

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

FIRST APPEAL NO. 73 OF 2020

APPELLANTS: 1. Shivram s/o Ramchand Titirmare,
(Ori. Appellants) Aged about 60 years, Occu: Nil.
On R.A.
2. Shobha w/o Shivram Titirmare,
Aged about 52 years, Occu: Household.
R/o At: Pardi, Post: Mohgaon Devi,
Tah. Mohadi, District Bhandara.

...VERSUS...

RESPONDENT Union of India,
(Ori. Respondent) through the General Manager,
(On R.A.) South East Central Railway
Bilaspur.

Mr P.S. Mirache, counsel for the appellants.
Ms A.S. Athalye, counsel for the respondent.

<u>CORAM</u>	: <u>URMILA JOSHI-PHALKE, J.</u>
<u>DATE OF RESERVE</u>	: <u>05/04/2023</u>
<u>DATE OF DECISION</u>	: <u>06/06/2023</u>

ORAL JUDGMENT :

1. By this appeal, the appellants/original claimants have challenged the judgment and award passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in OA (IIu)/NGP/0012/2016 dated 29/11/2017, by which the claim of the claimants was rejected by the Tribunal.

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

The claimants, who are the parents of the deceased filed an application for grant of compensation, on account of the death of the deceased -Sudhir s/o Shivram Titirmare in an untoward incident while travelling in Train No.58208 which was a passenger train. On 29/01/2015, the deceased was travelling from Bhandara Road to Nagpur for selling milk by train No.58208 Passenger Train and when the train reached Bhandara Road Railway Station near K.M. No. 1068, the deceased fell down from the running train, due to a jerk in the said train and died on the spot. The deceased was having monthly pass which was valid from 25/01/2015 to 24/02/2015. As the death of the deceased is caused in an untoward incident, the claimants are claiming compensation from the Railway.

3. The respondent/railway has contested the application on the ground that the deceased was not a bonafide passenger. The death of the deceased is caused as he was dashed by another train while he was crossing the track. Thus the death of the deceased is caused due to his own negligence and is not covered under the untoward incident, in view of the provision of Section 123(c) (2) of the Railway Act.

4. To substantiate the contention, the claimants adduced their evidence by examining claimant No.2 -Shobha Shivram Titirmare who narrated that on the day of the incident, the deceased

was travelling by the passenger train bearing No.58208. While travelling the train, he fell down from the train, sustained injuries, and died on the spot. The deceased was having a monthly pass which was valid from 25/01/2015 to 24/02/2015. As the said untoward incident took place on 29/01/2015, he was a bonafide passenger. The death of the deceased is caused in an untoward incident, and therefore, they claimed compensation.

5. Besides oral evidence, the claimants placed reliance on Marg report, Spot Panchanama, Inquest Panchanama, P.M. report etc. On behalf of the Railway, Ramesh Singh s/o Daddusingh Gautam was examined. As per his evidence, he was present as loco-pilot of train No. 58206 Itwari Raipur Passenger Train, no untoward incident has taken place. As per his evidence, when the train was likely to reach the Bhandara Railway Station, one unknown person, who was having milk cans in both his hands, came from the wrong side in front of the train and dashed by the train and died. Thus, as per the evidence of the Railway Administration, the death of the deceased is caused while he was crossing the track, therefore, not covered under the untoward incident. The Railway Administration placed reliance on D.R.M. report which was prepared after the due investigation by the Railway Administration.

6. After appreciation of the evidence, the Railway Claims Tribunal held that the death of the deceased is not caused in an untoward incident, but the death was caused when the deceased was crossing the track and dashed by another train.

7. Being aggrieved and dissatisfied with the judgment passed by the Railway Claims Tribunal, the present appeal is preferred by the appellants on the ground that the Railway Claims Tribunal has misconceived the evidence and erroneously rejected the claim. The Railway Claims Tribunal rejected the claim on the ground that the dead body of the deceased was cut into two pieces and the said injuries are not possible if the passenger falls from the train. The Tribunal further observed that the dead body of a person found in an injured condition does not *ifso facto* proved that said person fell down from the train and rejected the claim which is erroneous and liable to be set aside.

8. Heard learned counsel Mr P.S. Mirache for the appellant he reiterated the contention that the evidence of the claimant sufficiently shows that the deceased was travelling by the passenger train by having pass of the general class and he fell down from the said train bearing No. 58206 - Itwari Raipur Passenger Train, and died on the spot. Merely because the dead body was cut into two pieces is not sufficient to hold that the deceased had sustained injuries as the train run over him. The claimants are entitled to receive the compensation. In support of his contention, he placed reliance on *Sadashiv Ragagppa Kotiyan vs Union of India reported in 2021(2) TAC 391* and *Ranjana Santosh Deotale V/s Union of India reported 2022 (3) ALL MR 30*.

9. Per contra, learned counsel Ms. A.S. Athalye submitted that the entire evidence on record sufficiently shows that the deceased was crossing the track and dashed by the train. The death

of the deceased is caused by the train running over him. On the basis of evidence, the Railway Claims Tribunal rightly come to the conclusion that the death of the deceased is not caused in an untoward incident. Therefore, no interference is called for.

10. Having heard both sides and on perusal of the evidence on record, the following points arise my consideration.

Whether the learned Member of the Tribunal is justified in rejecting the claim of the claimants for compensation?

11. To substantiate the claim of the claimants, claimant No.2 stepped into the witness box and narrated the occurrence of the incident. Admittedly she is not eye witness of the incident. She narrated the incident on the basis of police papers and the information gathered by her. During cross-examination also, she admitted that she is not an eyewitness to the incident. She admitted that the deceased used to distribute the milk but she specifically stated that the deceased was not distributing the milk at Bhandara. Besides the oral evidence, the claimants placed on record the monthly pass of the deceased vide Exhibit A-32 which shows that the pass was issued for the period from 25/01/2015 to 24/02/2015. The alleged incident occurred on 29/01/2015. Thus, on the date of the incident, the deceased was having a valid pass to travel by train. The DRM Report shows that one person who was carrying the milk cans came in front of the train and the train ran over him and the alleged incident occurred. The police have registered the Marg Report regarding the alleged incident. The recitals of the Marg

report show that the death of the deceased was caused in a railway accident and therefore, he was admitted to the hospital and he was declared dead. The recitals of the spot panchanama shows that on 29/01/2015, person injured by a passenger train, who was travelling by the said train and got injured by the same train. Thus recitals of the panchanama show that the deceased was travelling by the said train and got injured by the same. The evidence of R.W.-1 -Ramesh Singh s/o Daddusingh Gautam is to the extent that he was working as a loco-pilot of train No.58206 Itwari Raipur Passenger Train and one person who was having Milk Cans in both the hands came from the wrong side in front of his train and train run over him. On the basis of this evidence, the respondent claimed that the death of the deceased is caused by the train run over him and not in an untoward incident. Whereas the spot panchanama shows that the deceased was travelling by the said train and got injured by the said train and his death is caused. The DRM report also supports the contention of the Railway Administration that the deceased was crossing the railway track, at the time he was run over by the train bearing No. 58206 and died on the spot.

12. Considering the contradictory evidence, it is necessary to see whether the deceased was a bonafide passenger. The spot panchanama and the Marg Report show that the deceased was travelling by train No. 58206. Deceased was having a monthly pass to travel by train, which is produced on record. Thus, these facts are sufficient to show that deceased was a bonafide passenger.

13. In so far as the contention of the railway is concerned, the deceased was crossing the track along with Milk Cans and run over by the train. The oral evidence of the R.W.1- Retired Loco-Pilot also shows that the deceased suddenly came in front of the train and run over by the train. If this evidence is tested on the basis of Marg Report and the Spot Panchanama, the Spot Panchanama nowhere shows that Milk Cans were found along with the deceased while drawing the spot panchanama. The panchanama was immediately drawn after the incident. The spot panchanama nowhere shows that along with the dead body of the deceased, some milk cans were found. The inquest panchanama is also on record. The recitals of the inquest panchanama show that it was drawn into the mortuary and the dead body was covered. There is a description of the clothes which were on the person of the deceased. The railway pass was found along with a dead body. The inquest panchanama also nowhere shows that along with the dead body, milk cans were also seized by the Police from the spot of the incident. Thus the contention of the railway that the deceased was crossing the track along with milk cans is not supported by the spot panchanama. The Marg Report also nowhere shows that at the relevant time, the deceased was carrying the milk cans. Thus the evidence of the railway is contradicted by the police papers.

14. Now, it is well settled that for proving the untoward incident, firstly the claimants have to prove that the deceased was a bonafide passenger. The railway pass which is produced on record, which was valid on the day of the incident shows that the deceased

was a bonafide passenger. In so far as the issue regarding the untoward incident is concerned, the DRM report shows that the deceased was crossing the railway track along with milk cans and he was run over by the train. However, the said contention is not supported either by the spot pachanama or by Marg Report. The deceased was not found along with a milk can at the spot. Thus the evidence of the railway witness is contradicted by the police papers.

15. Learned counsel Mr P.S. Mirache for the appellants placed reliance in the case of ***Sadashiv Ramappa Kotiyan*** referred (supra), wherein this Court has held that restrictive meaning to the expression accidental falling of a passenger from a train carrying passenger will deprive a large number of railway passengers from getting the compensation in the Railway accident. It is further held that the deceased was a bonafide passenger and there was no reason for the Tribunal to construe that while crossing the railway track, he met with an accident.

16. Here also, in the present case, the contention of the railway witness is not supported either by the Marg Report or by the spot panchanama. This Court in the case of ***Ranjana Santosh Deotale*** referred (supra) held that the burden discharged by the claimants by filing an affidavit, evidence of Loco-Pilot was contradictory to evidence of Station Master and awarded the compensation.

17. In the present case also, there was no eyewitness in the incident in question. The evidence of Loco-Pilot is not supported

by the Marg Report or Spot panchanama. The Railway Administration has not adduced any evidence to show that the deceased was run over by the train. On the contrary, Spot Panchanama and Marg Report show that the deceased was travelling by train No.58206 and was injured by the said train. The contention of the railway was that deceased was crossing the track along with milk cans which were not found at the spot after the incident. Thus the evidence of the railway witness is not supported by the circumstances like spot panchanama. The railway Tribunal has rejected the claim on the ground that the nature of injuries shows that it is the case of the deceased coming under the wheels of the train which is misconceived conclusion because types of injuries along with other facts, pertain to decide whether the accident is out of fall from the train or injuries, was on account of a person being run over by the train. It is not unknown that, a body may badly cut or crushed after falling from the train, either on account of bonafide passenger fell down on the place of the incident and thereafter, in the railway track or the other equipment of the train, in which he was travelling or that the deceased on account of fall from the train dashed by the various equipment of the railways which are joined to the tracks, such as poles, signals, wires etc. Therefore, the observation of the Tribunal that the death of the deceased is not possible by falling from the train merely because he was cut into pieces is completely unjustified.

18. As observed by the Hon'ble Apex Court in the case of *Union of India vs Prabhakaran Vijaya Kumar and others reported*

in 2008 (ACJ) 1895, wherein it is observed 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.

19. In the case in hand, the deceased was a bonafide passenger, there was no reason for the Tribunal to held that while crossing the railway track, he met with an accident. In fact, this fact is not supported by the spot panchanama. In view of well settled position of the judgment of the Hon'ble Apex Court in the case of *Union of India V/s Rina Devi reported in 2018 (3) PAC 26*, the initial burden will be on the claimants which can be discharged by filing an affidavit of the relevant facts and burden than will shift on the railways and the issue can be decided on the facts shown or attending the circumstances.

20. Here, in the present case, admittedly initial onus is discharged by the claimants by adducing reliable evidence, whereas Railway Administration failed to prove that the deceased has sustained injuries while crossing the railway track and has attempted to commit suicide. As such, I have no hesitation to hold that the burden shifted on the Railway Administration is not discharged by it. The claimants have proved that the deceased was a bonafide passenger and his death was caused in an untoward incident.

21. In view of the above discussion, the claimants are

entitled to receive the compensation as the alleged incident has taken place on 29/01/2015 i.e. prior to the issuance of the revised notification. The revised notification was issued on 22/12/2016 and came into effect from 01/01/2017. In view of the observation of the Hon'ble Apex Court in the case of *Union of India V/s Radha Yadav reported in (2019) 3 SCC 410*, wherein it is held that the amount of compensation payable on the date of the accident with a reasonable rate of interest shall firstly calculated, if the amount so calculated is less then the amount prescribed as on the date of the award the claimants would not be entitled to higher of this two amount. 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 the amendment, and on such a specific figure, the reasonable rate of interest would be calculated. After calculating the reasonable rate of interest, the amount which is payable under the revised notification is the highest one. Therefore, the claimants are entitled to receive compensation of Rs. 8,00,000/- without interest. Therefore, in my opinion, claimants are entitled to receive the compensation. Hence, I pass the following order.

- a) The First appeal is **allowed**.
- b) The judgment and award dated 29/11/2017 passed by the learned Member of the Railway Claims Tribunal at Nagpur in case No. OA (IIu)/NGP/0012/2016 is hereby quashed and set aside.
- c) The Railway Administration is directed to pay

compensation of Rs. 8,00,000/- without interest.

- d) The respondent/railway is directed to pay compensation within a period of 60 days from the date of receipt of the copy of this judgment.

With this appeal is **disposed of** with no order as to costs.

JUDGE

RKN