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

FIRST APPEAL NO.49 OF 2020

1. Smt.Pustakala wd/o Namdev Pahune,
Aged about 45 years, occupation seasonal worker.

2. Ruchika Namdev Pahune,
Aged about 12 years, occupation education.

3. Nishika Namdev Pahune,
Aged about 10 years, occupation education.

4. Himanshu Namdev Pahune,
Aged about 9 years, occupation education.

Applicant Nos.2, 3, and 4 are minor hence
through their natural guardian i.e. Mother
Smt.Pustakala wd/o Namdev Pahune
All are r/o Post Hanuman Nagar, Tumsar,
District Bhandara.

..... **Appellants.**

:: V E R S U S ::

Union of India,
Through the General Manager,
South East Central Railway (SECR), Bilaspur,
(Chattisgarh).

..... **Respondent.**

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Ms L.Y.Malewar, Counsel for Appellants.
Mrs.N.G.Chaubey, Counsel for the Respondent.

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CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **17/02/2023**

ORAL JUDGMENT

1. By this appeal, appellants (claimants) challenge judgment and order dated 9.7.2019 passed by learned Member of the Railway Claims Tribunal, Nagpur in Case

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No.OA/llu/NGP/RCT/109/2018 whereby learned Member rejected claim of claimants.

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

On 3.5.2017, Namdev (deceased), the husband of appellant No.1 (the claimant), was travelling by Gondia-Barauni Express to Umariya along with 50 other persons including contractor Bharat Doma Lanjewar. On 4.5.2017, 50 persons got down at Umariya. However, as he failed to get down, he reached next station and got down at Lorha. He purchased a ticket to return to Umariya. While boarding in train MEMU Katni-Bilaspur Express, he slipped due to jerk and was pushed and he came under wheels of the train and died. As per contentions of the claimant, the death of the deceased was caused in an untoward incident which took place on 4.5.2017 while boarding in train MEMU Katni-Bilaspur Express. The claimants are legal heirs of the deceased and they are entitled to receive compensation.

3. The respondent/Railway Administration resisted the claim on the ground that the deceased was not *bona fide*

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passenger. Moreover, the deceased fell down due to his own negligence and, therefore, the death of the deceased was caused. Hence, the respondent/Railway Administration is not responsible to pay any compensation to claimants. Learned Member of the Tribunal recorded evidence and after hearing both sides, came to conclusion that claimants failed to prove that the deceased purchased the ticket from Lorha Railway Station to reach Umariya Railway Station and while boarding in train MEMU Katni-Bilaspur Express, he slipped due to jerk and was pushed and he came under wheels of the train and died in an untoward incident. Learned Member of the Tribunal also observed that claimants failed to prove that the deceased was *bona fide* passenger in the said accident and, therefore, claimants are not entitled for compensation from the respondent/Railway Administration.

4. Being aggrieved and dissatisfied with the judgment and order passed by learned Member of the Tribunal, the present appeal is preferred by claimants, who are legal heirs of the deceased, on the ground that the deceased died in an untoward incident when he was attempting to board in train MEMU Katni-Bilaspur Express. Investigation report regarding

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investigation carried out by the railway officials itself shows that the deceased met with an untoward incident while he was attempting to board in train MEMU Katni-Bilaspur Express. Though DRM Report is placed on record, learned Member of the Tribunal has not considered the same and wrongly rejected claim of claimants. The judgment and order impugned in the appeal is erroneous and against principles of law and, therefore, the same be quashed and set aside.

5. Heard learned counsel Ms L.Y.Malewar for claimants and learned counsel Mrs.N.G.Chaubey for the respondent/Railway Administration. With their able assistance, I have gone through record and proceedings of the case.

6. Learned counsel Ms L.Y.Malewar for claimants submitted that the deceased was *bona fide* passenger. Claimants have led evidence by examining appellant No.1. DRM Report itself is sufficient to show that the deceased met with an untoward incident when he was boarding in train MEMU Katni-Bilaspur Express. Merely because Railway Ticket was not found along with the deceased, the same is not sufficient to hold that the deceased was not *bona fide* passenger. Admittedly, burden is on the claimant to prove that the deceased was *bona fide*

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passenger. However, the said burden is discharged by the claimant by placing on record an affidavit of evidence. Though the claimant is cross-examined, nothing is elicited during cross-examination. The documents placed on record show that railway officials have carried out investigation and DRM Report filed on record shows that the deceased died due to slip while boarding in the train. Thus, the evidence on record shows that the deceased met with an untoward incident.

7. *Per contra*, learned counsel Mrs.N.G.Chaubey for the respondent/Railway Administration submitted that the claimant failed to prove that the deceased was *bona fide* passenger. She submitted that neither the Railway Ticket was found with the deceased nor the same was produced by the claimant. The claimants also failed to prove that the deceased was travelling in train MEMU Katni-Bilaspur Express and met with an untoward incident. Thus, in the absence of the evidence, claimants are not entitled for any compensation.

8. Having heard learned counsel for parties and perused material on record, point arises for my determination is, as under:

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"whether learned Member of the Tribunal is justified in rejecting the claim of claimants for compensation".

9. As per contentions of the claimant, on 3.5.2017 the deceased was travelling by Gondia-Barauni Express to Umariya along with 50 other persons including contractor Bharat Doma Lanjewar. On 4.5.2017, 50 persons got down at Umariya. However, as he failed to get down, he reached next station and got down at Lorha. He purchased a ticket to return to Umariya. While boarding in train MEMU Katni-Bilaspur Express, he slipped due to jerk and was pushed by the train and he came under wheels of the train and died. To substantiate the said contention, the claimant adduced evidence by examining herself who stepped into witness box by filing an affidavit of examination-in-chief and narrated about the alleged incident. She is cross-examined at length and during cross-examination she admitted that she is not eyewitness of the incident. She specifically stated that her relatives informed her about the incident. It has further come on record during her cross-examination that the spot of the incident is far away from her village. She further stated that her husband travelled along with a contractor for seasonal work i.e. collecting Tendoo Patta.

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10. Besides the oral evidence, the claimant relied upon police papers including merge report and First Information Report, and spot panchanama etc..

11. To rebut the evidence led by the claimant, the respondent/Railway Administration also led evidence by examining Rajendra Prasad Yadav working as Station Master at Lorha Railway Station. As per his evidence, his duty hours were from 8:00 hours to 16:00 hours. Gondia-Barauni Express has no scheduled halt at Lorha Railway Station. He justified that the said train passed through platform No.2 Lorha Railway Station at 11:32 hours. Katni-Bilaspur Train No.68748 arrived at Lorha Railway Station at 16:00 hours on platform No.1. The said train departed at 16:15 hours and after the train started, the Guard of the train informed that an unknown person was run over on line No.1 Lorha Yard at kilometer No.987/6-8 and, thereafter, the Guard and Loco Pilot issued a joint memo stating that someone man aged about 32 years run over on line No.1 near yard kilometer No.987/6-8. He made the entry in the Station Master Diary and informed the same to Section Controller, GRP, RPF, and Local Police. He further stated that as the train has already crossed the dead body, which was lying on the track, he

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instructed the Loco Pilot to proceed further. During his cross-examination, he denied all suggestion on behalf of the claimant. It is elicited from his cross-examination that Train Katni-Bilaspur Express halted from 15 minutes at Lorha Railway Station. He was not personally present at the spot at the time of the incident.

12. The respondent/Railway Administration has also examined another witness namely Dinesh Ramavtar Singh serving as Passenger Guard in Katni-Bilaspur Train No.68748. As per his evidence, the train arrived at Lorha Railway Station at 15:57 hours on platform No.1 and departed at 16:18 hours. When the train was departing from Lorha Railway Station, he received an information that someone was run over. He immediately stopped the train. He visited the spot of the incident and saw that an unknown person was lying and was cut into two pieces. During his cross-examination, he admitted that he had not personally witnessed the incident. He further admitted that he only came to know that one person was lying run over due to shouting of passengers. He further explained that run over of a persons means the deceased coming under wheels or getting dashed by the train.

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13. Beside the oral evidence, the respondent/Railway Administration has also produced on record DRM Report. Recital of the DRM Report shows that the deceased came under wheels of the train when he was attempting to board in the train. It is specifically mentioned in the DRM Report that the deceased died due to his own negligence while he was attempting to board in the train. Thus, the respondent/Railway Administration denied the claim of the claimant only on the ground that the deceased was not *bona fide* passenger and he sustained injuries due to his own negligence.

14. Before appreciating the evidence in the present case, it is necessary to see the definition of "untoward incident" defined under Section 123(c) of the Railways Act, 1989, which reads thus:

**"Section 123(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

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(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.”

15. 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 *bona fide* passenger. Admittedly, no Railway Ticket was found with the deceased and, therefore, it is contention of the Railway Administration that as neither the Railway Ticket was found with the deceased nor it was produced by the claimant, the same itself is sufficient to show that the deceased was not *bona fide* passenger. The Honourable Apex Court in the case of Union of India vs. Rina Devi, reported in 2018(3) TAC 26 (SC) held that the initial onus lies with appellants/claimants to show that deceased was holding valid ticket. However, mere absence of ticket with such injured or deceased will not negate the claim that he was a *bona fide* passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the

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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 Court in the case of Dalit Tukaram Mudkhede vs. Union of India, reported in 2019 BOM CR 444 has also considered this issue and held that merely because the ticket was not found on the dead body of the deceased, will not infer that she had no ticket. It is also held that there is every possibility that ticket can be misplaced during "untoward incident" or while boarding or alighting from train.

16. Here, in the present case, evidence of railway official shows that the train arrived at Lorha Railway. When the train was departing from Lorha Railway Station, he received an information that someone was run over. He immediately stopped the train. He came to know that one person was lying run over due to shouting of passengers. As such, it is crystal clear that the deceased was intending to travell in the train and while boarding in the train, he slipped due to jerk and was pushed by the train and came under wheels of the train as a result of which he sustained injuries and died.

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17. Thus, the evidence on record sufficiently shows that the deceased was attempting to catch the train and while boarding, he slipped and came under wheels of the train.

18. Before commenting on the evidence regarding the "untoward incident" it is necessary to see the principle laid down by the Honourable Apex Court in the case of Union of India vs. Prabhakaran Vijaya Kumar & ors., reported in 2008 ACJ 1895, wherein the Honourable 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, the Honourable 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

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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.

19. Learned counsel Mrs.N.G.Chaubey for the Railway Administration vehemently submitted that the evidence of the claimant is not sufficient to show that the deceased died in an "untoward incident." She further submitted that even if contentions of the claimant is taken as it is, the deceased has sustained self inflicted injuries and due to the self inflicted injuries he fell down and died on the spot. She further submitted that thus the act of the deceased covers under Section 124-A of the Railways Act, 1989. The DRM Report

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placed on record by the Railway Administration shows that the deceased was attempting to board the train and he fell down and sustained injuries and died.

20. Now, only question arises as to whether the act of the deceased, boarding the train and coming under wheels of the train, covers under the self inflicted injury. Whether the said act covers under the self inflicted injury or not is dealt with by the Honourable Apex Court in the case of Union of India vs. Rina Devi, cited *supra*. It is held that for attracting provisions of Section 124-A of the Railways Act intention of the person to have 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 principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. The Honourable Apex Court has referred the earlier decision in the case of United India Insurance Co. Ltd. vs. Sunil Kumar, reported in 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

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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.

21. Here, in the present case, admittedly, initial onus lies with the claimant to show that there is a death due to the "untoward incident" of a *bona fide* passenger and that burden is discharged by the claimant by adducing reliable evidence. The law only expects that claimant/s to discharge the burden on the basis of preponderance of probability by filing affidavit. Here, the claimant has filed affidavit and the claimant's evidence is tested by cross-examining witnesses. Thus, onus is discharged by the claimant. Not only the evidence of the claimant but also DRM Report and evidence of R-2 Dinesh Singh serving as Passenger Guard in Katni-Bilaspur Train No.68748 show that while the deceased was attempting to board the train, he slipped and fell down from the train and sustained injuries and died.

22. Thus, there is an ample evidence on record to show that the death of the deceased was caused in an "untoward incident". Learned Member of the Tribunal has wrongly come to

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conclusion that the claimant failed to prove that the deceased died in an "untoward incident."

23. Here, in this case, the "untoward incident" had taken place on 4.5.2017. The fact that deceased was travelling by the train and met with an accident is sufficiently established by the claimant. However, learned Member of the Tribunal has dismissed the claim. The observation of learned Member of the Tribunal that the claimant failed to prove that the deceased was *bona fide* passenger deserves to be set aside in the light of oral as well as documentary evidence.

24. In the light of the above evidence and as per the above discussion, claimants are entitled to receive compensation as the deceased died in an accident/untoward incident. It is vehemently submitted by learned counsel Mrs.N.G.Chaubey for the Railway Administration that in view of the decision of the Honourable Apex Court in the case of Union of India vs. Rina Devi cited *supra*, if claimants are entitled for higher amount of compensation, they would not be entitled for any interest. The Honourable Apex Court had discussed whether claimants are entitled to interest or not and observed that compensation as applicable on the date of the accident has

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to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

25. In the present case, the alleged "untoward incident" has taken place on 4.5.2017. Notification issued by the Railway granting compensation Rs.8.00 lacs was issued on 22.12.2016. The aspect of interest was considered by this Court in the case of Union of India vs. Prabhakar s/o Venkatrao Tadkalaskar and anr, reported in 2020(3) Mh.L.J. 227 and it has been held that in view of Notification dated 22nd December, 2016, respondents are entitled for compensation Rs.8,00,000/- with interest @ 7.5% per annum from the date of filing claim for compensation before the Tribunal till the date of payment. This Court referred the judgment of the Calcutta High Court in the case of Bandana Mishra vs. Union of India reported in 2017 ACJ 2447, wherein, relying upon the said notification dated 22.12.2016, claimants were held entitled to get the compensation of Rs.8,00,000/- with interest 7.5% per annum from the date of lodging of claim till the payment. This Court has also referred the judgment of

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this Court in First Appeal No.924/2010 decided 6th August, 2019, wherein on the basis of said notification dated 22nd December, 2016, compensation of Rs.8,00,000/- was granted.

26. After perusal of observations of the Honourable Apex Court regarding the interest, the Honourable Apex Court, in the case of Union of India vs. Rina Devi cited *supra*, in paragraph No.15.3 of its judgment, observed that learned *amicus* has referred to judgments of this Court in Raman Iron Foundry and Kesoram Industries to submit that quantum of compensation applicable is to be as on the award of the Tribunal as the amount due is only on that day and not earlier. In Kesoram Industries, the question was when for purposes of calculating 'net wealth' under the Wealth Tax Act, 1957 provision for payment of tax could be treated as 'debt owed' within the meaning of Section 2(m) of the said Act. This Court discussing various judgments of the Honourable Apex Court held that once concept of interest has been introduced, principles of Workmen's Compensation Act can certainly be applied and judgment of 4-Judge Bench in Pratap Narain Singh Deo will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of

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the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation. In view of judgment in the case of Prabhakaran Vijaya Kumar cited *supra*, in paragraph No.15.4, the Honouable Apex Court further observed that accordingly we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. The 4-Judge Bench judgment in Pratap Narain Singh Deo (*supra*) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised

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amount with interest, the higher of the two amounts has to be given.

27. Thus, the Honourable Apex Court has held that if amount of compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

28. In the present case, the accident occurred after issuance of the Notification. So, on the date of the untoward incident, claimants were entitled for amount Rs.8.00 lacs. Thus, in the present case, amount Rs.8.00 lacs is not a revised amount. As observed by the Honourable Apex Court that considering mandate of beneficial legislation, as applicable on the date of the accident, reasonable interest has to be given. In view of the notification, claimants are entitled to receive compensation Rs.8.00 lacs along with interest at the rate of 6% per annum from the date of application till the realization of the amount. Hence, I pass following order :

ORDER

(1) The First Appeal is **allowed**.

Judgment

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(2) The respondent/Railway Administration is directed to pay amount Rs.8.00 lacs towards compensation along with interest at the rate of 6% per annum to claimants from the date of application within a period of three months from the date of receipt of writ of this judgment.

The First Appeal stands **disposed** of accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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