

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

FIRST APPEAL NO. 288 OF 2021

APPELLANTS 1] Shri Dattatray s/o Eknath Gavande,
(Original Claimants) Aged about 53 years, Occu: Labour
On RA (Father of deceased)

2] Smt. Shobha w/o Dattatray Gavande,
Aged about 49 years, Occu: Housewife
(Mother of deceased).
All claimants R/o Shivaji Nagar,
Mamurabad, Post Mamurabad,
Tah. & Dist. Jalgaon (Mah)
Pin Code-425 002.

..V E R S U S..

RESPONDENT : Union of India, through its
(Original Respondent) General Manager, Western Railway, _
On RA Church Gate, Mumbai.

Ms Sumesha Chaudhari, advocate for the appellants.
Mr N.P.Lambat, advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J. .
DATE : 26/04/2023

ORAL JUDGMENT :

1. The appellants have filed this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment and award dated 19/03/2020 passed by the learned Railway Claims

Tribunal, Nagpur Bench, Nagpur (for short 'the Tribunal') in O.A (IIu)/NGP /213/2018. The learned Tribunal dismissed the claim on the ground that the claimants could not prove the death of the deceased is an untoward incident and therefore, the claimants are not entitled for the compensation.

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

As per the case of the appellants, the deceased was travelling by train from Jalgaon to Surat by purchasing a valid ticket No. 40368422 dated 24/04/2018 and fell down from the running train at Km. No. 233/03-05 between Padse and Nardona Railway Station and died on the spot. As per the contention of the claimants, the death of the deceased is caused in an untoward incident while he was travelling from Jalgaon to Surat and therefore, the claimants are entitled for compensation.

3. In response to the notice, the respondent contested the claim application by resisting on the ground that the death of the deceased is not caused in an untoward incident. The attending circumstances show that the claimants are not entitled for compensation as there is no evidence that the deceased was a bonafide passenger and died due to the accidental injury in an untoward incident and prayed for dismissal of the claim.

4. The learned Tribunal had recorded the evidence of the claimants. The Respondent/Railway has not adduced any oral evidence and only relied upon the documents. Besides the oral

evidence, the claimants placed reliance on Marg Report, Spot Panchanama, Inquest Panchanama, and DRM Report. The evidence on the basis of which the claimants placed reliance and claim the compensation, after appreciation of the evidence, the Tribunal dismissed the claim of the claimants on the ground that the claimants could not prove that the death of the deceased is caused in an untoward incident and that he was a bonafide passenger.

5. Being aggrieved and dissatisfied with the judgment and award passed by the Tribunal, the present appeal is preferred by the claimants on the ground that the Tribunal has erroneously come to the conclusion that the death of the deceased is not caused in an untoward incident. In fact, the journey ticket filed on record shows that the deceased was travelling by train from Jalgaon to Surat to attend the marriage. He left the house to attend the marriage but he did not reach the destination. The claimants came to know from their relatives that, the deceased has not reached at the marriage destination. Therefore, the claimants approached to the village authorities, and the village authorities issued the certificate to the extent that the deceased was missing since he left the village. The finding of the dead body of the deceased on the railway track and the ticket purchased by the deceased found along with him sufficiently shows that the deceased was travelling by train, and during the journey, he fell down from the train and sustained injuries.

6. Heard learned advocate Ms Sumesha Chaudhari for the appellants, submitted that the dead body of the deceased was found

by the side of the railway track. After two days, the P.M. Report shows that the decomposition process was started. The spot panchanama shows that the place where dead body was found was an isolated place and therefore, the dead body was not noticed by any of the Railway Employees. The fact that the dead body was not seen by the Loco Pilot cannot be a ground to disbelieve the case of the claimants. She placed reliance on the judgment of this Court in the case of ***Ramadhan s/o Gondu Tayade and another vs The Union of India in First Appeal No. 458/2021 decided on 04/02/2022***, wherein it is held that merely because the dead body was not noticed by somebody is not sufficient to deny the claim. The fact that the deceased was travelling by train with valid railway ticket was found along with the deceased is sufficient to show that during the journey, he fell down from the train and sustained injuries. She further placed reliance in the case of ***New India Assurance Company Ltd. Vs Baby Nanda wd/o Devidas Salunke and others reported in 2016(2) Mh.L.J. 469*** to contend that the fact that the train ticket was not recovered from the dead body is not ground to hold that the deceased was not a bonafide passenger.

7. Per contra, Mr N.P. Lambat learned advocate for the respondent submits that the reasoning assigned by the Tribunal sufficiently shows that the circumstances came on record are recorded by the trial Court and held that burden of proof raised on the applicants to prove that the death of the passenger had occurred on account of 'untoward incident' within the meaning of Section 123(c) read with Section 124-A of the Railways Act either by direct

evidence or by circumstantial evidence. It is of course, impossible to lay down any rule as to the degree of proof, which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. In the instant case, it is a specific pleading of the respondent is that incident took place on 24/04/2018 while the deceased was performing the journey from Jalgaon to Surat by an unknown train. The dead body of the deceased was found on 26/04/2018 at 10.20 hrs and even assuming that the deceased had travelled on a ticket dated 24/04/2018 purchased at 19:17 hrs and the distance between Jalgaon to Padse being just 61 km., the body of the deceased should have been found till midnight of 24/04/2018. Further, as per the TSR of Padse Railway Station dated 26/04/2018 placed on record, nearly 20 trains passed through Padse Station in a time span of 24 hours. It is practically not possible that the body lying just beside the track would remain unnoticed by any of the Loco Pilots or Guards of several trains which passed through from the spot of the incident of both UP & DN tracks, as it is one of the busiest track, in the intermediate time and was only noticed by the Keyman at 10.20 hrs on 26/04/2018 i.e. after a long gap of more than 34 hours. There was no sign of any decomposition of the dead body and the ticket placed on record so neat and clean without any stain makes the claim of the applicants doubtful and suspicious and rejected the claim.

8. He submitted that the dead body of the deceased was found by the side of the railway track and as rightly held by the

Tribunal it is not possible that the body could have remained unnoticed for such a long time. He further submits that thus claimants have failed to prove that the death of the deceased was caused in an untoward incident and therefore, they are not entitled for any compensation.

9. I have perused the record and considered the rival submissions advanced by the learned advocates for the respective parties.

The short point arises for consideration is (a) whether the deceased was a bonafide passenger and his death was caused in an untoward incident. The further question arises is (b) whether the Railway Claims Tribunal is justified in dismissing the claim of the claimants..

10. As per the pleading of the claimants, the deceased left the house to attend the marriage ceremony at Bharuch (Gujrat) of his relative. Therefore, on 24/04/2018 he had left the house along with his luggage. On the next date i.e. on 25/04/2018, applicant No.1 contacted his relative and enquired about the deceased, but he came to know that the deceased has not reached Bharuch. Thereafter, he lodged a missing report to Jalgaon Police Station. On 26/04/2018, the applicant had received a call from his relative namely Shri Chandrasingh Raman Patil resident of Amalner that one dead body is lying on Bhusawal – Surat Railway Line, the applicant came to know that the deceased son was found in a dead condition on a railway track. Thus pleading shows that the deceased was travelling by train by purchasing a ticket to reach at Bharuch

from Jalgaon, and during the journey, he fell down from the train, sustained injuries, and succumbed to death. The death of the deceased is caused in an untoward incident. Whereas, the railway denied the said contention on the ground that the mere finding of the ticket with the deceased is not sufficient to hold that the deceased was travelling by train. In fact, no missing report is lodged by any of the relatives. It is highly impossible that none has noticed the dead body of the deceased. Thus, the claimants have no evidence to show that the death of the deceased is caused in an untoward incident.

11. To substantiate the contention, claimant No.1 stepped into the witness box and reiterated the contention by filing the affidavit of examination-in-chief. The sum and substance of his evidence is that his son left the house to attend the marriage at Bharuch, and therefore, he purchased the ticket and was travelling from Jalgaon to Surat on the way he fell down from the train, sustained injuries and succumbed to the death. This witness is cross-examined by the Railway Administration. Admittedly, AW-1 is not an eyewitness of the incident. He had not personally witnessed whether the deceased had boarded in the train or not. It came in the evidence that the Trackman has informed his relatives about the finding of the dead body of the deceased on the railway track.

12. Besides his oral evidence, the claimants placed reliance on the Merg report, Spot Panchanama, Inquest Panchanama etc. The recitals of the Spot Panchanama show that the dead body of the deceased was found on Bhusawal - Surat Railway Line at Pole No.

233 in Eklahare Shivar. The recitals of the spot panchanama further show that the deceased had sustained the head injury and his identification was revealed from the documents which were found along with him. The spot is situated on Bhusawal - Surat Railway Line, adjacent to the agricultural fields. The inquest panchanama is also produced on record which discloses that the railway ticket was found bearing ticket No. 40368422 with the deceased. The recitals of the inquest panchanama show that when the dead body of the deceased was examined Aadhar Card and Railway Ticket were found in the Pant Pocket of the deceased. The railway administration has not claimed that the railway ticket which was found along with the deceased was forged. Admittedly, the said railway ticket shows that it was issued for the journey on 24/04/2018. The said ticket appears to be a genuine one. The GRP report also shows that the railway ticket which was verified appears to be a genuine one. Thus, the evidence on record sufficiently shows that the deceased left the house for attending the marriage at Bharuch. The dead body of the deceased was also found on the railway track which proceeds from Jalgaon to Surat. The fact that the deceased was travelling to attend the marriage at Bharuch i.e. Gujrat and therefore, he obtained the ticket. Thus foundational facts that the deceased left the house obtained the ticket and was travelling by purchasing the ticket came on record. Admittedly, in compensation cases, the burden is not on the claimant to prove the fact beyond a reasonable doubt. The claimant has to prove the facts on the basis of a preponderance of probabilities. The Hon'ble Apex Court in the case of *Union of India Vs Rina Devi reported in 2018*

(3) *PAC 26* has held that the initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such an onus can shift on Railways if an affidavit of relevant facts is filed by the claimant.

13. Here the affidavit of the claimants supported by the railway ticket found along with the deceased sufficiently shows that the deceased was travelling by train by obtaining a valid ticket and thus in view of the definition given under Section 2 (29) a person who has purchased a valid ticket for traveling by train carrying passengers, on any date or a valid pass or valid platform ticket and becomes a victim of an untoward incident, he is included in the definition of a passenger. Thus, the evidence on record sufficiently shows that the deceased was a bonafide passenger, the claimants have proved the fact that the deceased was a bonafide passenger and was travelling from Jalgaon to Surat by train by obtaining a valid ticket.

14. The evidence on record reveals that on 26/4/2018, the dead body of the deceased was noticed by one Keyman on the railway track which proceeds from Jalgaon to Surat. The said dead body was found at Eklahare Shivar which is at a distance of 61 KM from Jalgaon. The evidence of the claimants reveals that on 25/4/2018, he inquired with his relatives and he came to know that the deceased did not reach at the destination where he has to attend the marriage and therefore, he came to know that the deceased is missing. The claimants relied upon the certificate issued by the Police Station Officer, Jalgaon Taluka Police Station which shows

that the claimant No.1 informed the Police by his son is missing from 24/4/2018 and he left the house to attend the marriage at Bharuch and he travelled by Bhusawal Surat Passenger. Thus, the document issued by Police Station Officer, Jalgaon Taluka Police Station sufficiently shows that the claimants lodged the missing report, regarding the missing of the deceased.

15. A perusal of the spot panchanama reveals that the dead body was lying by the side of the railway track between Bhusawal to Surat in Eklahare Shivar. The panchanama further reveals that there was an adjacent agricultural field where the dead body was found. The inquest panchanama was conducted wherein it was recorded that the death of the deceased was caused due to falling down from the running train. The PM report also indicates that the death of the deceased - Bhushan was caused due to a head injury. The PM report also records that as per the inquest panchanama death of Bhushan was caused due to injury sustained in a train accident. The PM report further reveals that the cause of the death of the deceased is due to a head injury and multiple injuries sustained by him. Though the tribunal has observed that there are no signs of decomposition in the PM report but Column No.12 of the PM Report shows that Post Mortem Lividity observed over the back, the body was swollen and a foul smell. Thus this observation is sufficient to show that the decomposition process was already started. Admittedly, the dead body of the deceased was found after two days.

16. The Railway Tribunal observed that there were no stains

on the ticket and the dead body of the deceased was found after two days which is the suspicious circumstances. The said observation itself is misconceived observation. Admittedly, the railway ticket was found in the pant pocket of the deceased when inquest panchanama was done. So the railway ticket was kept in the pant pocket and there was no reason that any damage will be caused to the said train ticket. In this regard, it is relevant to refer to the decision of the Hon'ble Apex court in the case of Union of India Vs Rina Devi reported in 2018 SC 2362, wherein it is held that the mere absence of a ticket with such injured or deceased will not negate the claim that he was a bona fide passenger. The initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. Admittedly, no evidence is adduced by the railway administration to show that the railway ticket was not a genuine one. Therefore, the attending circumstances that oral evidence of the claimants that the deceased left the house to attend the marriage at Bharuch and traveled by the train supported by the Railway ticket found with the deceased, sufficient to show that the deceased was a bonafide passenger.

17. In the instant case, as noted above, the evidence adduced by the claimants he choose that deceased had purchased the ticket for a train journey from Bhusawal to Surat. The railway has not adduced any rebuttal evidence in the absence of such rebuttal evidence, the Tribunal was not testified in holding that the deceased

was not the bonafide passenger. The body of the deceased was found by the side of the track at Eklahre Shivar on the Bhusawal - Surat track. The Post Mortem report shows that the death of the deceased is caused due to head injury and other multiple injuries. It is pertinent to note that the spot panchanama reveals that there were agricultural fields adjacent to where the dead body was found. Merely because the dead body was not noticed by the railway employees is not sufficient to discard the evidence of the claimant when it is supported by the attending circumstances like finding of the ticket with the deceased.

18. It is submitted by the railway Administration by producing documents on record that at least 20 trains passed from the said track during the said period but as already observed that merely because none of the loco pilot has noticed the dead body on the track is not sufficient to hold that, the death of the deceased is not caused in an untoward incident. The dead body of the deceased was found by the side of the track. The evidence of the claimant shows that the deceased was travelling from Jalgaon to Surat, the dead body was also found on the same track, and the genuine railway ticket was found in his pant pocket only an inference can be drawn that the death of the deceased was caused when he was travelling by train which is nothing but an untoward incident within the meaning of Section 123-C of the Railways Act.

19. The claimants who are the parents of the deceased have proved that the deceased was a bonafide passenger and his death was caused in an untoward incident. As observed by the Hon'ble

Apex Court in the case of *Union of India Vs Prabhakaran Vijaya Kumar and others reported in 2008 ACJ 1895* that if the words used enough 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 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 traveling 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 traveling 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.

20. Thus in view of the above observation and considering the evidence on record that claimants prove that the deceased was travelling from Bhusawal to Surat, supported by the Railway Ticket

found that the injuries sustained by the deceased is head injury and other multiple injuries sufficient to prove that the death of the deceased is caused in an untoward incident when he was travelling by train. Therefore, the appeal of the claimants deserves to be allowed by setting aside the judgment and award by the Railway Claims Tribunal.

21. In the instant case, the alleged incident occurred on 24/04/2018 i.e. after notification dated 22/12/2016 which came into force on 01/01/2017. the claimants are, therefore, entitled for a revised rate of compensation with interest payable from the date of the accident till its realization. Under these circumstances and in view of the discussions (supra), I proceed to pass the following order.

- (1) The First Appeal is **allowed**.
- (2) The judgment and award dated 19.3.2020 passed by learned Member of the Railway Claims Tribunal, Nagpur in Claim Application No.OA (Ilu) /NGP/213/2018 is hereby quashed and set aside.
- (3) The respondent/Railway Administration is directed to pay the amount of compensation Rs.8,00,000/- with interest @ 6% per annum from the date of the accident till its realization of the amount. The amount shall be paid to claimants within a period of 60 days from the date of receipt of a copy of this judgment.
- (4) The amount of compensation be apportioned equally to

the claimant Nos. 1 and 2 equally.

With this, the First Appeal is **disposed of** with no order as to costs.

JUDGE

RKN