

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

FIRST APPEAL NO. 201 OF 2023

APPELLANTS
ON R.A.
(Ori. Claimants)

- 1]: Nirmla wd/o Anil Janjale,
Age 47 years, Occ: Housewife.
- 2] Nilesh s/o Anil Janjale,
Age about 30 years, Occu: Labour.
- 3] Avinash s/o Anil Janjale,
Age about 27 years, Occu: Labour.
All r/o Sambhaji Nagar, Government
Quarter Pachora, Tah. Pachora,
Dist. Jalgaon (Mah-424105).
- 4] Vaishali w/o Nitin More,
Age 33 years, Occ: Housewife,
R/o Bapat Nagar, Konark Apartment,
Dist. Chandrapur (Mah.)

...V E R S U S...

RESPONDENT
ON R.A.
(Ori. Respondent)

Union of India, through
General Manager,
Central Railway, CST Mumbai.

Ms R.G. Bagul, advocate for the appellants.

Ms Neerja Chaubey, advocate for the respondent.

CORAM : URMILA JOSHI-PHALKE, J. .
DATE : 21/04/2023

ORAL JUDGMENT :

1. The present appeal is preferred against the judgment and award passed by the Railway Claims Tribunal in case No. OA(IIu)/NGP/148/2019 dated 27/05/2021. By the said judgment and award, the Railway Claims Tribunal rejected the claim petition of the claimants which was filed for grant of compensation on account of the accidental death of Anil Vitthal Janajale in an untoward incident dated 09/02/2019.

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

The deceased Anil Vitthal Janjale was proceeding along with his son on 09/02/2019 in a train bearing No. 51182 in Bhusawal Deolali Passenger Train from Jalgaon to Pachora. He has obtained a valid ticket to travel in the said train. As per the contention of the claimants, the deceased was travelling by standing in the footsteps of the boggy. Due to the rush of the passengers in the train by the push of somebody, he fell down from the train and sustained grievous injuries. While taking treatment in the Hospital, he succumbed to the death. As the death of the deceased occurred in an untoward incident, the application was filed by the claimants for a grant of compensation.

3. In response to the notice, the railway authority resisted the claim of the claimants on the ground that the deceased alighted from the train to approach his home by the short way, and therefore, in an attempt to alight from the train from the offside, he lost his control, sustained injury and succumbed to the death. Thus the

death of the deceased is caused due to his own negligence and therefore, the Railway Administration is not liable to pay compensation.

4. The claimants have adduced the evidence before the Tribunal by filing an affidavit of examination-in-chief of Avinash Anil Jangale, who was also travelling with the deceased. Besides his oral evidence, the claimants placed reliance on Marg Report, Spot Panchanama, Inquest Panchanama, PM report etc. To rebut the evidence of the claimants, Railway Administration has examined Pankaj Kumar s/o Shri Krishna Murary Prasad to show that it was the deceased because of whose negligence, he sustained injuries and died on the spot. After appreciation of the evidence produced on record and after hearing both the sides, the Railway Claims Tribunal rejected the claim of the claimants by holding that it was the deceased who has not taken due care and caution while alighting the train, he alighted the train to approach to the shortcut way to reach at home and in the haste, he lost his control, sustained injuries and succumbed to the death. Thus, the death of the deceased is due to his own negligence, and rejected the claim.

5. Being aggrieved and dissatisfied with the judgment and award passed by the Railway Claims Tribunal, the present appeal is preferred by the appellants/original claimants on the ground that the Railway Claim Tribunal erroneously come to the conclusion that the deceased sustained the injuries due to this own negligence. In fact, the Hon'ble Apex Court has settled the issue in the case of *Union of India Vs Rina Devi reported in 2018 (3) TAC 26*, wherein

the Hon'ble Apex Court has held that to attract self inflicted injury, the intention to cause self inflicted injury requires to be proved. Mere negligence is not sufficient to attract the self inflicted injury and therefore, the observation of the Tribunal is misconceived. Therefore, the judgment and order passed by the Railway Claims Tribunal deserves to be quashed and set aside.

6. Heard learned advocate Baghul for the appellants. He reiterated the said contentions and submitted that the claimants have proved that the deceased was a bona fide passenger as the railway ticket was found along with the deceased. The only defence raised by the Railway is that the deceased died due to the self inflicted injury as he attempted to alight from the train to approach the shortcut to reach his home. In fact, mere negligence is not sufficient to reject the claim of the claimants. Therefore, the judgment and award passed by the Railway Claims Tribunal deserves to be quashed and set aside.

7. Per contra, the learned advocate Ms N.G. Chaubey for the respondent/railway submitted that the intention of the persons to be gathered from attending the circumstances. In fact, the train was slowdown, and the station was ahead of at some distance, the deceased ought to have alighted from the train at the station itself but he alighted from the train, prior to the train approaches to the station only to approach the shortcut way to reach his home. It is sufficient to show that the deceased has not taken due care and caution while alighting from the train. She further submitted that the deceased has alighted from the off-side of the train which

reflects his intention and therefore, the claimants are not entitled for any compensation.

8. Having heard both the sides, after perusal of the record with the able assistance of learned counsel of both sides. The following point arises my consideration.

Whether the railway claim tribunal is justified in rejecting the claim of the claimant by holding that deceased was negligent while alighting the train?

9. There is no dispute that the deceased was a bonafide passenger as he purchased a valid railway ticket. The definition of passenger shows that the person who holds some valid ticket to travel in a train is a bonafide passenger. The railway administration has also not raised any objection regarding the aspect of bonafide passenger. The railway ticket which is filed on record is sufficient to show that the deceased was a bonafide passenger travelling in the said train. The only issue is raised by the Railway Administration is that the deceased has not taken due care and caution while alighting from the train. He alighted from the off-side of the train to approach the shortcut to reach at his home which is negligence. Thus, the deceased sustained the self inflicted injuries due to his own negligence, and therefore, the claimants are not entitled to receive the compensation.

10. To substantiate the contention claimant Avinash Anil Janjale stepped into the witness box. He testified about the alleged incident. The sum and substance of his evidence is that deceased

was travelling by the train from Jalgaon to Pachora by Bhusawal Deolali Passenger train No. 51182. He was also present along with the deceased. As per the contention of the claimants, the deceased was travelling by standing on the footsteps of the boggy. Due to the rush of the passengers, somebody pushed the deceased, deceased fell down, and sustained injuries. He was immediately shifted to the hospital, and during treatment, he died. Thus, the sum and substance of the evidence of the claimants is that the deceased was travelling by train while traveling he was pushed by somebody and fell down and sustained injuries, and died on the spot. During cross-examination, this witness admitted that he has not personally witnessed the deceased felling down from the train. Thus the evidence of the claimant is to the extent that the deceased was travelling and while travelling he fell down as he was standing in the footsteps of the boggy sustained injures and succumbed to death subsequently.

11. To rebut the evidence of the claimants, the Railway Administration has also adduced evidence by examining Pankaj Kumar S/o Shri Krishna Murary Prasad, his evidence is only to the extent that he was working as Deputy Station Master at Pachora Railway Station, Passenger Train No. 51182 arrived at Platform No.1 at 7.17 hours and departed 7.26 hours. Thereafter, train no. 12870 passed through his station and none of the Loco-pilot informed him about the felling of the passenger. The evidence of this witness remained unchallenged as none has cross-examined. Besides oral evidence, claimants placed reliance on the police papers

i.e. marg report, spot panchanama etc. There is no dispute that the deceased was travelling by train i.e. passenger train. The contention of the claimants is that while travelling he fell down and sustained the injuries, whereas as per the contention of the railway administration the deceased alighted from the train from the offside to approach the shortcut way to reach at his home. The DRM report is also placed on record. The conclusion of the DRM report is that on the basis of the statements recorded by the investigating agency, the deceased alighted from the train from the offside and lost his control fell down, and sustained injuries. After perusal of the evidence only point which remains for consideration is whether the Act of the deceased is covered under the untoward incident or whether the act of the deceased covers under the self inflicted injuries.

12. 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) "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.

13. Now, by considering the definition of the untoward incident it is to be seen whether the deceased was travelling by train. There is no dispute that the deceased was a bonafide passenger. The DRM Report also shows that the deceased was travelling by the said train. Admittedly, there was no eyewitness to the incident in question. The learned Tribunal had held that the deceased alighted from the train as he has to approach to the shortcut way to reach at home. Thus, the Act of the deceased is covered under self inflicted injuries and therefore, the claimants who are the legal representatives of the deceased are not entitled to receive the compensation. The DRM Report and the various statements recorded during the investigation reveal that the deceased alighted from the train by the offside way. Whether the Act of the deceased covers under self inflicted injuries is the material question which is to be decided. Now, it is well settled that mere negligence of the deceased is not sufficient to attract the self inflicted injuries. The Hon'ble Apex Court in the Union of India Vs Rina Devi referred (supra) held that the initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and the burden will then shift on the Railways and the issue can be decided

on the facts shown or the attending circumstances.

14. The next contention raised by the Railway Administration is that the Act of the deceased alighting from the train by the offside covers under the self inflicted injury. The Hon'ble Apex Court in the judgment of ***Union of India V/s Rina Devi*** referred (supra) that for attracting the provision of Section 124-A of the Railways Act, the intention of the person who has sustained a self inflicted injury is to be proved. It is further held that self inflicted injury would require an 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 its earlier decision in ***United India Insurance Co. Ltd. v/s Sunil Kumar and another 2017(13) SCALE 652*** wherein it is held that the plea of the negligence of the victim cannot be allowed in a 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 the negligence of the victim as a contributory factor.

15. Here in the present case, admittedly initial onus is discharged by the claimant by adducing reliable evidence. The railway administration also adduced the evidence and the DRM Report which shows that the deceased alighted from the train from the offside and sustained the injuries as he lost control. Even if it is

accepted that the deceased was negligent while alighting from the train but mere negligence is not sufficient to attract Section 124-A of the Railway Act. In view of that, I have no hesitation to hold that the burden shifted on the railway administration that the deceased has caused himself the self inflicted injuries with intention is not proved. The claimants have proved that deceased was a bonafide passenger and the death was caused in an untoward incident.

16. In view of the above discussion, as the death of the deceased is caused in an untoward incident, the claimants are entitled to receive compensation on account of the accidental death of the deceased in an untoward incident. The alleged incident occurred on 09/02/2019. In view of the notification issued by the Railway administration on 22/12/2016 which came into effect from 01/01/2017, the claimants are entitled to receive the compensation of Rs. 8,00,000/- with interest @ Rs.6% per annum.

17. In view of the above said discussion, I proceed to pass the following order:

- (1) The First Appeal is **allowed**.
- (2) The judgment and award dated 27.5.2021 passed by learned Member of the Railway Claims Tribunal at Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/148/2019 is hereby quashed and set aside.
- (3) The respondent/Railway Administration is directed

to pay the amount of compensation Rs.8,00,000/- to claimants within a period of 60 days from the date of receipt of the copy of this judgment along with interest @ 6% per annum.

- 4) The claimant No.1 is entitled to receive the amount of compensation along with accrued interest on due identification and verification.

With this, the First Appeal is **disposed of** with no order as to costs.

JUDGE