

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

FIRST APPEAL NO.838/2022

1. Ashok Dhanaram Borkar,
Aged about 55 years, occupation – Labourer.

2. Smt. Kiran w/o Ashok Borkar,
Aged about 50 years, occupation- Household,

Both R/o Dayal Nagar (Samta Nagar),
Tah. Wardha, District Wardha

..... **Appellants.**

:: V E R S U S ::

Union of India,
Through the General Manager,
Central Railway, C.S.T. Mumbai.

..... **Respondent.**

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Ms Sumesha Chaudhari, Counsel for Appellants.
Ms N.G.Chaubey, Counsel for the Respondent.

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CORAM : URMILA JOSHI-PHALKE, J.

DATE : 28/03/2023

ORAL JUDGMENT

1. By this appeal, appellants (claimants) have challenged the judgment and award dated 15-12-2015 passed by learned Member of the Railway Claims Tribunal at Nagpur (Learned Member of the Tribunal) in Case No.OA(IIu)/NGP/2011/0325 whereby learned Member of the Tribunal rejected the claim of claimants.

2. The facts giving rise to filing of the present appeal can be summarized as follows:

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3. On 17-10-2010 at 5.00 pm deceased Dinesh Ashok Borkar was travelling from Wardha to Nagpur by passenger train, by purchasing a valid ticket to attend the programme held at Deeksha Bhumi, Nagpur. As there was heavy rush in the bogie and due to the jerk to the train the deceased fell down from the running train near poll no.774/25-774/26 in between Sukli Railway Station to Bhor river. As the deceased fell down from the train, due to multiple injuries he died on the spot. As per contention of the learned Advocate for the appellants that the death of the deceased was occurred in an untoward incident and the claimants are entitled to receive compensation.

4. In response to Notice, the Railway Administration resisted the claim of claimants by denying the contentions of the claimants. The defence raised by the respondent is that the deceased was not a bonafide passenger as he was not holding a valid railway ticket. It is further contended by the railway that the death of the deceased is caused due to his own negligence, therefore, it covers under the definition of self inflicted injuries, hence the claimants are not entitled for any compensation from the Railway

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Administration. The claimants have adduced the evidence to substantiate the contention. Besides oral evidence the claimants have placed reliance on the police papers, FIR, spot panchanama, PM report etc. The claimants have also placed reliance on the DRM report which is filed by the railway administration after due investigation. On behalf of railway also, one witness namely Manoj Hiralal Ghodeswar, who was the station Superintendent of Seloo Road Railway Station, was examined. After appreciating the evidence of both the sides, the Railway Claims Tribunal comes to the conclusion that the deceased was not holding a valid railway ticket and therefore the claimants are not entitled to receive the compensation and rejected the claim of the claimants.

5. Being aggrieved and dis-satisfied with the judgment passed by the Railway Claims Tribunal, the present appeal is preferred by the original complainant on the ground that the Railway Claims Tribunal has not considered the settled law that mere absence of the ticket is not sufficient to come to the conclusion that the deceased was not a bonafide passenger. The Railway Claims Tribunal ought to have considered the evidence of the claimants. The DRM report also shows that the deceased was travelling at the footstep of

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the coach and died in an untoward incident, therefore, the claimants are entitled to receive the compensation. The observations of the learned Member of the tribunal are erroneous and the same are liable to be set aside.

6. Heard learned Advocate Ms Sumesha Chaudhari for the appellants. Since she submitted that the Railway Claims Tribunal rejected the claim only on the ground that the ticket was not found along with the dead body, the possibility of misplacing the ticket during the untoward incident cannot be ruled out. She submitted that apart from the evidence of the claimant, the claimant has adduced the evidence of witness namely Rajesh Kasovate, who had witnessed the deceased was purchasing the ticket. He also travelled along with the deceased. She further submitted that the burden on the claimants to prove the contention that the deceased was bona fide passenger is only on the preponderance of probability. The same is proved by the claimants and therefore the Railway Claims Tribunal ought to have awarded the compensation to the claimants.

7. Per contra, learned Advocate Ms N.G. Chaubey for the respondent, submitted that the tribunal has minutely

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gone through the documents and come to the conclusion that the claimants are not entitled for compensation as the valid ticket was not found with the deceased. In fact the death of the deceased is caused due to his own negligence, therefore, it covers under the definition of self inflicted injuries, hence the claimants are not entitled for compensation.

8. Having heard both the sides and perused the material on record, following point arises for my determination:

Whether the learned Member of the Tribunal is justified in rejecting the claim of the claimants for compensation ?

9. To substantiate the claim of claimants, claimant No.1-Kiran Borkar (AW 1) was examined. She narrates about the alleged incident. In support of her contention she relied upon the police papers, merg summary, spot panchanama, inquest panchanama, PM report etc. She has cross examined at length by the respondent/railway administration. Admittedly, Kiran Borkar was not the eye witness of the incident though

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she was cross examined at length nothing incriminating is brought on record. The claimants have also examined another witness by name Rajesh Kasovate who had witnessed the deceased was purchasing the railway ticket. He deposed that he was traveling along with the deceased and they both have purchased the railway ticket. This witness was not cross examined by the railway thus evidence of this witness is unchallenged. Thus, the evidence of the claimant as well as the evidence of AW 2-Rajesh Kasovate show that the deceased was travelling by passenger train from Wardha to Nagpur. The Police papers filed on record are also show that the death of the deceased was caused when he was traveling in the train. The railway administration has carried out the investigation and DRM report is filed on record, which shows that during the course of investigation the officers of the Railway administration recorded the various statements of the witnesses and come to the conclusion that the victim was traveling by standing near the door on footstep of the coach and fell down from the train and sustained the injuries. It is seen from the DRM report that the deceased died due to his

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own negligence and railway Administration is not responsible for the above said incident. On behalf of the Railway Administration, Station Superintendent Seloo Road-Manoj Ghodeswar was examined. His evidence is only to the extent that he received the information about the untoward incident that one unknown person was laying between the Seloo road station and Tuljapur Station at about KM No.774/26. During his cross examination he admitted, that neither any loco pilot nor any guard or any key man informed him about the suicide of any person on the day of the incident. Thus, the contention of the railway, that deceased was not fell down in an untoward incident is not supported even by the DRM report.

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

“Section 123. Definitions. - In this Chapter, unless the context.....

(a) “accident means”.....

(b) “dependent” means.....

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(i)

(ii)

(iii)

[(c) “untoward incident” means—

3.(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. Now, by considering the definition of the “untoward incident”, it is to be seen whether the deceased was travelling by the train which was carrying passengers and whether he was holding a valid Railway Ticket and, therefore, he was a *bona fide* passenger. As

regards the contention of the Railway Administration is concerned, admittedly the Railway ticket was not found along with the deceased. The possibility that railway tickets might have misplaced during the untoward incident cannot be ruled out. The Honourable Supreme Court of India in the case of **Union of India (UOI) vs Rina Devi**, reported in **(2019)3 SCC 572** held that: 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. The Hon'ble Apex court further held that the initial onus is always on the appellant to show that there is a death due to untoward incident and the deceased was bona fide passenger. Merely because ticket was not found the claim of the claimants cannot be negated. It is observed by Hon'ble Apex Court that mere absence of ticket with the injured or deceased will not negate the claim of bonafide 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 railway and the issue can be decided on

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the facts shown or the attending circumstances. Thus, merely absence of ticket is not sufficient to held that the deceased was not a bona fide passenger. The observation of the tribunal that the ticket was not found with the deceased is not sufficient to negative the claim of the claimant.

12. Insofar as the issue regarding the untoward incident is concerned, the DRM report also shows that the death of the deceased was caused as he was travelling at the footsteps and he fell down from the train and sustained the injuries. As per the evidence of the claimant, the deceased met with an untoward incident when he was travelling by the passenger train Wardha to Nagpur. The evidence of the claimant also supported by AW 2 Rajsh Kasovate who was traveling along with the deceased by the same train. The witness namely Rajesh Kasovate had also purchased the ticket to travel by the same train. His evidence is corroborated to the extent that they both have purchased the ticket separately and travelling by the same train. The evidence of this witness is not shattered during the cross examination. Admittedly, there was no eye witness to the said

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incident but evidence of AW 2 Kasovate is sufficient to show that deceased was travelling by the said train.

13. As per contention of the railway, the injuries sustained by the deceased are self inflicted injuries. Admittedly, the railway has not adduced any evidence to show that deceased had died due to the self inflicted injuries. Whether the act of deceased covers under the self inflicted injuries, the burden is on the railway to prove that initially deceased was traveling at the foot steps and he had sustained the self inflicted injuries. The self inflicted injury would require intention to inflict such injury and not mere negligence of any particular degree. He travelled on the footstep on the entrance of the coach may be negligence of the deceased but intention cannot be attributed to the deceased and therefore the case of the deceased does not cover under the contributory negligence. It is a settled law by the Honourable Apex Court in the case of Union of India vs Rina Devi (supra) that for attracting the provisions of Section 124-A of the Railways Act, intention of the person who had sustained a self inflicted injury is to be proved. It is further held that self inflicted injury would require

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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 Honourable Apex Court has referred the earlier decision in Union of India vs Sunil Kumar reported in 2017(13) SCALE 652 wherein it is held that the plea of negligence of the victim cannot be allowed wherein the claim based on 'no fault theory' under Section 163 A of the Motor Vehicle 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 124-A merely on the plea of negligence of the victim as a contributory factor.

14. Here, in the present case ,admittedly, the initial onus is discharged by the claimant by adducing reliable evidence, whereas the railway Administration failed to prove that the deceased had sustained the injuries which are self inflicted injuries, therefore I have no hesitation to hold the burden shifted on the Railway Administration which is not discharged by it. Merely, absence of the ticket is not sufficient to hold that the deceased was not

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a bona fide passenger and the possibility of ticket has been misplaced in an untoward incident cannot be ruled out. The claimants are entitled to receive the compensation as death of the deceased was caused in an untoward incident.

15. Learned counsel Ms. N.G.Chaubey for the Railway Administration vehemently submitted, that the claimants are not entitled for any interest on the compensation amount. The Honourable Apex Court in the case of Union of India vs. Rina Devi *supra* has dealt the said aspect of interest and observed as follows :-

“15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in Rathi Menon(AIR 2001 SC 1333) (*supra*) and Kalandi Charan Sahoo (*supra*) stands explained accordingly. The 4-Judge Bench judgment in

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Pratap Narain Singh Deo (AIR 1976 SC 222) (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

16. Thus, the Honourable Apex Court has held that the compensation as applicable on the date of incident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of the award of the Tribunal is higher than revised amount with interest the higher of the two amounts has to be given.

17. The alleged incident occurred on 17-10-2010. The Railway Administration issued a notification dated 22.12.2016. In view of that the claimants are entitled to receive the compensation of Rs 8 lac which is higher than the amount with interest. In view of that the claimants are not entitled to receive interest on the awarded compensation amount.

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18. In view of the above discussion, I pass the following order:

ORDER

(1) The First Appeal is **allowed**.

(2) The judgment and award dated 15-12-2015 passed by learned Member of the Railway Claims Tribunal at Nagpur in Case No.OA(IIu)/NGP/2011/0325 is hereby quashed and set aside.

(3) The respondent/Railway Administration is directed to pay compensation Rs.8.00 lacs to the claimants within a period of 60 days from the date of receipt of copy of this judgment.

(4) The amount of compensation shall be apportioned in between the claimants equally.

With this, the First Appeal is **disposed** of.

(URMILA JOSHI-PHALKE, J.)