

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

FIRST APPEAL NO. 918 OF 2022

APPELLANTS:
(Ori. Applicant)
On R.A.

1. Balaji Gangaram Warkad,
Aged 46 years, Occu: Labour.
2. Vanita Balaji Warkad,
Aged about 41 years,
Occu: Household.
Both r/o Telangwaid, Post Usman
Nagar, Tahsil Kandhar,
District Nanded-431702

...VERSUS...

RESPONDENT
On R.A.

Union of India,
through General Manager,
South Central Railway, Secunderabad

Mr Deven Lambat, counsel for the appellants.
Mrs Suhasini N. Deshpande, counsel for the respondent.

<u>CORAM</u>	: <u>URMILA JOSHI-PHALKE, J.</u>
<u>DATE OF RESERVE</u>	: <u>27/03/2023</u>
<u>DATE OF DECISION</u>	: <u>05/06/2023</u>

ORAL JUDGMENT :

1. The appellants have filed this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 read with Section 96 of the Code of Civil Procedure challenging the judgment and award dated 31/08/2022 passed by the learned Railway Claims Tribunal, Nagpur in OA (IIu)/NGP/14/2020 by which the claim of the

claimants is dismissed by the Tribunal.

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

On 31/10/2019, the deceased was travelling from Nanded to Pune by Train No. 17614 Nanded - Panvel Express along with his friend namely Sahebrao Ramchandra Warkad after purchasing a journey ticket. When the said train started from Nanded Railway Station, the deceased accidentally fell down from the running train and sustained grievous injuries, and during treatment he died in the hospital at Nanded on 10/11/2019. As per the contention of the claimants, the deceased who had purchased a valid ticket and was travelling by the train Nanded Panvel Express met with an accident and died in an untoward incident. Being deceased was a bonafide passenger and his death is caused in an untoward incident, the claimants are entitled for compensation.

3. In response to the notice, the respondent/railway contested the claim by filing a written statement. The respondent/railway denied that the deceased was possessing a valid journey ticket and he was a bonafide passenger. As per the contentions of the railway, the deceased was not travelling by train No.17614 Nanded Panvel Express. The deceased knowingly and deliberately tried to board the empty rake of Train No. 17614, when the train was shunted to platform No. 2 of Nanded Railway Station. During this criminal act, the deceased fell down and stuck in the gap of the platform train and later on died in the hospital. Thus, the

death of the deceased is not caused in an untoward incident and therefore, the claimants are not entitled for any compensation.

4. To substantiate the contention, claimant No.1 -Balaji Ganaram Warkad adduced his evidence vide Exhibit No. A-118. The claimants have also examined Sahebrao Ramchandra Warkad, who was travelling along with the deceased. Besides oral evidence, the claimants placed reliance on Marg Report, Spot Panchanama, Inquest Panchanama etc. During the investigation, the Railway Ticket was also found along with the deceased. The said Railway Ticket was verified and it revealed that it was issued at Nanded Railway Station to travel up to Pune. The cash against the said ticket was received of Rs. 333/-. The railway administration has also adduced the evidence by examining Chandan Pal s/o Suresh Pal, working as pointsman at Nanded Railway Station, and Vivek Kumar s/o Anil Kumar- Station Master at Nanded Railway Station, to prove that the deceased died due to his own negligence.

5. The learned Tribunal after appreciating the evidence held that the deceased sustained the injuries, due to his own negligence, and therefore, the claimants are not entitled to receive any compensation and rejected the claim.

6. Being aggrieved and dissatisfied with the judgment and order passed by the Railway Claims Tribunal, the present appeal is preferred on the ground that the Railway Claims Tribunal, erroneously held that the deceased died due to self inflicted injury. Admittedly, the ticket was found along with the deceased which was

confirmed and evidence which came on record sufficiently shows that the deceased was bonafide passenger. The alleged incident occurred when the deceased fell down while boarding in the train is also covered under the untoward incident. Mere negligence of the deceased is not sufficient to negate the claim of the claimants. Thus, the Railway Claims Tribunal ignored the legal position and arbitrarily rejected the claim of the claimants.

7. Heard learned counsel Mr Deven Lambat for the appellant. He reiterated the said contentions and submitted that the finding of the ticket with the deceased which was verified by the Railway Administration shows that the deceased was a bonafide passenger. Admittedly, the death of the deceased is caused when he was trying to board in the train which is also covered under the untoward incident.

8. 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 (S.C.)*. He submitted that in view of the judgment of the Prabhakaran (supra) a liberal approach is to be taken while considering the claim of the compensation under beneficial legislation. In the case of *Union of India Vs Rina Devi*, the Hon'ble Apex Court held that the initial burden is on the claimants to prove that the deceased was a bonafide passenger which is to be discharged on the basis of the affidavit of the relevant facts which is discharged by the claimants. There is no evidence that the deceased either committed suicide or dashed by any other train

therefore, only inference can be drawn that the deceased sustained the injuries in an untoward incident. Hence, the claimants are entitled for compensation.

9. Per contra, learned counsel Ms N.G.Chaubey for the respondent vehemently submitted that the deceased was not a bonafide passenger. Moreover, the death of the deceased is caused due to his own negligence as he attempted to board a running train, and the deceased sustained injuries as he fell down while boarding the running train. This evidence sufficiently shows that the death of the deceased is caused due to his own negligence. Therefore, the railway administration is not responsible for the said accident and is not liable to pay compensation.

10. Having heard both the sides and on perusal of the evidence on record, the following points arise for my consideration and I answer the same as follows:-

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

11. To substantiate the contention that the death of the deceased is caused in an untoward incident when he was travelling from Nanded to Pune in a Nanded - Panvel Express No. 17614. The deceased while boarding in the train fell down and sustained injuries and died. The claimant- Balaji Gagaram Warkad stepped into the witness box and narrated the occurrence of the accident. Admittedly, he is not an eyewitness of the incident. PW- 2- Sahebrao Ramchandra Warkad, was travelling along with the

deceased, his evidence shows that he obtained one railway ticket, bearing No. 30576748 of Rs. 333/- for travelling from Nanded to Pune by Nanded to Panvel Express train No. 17614 for himself and the deceased. They both boarded in the train Nanded to Panvel Express Train. The deceased was attempting to board the train at that time, he fell down and sustained injuries and while taking treatment succumbed to the death. Besides the oral evidence of these witnesses, the claimants placed reliance on Marg Report, Spot Panchanama, Inquest Panchanama, PM Report etc. The Railway Administration has also carried out the investigation and DRM Report is filed on record.

12. To rebut the contention of the claimants, the railway administration has examined Shri Chandan Pal s/o Suresh Pal, who was the pointsman of Nanded Railway Station, Central Railway, and Vivek Kumar s/o Anil Kumar Gupta.

13. As far as the issue regarding the valid ticket is concerned, the claimants have adduced the evidence of PW-2-Sahebrao Ramchandra Warkad, who was travelling along with the deceased his evidence shows that he purchased the ticket for himself and the deceased and boarding in the train, deceased fell down and sustained injuries. Thus PW-2 Sahebrao Ramchandra Warkad is not only the witness on the issue of bonafide passengers but also on the issue of untoward incidents. Admittedly, PW-1 Balaji Gangaram Warkad who is the father of the deceased is not the eyewitness of the incident. He narrated the occurrence of the incident, on the basis of information received by him. Though he is cross-examined

but nothing incriminating came on record. He denied that the death of the deceased is caused due to self inflicted injuries. PW-2 - Sahebrao Ramchandra Warkad, is the eye witness who had purchased the ticket for the deceased and himself. His evidence further shows that when the deceased boarded the train and was standing near the door of the compartment, the train has a sudden jerk, due to which the deceased fell down from the train and sustained injuries. His evidence during cross-examination shows that he himself purchased the ticket from Booking Clerk. He denied the suggestions of the Railway Administration that, the deceased died due to his own negligence. The claimants placed reliance on the First Information Report, Spot Panchanama etc. These documents also support the contention of the claimants, that deceased was travelling by the Nanded Panvel Express by boarding the train, he lost his control and sustained injuries, and died on the spot. Regarding the said accident, the railway administration has also carried an investigation. The investigation report which is called as DRM report is also filed on record. The communication i.e. Note dated 29/09/2021 also shows that while boarding the train, the deceased fell down and sustained injuries, and subsequently succumbed to the death. The DRM report also supports the said contention and shows that while boarding the train, the deceased fell down and sustained injuries. The evidence of the witnesses of the Railway Administration namely Chandan Pal Suresh Pal also shows that the deceased was attempting to board the train, he fell down from the train and sustained injuries..

14. As per the evidence of RW-1, on 31/10/2019 when he was on duty, brought empty reck Train No. 17614 Panvel Express from Yard to Platform No.2 of Nanded Railway Station. Accordingly, he went to guard the empty reck of train No. 17614, at that time, the Loco-Pilot of the empty reck train asked the loco-pilot to back the said empty reck train and he was continuously blowing the whistle. At the relevant time, he heard shouting of the people to stop the empty reck of the train as some person fell down. He immediately informed the incident to the loco-pilot. Another witness Vivek Kumar Anil Kumar Gupta is on the point that he received information from the pointsman that some person while trying to board the empty train fell down and sustained injuries. Thus, the evidence from the railway administration also shows that the deceased while boarding the train, lost his control, sustained injuries, and died on the spot.

15. As far as the issue regarding the bonafide ticket is concerned, the evidence of the claimant as well as evidence of PW-2 Sahebrao Warkad shows that the said Sahebrao Warkad himself has purchased the railway ticket. The said ticket was produced during the investigation. The verification report of the railway administration shows that the said ticket was issued for two adults from Nanded Railway Station on 31/10/2019 at about 16:20:53. The oral evidence of PW-2 is supported by the verification report which shows that the said ticket was issued for two persons from Nanded Railway Station. The verification report is at Exhibit A-74 also shows that the ticket was issued from the Nanded Railway

Station. The communication dated 16/02/2020 also shows that ticket No. 30576748 was issued from Nanded Railway Station to travel from Nanded to Pune. The railway ticket is at Exhibit-81. Thus, the evidence on record sufficiently shows that the PW-2 has obtained the ticket and the deceased and PW-2 were travelling by the ticket, which was a valid ticket, therefore, the contention of the railway that the deceased was not a bonafide passenger is not sustainable. The initial onus is always on the claimants and said onus can be discharged by the claimants on the basis of affidavit on relevant facts. Thereafter, the onus shifts on the railway. Admittedly, the railway has not adduced contrary evidence to show that deceased was not a bonafide passenger. Thus, on the basis of available evidence on record. The irresistible conclusion can be drawn that the deceased was a bonafide passenger.

16. The defence raised by the railway is that the death of the deceased is caused due to the self inflicted injury. The evidence of the claimants, as well as the evidence of the railway witness, shows that while boarding the train deceased fell down and sustained injuries and while taking treatment, succumbed to the death. The DRM Report as well as the investigation report also shows that while boarding the train, the deceased fell down and sustained injuries. As per the contention of the railway, the death of the deceased is caused due to his own negligence, and therefore, the railway administration is not responsible for the said accident. The definition of an untoward incident is defined in Section 123 (C) of the Railways Act, 1989.

17. 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."

18. Now, by considering the definition of the untoward incident, there is no dispute that the deceased was a bonafide passenger. There is also no dispute that while boarding in the train, deceased fell down and sustained the injuries. The expression accidental falling of passenger from a train carrying passengers in Section 123 C of the Railway Act has wider meaning. The Hon'ble Apex Court, in the case of *Union of India Vs Prabhakaran Vijaya Kumar and others reported in 2008 ACJ 1895* held that '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 the various judgments, the Hon'ble Apex Court 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 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 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 fell down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression.

19. In light of the above principles, the evidence of the present case is to be appreciated. There is no dispute that the deceased was travelling in a train by holding a valid ticket. It is also not disputed that the deceased fell down from the train while

travelling and sustained injuries and succumbed to death.

20. Now the only question that arises is whether the Act of the deceased is covered under the self inflicted injuries. The Hon'ble Apex Court in the case of ***Union of India V/s Rina Devi reported in 2018 (3) TAC 26*** held that for attracting the provision of Section 124 A of the Railway Act, the intention of the person who have self inflicted injuries is to be proved. The Hon'ble Apex Court in the said judgment in para-16 held that self inflicted injury would require the intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principals of contributory negligence which can not be done in the case of liability based on 'no fault theory'. The Hon'ble Apex Court has referred its earlier decision in ***United India Insurance Company V/s Sunil Kumar reported in (2017) 13 SCALE 652***, wherein it is laid down that the plea of negligence of the victim cannot be allowed in a claim based on 'no fault theory' under Section 163-A of Motor Vehicles Act, 1988 and it is held that death or injury in the course of boarding or de-boarding the 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 the negligence of the victim as a contributing factor.

21. Admittedly, there is no evidence on record to show that the deceased with an intention to cause self inflicted injuries either attempted to commit suicide or was crossing the railway track. The evidence shows that while boarding the train, he fell down and sustained injuries which is indisputably covered under the

definition of an untoward incident.

22. In the light of the above evidence, the claimants are entitled to receive compensation as the deceased died in an untoward incident. The railway Tribunal had not considered these aspects and arbitrarily rejected the application. Admittedly, the alleged incident has taken place on 31/10/2019 i.e. after the notification dated 22/12/2016. Therefore, the claimants are entitled to receive the compensation of Rs.8,00,000/- along with the interest @ Rs. 6% per annum from the date of the application till the realization of the amount. Under these circumstances and in view of the discussions, I proceed to pass the following order.

- (1) The First Appeal is **allowed**.
- (2) The judgment and order dated 31/08/2022 passed by learned Railway Claims Tribunal, Nagpur in Claim Application No. OA (IIu) /NGP/14/2020 is hereby quashed and set aside.
- (3) The respondent/Railway Administration is directed to pay the amount of Rs.8,00,000/- towards the compensation along with interest @ 6% per annum from the date of the application. The respondent/Railway Administration shall deposit the amount within three months from the date of receipt of a copy of this judgment.
- (4) The amount of compensation be apportioned

equally to the claimant Nos. 1 and 2 equally.

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

JUDGE

RKN