



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

FIRST APPEAL NO. 90 OF 2017

APPELLANTS

[Original Applicants]
ON R.A.

- : 1. Smt. Nirmala Wd/o. Ambadas
Dahiwade, Aged – 60 Years,
Occupation – Household.
2. Manoj S/o. Ambadas Dahiwade, Aged
– 38 years, Occupation – Service.
3. Pravin S/o. Ambadas Dahiwade, Aged
– 34 years, Occupation – Advocate.

All above R/o. 162, Sawarbhande
Layout, Hudkeshwar Road, Nagpur –
440034.

//VERSUS//

RESPONDENT

[Original Respondent]
ON R.A.

: Union of India, through its General
Manager, Central Railway, Mumbai,
Maharashtra.

Mr. G.D. Asole, Advocate for the Appellants.
Mr. N.P. Lambat, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 27th SEPTEMBER, 2023.

ORAL JUDGMENT

In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short “the Act of 1987”), challenge is to the judgment and order dated 24th August, 2016, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby

learned Member of the Tribunal dismissed the claim application filed by the appellants under Section 16 of the Act of 1987.

02] BACKGROUND FACTS :-

The appellants are the dependents of deceased Ambadas Dahiwade. The deceased was working as Technician at Ridhora DC of MSEDCL, Katol. He was doing up and down by railway from Nagpur to Katol. On 10th January, 2013, after attending his office, with a valid pass, he boarded passenger train No.51830 at Katol Railway Station for Nagpur. The said train, after reaching Kalmeshwar Railway Station, stopped there due to breakdown. The passengers went to the Station Master with a request to stop Dakshin Express and allow them to travel to Nagpur in the said train. Dakshin Express had no schedule halt/stop, however the passengers were assured that the train coming after Dakshin express would be stopped at Kalmeshwar Railway Station and they will be allowed to travel in the said train. It is stated that the passengers had gone to the cabin of the Station Master. The deceased was in the train. After hearing the hue and cry at railway station, he came near the door of the train to take the account of situation. It is stated that there was sudden jerk to the train and he fell down and sustained head injury. He died due to the injuries

sustained by him. According to the appellants, the deceased was a *bona fide* passenger. It is their case that the deceased died in an untoward incident. They, therefore, claimed compensation.

03] Respondent/Railway filed the written statement and opposed the claim. According to the respondent, the deceased was run over by Dakshin Express, when he got down from the train, while crossing the railway line. There was criminal negligence on the part of the deceased. Death was not in an untoward incident. Death was, therefore, due to self-inflicted injury. The respondent/Railway, on these grounds, opposed the claim.

04] Learned Member of the Tribunal framed as many as four issues. Appellant No.1 examined herself as AW-1. Respondent/Railway has examined the Station Master as RW-1. Learned Member of the Tribunal, on consideration of the evidence, held that death of the deceased was not in an untoward incident and therefore, dismissed the claim application. Being aggrieved by this judgment and order, the appellants are before this Court in appeal.

05] I have heard Mr. G.D. Asole, learned advocate for the appellants and Mr. N.P. Lambat, learned advocate for the respondent. Perused the record and proceedings.

06] Following point falls for my determination:

Whether the deceased died in an untoward incident?

07] Learned advocate for the appellants submitted that it is not the case of the respondent/Railway that while crossing the railway line, the deceased was run over by Dakshin Express. Learned advocate submitted that the Loco Pilot of Dakshin Express neither made any report of death of any passenger at Kalmeshwar Railway Station while crossing the railway line nor he has been examined. Learned advocate submitted that there is no eye witness to the incident. Learned advocate submitted that the facts and circumstances proved on the basis of the evidence clearly indicate that the possibility of the deceased falling from the train in a confused state of mind due to uncertainty of the departure of the passenger train from Kalmeshwar Railway Station cannot be ruled out. Learned advocate submitted that the case in question is not of run over. It is pointed out that if the deceased was run over by the train, then his body would have been cut into pieces. Learned advocate pointed out that the deceased had sustained injury to his head and died due to the said injury. Learned advocate submitted that the defence of negligence sought to be urged is not available to the respondent/Railway inasmuch as the liability in

such cases is based on 'no fault theory'. Learned advocate submitted that learned Member of the Tribunal has not properly appreciated the material on record and has come to a wrong conclusion. In support of this submission, learned advocate has placed reliance on the decision in the case of *Union of India Vs. Rina Devi [AIR 2018 SC 2362]*.

08] Learned advocate for the respondent/Railway submitted that there is ample documentary evidence to substantiate the case of the respondent/Railway that the deceased was dashed by Dakshin Express, when he was crossing the railway line at Kalmeshwar Railway Station. Learned advocate further submitted that the train in which the deceased was travelling was halted at Kalmeshwar Railway Station due to breakdown and the passengers of the said train had become restless and they were trying to pressurize the Station Master to stop Dakshin Express so as to enable them to travel to Nagpur. Learned advocate submitted that if the deceased had remained seated in the train, there would have been no question of any accident. Learned advocate, in short, submitted that the deceased died due to self-inflicted injury and as such, learned Member of the Tribunal was right in rejecting the claim application.

09] In order to appreciate the rival submissions, it would be necessary, at the outset, to make a mention of some of the admitted facts having bearing with the issue arising for consideration. The deceased was doing service at Katol. He was doing up and down from Nagpur to Katol. He had a valid pass for journey. The deceased was a *bona fide* passenger travelling in passenger train No.51830. It has come on record that due to breakdown, the passenger train had halted at Kalmeshwar Railway Station. The passengers travelling in the said train were not informed about the cause of breakdown as well as the suitable arrangement for their onward journey. It is undisputed that in this process, some of the passengers had approached the Station Master and requested him to stop Dakshin Express Train No.12722 and allow them to travel by the said train. It is undisputed that the Station Master, after contacting his superiors, had assured the passengers that the train following Dakshin Express would be stopped at Kalmeshwar Railway Station and they would be allowed to travel by the said train. It is undisputed that due to this position, the chaos and confusion was created at the Railway Station. All these facts are very relevant for the purpose of addressing the issue.

10] It is the case of the appellants that the deceased remained seated in the train after breakdown. It is their case that when he

heard the hue and cry at the Railway Station, due to curiosity, he came near the door and at that time there was jerk to the train and due to the said jerk, he fell down. It is to be noted that the appellants were not eye witnesses to the incident. Similarly, RW-1 was also not an eye witness to the incident. There is no witness to the incident. The main question that needs to be addressed is as to whether the case of the appellants is probable or the case of the respondent is probable. In my view, on proper appreciation of the evidence, it has to be held that the case of the appellants is more probable. Undisputedly, Dakshin Express had no scheduled halt at Kalmeshwar Railway Station. It is undisputed that Dakshin Express passed through the Railway Station in high speed. It is not the case of RW-1 that due to breakdown of the passenger train, he had informed the Loco Pilot of Dakshin Express to pass through the Station in moderate speed. It is, therefore, seen that the required care was not taken. Dakshin Express passed through Kalmeshwar Railway Station in high speed. The possibility of dash to the deceased while crossing the railway line by Dakshin Express is totally ruled out in this case. If the train had dashed the deceased in high speed, he would have been thrown away at some distance. In the process, he would have sustained multiple injuries including fractures. If he was dashed by a train while crossing the railway line,

then most probably he would have been thrown on the railway line and cut into pieces due to run over of train. The Loco Pilot of Dakshin Express did not make any report of dash to any passenger at Kalmeshwar Railway Station while crossing the railway line.

11] The next possibility which is supporting the claim of the appellants is that the deceased due to the prevailing situation would have come near to the door and accidentally fallen from the train. The possibility of the deceased falling on railway line or on running train also cannot be ruled out. The injury sustained by the deceased was serious injury. The deceased had sustained the injury to his head. Such injury could be possible due to fall from the train.

12] In the facts and circumstances, in my view, the defence of the respondent/Railway that the deceased was run over by Dakshin Express cannot be accepted. Similarly, the theory of the respondent that Dakshin Express gave dash to the deceased also cannot be accepted, in view of the above stated factual situation. Even if it is assumed for the sake of argument that the deceased in this process had come near to the door and accidentally fell from the train, in my view, the claim of the appellants cannot be rejected.

13] The Hon'ble Supreme Court in the case of *Rina Devi* (supra) has addressed the issue of negligence/contributory

negligence. In this case, it is held that the principle of contributory negligence cannot be applied in the case of liability based on ‘no fault theory’. It is held that the 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 of the Railways Act, 1989 (for short “the Act of 1989”) merely on the plea of negligence of the victim as a contributory factor. It is held that if the case falls in first part of Section 124A of the Act of 1989, then the Railway will be liable to pay the compensation. It is held that the Railway would not be liable to pay the compensation, if the case is covered by any of the clause to the proviso to Section 124A of the Act of 1989. In my view, this settled position in law supports the case of the appellants. The defence of contributory negligence sought to be canvassed would not be available in view of the above stated legal position.

14] In view of the above, I conclude that the deceased died in an untoward incident as understood by Section 123(c)(2) of the Act of 1989. The learned Member of the Tribunal was not right in rejecting the claim of the appellants on this ground. Accordingly, I answer the above point in the affirmative. The deceased was a *bona fide* passenger.

15] Learned advocate for the appellants submits that the respondent Nos.2 and 3 are major. He further submits that the compensation may be directed to be paid to appellant No.1, who is the widow of the deceased.

16] Learned advocate for the appellants, relying upon a decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Radha Yadav [(2019) 3 SCC 410]*, submitted that the appellant No.1 would be entitled to get compensation of Rs.8,00,000/- (rupees eight lakhs only). It is pointed out that in view of the Notification issued by Ministry of Railways (Railway Board) dated 22nd December, 2016 in case of death claim, the claimants are entitled to get compensation of Rs.8,00,000/-. In view of the law laid down in the case of *Radha Yadav* (supra), appellant No.1 is entitled to get total compensation of Rs.8,00,000/- (rupees eight lakhs only) from the respondent/Railway without any interest.

17] The respondent/Railway is directed to pay compensation of Rs.8,00,000/- to the appellant No.1 within four months from today. The amount of compensation be deposited directly in the bank account of appellant No.1. Appellant No.1 shall provide particulars of the bank account to the respondent/Railway. If the

amount is not deposited within four months, then the respondent/
Railway shall pay interest @ 7% per annum from the date of this
order till realization.

18] The appeal is **allowed** and disposed of accordingly. No
order as to costs.

(G. A. SANAP, J.)

Vijay