it is observed that a person, who is having waiting list ticket, is travelling near gate is common, but it is the duty of the railway authority to stop such person to travel in such a manner. Once the Railway Authority has given green signal to the overcrowded train, it is the duty of the railway authority to look after the safety of the passengers. There is no dispute that the deceased has obtained the ticket and the said ticket was not confirmed. The deceased was having waiting list ticket. It is common knowledge that the person obtains the ticket which is not confirmed boards in the train under the expectation that during the journey at any station their ticket can be confirmed. Thus, a person who is having waiting list ticket, if travels by the train and they are allowed to travel by the train by the Railway Authority then it is the Railway Authority who has to take due care of such passengers, such passengers are entitled to claim the

compensation by holding them as a *bona fide* passenger. It is not the case that deceased was travelling without the ticket. This aspect was dealt by the Jharkhand High Court in the Judgment of **Shri Birendra Kumar Mishra** referred supra wherein it is held that only exceptions available in Section 124-A of the Railways Act shall be the only ground for non payment of compensation and no other grounds. Here in the present case, deceased who was having waiting list ticket and it is common knowledge that the person who are having waiting list ticket travels by the train, near the gate. In such circumstances, it is the duty of the Railway Administration not to allow such persons to travel by the said train. If the Railway Authority is allowing such passengers to travel by the train then obviously the Railway Authority is under obligation to provide safety and security to the said passengers and if any untoward incident happens to them then Railway Authority is liable to pay compensation.

14. In **Union of India Vs. Prabhakaran Vijaya Kumar** reported in **(2008) 9 SCC 527** wherein it is held by the Hon'ble Apex Court 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 travelling 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 travelling 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.

15. In the present case as deceased was having ticket, though it was not confirmed but he was travelling by obtaining a ticket and therefore, he is a *bona fide* passenger.

16. Now, the question arises whether the death of the deceased is caused in an untoward incident. Admittedly, the claimant is not the

eye witness of the incident. His evidence is only to the extent that deceased was travelling from Pune to Sonpur by Darbhaganga Express by obtaining the ticket and during journey due to the heavy crowd of the passengers in the train and due to the push by the passenger to the deceased, he lost his control, fell down and sustained the injuries. During his cross-examination, nothing is brought on record to show that deceased either died by committing suicide or due to dash by another train. Admittedly, Railway Administration has not adduced any evidence to show that the death of the deceased is caused due to some other reasons. Regarding the said accident, First Informant Report was lodged which also shows that while travelling by the Train deceased fell down and sustained the injuries. The Postmortem report is also on record which shows that the death of the deceased is caused due to injuries to the vital organs. The spot panchnama and inquest panchnama sufficiently shows that the deceased died as he fell down from the train and sustained injuries to the vital organs. The DRM report which is the investigation report of the Railway Administration shows that during investigation, they have recorded statements of various witnesses and it reveals to them that the dead body of the deceased was found near the bridge of Tapi river at Km No.449/22-24. Thus, the fact that the deceased was travelling by the Darbhanga Express he has obtained the ticket which was not confirmed and while travelling he fell down from

the train and sustained the injuries is not only supported by the evidence of the claimant but also supported by the investigation papers. The DRM report also shows that deceased has sustained the injuries as he fell down from the train.

17. The contention of the Railway is that deceased sustained the injuries due to his own negligence and therefore, Railway Administration is not liable to pay compensation. Only question arises is whether the act of the deceased standing at the entrance covered under the self-inflicted injury. Whether it covered under the self-inflicted injury or not is dealt by the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** reported in **2018 (3) TAC 26** wherein Hon'ble Apex Court held that for attracting the provisions of Section 124-A of the Railways Act intention of the person to have a self-inflicted injury is to be proved. The Hon'ble Apex Court in the said judgment in para No.16 held that 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. The Hon'ble Apex Court has referred its earlier decision in **United India Company Limited Vs. Sunil Kumar Reported in 2017 (13) SCALE 652** wherein it is laid down that plea of negligence of the victim cannot be allowed in a claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988 and

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 124A merely on the plea of negligence of the victim as a contributing factor.

18. Here in the present case admittedly, the initial onus lies upon the claimants to show that there is death due to the untoward incident of a *bona fide* passenger, that burden is discharged by the claimant by adducing reliable evidence. The law only expects that the claimants to discharge the burden on the basis of preponderance of probability by filing affidavit. Here not only the affidavit of the claimants but claimants have adduced the evidence which is oral as well as document. Thus, onus is discharged by the claimants and it is proved that the death of the deceased is caused in an untoward incident.

19. The learned Tribunal has wrongly come to the conclusion that deceased was not a *bona fide* passenger and his death is not caused in an untoward incident.

20. In the light of the above evidence and in view of the above discussion the claimants as they have proved that the death of the deceased is caused in an untoward incident and deceased was a *bona fide* passenger, they are entitled to receive the compensation. The

alleged untoward incident has occurred on 11.11.2019 i.e. after Notification dated 22.12.2016. In view of revised notification, the claimants are entitled to receive the compensation to the tune of Rs.8,00,000/- along with the interest. The said Notification is applicable in the present case. In view of the Notification, the claimants are entitled to receive the compensation Rs.8,00,000/- along with interest at the rate of 6% from the date of application till the realization of the amount. Hence, I proceed to pass following order.

- (i) The appeal is allowed.
- (ii) The respondent – Railway is directed to pay the amount of Rs.8,00,000/- towards the compensation along with the interest at the rate of 6% per annum from the date of application.
- (iii) The respondent – Railway shall deposit the said amount within three months.

(URMILA JOSHI-PHALKE, J.)

Sarkate.