



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

FIRST APPEAL NO. 1085 OF 2011

APPELLANTS

- : 1. Madhuri Wd/o. Harish Sorle, Aged about 25 years, Occ. Household.
2. Ku. Vaishanvi d/o. Harish Sorle, Aged about 5 years, Occ. Student.
3. Deepika d/o. Harish Sorle, Aged about 3 years.
4. Vijaybharat s/o. Jagannath Sorle, Aged 66 years, Occ. Labour Work.
5. Smt. Champa W/o. Vijaybharat Sorle, Aged 61 years, Occ. Household.

All R/o. Subhash Ward, Dewadi,
Tumsar Road, Tah. Tumsar, Dist :
Bhandara.

Applicant Nos. 2 and 3 are minors
through their Guardian mother
applicant No.1.

//VERSUS//

RESPONDENT

: Union of India, through the General
Manager, South East Central Railway,
Bilaspur.

Ms. Sumesha Choudhary, Advocate for the Appellants.
Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 4th 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 23rd August, 2011, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the learned Member of the Tribunal dismissed the claim application filed by the appellants under Section 16 of the Act of 1987.

02] BACKGROUND FACTS :-

Appellant No.1 is the wife of deceased Harish Sorle. Appellant Nos.2 and 3 are the children of the deceased. Appellant Nos.4 and 5 are the parents of the deceased. It is the case of the appellants that on 5th August, 2010, the deceased was waiting for a train at Platform No.2 at Tumsar Railway Station. He had purchased a ticket for journey from Tumsar to Bhandara. There was heavy rush of the passengers at Platform Nos.2 and 3. It is stated that due to heavy rush and push of the passengers, deceased slipped and fell on the track. He was run over by Train No.1040 Up Maharashtra Express. He died on the spot. It is stated that death was in an untoward incident. He was a *bona fide* passenger. The appellants, therefore, claimed the compensation.

03] The respondent/Railway filed the written statement and opposed the claim. It is contended that no accident was reported by Maharashtra Express on 5th August, 2010. There was no ACP during the course of journey of the train. No passenger had fallen from the train. The journey ticket found on the person of the deceased was issued at 19:20 hrs. on the date of the incident for journey by a passenger train. Maharashtra Express had left from Tumsar Road Railway Station at about 9:12 hrs. Therefore, the possibility of deceased travelling by Maharashtra Express is totally ruled out. It is contended that the deceased was run over by train at the time of crossing the railway line in negligent manner. Death was not in an untoward incident.

04] The learned Member of the Tribunal framed as may as four issues. The learned Member of the Tribunal, on consideration of the evidence, dismissed the claim. Being aggrieved by this judgment and order, the appellants are before this Court.

05] I have heard Ms. Sumesha Choudhary, learned advocate for the appellants and Ms. Neerja Chaubey, learned advocate for the respondent/Railway. Perused the record and proceedings.

06] Following points fall for my determination :-

(a) Whether the deceased died in an untoward incident?

(b) Whether the deceased was a *bona fide* passenger having a valid journey ticket?

07] Learned advocate for the appellants submitted that the journey ticket was found from the pocket of the deceased after the incident. Learned advocate pointed out that this aspect has not been properly appreciated by the learned Member of the Tribunal. Learned advocate submitted that the ticket found on the person of the deceased was the proof that he was about to travel from Tumsar to Bhandara. Learned advocate submitted that there is no evidence of any Loco Pilot of dash given to any person by a train while crossing the railway line. Learned advocate submitted that the body of the deceased was found in the railway premises. Learned advocate submitted that, therefore, in the absence of any cogent and concrete evidence adduced by the respondent, an inference of the deceased died in an untoward incident with a valid journey ticket needs to be drawn. Learned advocate submitted that the possibility of planting the ticket after the incident has been completely ruled out.

08] Learned advocate for the respondent/Railway submitted that the facts, circumstances and evidence create doubt about the journey ticket. Learned advocate took me through the evidence and pointed out the time of purchase of ticket and the time of departure of Maharashtra Express at Tumsar Railway Station. Learned advocate submitted that this fact has been independently proved by examining the witness. Learned advocate submitted that the possibility of the deceased falling from running train after boarding has been completely ruled out. Learned advocate submitted that boarding the Maharashtra Express by the deceased was out of question because the train had no scheduled halt at Tumsar Railway Station. Learned advocate submitted that the next train i.e. 4 TT passenger arrived at Tumsar Railway Station at 9:30 hrs. Learned advocate submitted that the place where the dead body was found indicates that the deceased was run over by train while crossing the railway line. In short, learned advocate submitted that the judgment and order passed by the Tribunal does not warrant interference.

09] AW-1 is the wife of the deceased. She has deposed that the deceased was to proceed from Tumsar to Bhandara and for that purpose, he had purchased the journey ticket. AW-1 has stated that

when he was standing at Platform No.2, due to heavy rush of the passengers, he fell on the railway track and run over by Maharashtra Express. There is no eye witness to the incident. RW-2 is the Deputy Station Superintendent at Tumsar Road Railway Station. He has produced original TSR (Train Signal (cum log) Register). The certified extract of the said TSR is RW-2/1. This document shows that Maharashtra Express departed at 9:12 a.m. from Tumsar Railway Station. The ticket found on the person of the deceased shows that it was purchased at 9:20 a.m. This fact indicates that when Maharashtra Express Train passed through Tumsar Railway Station, the deceased had not purchased the railway ticket. The ticket was admittedly found in the pocket of the deceased. In view of this factual position, the possibility of the deceased having been run over by Maharashtra Express due to accidental fall has been completely ruled out.

10] The deceased had purchased the ticket for journey from Tumsar to Bhandara. It was passenger train ticket. The next passenger train came to Tumsar Railway Station at 9:30 a.m. The Loco Pilot of 4 TT Train did not give any information of run over of the deceased. It is further seen on the basis of the evidence that there was no information of run over of any passenger either by

Maharashtra Express or 4 TT passenger train. If the deceased was run over by Maharashtra Express or 4 TT passenger train, the Loco Pilot would have informed the Station Master.

11] The deceased admittedly had not boarded Maharashtra Express, which passed through Tumsar Railway Station without any halt. The next train came at 9:30 a.m. It is not the case of the appellants that the deceased had boarded 4 TT passenger train and fell from running train. In my view, these facts are vital and important for addressing the question as to whether the death was in an untoward incident or not. It is seen that the dead body was cut into two pieces. It is, therefore, a case of run over of the deceased by the train. The deceased had not boarded any train. The learned Member of the Tribunal on the basis of the evidence has recorded a finding that the case in question is of run over of the deceased by a train while crossing the railway line. In my view, in view of the facts, circumstances and evidence brought on record, I do not see any reason to disagree with this finding of fact recorded by the Tribunal.

12] It is true that the ticket was found in the pocket of the deceased. In my view, this fact by itself would not be sufficient to draw an inference that the deceased fell from running train. The

deceased was the resident of Tumsar. According to the appellants, he was proceeding from Tumsar to Bhandara. The panchanama would show that the deceased was wearing half pant. From his back pocket of the pant, only journey ticket was found. Except journey ticket, nothing was recovered from the person of the deceased. AW-1 was not an eye witness to the incident. The evidence on record, therefore, is not sufficient to accept the claim of the appellants that the deceased fell from a working train and as such the death was in an untoward incident. The learned Member of the Tribunal, in my view, was, therefore, right in rejecting the claim of the appellants. Accordingly, I record my findings on the above points in the negative. As such, the appeal, being devoid of merits, is **dismissed**.

(G. A. SANAP, J.)

Vijay