



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

FIRST APPEAL NO.297 OF 2010

The Union of India,
General Manager,
South Central Railway,
Secunderabad (A.P)

APPELLANT

(original Respondent on RA)

// VERSUS //

Corrected the
name of
respondent as
per Court's
order dated
01/09/2023.

Smt. Sulochana @ Alka w/o
Pundlikrao Totawar, Alias
Mrs. Alka Padmakar Swami
Age 41 Years, Occ. Service,
R/o. Pawan Plaza, Renuka Builder,
Flat No.S/8, Pawan Nagar,
Malegaon Road, Nanded,
Taluka and District Nanded.

RESPONDENT

(original Applicant on RA)

Ms. Neerja G. Chaubey, Advocate for appellant.
Mr. D. S. Lambat, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/04/2023

ORAL JUDGMENT

1. Present appeal is preferred by the Union of India, through General Manager, South Central Railway, Secunderabad, by challenging the Judgment and Award passed by the Railway Claims Tribunal, Nagpur in Claim Application No.:QA(llu) No.40/2008 dated 31.07.2009, by which the compensation

amount of Rs.4,00,000/- was granted to the claimant along with interest at the rate of 9% per annum from the date of order till realization.

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

On 06.11.2007, the son of the applicant/claimant namely, Kiran who was travelling from Nanded to Bhokar by Nandigram Express bearing No.1401. As per the allegation, on 06.11.2007 deceased Kiran and his mother came to Nanded Railway Station. Deceased Kiran went on the Platform No.2 and his mother remained on Platform No.1. Deceased Kiran boarded in Train No.1401 Nandigram Express. The mother of the deceased had seen the deceased while boarding in the train and train started moving. Deceased Kiran who was standing at the door step of the Bogie of the said train to see off his mother. There was sudden jerk to the said running train and he fell down from the train, came under the wheel of the running train and died on the spot. The Railway journey ticket was in the pocket of the deceased which was lost in the said accident. Thus, as per the contention of the applicant, the death of the deceased is

caused in an untoward incident, therefore, the applicant who is the mother of the deceased is entitled for the compensation.

3. In response to the notice, the Railway Administration has contested the application on the ground that deceased was not a *bona fide* passenger of the train. Moreover, the death of the deceased is caused due to his own negligence and, therefore, the phrase of self-inflicted injury is attracted against the deceased and, therefore, applicant is not entitled for any compensation.

4. The claimant has adduced her evidence before the learned Tribunal. Besides her oral evidence, she placed reliance on police papers i.e. merg report, spot panchamam, Inquest Panchnama, Postmortem Report as well the report furnished by the Investigating Agency of the Railway Administration.

5. To rebut the evidence of the claimant, the Railway has adduced the evidence of R-1 Bapurao Hemlal who was the Express Guard and R-2 i.e. Sheshrao Ganpat Kadam who was the Railway Driver. The learned Railway Claims Tribunal after

appreciating the evidence held that the death of the deceased is caused in an untoward incident and awarded the compensation of Rs.4,00,000/- to the claimant.

6. Being aggrieved and dissatisfied with the Judgment and Award passed by the Railway Claims Tribunal, the present appeal is preferred by the Railway Administration on the ground that the deceased was not a *bona fide* passenger as no ticket was found with the deceased. The further ground raised by the Railway is that, the deceased himself was negligent as after several instructions, he attempted to board in a moving train, slipped, sustained injuries and died on the spot. Thus, proviso (b) of Section 124-A of the Railways Act is applicable. In view of the proviso (b) deceased died due to the self-inflicted injury and, therefore, claimant is not entitled for any compensation which is not considered by the Railway Claims Tribunal and awarded the compensation which is illegal and erroneous one.

7. Heard learned Advocate Ms. Neerja Chaubey for the appellant – Railway. She submitted that the circumstances which are appearing on record itself is sufficient to show that the

deceased himself was negligent while boarding in the train, therefore, the proviso (b) of Section 124-A of the Railways Act is attracted and the claimant is not entitled for any compensation. She vehemently submitted that, every case is to be appreciated in its own facts and circumstances of the case. Here the fact and the circumstances of the case shows that deceased himself was negligent, was not a *bona fide* passenger and, therefore, claimant is not entitled to receive any compensation.

8. Per contra, learned Advocate Mr. Lambat, for the respondent/claimant submitted that mere negligence of the deceased is not sufficient to attract proviso (b) of Section 124-A. This aspect is dealt by the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** reported in **2018 (3) T.A.C. 26 (S.C.)** wherein Hon'ble Apex Court has held that mere negligence of the deceased is not sufficient to attract self-inflicted injuries for attracting the self-inflicted injuries the intention of the deceased is to be proved. It is further held by the Hon'ble Apex Court that initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and thereafter, burden will then shift on the

Railways and the issue can be decided on the facts shown or the attending circumstances. He further submitted that merely because the ticket was not found along with the deceased is not sufficient to hold that he was not a *bona fide* passenger. In an untoward incident there is every likelihood of missing of the ticket and, therefore, to hold that injured or deceased was not a *bona fide* passenger, the Railway Administration has to adduce the evidence. The Hon'ble Apex Court has held in **Rina Devi** (supra) that mere absence of ticket with the deceased is not sufficient to hold that deceased was not a *bona fide* passenger and this fact will not negative the claim that he was a *bona fide* passenger.

9. Heard both the sides. Perused the record with the able assistance of the learned Advocates for the parties.

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

Section 123(c)

[(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.]

11. After coming into the merits of the present case, the claimant has come with a case that she along with the deceased had been to the Nanded Railway Station. Deceased boarded in the train by approaching Platform No.2. He boarded in the train bearing No.1401 and she has witnessed while the deceased was boarding in the train. Deceased was standing on the foot step of the Bogie, suddenly train started moving and due to the jerk deceased thrown out of the train sustained injuries. As he fell

down from the train and died on the spot, as he came underneath of the wheel of the train.

12. To substantiate the contention, claimant stepped into the witness box and narrated about the alleged incident. She is cross-examined at length. During her cross-examination, she admitted that her son attempted to board in a moving train. Her evidence further shows that deceased was standing at the door of the compartment of the train and gave her sign. However, she denied that deceased fell down from the train due to his own negligence. Besides oral evidence, claimant placed reliance on merg report, Spot Panchnama Exh.A87 and Exh. A89, Inquest Panchnama Exh. A92. The recitals of the merg report also shows that when deceased was attempting to board in the train he slipped and fell down from the train and sustained injuries as he came underneath the wheels of the train and died on the spot. The spot panchnama supports the said contention.

13. To rebut the evidence of the claimant, Railway Administration has adduced the evidence of RW-1 Bapurao Hemlal who was the Express Guard on Purna, Nanded Division.

As per his evidence, he was Guard on Train No.1401 Nandigram Express on 06.11.2007 from Purna to Adilabad. One passenger while boarding in moving train came under the wheels of the train and he has witnessed the said accident. He admits during the cross-examination that train was started or departed from Nanded Station, the said person fell down from the moving train. Another witness RW-2 Sheshrao Ganpat Kadam who was the Railway Driver has also supported the said contention that one person came under the wheels of the train and it was informed to him that while entering in the train he fell down and sustained the injuries. Thus, the sum and substance of the evidence of the claimant as well as the evidence of the witnesses on behalf the Railway Administration shows that deceased who was boarded in the train sustained the injuries as he fell down and died on the spot.

14. It is necessary to consider that the compensation claimed by the claimant is under the beneficial or welfare statute. The Hon'ble Apex Court in case of **Union of India Vs. Prabhakaran Vijaya Kumar and others** reported in **2008 ACJ 1895** held that a purposive construction of an enactment is

required to be taken into consideration. It is further held 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 accident. It is well-known that in our country there are crores of people who travel by the 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 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 a 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.

15. In the light of the above well settled principle the facts and circumstances of the present case are to be appreciated.

16. The Railway Administration has raised the issue that deceased was not a *bona fide* passenger. The oral evidence of the claimant shows that the deceased has obtained the ticket and he was intending to travel by the Nandigram express, therefore, he approached to the Platform No.2 and was about to board in the train, but he fell down and sustained the injuries and died on the spot. The Railway Administration carried out the investigation and submitted its report vide Exh.A54. The RPF report also shows that the deceased was attempting to board in the train from Platform No.2, he slipped, sustained injury and died on the spot. Thus, RPF report is also sufficient to show that as deceased was attempting to board in the train and in that attempt, he fell down and sustained the injuries.

17. So far as, the issue regarding the *bona fide* passenger is concerned, admittedly no train ticket was found along with dead body of the deceased. This aspect is already dealt by the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** referred supra. The Hon'ble Apex Court held that mere absence of the ticket is not sufficient to negate the claim of the claimant that deceased was a *bona fide* passenger. There is

every possibility that ticket may have lost or missing in an untoward incident. Here in the present case, mere absence of the ticket is not sufficient to hold that deceased was not a *bona fide* passenger. The Railway Administration has not carried out any inquiry to ascertain whether deceased was travelling without the ticket. The Railway Tribunal had considered this fact appropriately and held that deceased was a *bona fide* passenger.

18. Admittedly, RW-1 is the eye witness of the incident as well as claimant is also eye witness of the incident. They both have stated that deceased was attempting to board in the train and in that attempt he slipped, fell down from the train and sustained the injuries. Initial burden will be on the claimant which can be discharged by filing affidavit of the relevant facts and burden will then shifts on the Railways and the issue can be decided on the facts shown of the attending circumstances. Now it is well settled by the Hon'ble Apex Court judgment 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. Here though Railway Administration has adduced the evidence

of RW-1 i.e. Bapurao Hemlal but his evidence nowhere shows that after several instructions deceased attempted to board in the train. His evidence is only to the extent that one passenger while boarding in moving train, slipped and fell down and sustained the injuries. The evidence of the claimant also shows that deceased was attempting to board in the train and he slipped as he was standing on the foot step came under the wheels of the train and sustained the injuries. Thus, there is no evidence that either deceased has attempted to board in the train though he has received repeated instructions, but he ignored the same and boarded in the train. There is no evidence that deceased attempted to commit suicide or he was dashed by any train while crossing the railway track. Thus, in view of the observations of the Hon'ble Apex Court 'self-inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree is sufficient to attract the self-inflicted injury. It is further held by the Hon'ble Apex Court that 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 Hon'ble Apex Court has referred its earlier judgment in **United India Insurance Co. Ltd. Vs. Sunil Kumar**

reported in **2017 (13) SCALE 652** which laying down that plea of negligence of the victim cannot be allowed in a claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold 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 124A merely on the plea of negligence of the victim as a contributing factor.

19. As far as the contention of the Railway is concerned, that deceased was negligent however, the onus which was shifted on the claimant is discharged by the claimant by filing affidavit of examination-in-chief of relevant facts. A negative onus cannot be placed on the Railways. Onus to prove that deceased or injured was a *bona fide* passenger can be discharged even in absence of a ticket, if relevant facts are shown that ticket was purchased but it was lost. The evidence of the claimant shows that deceased has purchased the ticket and it was with him. The possibility that the ticket might have lost or destroyed in an untoward incident cannot be ruled out. Initial burden is discharged by the claimant by filing an affidavit of relevant facts

and, thereafter, burden will shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. Here the evidence of the claimant is sufficiently shows that deceased has obtained the ticket and was intending to travel by Nandigram Express therefore, he boarded in the train and while boarding in the train, he fell down and sustained the injuries. Thus, the contention of the Railways that the deceased was not a *bona fide* passenger and deceased died due to the self-inflicted injuries is not acceptable. It is sufficiently established by the claimant that deceased was a *bona fide* passenger and he sustained injuries and died on the spot in an untoward incident.

20. Furthermore, on failure of the appellant to discharge its burden to prove and establish that the present matter falls under the proviso below Section 124-A of the Railways Act 1989, railway cannot escape from liability and shall be liable to pay compensation on account of the death of the deceased.

21. Hence, in the light of the above observations, I have no hesitation to hold that there is no merit in the present appeal,

the learned Tribunal has not committed any error in law while allowing the claim petition and granting compensation to the tune of Rs.4,00,000/- vide impugned judgment and award.

22. At this juncture, learned Advocate Mr. Lambat, for the respondent argues that in view of the notification dated 22nd December 2016 the respondent is entitled for compensation of Rs.8,00,000/-. In view of the notification dated 22nd December 2016 which came into effect from 01.01.2017. The claimant is entitled to receive the compensation of Rs.8,00,000/-. As far as the contention of the learned Advocate for the respondent regarding the rate of interest is concerned, in view of the judgment of the Hon'ble Apex Court in case of **Union of India Vs. Radha Yadav** reported in **(2019) 3 SCC 410** wherein the Hon'ble Apex Court has held that the issue raised in the matter does not really 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 accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these two amounts.

23. Accordingly, the Judgment and Award passed by the learned Railway Claims Tribunal, Nagpur dated 31.07.2009 is modified and thereby appellant is directed to pay compensation of Rs.8,00,000/- (Rs. Eight Lakhs only) to the respondent within a period of 60 days from the date of receipt of the copy of the judgment.

24. The respondent is not entitled to receive any interest.

25. The appeal is accordingly disposed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)