

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

FIRST APPEAL NO. 889 OF 2022

APPELLANTS:

(Ori. Claimants)

On R.A.

Appellant is deleted as per
Courts order dated 17.3.23
Sd/- R.G. Bagul.
21.3.23

1. [Sk. Ibrahim s/o Sk. Chottu
Aged 69 years, Occu: Labour.] **deleted**

2. Nasimbano wd/o Sk. Ibrahim,
Aged 57 Yrs., Occu: Household,
R/o Ramdas Math Chauk, Ashok Nagar,
Akot Fail Akola, Tah – Dist. Akola.

...VERSUS...

RESPONDENT

On R.A.

(Ori. Resp.)

Union of India,
It's General Manager,
Central Railway CST- Mumbai.

Mr R.G. Bagul, counsel for the appellants.

Ms N.G. Chaubey, counsel for the respondent.

CORAM

DATE OF RESERVE

DATE OF DECISION

: URMILA JOSHI-PHALKE, J.

: 03/04/2023

: 06/06/2023

ORAL JUDGMENT:

1. The appellants who are the original claimants have challenged the judgment and award passed by the Railway Claims Tribunal in OA(IIu)/NGP/2015/0213, dated 28/04/2017 by which the claims of the claimants is rejected by the Tribunal.

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

On 06/12/2014, the deceased Sk. Hafeez s/o Sk. Ibrahim along with his elder sister and brother came to Akola Railway Station in order to drop his sister to her at Malkapur and accordingly, the brother of the deceased purchased two railway tickets from Akola to Malkapur for the deceased and his sister. The tickets were handed over to his sister. The deceased and his sister both boarded in Prerna Express in two different bogies, due to the crowd in the train. The deceased was standing near the door of the compartment of the train, whereas his sister was in a different bogie. While departing the train at Akola Railway Station, there was a sudden jerk to the train, due to which the deceased fell down from the said running train near KM No.583/11-13 and died on the spot. The sister of the deceased after getting down at Malkapur Railway Station had handed over the ticket to the Ticket Collector at Malkapur. As per the contention of the claimants, who are the parents that the death of the deceased is caused in an untoward incident when he was travelling by train as a bonafide passenger, therefore, the claimants are entitled for compensation.

3. In response to the notice, the Railway Administration resisted the claim, on the ground that the deceased was not a bonafide passenger and the death of the deceased is caused due to his own negligence, therefore, the Railway Administration is not liable to pay compensation.

4. To substantiate the contention, the claimants Sk. Ibrahim s/o Sk. Chottu adduced his evidence and narrated about the occurrence of the incident. Besides his oral evidence, he placed

reliance on D.R.M. Report Exhibit A-27, Report of the Railway Exhibit A-31, Marg Report, Exhibit A-32, Spot Panchanama Exhibit No. A-34 and Inquest Panchanama Exhibit A-37.

5. To rebut the evidence of the claimants, the railway administration has also examined Shaikh Azim s/o Shaikh Lal, Trackman Unit No.06, Akola Railway Station, and also relied upon the D.R.M. report. The Railway Claims Tribunal appreciated the evidence of claimants as well as the respondent railway and observed that the deceased was not a bonafide passenger. Moreover, the death of the deceased is caused due to his own negligence. Therefore, the claimants are not entitled for any compensation and rejected the claim.

6. 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 even the investigation papers of the Railway Administration show that the deceased was travelling by the said train, and fell down from the train and succumbed to the death. The Railway Administration has not adduced any evidence to show that the deceased was not a bonafide passenger. The mere absence of the ticket is not sufficient to hold that deceased was not a bonafide passenger. Therefore, the judgment and award passed by the Railway Claims Tribunal is erroneous and liable to be set aside.

7. Heard learned counsel Mr R.G. Bagul for the appellants. He reiterated the said contention and submitted that even the report filed by the Railway shows that, the death of the deceased is

caused as he fell down from the running train, sustained injuries, and died on the spot. The mere absence of the ticket is not sufficient to hold that the deceased was not a bonafide passenger. In support of his contention, he placed reliance in the case of ***Union of India vs Prabhakaran Vijaya Kumar and others reported in 2008 ACJ 1895*** and ***Union of India Vs Rina Devi reported in 2018 (3) T.A.C. 26.***

8. Per contra, the learned counsel Ms N.G. Chaubey for the respondent submitted that Railway Ticket was not found along with the deceased. The sister of the deceased who was travelling along with him has also not produced the Railway Ticket. The deceased was not a bonafide passenger. She further submitted that the evidence on record sufficiently shows that while alighting from the running train, the deceased fell down and sustained the injuries which attract Section 124-A clause-(b) of the Railways Act, 1989 and shows that the death of the deceased is caused due to his own negligence. In support of her contention, she placed reliance ***Ganesh s/o Waman Waghmare and another V/s Union of India in First Appeal No. 347/2022 dated on 09/11/2022.***

9. After hearing both the sides and on perusal of the evidence on record, the following points arise my determination:

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

10. To substantiate the claim of the claimants, the claimant-Sk. Ibrahim Sk. Chotu stepped into the witness box and filed an affidavit of examination in chief, wherein he reiterated the

occurrence of the accident. Besides his oral evidence, he placed reliance on the D.R.M. Report, Marg Report, Report of the Railway Administration, Spot Panchanama, and Inquest Panchanama. Admittedly, PW-1 Sk. Ibrahim Sk. Chotu is not the eyewitness of the incident, nor he was travelling along with the deceased. He narrated the occurrence on the basis of the information received by him. He admitted during the cross-examination that, he had not personally witnessed the incident, but he stated that the deceased has purchased the journey ticket, and he was proceeding along with his sister to drop his sister at Malkapur. During the cross-examination of the petitioner, his evidence is not shattered. The DRM Report, on which the claimant placed reliance and also shows that on the day of the incident, the deceased while alighting from the train, lost his control, sustained injury, and died on the spot.

11. As per the DRM Report, the deceased against the rules was alighting from the train, fell down, and sustained injuries. The communication to the In-charge Superintendent of G.R.P. and R.P.F. Akola, the railway administration informed that one unknown person travelling from train No. 11454, fell down from the train, sustained injuries, and died on the spot. The Marg Report also supports the said contentions that while travelling from the train bearing No.11454, the deceased fell down and sustained injuries, and died on the spot. Thus, the contention of the claimants is supported by the Investigation carried out by the Railway Administration.

12. As per the DRM Report, the deceased was attempting to

alight from a running train and he fell down and sustained injuries. To prove the said contention, the railway administration has examined Sk. Azim Sheikh Lal, who was the Trackman, his evidence shows that when he was on duty, at the relevant time, the train bearing no.11454 was passing and he saw that one unknown boy aged about 20 years, tried to alight from the running train, due to which he misbalanced and was run over. Thus, the evidence of the Railway Administration also shows that the deceased was travelling by the said train, and due to the imbalance, he fell down and sustained injuries.

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

"(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, cloakroom 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."

14. Now, by considering the definition of the untoward incident, it is to be seen whether the deceased was travelling by train which was carrying passengers, and whether he was holding a valid railway ticket and therefore, he was a bonafide passenger. Admittedly, the evidence of the claimant as well as the investigation carried out by the railway administration shows that the deceased was travelling by train No. 11454 -Prerna Express Nagpur to Ahmadabad. There is no dispute that while travelling from the said train, the deceased fell down and sustained injuries. The initial report submitted by the railway administration to the In-charge Superintendent, G.R.P. and R.P.F., Akola shows that while travelling from the train, one unknown person fell down and sustained injuries. The said report nowhere discloses that the deceased while travelling from the train, in an attempt of alighting from the running train fell down and sustained injuries. The evidence of Shaikh Azim s/o Shaikh Lal who was working as a Trackman, who alleged to be the eye witness of the incident shows that the deceased was trying to alight from the running train, due to which he misbalanced and was run over. Thus, one thing is clear the deceased while travelling from the train fell down and sustained injuries. To prove that deceased was a bonafide passenger claimants relied upon the evidence of PW-1. The evidence of PW-1 shows that the deceased has purchased the ticket. Admittedly, the ticket was not found along with the deceased nor sister of the deceased has

produced the said ticket.

15. As per the pleading of the claimants, the sister of the deceased handed over the said ticket to the Ticket Collector. Now, it is settled that the mere absence of the ticket is not sufficient to hold that the deceased was not a bonafide passenger. The Hon'ble Apex Court in *Union of India V/s Rina Devi*, referred (supra) held that the mere absence of a ticket with such an injured or deceased will not negative the claim that he was bonafide passenger. The 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. The evidence of the claimant shows that the deceased was proceeding to drop his sister at Malkapur, he has purchased the ticket and was travelling by the ticket. Admittedly, the sister of the deceased travelled up to Malkapur. The railway administration has not taken any action against her, as she travelled without a ticket. As per the contention of the claimants, she handed over the said ticket to the Ticket Collector. Admittedly, the sister of the deceased was not examined by the claimants. However, considering the evidence on record, the initial onus to prove that the deceased was a bonafide passenger is discharged by the claimants, on the basis of the affidavit filed by the PW-1. The mere absence of the ticket is not sufficient to hold that the deceased was not a bonafide passenger.

16. In so far as the issue regarding the untoward incident is concerned, the DRM Report, Evidence of R.W-1, and Police Papers show that deceased was travelling by the train Pragati Express and while travelling fell down from the train and sustained injuries. The

evidence of railway administration especially, the evidence of R-1 shows that while alighting from the running train, the deceased was imbalanced and fell down and sustained injuries. The initial report submitted by the Railway to the In-charge Superintendent of G.R.P. and R.P.F. Akola, nowhere shows that the deceased was attempting to alight from the running train. It only shows that one unknown person fell down from train No.11454. The said report Exhibit A-31 further shows that the said information was received from the Keyman -Sk. Aziz Sk. Lal. Thus, the contention of the railway that the deceased fell down while alighting from the running train is not supported by any evidence. On the contrary, it is contradicted by their own report. Even it is accepted that the deceased sustained injuries while alighting from the running train which can be negligence on the part of the deceased, it is well settled that mere negligence is not sufficient to hold that there was an intention of the deceased to cause self-inflicted injuries. Now, it is settled law by the Hon'ble Apex Court in the case of *Union of India V/s Rina Devi* that for attracting the provisions of Section 124-A of the Railway Act, the intention of the person who had sustained self inflicted injury is to be proved. Thus, for holding the deceased liable for his own death, on account of self-inflicted injuries, his intention required to be proved. There is no evidence that the deceased caused self inflicted injury while attempting to commit suicide or while crossing the track. Therefore, the contention of the railway that claimants are not entitled for any compensation as the death of the deceased is caused due to his own negligence is not sustainable.

17. The claimants have claimed the compensation under the beneficial statute. The Hon'ble Apex Court, in the case of *Union of India Vs Prabhakaran Vijaya Kumar and others*, referred (supra), held 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. Thus, in view of the well settled position, mere negligence of the deceased is not sufficient to negate the claim of the claimants for grant of compensation.

18. Here in the present case, admittedly, the initial onus is discharged by the claimants by adducing reliable evidence. Whereas the railway administration failed to prove that the deceased has sustained the injuries due to his own negligence. As such, I have no hesitation to hold that the burden shifted on the railway administration is not discharged by it. The claimants have proved that the death of the deceased is caused in an untoward incident and he was a bonafide passenger. Thus, the claimants are entitled to receive the compensation. Admittedly, the alleged accident occurred on 06/12/2014 i.e. prior to the revised notification issued by the Railway on 22/12/2016 which came into effect on 01/01/2017. In view of the judgment of *Union of India V/s Rina Devi* referred (supra) and *Union of India V/s Radha Yadav reported in (2019) 3 SCC 410*, wherein it is held that the issue raised in the matter does not require any elaboration as in our view, the judgment of this Court in *Rina Devi* is very clear, what this Court has laid down is that the amount of compensation payable on the date of the accident with a reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of award, the claimant would be entitled to the higher of these two amounts.

19. In view of the above observations and in the present case, the highest amount is Rs.8,00,000/- as per the revised notification. Thus, claimants are entitled to get compensation of Rs.8,00,000/- without interest. Under these circumstances and in view of the discussions, I proceed to pass the following order.

- (a) The First Appeal is **allowed**.
- (b) The judgment and order dated 28/04/2017 passed by learned Member, Railway Claims Tribunal, Nagpur in Claim Application No. OA (IIu) /NGP/2015/0213 is hereby quashed and set aside.
- (c) The respondent/Railway Administration is directed to pay the compensation of Rs.8,00,000/- to claimants within a period of 60 days from the date of receipt of a copy of this judgment.

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

JUDGE

RKN

Signed By: RAJESH K
NANDURKAR

Signing Date: 07.06.2023 17:21