

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

FIRST APPEAL NO.39 OF 2023

1. Smt. Gokarna wd/o Balaji Borkar,
Aged 43 years, Occ. Household
2. Ankita Balaji Borkar,
Aged 13 years, Occ. Education
3. Seema Balaji Borkar
Aged 09 years, Occ. Education

(2 and 3) Minor under guardianship
of her mother Smt. Gokarna wd/o
Balaji Borkar
4. Shri Gyanoji s/o Kachraji Borkar,
Aged 70 years, Occ. Nil
5. Smt. Suryakanta w/o Gyanoji
Borkar
Aged 73 years, Occ. Education
All R/o. Village Korta,
Tahsil : Basmat Nagar,
District : Hingoli - 431512

...APPELLANTS

VERSUS

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

...RESPONDENT

Shri D.S. Lambat, Advocate for the appellants.
Shri S.A. Chaudhari, Advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 17, 2023.

ORAL JUDGMENT :

Heard.

2. **ADMIT.**

3. Present appeal has been preferred by the original claimants challenging the judgment and award passed by the Railway Claims Tribunal, Nagpur in Claim Application No.OA(Ilu)/NGP/36/2020 dated 31/08/2022 wherein the claim for compensation filed by the claimants came to be dismissed (parties are hereinafter referred as per their original nomenclature before the Tribunal.)

4. Present claimants (appellants) are the original claimants who are the widow and children of the deceased filed an application for grant of compensation on account of death of Balaji Gyanoba Borkar who died in an untoward incident on 22/06/2019 while he was travelling in train bearing No.17642 from Narkhed - Kacheguda. The deceased was travelling by obtaining the valid ticket from Hingoli to Basmat. As per the contention of the claimants, deceased was travelling on 22/06/2019 from Hingoli to Basmat by train bearing No.17642 Narkhed - Kacheguda Intercity Express by obtaining the valid ticket. When the said train

reached at Chondhi railway station at km No.916/9 to 917/0 due to the jerk to the train he fell down on the track, sustained injuries and died on the spot. Thus, the contention of the claimant is that the deceased accidentally fell down and sustained injuries and died on spot. As the death of the deceased was caused while travelling in the train as a *bona fide* passengers, hence, they are entitled to receive the compensation from the railway. The respondent-railway contested the claim on the ground that the deceased died due to the self inflicted injuries as he jumped from the train. He was not *bona fide* passenger, and therefore, railway is not liable to pay compensation.

5. The learned Tribunal has recorded the evidence and after appreciating the evidence, came to the conclusion that as the deceased died as he jumped from the train, thus it is self inflicted injury and hence claimants are not entitled to receive any compensation. Further it is held by the Railway Claims Tribunal that the deceased was not the *bona fide* passenger hence, claimants are not entitled to receive any compensation.

6. Being aggrieved and dissatisfied with the judgment and award passed by the Railway Claims Tribunal, present appeal is preferred on the ground that the learned Tribunal has not considered

that the deceased was travelling by the train as a *bona fide* passenger as train ticket was found along with the deceased. Moreover, there is no evidence on record to show that the deceased jumped from the train. The burden is discharged by the claimants by filing affidavit of evidence however, the railway has not rebutted the evidence of the claimants by discharging the burden thus, the claimants are entitled to receive the compensation. The judgment passed by the Tribunal is erroneous and liable to be set aside.

7. Heard Shri Lambat, learned Counsel for the claimants. In support of his contention he placed reliance on DRM report Exhibit A-35 and submitted that this report is filed after due investigation by the railway administration which shows that when dead body was found at the time of inquest report, the valid ticket was found along with the deceased thus, the contention of the Railway is that the deceased was not *bona fide* passenger is not sustainable. He further invited my attention towards the DRM report wherein in concluding remark it is mentioned that the deceased died as he fell down from the train. Though the Railway administration has denied the liability of the Railway but it is mentioned that the deceased died as he fell down from the train. He further submitted that the claimants have discharged the burden by adducing the oral evidence on record which is not

shattered during the cross-examination. On the other hand, the Railway has not adduced any evidence to prove that it is self-inflicted injury due to which deceased died. Thus, the observation of the Railway Claims Tribunal deserves to be quashed and set aside.

8. Per contra, Shri Chaudhari, learned Counsel for the Railway submitted that there was no halt at Chondhi Railway Station, therefore, the question regarding alighting or boarding in the train does not arise. It is further submitted that the statements recorded during the investigation clearly states that it was the deceased who jumped from the train, therefore, he sustained injuries. Thus, the deceased has died due to self-inflicted injury, therefore, Railway administration is not liable to pay the compensation. He supported the observation made by the Railway Claims Tribunal and submitted that the appeal is devoid of merits and liable to be dismissed.

9. Heard rival submissions of the parties. Perused the evidence on record and following points arise for my consideration :

(i) Whether the Railway Claims Tribunal is justified in dismissing the claim for the compensation of the claimants.

10. Perused the application and record with the able assistance of the learned Counsel of both the sides. To substantiate the claim,

claimant – Smt. Gokarna Balaji Borkar stepped into the witness box and reiterated the contentions as per her pleadings in the claim petition. The sum and substance of her evidence is that on 22/06/2019 her husband Balaji with his brother by name Ganesh came to Hingoli railway station. Deceased Balaji in the presence of his brother Ganesh obtained one railway ticket from Hingoli railway station and was travelling from Hingoli to Basmat by Narkhed-Kacheguda Intercity Express train No.17642. The valid ticket was found along with the deceased at the time of the inquest panchnama. The dead body of her husband found near the Chondhi railway station near km 916/9 to 917/0. She submitted that as the train had a jerk due to which he fell down on the track sustained injuries and died on the spot. She is cross-examined at length. During her cross-examination it came on record that she personally did not witnessed the incident. She admitted that train No.17642 Narkhed-Kachiguda Intercity Express having no scheduled halt at Chondhi railway station.

11. In support of the contention brother of the deceased namely Ganesh Gyanobaji Borkar is also examined who had also supported the fact that in his presence the deceased had purchased the ticket from Hingoli railway station and was travelling from Narkhed-Kacheguda Intercity Express train No.17642 for travelling upto Basmat. Though he

is cross-examined at length nothing incriminating is elicited from his cross-examination. Thus, the evidence of both these witnesses shows that the deceased was travelling by Narkhed-Kacheguda Express by obtaining the valid ticket. Besides, the oral evidence, the claimants also relied upon the police papers including FIR, spot panchnama and inquest panchnama. There is no dispute that while drawing the inquest panchnama, the valid railway ticket was found along with the deceased and it was seized by the police. The spot panchnama shows that the dead body of the deceased was found on the track towards the southern side at a distance of 100 feet from Pole No.917/0. The post-mortem report is also on record which shows that the death of the deceased is caused due to the head injury.

12. On behalf of Railway none is examined by the Railway administration to support the contention that the deceased died due to self-inflicted injuries. Thus, only evidence available on record is the evidence of the claimants and brother of the deceased.

13. Before entering into the merits of the case, it is necessary to see the definition of untoward incident :

Section 123(c) of the Railways Act, 1989 defines 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; 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.

14. Now by considering the definition of the untoward incident it is to be seen whether the deceased was travelling by the train which was carrying the passenger and whether he was holding valid ticket, and therefore, he was a bona fide passenger. As regards the contention of the Railway is concerned, the deceased was not a bona fide passenger is not substantiated by any other evidence. The DRM report Exhibit A-35 itself shows that at the time of drawing the inquest panchnama, railway ticket was found bearing No.APB15152373 along with the deceased. Therefore, the contention of the railway that the deceased was travelling without ticket is not sustainable. The finding of the ticket with the dead body itself is sufficient to show that the deceased was *bona fide* passenger. The initial burden lies with the claimants to show that deceased was holding valid ticket is discharged by the claimants on the basis of the inquest panchnama and DRM report which is filed by the

Railway administration itself is showing that the deceased was found along with the railway ticket, therefore, the contention of the Railway that he was not *bona fide* passenger is not sustainable. Therefore, I have no hesitation to hold that the deceased was bona fide passenger.

15. So far as the issue regarding the untoward incident is concerned, the investigation report of the Railway is on record which also shows that the death of the deceased is caused due to falling down from the train. Though it is contended by the Railway that the deceased jumped from the train and he sustained the injuries and died on the spot, the act of the deceased covers under the self inflicted injury which is caused due to the negligence by the deceased himself. The Railway administration relied upon the statement of one namely Surendra Dongare-Pointsman however, the DRM report itself shows that the Station Master has received the information from Surendra Dongare-Pointsman only to the extent that one person aged about 35 years fell down from the train. Thus, the contention of the Railway that the deceased sustained the injury as he jumped from the train is also not substantiated by any cogent and reliable evidence. This Surendra Dongare is also not examined by the Railway.

16. Before commenting on the evidence regarding the untoward incident it is necessary to see the principle laid down by the Hon'ble

Apex Court in the case of *Union of India Vs. Prabhakaran Vijaya Kumar & Ors., 2008 ACJ 1895*, wherein the Hon'ble Apex Court 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 various judgments 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 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.

17. In the light of the above principles, 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. Though Railway administration has come with a case that the deceased jumped from the train but it is not substantiated by the cogent and reliable evidence. Only the question arises whether the act of the deceased standing at the interest covered under the self-inflicted injury. Whether it covered under the self-inflicted injury or not is dealt by the Hon'ble Apex Court in the case of ***Union of India Vs Rina Devi 2018 (3) T.A.C. 26 (S.C.)*** wherein it is held 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. The Hon'ble Apex Court in the said judgment in paragraph No.16 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 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 the earlier decision in ***Union of India Vs Sunil Kumar 2017 (13) SCALE 652*** wherein it is laid down that plea of negligence of the victim cannot be allowed in claim based on 'no

fault theory' under Section 163A 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 124A merely on the plea of negligence of the victim as a contributing factor.

18. In the present case, admittedly, initial onus lies upon the claimants to show that there is a death due to untoward incident of a *bona fide* passenger. That burden is already discharged by the claimant by adducing reliable and cogent evidence. The law only expects that the claimants who has to discharge the burden on the basis of preponderance of probability by filing affidavit. Here not only the affidavit of the claimants but the claimants have adduced the evidence of a brother of the deceased who witnesses the deceased purchasing the ticket. The DRM report filed by the railway administration on the basis of investigation carried out by them also supports the case of the claimants. Thus, onus is discharged by the claimants. The claimants have proved that the deceased was a *bona fide* passenger and died in an untoward incident when he was travelling by Narkhed – Kacheguda Express, as a passenger.

19. The learned Tribunal has wrongly come to the conclusion merely observing that the claimants failed to prove that the deceased

was a *bona fide* passenger and died in an untoward incident. In the light of the above evidence and as per the above discussion the claimants are entitled to receive the compensation as deceased died in an accident (untoward incident).

20. In the light of above evidence and as per the above discussion, the claimants are entitled to receive compensation as deceased died in an accident/untoward incident. Initially, the Railway Tribunal was liable to pay compensation to the tune of Rs.4,00,000/- on the death. However, Ministry of Railway by Notification dated 22nd December, 2016 enhanced the compensation for death to the tune of Rs.8,00,000/-. Their petition claiming compensation was filed after the said notification, the untoward incident also has taken place after the notification. Therefore, said notification is applicable in the present case. In view of the Notification, the claimants are entitled to receive compensation at the tune of Rs.8,00,000/- along with the interest at the rate of 6% from the date of application till the realization of the amount. Hence, I proceed to pass following order :

- (i) The appeal is allowed.
- (ii) The respondent-Railway is directed to pay amount of Rs.8,00,000/- towards the compensation along with

interest at the rate of 6% per annum from the date of application.

(iii) The respondent-Railway shall deposit the said amount within three months.

(iv) Appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*