

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

FIRST APPEAL NO. 604 OF 2018

- APPELLANTS:** 1. Pornima wd/o Mahadeo Chittewar
(Ori. Applicants) Aged 33 years, Occu: Household work
On R.A.
2. Ku. Shraddha d/o Mahadeo Chittewar,
Aged about 12 years, Student.
3. Sainath s/o Mahadeo Chittewar,
Aged about 10 years, Student
4. Om s/o Mahadeo Chittewar,
Aged about 7 years,
- Nos. 2 to 4 minors through
Next friend/guardian mother appellant
No.1 Smt. Pornima wd/o Mahadeo
Chittewar,
5. Yashodabai w/o Madhukar Chittewar,
Aged about 55 years,
Occu: Household work.
6. Madhukar s/o Mahadu Chittewar,
Aged about 65 years, Occu: Labourer,
All residents of Opposite Power Loom
Shed No. 1, Basmat Nagar, Tq. Basmat
Nagar, Distt. Hingole.

...VERSUS...

RESPONDENT
Ori. Respondent.
On R.A.

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

Mr C.A. Joshi, counsel for the appellants.
Ms N.G. Chaubey, counsel for the respondent.

CORAM : URMILA JOSHI-PHALKE, J. .
DATE : 17/04/2023

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 30/06/2016 passed by the learned Member (Judicial), Railway Claims Tribunal, Nagpur Bench, Nagpur in OA (Ilu)/NGP /2012/0252. The Tribunal by the impugned judgment has dismissed the application of the appellants for compensation.

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

The appellant No.1 is the widow and appellant Nos. 2 to 4 are the minor children of the deceased. The deceased - Mahadeo Madhukar Chittewar had been to Shegaon for attending the Darshan of Lord Gajanan Maharaj on 09/12/2011. On 13/12/2011, he was intending to return back to his home. He was a permanent resident of Basmat Nagar. Therefore, he has to reach at Akola, and therefrom, he has to change the train and board the train going towards Basmat, by purchasing the railway ticket No. 47869221 from Shegaon to Akola and boarded the train. He was on a continuous journey from 09/12/2011. He was very much tired, and

due to that as he was sleeping and he could not alight from the train at Akola and reached at Nagpur. Thus, he over travelled his journey up to Nagpur. He awake only at Nagpur when the train was about to reach at Nagpur Railway Station. While alighting from the train, he fell down from the running train and sustained injuries and his body was cut into pieces.

3. As per the contention of the claimants as the deceased fell down accidentally from a running train and sustained injuries and died on the spot. Therefore, claimants are entitled to claim the compensation as the death of the deceased was caused in an untoward incident.

4. The said application is strongly opposed by the railway by filing a written statement and denied the contention of the appellants. As per the contention of the railway, no ticket was found on the person of the deceased when his dead body was found. He was not a bonafide passenger as he was not holding a valid ticket to travel up to Nagpur. Moreover, the death of the deceased is caused due to his own negligence, and therefore, claimants are not entitled to receive any compensation and prayed for dismissal of the petition.

5. The tribunal for the reasons recorded in the impugned judgment, dismissed the claim application. It is held by the Tribunal that the deceased was not a bonafide passenger. Moreover, the death of the deceased is not caused in an untoward incident but he was run over by the train, and therefore, the claimants are not entitled to

receive the compensation and rejected the claim of the claimant.

6. I have heard learned counsel Mr C.A. Joshi for the claimants. He submitted that admittedly, the deceased had obtained the ticket from Shegaon to Akola but due to tiredness, he travelled up to Nagpur as he was in deep sleep. Suddenly, he awoke and realized that he reached at Nagpur. While alighting from the train, he fell down and sustained injuries. He submitted that merely because the deceased was not having a ticket to travel up to Nagpur is not sufficient to hold that he was not a bonafide passenger.

7. In support of his contention, he placed reliance in the case of *Ratta wd/o Subhash Meshram Vs. Union of India 2023(1) Mh.L.J. 375*. He further submitted that the deceased died in an untoward incident due to the falling from the train, his body cut into pieces. There is no evidence adduced by the railway to show that the deceased was run over by the train either while he was crossing the track, he committed suicide or his death is due to the dashed by the train. The claimants discharged the burden by the filing affidavit by stating the relevant facts and therefore, the railway is liable to pay compensation.

8. Per contra, learned counsel Ms N.G.Chaubey for the respondent submitted that admittedly deceased was not having a valid ticket to travel up to Nagpur. The dead body of the deceased was cut into pieces, which is sufficient to show that the deceased was run over the train while he was crossing the track. Therefore, the claimants are not entitled to receive the compensation and hence,

the Railway Claims Tribunal rightly rejected the claim and no interference is called for.

9. After hearing both the sides and after perusal of the evidence on record, the following point arises my consideration.

Whether the Railway Claims Tribunal is justified in rejecting the compensation to the claimants?

10. The first and foremost question which arises for consideration is, whether the deceased was a passenger within the meaning of Clause (29) of Section 2 of the Railway Act, 1989. As per this definition, "passenger" means a person travelling with a valid pass or ticket. This definition presupposes that a person who undertakes a journey must travel with a valid ticket or pass. A person who was travelling without a valid ticket pass or a ticket cannot be recorded as a passenger in terms of clause-29 Section 2 of the Railway Act. Chapter-III of the Railways Act contains provisions regarding the carriage of passengers. Section 55 is a prohibition against the travelling without pass or ticket. Sub-Section 1 of Section 55 states that no person shall enter or remain in any carriage of a Railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket. Thus Section 55 clearly prohibits travelling without a pass or ticket. Thus, the person who wants to enter or remain in any carriage on the railway for the purpose of travelling therein as a passenger, he must have a valid ticket.

11. Thus, the definition of the passenger in view of the

Clause-29 of the definition in Section 2 of the Railway Act is so clear which shows that for coming within the definition of passenger, the person has to obtain the ticket i.e. also a valid ticket.

12. In the present case, it is specific case of the claimants that deceased was holding a ticket from Shegaon to Akola but as he was in the deep sleep, he travelled upto Nagpur. Thus, he was not having the ticket to travel up to Nagpur. The railway Administration has also carried out the investigation. The DRM Report is on record which shows that the victim was having ticket up to Akola only but his dead body was found at Nagpur Railway Station and hence the victim is not a bonafide passengers of the railway. So, there is no dispute that the deceased was having a ticket up to Akola but he travelled up to Nagpur. The claimants had adduced her evidence and she has also supported the said fact. Thus, it is crystal clear that deceased namely Mahadeo purchased a valid ticket for travelling from Shegaon to Akola. He boarded in a train but as he was in the sleep, he over travelled up to Nagpur. He realized the said fact at the Nagpur Railway Station. However, while alighting from the running train, he met with an untoward incident and sustained the injuries. On the date of journey, the deceased became a victim of an untoward incident, The Railway's Act is benevolent and beneficial legislation. The Hon'ble Apex Court has held in *Union of India vs Prabhakaran Vijaya Kumar and others reported in 2008 (9) SCC 527*, 'it is well settled 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'. By referring to the various earlier judgments, it is further held that the principles of statutory constructions are well settled. 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 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 person 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.

13. In the light of the above principals, the evidence in the present case is to be appreciated. There is no dispute that deceased was travelling in a train by holding a valid ticket up to the Akola. Keeping in mind the facts of this case, it is common knowledge that the passengers, having valid journey ticket board a wrong train or

under some mistaken impression; illiteracy and panic leads a passenger holding a valid travel ticket to board a wrong train; of course the possibility of purposely boarding a wrong train for convenience without a proper ticket cannot be ruled out.

14. In such view of the matter, merely because he did not have a valid ticket beyond Akola Railway Station, it cannot be held that he was not a bonafide passenger. Mistakenly he over travelled and therefore, the claimants cannot be deprived from getting the compensation. This aspect is already considered by this Court in the case of ***Ratta Subhash Meshram V/s Union of India*** (supra) wherein also this Court has held that merely because the passenger did not have a valid ticket beyond Kamptee Railway Station where the train does not have a scheduled halt, the claimants cannot be deprived of from compensation. Accordingly, this Court has held that deceased is a passenger within meaning of Clause (ii) of the Explanation to Section 124-A of the Railways Act.

15. Another contention raised by the Railway is that the dead body of the deceased was cut into the pieces which is sufficient to show that the deceased has not died in an untoward incident but he died as train was run over on him. As per the contention of the claimants, deceased fell down from the running train and sustained injuries. Therefore, the claimants are entitled to receive the compensation. The claimant No.5 Yashodabai entered into the witness box and deposed before the Court. Besides her oral evidence, she relied upon the Marg report, Spot Panchanama etc. She is cross-examined at length. During her cross-examination, she

admitted that she was not travelling along with the deceased and she was not witness of the incident. Her evidence further reveals that the deceased has left the home prior to four days of the incident and she has no personal knowledge about the incident. On behalf of the railway also one Anil Nagre, aged about 54 years was examined. As per the his evidence, he received the information that at Howrah End of platform no. 6, one person is run over and the dead body is lying on the track. He immediately went to the spot. During cross-examination, he admitted that he did not visit the spot of incident. Thus, no other evidence is adduced by the railway.

16. As already observed that Railway ticket which is at A-82 shows that the deceased was having a valid railway ticket up to Akola. Mistakenly he over travelled up to Nagpur. It is already held that merely because deceased was not having a ticket to travel up till Nagpur is not sufficient to deprive the claimants from claiming the compensation.

17. 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 :

(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, 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.

18. Now by considering the definition of untoward incident, it is to be seen whether the deceased was travelled by train which carrying the passenger. There is no dispute that deceased was having a valid ticket to travel up to Akola. The claimants have proved on the basis of the affidavit that he travelled up to Nagpur mistakenly. The DRM report filed on record which also shows that the deceased was having a valid ticket to travel up to Akola. The railway ticket which is produced on record also support the same facts. The observation of the railway administration while conducting the inquiry is sufficient to show that the deceased had obtained the railway ticket to travel from Shegaon to Akola. In view of the said report and in view of the judgment of this Court, it is already held that the deceased was a passenger within the meaning of Clause (iii) of Clause 29 of Section 2 of the Railway Act.

19. In so far as the issue regarding untoward incident is concerned, the death of the deceased is caused and dead body was cut into the pieces. As per the contention of the learned counsel for

the railway - Ms N.G. Chaubey, that deceased has died as the train run over on him. As per the evidence of the claimant, the deceased met with an untoward incident when he was travelling in the train, as he fell down and sustained the injuries.

20. Learned counsel Ms N.G. Chaubey vehemently submitted that the dead body of the deceased was cut into the pieces which is sufficient to show that the deceased was run over by the train while either crossing the track or due to the accidental dash by the another train. Admittedly, there is no eye witness to the incident. During the cross-examination, nothing is revealed as none of the claimants have witnessed the incident. The railway administration come to the conclusion only on the basis of that the dead body of the deceased was cut into the pieces. The conclusion of the learned member of the Tribunal that nature of injuries shows that it is the case of the deceased coming under the wheels of train is once again misconceived conclusion. To decide whether the accident is by fall from the train or injuries were on account of a person being run over by the train, the facts of the present case to be seen, it is not unknown that a body may badly cut or crush after falling from the train, either on account of bonafide passenger fell down on the place of the incident and thereafter, in the railway track or the other equipment of the train, in which he was travelling or that the deceased on account of fall from the train dashed against various equipments of the railways which are joined to the tracks, such as poles, signals, wires etc. Therefore, the facts of the present case, the observation of the Tribunal that the death of

the deceased is not possible by falling from the train merely because he was cut into pieces is completely unjustified.

21. As observed in the present case, there is no evidence to show that the deceased was crossing the railway track and therefore, he was run over by coming under the train. On the contrary the evidence that the railway ticket found shows that deceased was having the ticket to travel up to Akola. The reason that he travelled up to Nagpur mistakenly is supported by the affidavit filed by the claimants. The Hon'ble Apex Court in the case of ***Union of India V/s Rina Devi reported in 2018 (3) PAC 26***, as held that initial burden will be on the claimants which can be discharged by filing an affidavit of the relevant facts and burden then will shift on the railways and the issue can be decided on the facts shown or attending the circumstances. Thus, the evidence of the claimants is supported by the circumstances that the deceased has to travel up to Akola but mistakenly he over travelled and reached at the Nagpur when he realized that he reached up to the Nagpur while alighting from the train he sustained injuries as he fell down from the train.

22. The next contention placed by the railway administration is that the act of the deceased alighting from the running train is covered under the self inflicted injury. Now, it is settled law in view of the judgment of the Hon'ble Apex Court in ***Union of India V/s Rina Devi*** referred (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 intention to

inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principles of contributory negligence which cannot be done in the case of liability based on 'no fault' theory. The Hon'ble Apex Court has referred the earlier decision in ***United India Insurance Co. Ltd., vs Sunil Kumar and others 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 Vehicles 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 contributing factor.

23. Here, in the present case, admittedly initial onus is discharged by the claimants by adducing reliable evidence, whereas Railway Administration fail to prove that the deceased has sustained injury while crossing track or has attempted to commit suicide. As such, I have no hesitation to hold that the burden shifted on the railway administration is not discharged by them. The claimants have proved that the deceased was a bonafide passenger and his death was caused in an untoward incident.

24. Learned Advocate Ms Chaubey vehemently submitted that the claimants are not entitled for any interest on the compensation amount. The Hon'ble Apex Court in the case of ***Union of India V/s Rina Devi*** (supra) has dealt the said aspect of interest. It is further clarified by the Hon'ble Apex Court in the case

of *Union of India V/s Radha Yadav reported in (2019) 3 SCC 410*, wherein it is held that the judgment of this Court in *Rina Devi* is very clear that what this Court is laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall firstly calculated. If the amount so calculated is less then the amount prescribed as on the date of the award the claimants would not be entitled to higher of this amount.

25. Thus, in view of the observations, the claimants are entitled to receive the compensation which is highest. After calculating the amount i.e. Rs. 8,00,000/- is the highest amount and therefore, claimants are entitled to receive the highest amount of compensation without any interest.

26. In view of the above discussion, the appeal deserves to be allowed by setting aside the judgment and order passed by the Railway Claims Tribunal, Nagpur. In the result, I proceed to pass the following order.

- (1) The First Appeal is **allowed**.
- (2) The judgment and award dated 30/06/2016 passed by learned Member Railway Claims Tribunal, Nagpur in Claim Application No. OA (IIu) /NGP/2012/0252 is hereby quashed and set aside.
- (3) The respondent/Railway Administration is directed to pay the amount of compensation Rs.8,00,000/- to claimants within a period of 60 days from the date of

receipt of copy of the judgment.

- (4) On depositing the amount, the claimants are entitled to receive the compensation equally to the claimants with accrued interest.

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

JUDGE

RKN