



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

FIRST APPEAL NO. 748 OF 2018

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

//VERSUS//

RESPONDENTS : 1. Smt. Meena Wd/o. Sitab Kahar, Age
63 years, Occu. - Housewife.

2. Sitab S/o. Premlal Kahar, Age 66 years,
Occu. - Pensioner.

Both resident of Railway Loco Colony,
behind RPF Colony, Ward No. 19,
Chindwarah (M.P.).

Ms. Neerja Chaubey, Advocate for the Appellant.
Mr. R.G. Bagul, Advocate for the Respondents.

CORAM : G. A. SANAP, J.
DATED : 9th 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 29th November, 2017, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the learned Bench of the Tribunal allowed the claim application filed by the respondents under Section 16 of the Act of 1987.

02] BACKGROUND FACTS :-

Deceased Sushil Kumar was the son of the respondents. He had joined railway service as Pointsman. He was the resident of Chhindwara. He was posted at Malkhed Railway Station near Chandur Railway Station. After spending his vacation at his native place at Chhindwara, he left for his duty place on 14th December, 2013. It is stated that while travelling from Nagpur to Badnera with a valid ticket, he fell from running train near Chandur Railway Station and died. The parents of the deceased, being the dependants of the deceased, claimed the compensation. According to them, the deceased died in an untoward incident. He was a *bona fide* passenger.

03] The appellant/Railway filed the written statement and opposed the claim. It was contended that the deceased was not a *bona fide* passenger. Railway ticket was not recovered at the time of inquest panchanama as well as spot panchanama. It was further contended that the deceased had boarded the wrong train and after realizing that the concerned train had no scheduled halt at Chandur Railway Station, he tried to alight from running train and in that process he fell and died. It was contended that death was due to his own negligence and therefore, the respondents were not

entitled to get the compensation.

04] In the claim, as many as four issues were framed. The learned Bench of the Tribunal, on consideration of the evidence adduced by the parties, found the respondents entitled to get the compensation and accordingly awarded the compensation. The appellant/Railway, being aggrieved by this judgment and order, has come before this Court.

05] I have heard Ms. Neerja Chaubey, learned advocate for the appellant/Railway and Mr. R.G. Bagul, learned advocate for the respondents. Perused the record and proceedings.

06] Following points fall for my determination:

(a) Whether the deceased died in an untoward incident as understood by Section 123(c)(2) of the Railways Act, 1989 (for short “the Act of 1989”)?

(b) Whether the deceased was a *bona fide* passenger travelling in the train with a valid journey ticket?

07] Learned advocate for the appellant/Railway took me through the evidence and submitted that RW-1 was an eye witness to the incident and in his evidence, he has categorically deposed

that the deceased was travelling by Hatia Pune Express, which had no scheduled halt at Chandur Railway Station. Learned advocate submitted that this witness has admitted that the deceased was trying to alight from running train and in that process, he lost his balance and fell down. Learned advocate submitted that this act of the deceased getting down from running train is a negligent act and therefore, the respondents were not entitled to get the compensation. Learned advocate submitted that the deceased was not a *bona fide* passenger inasmuch as the railway ticket was not recovered from his pocket. Learned advocate submitted that the evidence of AW-1, mother of the deceased, is not sufficient to discharge the initial burden.

08] Learned advocate for the respondents submitted that the learned Bench of the Tribunal has properly appreciated the evidence and has allowed the claim filed by the respondents. Learned advocate submitted that there is ample evidence on record to conclude that the deceased fell from running train and therefore, death was in an untoward incident. Learned advocate submitted that the defence of negligence in the teeth of the evidence on record is not available to the Railway. Learned advocate submitted that the deceased was serving as Pointsman in the Railway and

posted at Malkhed Railway Station. Learned advocate submitted that the affidavit filed by AW-1, stating that the deceased was travelling with a valid journey ticket is sufficient to discharge the burden. In short, learned advocate has supported the judgment and order passed by the learned Bench of the Tribunal.

09] I have gone through the record and proceedings. RW-1 has categorically stated that he saw that the deceased was trying to alight from running train and in that process he fell and died. AW-1 has stated that the deceased had left Chhindwara for Malkhed to join his duty. She has stated that the deceased while travelling fell from running train and died. It is true that she was not an eye witness to the incident. She has stated that the deceased had boarded a passenger train. The evidence of eye witness RW-1 is sufficient to conclude that the deceased had boarded Hatia Pune Express, which had no scheduled halt at Chandur Railway Station.

10] Keeping aside the defence of negligence or criminal negligence on the part of the deceased, it would be necessary at this stage to observe that on the given date, the deceased was travelling in the train in question and fell from the said train near Chandur Railway Station. The question is whether the defence of negligence

or criminal negligence, as sought to be made out, is available to the appellant/Railway in the fact situation. In order to address this issue, it would be necessary to consider the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Rina Devi [AIR 2018 SC 2362]*.

11] The Hon'ble Supreme Court in the case of *Rina Devi* (supra) has addressed the issue of negligence/contributory negligence. In this case, it is held that the principle of contributory negligence cannot be applied in the case of liability based on 'no fault theory'. 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 of the Act of 1989 merely on the plea of negligence of the victim as a contributory factor. It is held that if the case falls in first part of Section 124A of the Act of 1989, then the Railway will be liable to pay the compensation. It is held that the Railway would not be liable to pay the compensation, if the case is covered by any of the clauses to the proviso to Section 124A of the Act of 1989.

12] In view of the above, it is very difficult to accept the defence of the Railway on the point of negligence. The case is not

covered by any of the clauses to the proviso to Section 124A of the Act of 1989. The learned Bench of the Tribunal, in my view, was therefore, right in accepting the contention of the respondents.

13] The next important issue is whether the deceased was travelling with a valid journey ticket or not. AW-1, mother of the deceased, was not an eye witness to the purchase of railway ticket by the deceased. The deceased was doing service as Pointsman in Railway. In her affidavit, she has stated that the deceased had purchased journey ticket at Nagpur Railway Station and boarded the train to go to his place of posting. It is true that at the time of spot panchanama as well as inquest panchanama, ticket was not recovered from the spot. Learned advocate for the appellant pointed out that other articles and belongings of the deceased were found at the time of spot panchanama.

14] The question that needs to be addressed is whether the statement made in the affidavit by the mother of the deceased is sufficient to discharge the burden on this point. 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.”

15] The Hon’ble Supreme Court has 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.

16] The witnesses examined by the Railway have not stated that the deceased was travelling without railway ticket. As far as this issue is concerned, in the written statement there is contention that the deceased was travelling without railway ticket. In view of filing of affidavit by the mother of the deceased that the deceased was travelling with a valid journey ticket, it was expected from the Railway to lead evidence and rebut this contention. In my view, the

evidence adduced by the appellant/Railway on this point is sufficient to discharge the burden.

17] On going through the record and proceedings and particularly the order passed by the learned Bench of the Tribunal, I am of the view that the Tribunal has not committed any mistake or error. The findings are based on the evidence on record. Accordingly, I record my findings to the above points in the affirmative. In the facts and circumstances, I do not see any substance in the appeal. As such, the appeal is **dismissed** with no order as to costs.

(G. A. SANAP, J.)

Vijay