

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

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.749 OF 2018

Smt. Chandrakala w/o Krishnarao Kale
Aged about 55 years, Occ: Housewife,
R/o Minimata Nagar,
Near Water Tank Kalamna Market Road,
Nagpur, At present R/o: Village Telang Khadi,
Tahsil Parsioni, Distt. Nagpur. ... Appellant

Vs.

Union of India,
Through it's General Manager,
Central Railway, CST, Mumbai. ... Respondent

Ms.Sumesha Choudhary, Advocate for the Appellant.
Ms.Neerja G. Chaubey, Advocate for the Respondent.

**CORAM : ABHAY AHUJA, J.
RESERVED ON : 20th OCTOBER, 2022.
PRONOUNCED ON : 2nd JANUARY, 2023.**

JUDGMENT :-

1. This appeal under section 23 of the Railway Claims Tribunal Act, 1989 has been preferred by the parents of one deceased Pradip Krishnarao Kale impugning the judgment and order dated 15th June, 2017 passed by the Railway Claims Tribunal, Nagpur in case No.27/O.A.II/RCT/NGP/2004 rejecting the claim for compensation from the respondent-railway made on account of the

death of their son Pradip purportedly in an untoward incident on 30th March, 2003.

2. Earlier on, the claim application by the appellants was dismissed by the Division Bench of the Railway Claims Tribunal, Nagpur on 30th September, 2004. Against this order the appellants had moved the Nagpur Bench of the Bombay High Court and the same was allowed on 22nd March, 2017, whereby the Railway Claims Tribunal, Nagpur was directed to restore and adjudicate afresh in the matter in accordance with law. Accordingly, the Railway Claims Tribunal, Nagpur restored the matter and heard the matter afresh and has passed the impugned judgment and order dated 15th June, 2017.

3. It is the case of the appellants that their son Pradip went to Mumbai on 27th March, 2003 for some private work from Nagpur. It is stated that when he left the house he told the appellant No.1 that probably he would come back on 31st March, 2003 to Nagpur by Sevagram Express; that their son had also left a telephonic message with their neighbour about arriving Nagpur by Sevagram Express on 31st March, 2013. That their son while travelling by 1439 Dn. Sevagram Express Ex Dadar to Nagpur accidentally fell down from the running train at Dahegaon railway station and his dead body was found at Dahegaon station on 31st March, 2003. Although no ticket was found on the person of the deceased, it has been claimed by the father of the deceased in his evidence affidavit that the deceased must have purchased a journey ticket Ex Dadar to

Nagpur as no person will travel such a long distance without a ticket due to massive ticket checking and that the journey ticket of the deceased was lost in the alleged incident.

4. Paragraphs 2 to 10 of the affidavit of Shri Krishnarao Kale are usefully quoted as under :-

“2. I say that my son (deceased) Pradip went to Mumbai on 27.03.03 for some private work Ex Nagpur. When he (deceased) left the house the (deceased) told me that probably he will come back on 31.03.03 at Nagpur by Sevagram Express.

3. I say that I was not travelling alongwith deceased son named Pradip. I filed claim case as per information by Police and message kept by my son that probably arriving at Nagpur on 31.03.03 and also message received on telephone to neighbour that arriving by Sevagram Express on 31.03.03 at Nagpur. It presumed that the deceased was travelled by Sevagram Express Ex-Dadar on 30.03.03.

4. I say that my son while travelling by Sevagram Express (i.e. 1439 Dn) Ex-Dadar to Nagpur accidentally fallen down from running train at Dahegaon Railway Station and his dead body was found at Dahegaon stations on 31.03.03.

5. I say that he (deceased) must have purchased a Journey ticket Ex-Dadar to Nagpur and as such no person will travel such a long distance without ticket due to massive ticket checking. Ticket lost on the accident spot.

6. I say that as per inquest panchanama one pocket diary was recovered from dead body of my deceased son named Pradip and phone No.1460, 2680/771 and 778256 were written on his pocket diary.

7. I say that as per police p.m. report the death is caused due to crushed injuries.

8. I say that the death report informed me by police on telephone on 31.03.03.

9. I say that the police has registered a merg No.12/03 u.s. 174 Cr.P.C. i.e. accidental death.

10. I say that the claims case is filed as per police report i.e.

spot panchnama, inquest panchnama, post mortem report and telephonic message received from my deceased son named Pradip. That is he was coming by Sevagram Express at Nagpur on 31.03.03.”

(Emphasis supplied)

5. In the case of **Union of India Vs. Rina Devi**¹, the Apex Court in paragraph 17.4 has observed that the mere absence of ticket with an injured or deceased will not negative the claim that he was a bonafide passenger. The Apex Court further goes on to elaborate that the initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and then the burden will shift on the railways. The said paragraph is usefully quoted as under:-

“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 bonafide 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 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 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.”

(Emphasis supplied)

6. It can be seen from the above that the father of the deceased Pradip has filed an affidavit dated 10th March, 2004 where the circumstances in which their son Pradip left for Mumbai on 27th March, 2003 and that he was to travel back to Mumbai from Dadar on 30th March, 2003 and reach Nagpur on 31st March,

1 AIR 2018 SC 2362

2003 are stated on the basis of the information that he left with his father before leaving for Mumbai and also pursuant to the telephone message that was received by neighbour that he would be arriving on 31st March, 2003 by Sevagram Express. This affidavit in my view is an affidavit containing relevant facts. Once this affidavit was filed, the burden to rebut the contents thereof fell on the railway administration. However, neither by way of a proposition nor by way of an affidavit nor any other evidence have these facts been rebutted or controverted by the railways. The contents of the affidavit are therefore proved.

7. The Apex Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar and ors.**² has clearly observed that since the provision for compensation in the Railways Act is a beneficial piece of legislation, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, if there are two interpretations to the expression ‘accidental falling of a passenger from a train carrying passengers’, the interpretation which advances the object of the statute and serves its purpose should be preferred. Further, the Hon’ble Supreme Court has observed 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. The Apex Court also goes on to observe that by giving a restrictive and a narrow meaning

2 2008(20 T.A.C. 777(S.C.)

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. In other words, a purposive and not literal interpretation should be given to this expression. In fact the Hon'ble Court goes on to observe that if the accident has not occurred because of any of the reasons mentioned in the proviso to the said section, being clauses (a) to (e) of section 124A, then the case would be clearly covered by the main body of the section 124A and the dependents would be entitled to compensation as section 124A lays down strict liability or no fault liability in case of railway accidents and therefore, it is wholly irrelevant as to who was at fault. Paragraphs 11, 14, 16 and 17 of the said decision are usefully quoted as under :-

“11. No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the later of the above mentioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh Vs. Union of India (2003) 4 SCC 524(para 9), B.D.Shetty Vs. CEAT Ltd. (2002) 1 SCC 193 (para 12), Transport Corporation of India Vs. ESI Corporation (2000) 1 SCC 332 etc.

14. In our opinion, 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 bonafide 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.

16. The accident in which Smt. Abja died is clearly not covered by the proviso to 124A. The accident did not occur because of any of the reasons mentioned in clauses (a) to (e) of the proviso to Section 124A. Hence, in our opinion, the present case is clearly covered by the main body of Section 124A of the Railways Act, and not its proviso.

17. Section 124A lays down strict liability or no fault liability in case of railway accidents. Hence, if a case comes within the purview of Section 124A it is wholly irrelevant as to who was at fault.”

8. The spot panchnama, the memo issued by the Station Master, Dahegaon, the inquest panchnama all clearly indicate that Pradip died due to a railway train accident. Admittedly, from the aforementioned documents it appears that the position from chest middle portion was crushed badly in pieces and also from head to chest. There were two pieces from middle portion of the legs; the left hand cut badly and right hand got injured due to ballast; the left hand was lying about 30 steps near the down loop-line. In the post mortem report it is mentioned that all the viscera and organs (stomach, small intestine, large intestine, liver, pancreas and suprarenal, spleen, kidneys, bladder, organ of generation) vanished due to the crushing and the post mortem report opined that the death was due to crush injuries. It is quite clear that such a ghastly

accident resulting in such an extensive damage and destruction of the entire body could have resulted by an impact of a speeding train. There is an observation by the Tribunal that an accident due to high speed train would be a run-over and not a case of accidental fall from the train. I am afraid that argument of the railways may not always be true. From the circumstantial evidence which includes the affidavit of the father of the deceased as well as the spot panchnama, the inquest panchnama, the post mortem report, it is quite clear that Pradip was hit by a train and he died in a train accident after he would have fallen down from the Sevagram Express that he was travelling in. Assuming for a moment that Pradip was hit by a high speed train and even though it would be a case of a run-over, even then this would be a case of an untoward incident going by the exposition of the said expression of accidental falling by the Apex Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar and ors.** (supra). In view of the above discussion, the observations of the Tribunal as contained in the impugned order or the contention of the Railways on that basis cannot be sustained.

9. I am therefore of the view that Pradip was a bonafide passenger who died in an untoward incident. His parents-the appellants are entitled to compensation under section 124A of the Railways Act.

10. In view of the above, it would not be necessary to deal with the

judgments cited as the same are clearly distinguishable on facts as well as in view of the aforesaid findings.

11. It is observed from page 1 of the Memorandum of Appeal that the name of appellant No.1 has been deleted. In this view of the matter, the appellant No.2 would be entitled to the entire compensation payable under section 124A of the Railways Act.

12. The impugned judgment and order dated 15th June, 2017 passed by the Railway Claims Tribunal, Nagpur in case No. 27/O.A.II/RCT/NGP/2004 rejecting the claim for compensation from the respondent-railway on account of the death of their son Pradip purportedly in an untoward incident on 30th March, 2003 is hereby set aside.

13. The appellant would be entitled to a claim of Rs.8,00,000/- (Rupees Eight Lakhs Only) as compensation in accordance with the prevailing law.

14. The Railways are directed to pay the appellant a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) to be deposited in her savings bank account, subject to verification of her identity and bank details within a period of six weeks.

14. Appeal stands allowed in the above terms. Parties to bear their own costs.

(ABHAY AHUJA, J.)