



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

FIRST APPEAL NO.56 OF 2023

Shri Bharat s/o Baliram Mohite,
Age 55 years, Occ. Labour,
R/o Main Road Yeota,
Tah. Barshitakli, Dist. Akola – 444401.

APPELLANT

// VERSUS //

Union of India,
Through the General Manager,
Central Railway, CST Mumbai.

RESPONDENT

Mr. Ravindra Bagul, Advocate h/f Mr. Ravi Kumar Tiwari, Advocate for
the appellant.
Mrs. Neerja Chaubey, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/03/2023

ORAL JUDGMENT

1. **Admit.**

2. The present appeal is finally heard with the consent of the
learned counsel for the parties.

3. The present appeal has been filed by the original claimants
challenged the Judgment and Award passed by the Railway Claims
Tribunal, Nagpur in Case No.OA(IIu)/NGP/252/2019 dated 02.09.2022.

4. The facts giving rise to the present appeal can be summarized as under:

The deceased was learning in 12th standard in Maharshi Uttam Swamy Maharaj Junior College, Chincholi (Khurd), Tahsil Rajura, District Chandrapur and was residing at Chandrapur by taking a room on rent. Prior to one day of the incident, on 09.02.2019, the deceased has obtained the Hall Ticket for appearing in the 12th examination scheduled on February/March 2019 from college. On 10.02.2019, he was proceeding to his native place by obtaining the ticket from Chandrapur to Akola by travelling in Ballarshah - Wardha Passenger. His friend Ketan Nandkishor Rarandal R/o Chandrapur has purchased the ticket for him. When he was attempting to catch the train, he slipped and fell down at Chandrapur Railway Station. Thus, he came underneath the train and the train run over his body. He died on the spot. Immediately, the information of the alleged untoward incident was reported to the Railway Administration. Officials of Railway Administration have attended the spot. The deceased was brought to the Government Medical College and Hospital, but he was declared dead. On the basis of the report, NC summary report was registered. The Railway Police drawn the spot panchnama and inquest panchnama. Thus, as per the contention of the claimants, the death of the deceased

was caused in an untoward incident. The claimants are the parents of the deceased. During pendency of the claim, claimant No.1 mother of the deceased died. The claimant No.2 has claimed the compensation.

5. The respondent – Railway has contested the claim application by filing the written statement. As per the contention of the railway, no such incident causing death of the deceased within the meaning of provisions of Section 123(c) read with Section 124-A of the Railways Act has taken place and as such, the claim of the applicants is not maintainable. It is further contention of the railway that the deceased was not a *bona fide* passenger of any train, and therefore the claimant is not entitled for any compensation.

6. After considering the rival submissions of the parties, the Railway Claims Tribunal framed necessary issues. On behalf of the claimant, namely, Bharat s/o Baliram Mohite stepped into the witness box and filed an affidavit of examination-in-chief. Besides the oral evidence, he placed reliance on police papers including spot panchanama, inquest panchnama and DRM report. The respondent – Railway has examined Shalikrao s/o Shri Ramchandra Deogade and Shri Santosh s/o Bajiraoji Kokode in support of contention and also relied

upon the DRM report.

7. After hearing both the sides, the Railway Claim Tribunal rejected the claim of the claimant by observing that the dead body of the deceased was cut into two pieces. The claimant cannot make out the case of compensation because when a person falling from the compartment of the running train will have to go inside the railway track, so as to be subjected for cutting of his body into two parts from the chest, and therefore the case put up by the claimant is unacceptable. The learned Tribunal had not accepted that deceased Nikhil had met with an accident which can be held an untoward incident, and therefore is not liable to pay compensation.

8. Being aggrieved and dissatisfied with the Judgment and Award passed by the Railway Claims Tribunal, the present appeal is preferred by the original claimant on the ground that the observation of the learned Tribunal that as the body of the deceased was cut into two pieces, the claimant is not entitled to claim compensation as the claimant failed to prove that death of the deceased is in an untoward incident. It is further submitted on behalf of the claimant that the deceased was a *bona fide* passenger though ticket was not found along

with the deceased. The non finding of the ticket is not sufficient to held that he was not a *bona fide* passenger. The possibility of missing of ticket cannot be ruled out. Hence, the observations of the Railway Claims Tribunal are erroneous and liable to be set aside.

9. It is further submitted by the learned Advocate for the claimant that the observations of the Tribunal that the applicant neither examined any eye witness who could establish the circumstances under which the death of the Nikhil has occurred nor they stated that there was any eye witness to the incident. The fact that deceased Nikhil died on account of an untoward incident must to be proved by the applicant in order to claim compensation under Section 124-A of the Railways Act. The said observations are also erroneous and liable to be set aside and quashed.

10. Heard learned Advocate Mr. Bagul holding for learned Advocate Mr. Tiwari and reiterated the same contentions, in addition to that, he invited my attention towards the DRM report which also shows that death may be due to the run over the train or due to the felling down from the train. He submitted that thus the Railway Administration is also not clear that death is not due to the felling from the train. The

evidence on record sufficiently shows that deceased was travelling by train and while catching the train, he felled down and met with an untoward incident. Therefore, claimant is entitled for compensation.

11. Per contra, learned Advocate Ms. Neerja Chaubey, for the respondent vehemently argued that the Railway Claims Tribunal has minutely verified the documents and has come to a proper conclusion that the claimant is not entitled for compensation, as the story narrated by the claimant that while catching the train deceased felled down from the train, came underneath the train and train run over him, is not acceptable. Moreover, he was not a *bona fide* passenger, and therefore claimant is not entitled for the compensation. The learned Advocate for the respondent further submitted that mere dead body was found on the track is not sufficient to hold that deceased died in an untoward incident.

12. After hearing both the sides and perusal of the evidence on record, the following points arise for my consideration.

- (i) Whether the Railway Claims Tribunal is justified in rejecting the application of the claimant for compensation?

13. To substantiate the claim, father of the deceased namely, Bharat s/o Baliram Mohite stepped into the witness box testified that his son/deceased was taking education in 12th class in Uttam Swamy Maharaj Junior College, Chincholi. On 09.02.2019, he obtained the Hall ticket for appearing 12th examination. On 10.02.2019, he was coming towards his native place at Akola, and therefore he purchased the ticket Train No.51196 Ballarshah - Wardha Passenger. His friend Ketan has purchased the ticket for him. He run towards the train, as the train has started moving, but while catching the train he slipped and fell down and the train run over on him. Thus, his evidence is that, the death of the deceased is caused in an untoward incident. Therefore, he is entitled to receive the compensation. It came in his evidence that he has not personally witnessed the incident. Police had not handed over any ticket to him. But he denied that deceased was not having valid ticket. He also denied that deceased was not travelling by the train. He further denied that deceased died due to dash by the train.

14. To rebut the evidence of claimant on behalf of the respondent/Railway Mr. Shalikrao s/o Ramchandra Deogade who was working as a Deputy Station Superintendent at Chandrapur Railway Station stepped into the witness box. As per his evidence Train

No.51196 arrived at Chandrapur Railway Station at Platform No.2 on 18.10 hours and departed at 18.13 hours. No one has reported about accidental falling of any passenger from the said train. The said train was not having any alarm chain pulling or any unexpected jerk. He received the information at about 18.15 hours in his Cabin that one unknown person run over by the Ballarsha - Wardha Passenger Train No.51196 at Km No. 876/200-300 towards Wardha end in between platform end of Station and A cabin. Loco Pilot and Guard of train No.51196 or any passengers who were in the train have not informed about any untoward incident of accidental falling down of any passenger from the train. There was no unexpected jerk and rush in train. There was no alarm chain pulling etc. This witness through cross-examined, however nothing is transpired from his cross-examination.

15. The respondent/railway is also examined Mr. Santosh s/o Bajiraoji Kokode who was a Guard who testified that his train arrived at Chandrapur Railway Station at 18.08 hours and departed at 18.11 hours. He was standing in the Guard Brake Van till departure of the train. He has not noticed any passenger falling down while alighting or boarding in a running train from the platform side till complete departure of the train from the platform. During his duty hours no

untoward incident of accidental fall down of any passenger was noticed. This witness is also cross-examined but only suggestions are given and nothing is transpired during his cross-examination.

16. I heard submission of both the parties and perused the judgment of the learned Tribunal. The learned Tribunal come to the conclusion on the basis that applicant has not examined any witness or not stated that there was any eye witness to the incident. It is further observed by the Tribunal that mere finding of dead body or a person in injured condition near the track does not *ispo facto* prove that the said person fell down from the train and came to the conclusion that the claimant is not entitled for any 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:

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.”*

18. If the definition of the untoward incident is perused, it has to be seen whether the deceased was travelling by the train which was carrying the passengers and whether he was holding valid ticket, and therefore he was a *bona fide* passenger. The contention of the Railway is concerned, that the train ticket was not found along with the body. The said train ticket was not found nor it is produced subsequently by the relatives of the deceased. The claimant is also relied upon the DRM report. On perusal of the DRM report, it appears that Railway Administration has conducted the enquiry, recorded the various statements of the witnesses and come to the conclusion that as per the spot panchnama, dead body of the deceased was found near platform Km. No.876/02 which clarifies that deceased was attempting to catch the train from the outskirts of the platform and he slipped due to the losing of balance and came underneath the train and train run over him.

The DRM report further discloses that deceased either died while catching the train. The evidence of railway witness namely, Shalikrao s/o Ramchandra Deogade also shows that the Train bearing No.51196 arrived at Chandrapur Railway Station at Platform No.2 at about 18.10 hours and departed at 18.13 hours. Immediately, thereafter at about 18.15 hours in within three minutes, he received the information that one person was run over by the train No.51196 at Km No.876/200-300. Thus, DRM report as well as the evidence of this witness shows that while the Train bearing No.51196 was proceeding the deceased was run over by the said train. The DRM report clarifies that death of the deceased is caused due to the felling from the train while catching the train. Thus, the evidence on record sufficiently shows that the deceased was attempting to catch the train, he fell down, sustained the injuries and died on the spot. Admittedly, no railway ticket was found along with the deceased. Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** reported in **2018 (3) T.A.C. 26 (S.C.)** held that initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. It is further held that mere absence of ticket with such injured or deceased will not negative the claim that he was a *bona fide* passenger.

Thus, mere affidavit of claimant is sufficient to prove the fact that deceased was a *bona fide* passenger. In the present case, claimant has discharged the said burden by filing an affidavit of the relevant facts. Thereafter, burden will be shifted on the railways. The DRM report which is prepared by the Railway Administration after due investigation also support the case of the claimant that death of the deceased is caused in an untoward incident while catching the train.

19. It is submitted by the learned Advocate Ms. Chaubey for the respondent that the act of the deceased is a negligent act and there was no fault on the part of the Railways. The issue regarding the negligence or the self-inflicted injuries is also dealt by the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** (supra) and it is held by the Hon'ble Apex Court that for attracting self-inflicted injuries the intention on the part of the deceased or the injured is to be proved by the Railway. Mere negligence is not sufficient to attract the self-inflicted injury. The concept of 'self-inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. It is 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 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. It is further held by the Hon'ble Apex Court 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 of Section of 124A merely on the plea of negligence of the victim as a contributing factor.

20. So far as the issue regarding 'untoward incident' is concerned, the DMR report sufficiently shows that the death of the deceased is caused as the deceased was attempting to catch the train, but he slipped and fell down and succumbed to the death. The evidence of Railway witness also shows that within three minutes after departure of the said train, he received the information that one person was run over by the train. Admittedly, there was no any eye witness of the incident. The Railway has not adduced any evidence to show that the deceased has attempted to commit suicide or the train gave dash to the deceased. The Railway has not adduced the evidence to show that while crossing the track deceased was dashed by the train and sustained the injuries and cut into the pieces. Therefore, the conclusion of the learned Tribunal that there was no eye witness examined by the deceased is erroneous and misconceived conclusion.

21. It is vehemently submitted by learned Advocate Ms. Chaubey for the respondent – Railway that from the nature of the injuries that deceased was badly cut into two pieces, is also sufficient to show that these injuries are not possible by falling from the train. It is now known that a body may badly cut or crushed after falling from the train, either on account of *bona fide* passenger getting entangled in the place of the train and thereafter in the wheels or the other equipment of the train in which he was travelling or that the deceased on account of fell down from the train dashed by the various equipment of the railways which are joined to the tracks such as poles, signals, wire etc. Therefore, in the facts of the present case the submission of the learned Advocate that the death of the deceased is not possible by falling from the train merely because he was cut into pieces is completely unjustified.

22. 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 train. Here in the present case, there is also no evidence that deceased has attempted to commit suicide, and therefore he was run over by coming train. On the contrary, the evidence that DRM report, inquest panchnama, spot panchnama shows that the death of the deceased is caused as he was attempting to catch the train. Thus,

the contention of the claimant is also supported by the DRM report. Therefore, the evidence of claimant and the DRM report sufficiently shows that death of the deceased is an 'untoward incident'. The Hon'ble Apex Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar** reported in **2008 ACJ 1895** has held thus:

13. In Hindustan Lever Ltd. v. Ashok Vinshu Kate this Court observed:

41 "In this connection, we may usefully turn to the decision of this Court in Workmen vs. American Express International Banking Corporation wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations: (SCC p.76)

'4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these 6 2008 ACJ 1895 legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in Prenn v. Simmonds). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surrender

Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court we had occasion to say: (SCC p.447, para 6)

"6. ... Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions."

42. Francis Bennion in his *Statutory Interpretation*, 2nd Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

'A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

At p. 661 of the same book, the author has considered the topic of 'Purposive Construction' in contrast with literal construction. The learned author has observed as under:

'Contrast with literal construction - Although the term "purposive construction" is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: "If one looks back to the actual decisions of the [House of Lords] on

questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions". The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."

(emphasis supplied)

23. In the light of the above principles, the evidence in the present is to be appreciated. There is no dispute that deceased was attempting to catch the train. He fell down while catching the train, sustained injuries and succumbed to the death. The burden of the claimants to prove that the deceased died in an 'untoward incident' is discharged by the claimants by filing an affidavit of the relevant facts. Thereafter, burden will shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. The Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** (supra) also held that the initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on

the railways and the issue can be decided on the facts shown or the attending circumstances.

24. The next contention raised by the Railway is also not sustainable, in view of the observation of the Hon'ble Apex Court in the case of **Union of India Vs. Rina Devi** (supra) that for attracting provisions and Section 124A of the Railways Act intention of the person who had sustained self-inflicted injuries 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.

25. By applying the above said principle admittedly the initial burden is discharged by the claimant by adducing reliable evidence. Whereas railway fails to prove that deceased either sustained injury while crossing the track or deceased has attempted to commit suicide. Therefore, I have no hesitation to hold that the burden shifted on the Railway is not discharged by them. The claimant has proved that the deceased was a *bona fide* passenger and his death was caused in an untoward incident.

26. Learned Advocate Ms. Choubey 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 and observed as follows :-

“15.4 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 of the Tribunal, 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. Seeming conflict in Rathi Menon(AIR 2001 SC 1333) (supra) and Kalandi Charan Sahoo (supra) stands explained accordingly. The 4-Judge Bench judgment in Pratap Narain Singh Deo (AIR 1976 SC 222) (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 amount with interest, the higher of the two amounts has to be given.”

27. Learned Advocate for Railway Ms. Chaubey placed reliance on **Union of India Vs. Radha Yadav reported in (2019) 3 SCC 410**, in para No.11 it is held by the Hon'ble Apex Court that the issue raised in

the matter does not really require any elaboration as in our view, the judgment of this in **Rina Devi** is very clear. What this Court has laid is that the amount of compensation payable on the date of accident with reasonable rate of interest that first we calculated. The observation of the Hon'ble Apex Court in Para No.11 is reproduced here for reference.

Para No.11

“11. 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. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs.4,00,000/-. If, after applying reasonable rate of interest, the final figure were to be less than Rs.8,00,000/-, which was brought in by way of amendment, the claimant would be entitled to Rs.8,00,000/-. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs.8,00,000/- the compensation would be in terms of figure in excess of Rs.8,00,000/-.

The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration.”

28. Thus, the Hon'ble Apex Court has held that the 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 amount with interest, the higher of the two amounts has to be given. Here in the present case, the untoward incident has taken place on 10.02.2019 i.e. after issuance of the notification which came into effect on 01.01.2017. The Railway Administration had issued a notification on 22.12.2016 and it came into effect on 01.01.2017. In view of the notification, the claimant is entitled for compensation of Rs.8,00,000/- with interest at the rate of 6% per annum.

29. In view of above discussion, I pass the fallowing order.

30. The First Appeal is allowed.

31. The Judgment and order passed by the learned Railway

Claims Tribunal, Nagpur dated 02.09.2022 is quashed and set aside.

32. The respondent - Railway is directed to pay compensation of Rs.8,00,000/- (Rupees Eight Lakhs only) to the claimant within a period of 60 days from the receipt of the copy of judgment along with interest at the rate of 6% per annum from the date of the application.

**Para No.32
corrected as per
Court order
Dated 26/04/2024**

(URMILA JOSHI-PHALKE, J.)

Sarkate.