



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

FIRST APPEAL NO.1015/2019

1. Smt. Sunitabai Wd/o Rambhau Chaudhari,
aged about 43 Yrs., Occ. Housewife
(widow of deceased)
2. Shri Amol S/o Rambhau Chaudhari,
aged about 24 Yrs., Occ. Education
(Son of deceased)
3. Shri Dipesh S/o Rambhau Chaudhari,
aged about 22 Yrs., Occ. Education.
(So of deceased)

All R/o Bahirpura Pachora,
Tah. Pachora, Dist. Jalgaon (Mah)

... Appellants
(Original Claimants on R.A.)

- Versus -

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

... Respondent
(Original Respondent on R.A.)

Mr. Ravindra G. Bagul, Counsel for the Appellants.

Ms. Neerja G. Chaubey, Counsel for the Respondent.

CORAM: MRS. VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE JUDGMENT : 7.11.2023

DATE OF PRONOUNCING THE JUDGMENT : 11.12.2023

JUDGMENT

Heard.

2. This appeal arises out of the judgment dated 4.6.2018 passed by the Railway Claims Tribunal, Nagpur. Brief facts of the case are as under:-

3. The deceased was travelling by the Nagpur Dadar Sevagram Express from Pachora to Nashik on 3rd December 2014. He has boarded the general compartment of Nagpur Dadar Sewagram Express in presence of his son Amol. It is the case of appellants that when train started to run the deceased fell down from the said running train at KM No.372/03-04 at Pachora Railway Station and died on the spot. The ticket was not found during the inquest panchanama. The respondent Railway has opposed the

application stating that the incident causing death of deceased within the meaning of provisions of Section 123(c) read with Section 124A of the Railways Act has not taken place and as such the claim application is not maintainable and the deceased was not a *bona fide* passenger of the train.

4. The Member of the Tribunal after considering the arguments and the documents on record has rejected the claim stating that in the spot panchanama or in the inquest panchanama ticket was not found from the body of deceased. There is no eye witness to the accident. The claimants have not shown as to whether the deceased had boarded the train while in possession of valid ticket. There is no evidence on record to remotely suggest that the death of Rambhau Chaudhary was due to fall from train to bring the case within the meaning of “untoward incident” as defined in Section 123(c)(2) of the Railways Act, 1989. It is the duty of the claimants to prove that the death was due to “untoward incident” and cannot ipso facto prove that the said person fell down from the train. The

claimants have not been able to prove that the deceased had fell down from any train carrying the passengers and, therefore, has rejected the application by observing that the deceased was not a bona fide passenger and was not involved in an “untoward incident” as defined in Section 123(c)(2) of the Railways Act and rejected the application.

5. Heard both sides and perused the record.

6. The applicants are the dependents of deceased. It is the case of the claimants that on 3.12.2014 the deceased was travelling by Nagpur Dadar Sewagram Express from Pachora to Nashik with a valid journey ticket which was purchased by the deceased in front of his son Amol who is the applicant No.2. The incident was reported by Loco Pilot of Train No.12168 Up that the body of one person is lying on KM 372/03-04 near Repeater. During the period of inquest personal search of the deceased was conducted by police officials. It is not in dispute that no journey ticket nor any belonging

were recovered from the body of the deceased. There is also no evidence to suggest that any ticket was purchased by or for the deceased to travel from Pachora to Nashik by any train. It is the case of the claimants that the deceased was travelling by Nagpur Dadar Sewagram Express but it was not informed by the driver of said express there was no chain pulling and passengers and the driver of the said train were not aware about falling down of the passenger from their train. The Loco Pilot of Train No.12168 Up has informed about it. He saw the body lying there. There is neither any eye witness; nor any other witness to the accident that may have lead to the death of deceased. It is settled law that onus to prove an untoward incident is on claimants. It is only when initial burden is discharged, that burden shifts on the Railways. Thicket was not found though it is claimed that he has purchased it. Therefore, it is not proved that the deceased was travelling by the said Nagpur Dadar Sewagram Express.

7. The son of the deceased i.e. claimant No.2 has given the statement that his father has purchased the ticket in his presence and

he was with him when he has boarded the said train. Said witness is not examined by the claimants / appellants.

8. The body was lying on the track. It is also not disputed that there is hardly any evidence to demonstrate that deceased travelled by any train or deceased died due to any fall accidentally from a train. The appellants have examined the applicant No.1 as A.W. 1 the wife of deceased. She has narrated about the death of her husband due to railway accident and how she came to know about it and how her son has given the statement but she was not eye witness of the incident or was not travelling with the deceased. The son who has given the statement that in his presence the deceased boarded the train, has not entered the witness box. The witness has stated that the deceased was running Betel Kiosk (Pan-shop) which is one kilometre away from the spot of incident. As it is not proved that the deceased was travelling by said train and was *bona fide* passenger of said train it does not fall under “untoward incident” though he died due to dash and cutting by the railway, there is no presumption of an “untoward incident” under Section 123(2)(c) read with Section

124A of the Railways Act, the initial burden of proving an “untoward incident” always being on the claimants.

9. The appellants have relied on the judgment in the case of Kamukayi and others V/s. Union of India and others reported in **2023 SCC Online SC 692** in support of their case that in absence of any cogent evidence that the deceased was travelling without ticket, the Railway Administration shall be liable to pay compensation as prescribed. But in said case the person in whose presence he has purchased the ticket is examined and it was confirmed that the deceased fell down from the said train. Here in case in hand, it is not confirm whether deceased fell down from the train while travelling or whether the train dashed him and the accident took place. Coming to the decision in the case of Union of India Vs. Rina Devi reported in **AIR 2018 SC 2362**, wherein it is held as under :

“16.6 We are unable to uphold the above view as the concept of ‘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’. We may in this connection refer to judgment of this Court in United India

Insurance Co. Ltd. versus Sunil Kumar (AIR 2017 SC 5710) laying 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. Accordingly, we hold 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 negligence of the victim as a contributing factor."

10. It is not the case of applicants that deceased died in the course of boarding or de-boarding. On the contrary, it is proved from the evidence of A.W.1 that he was running the Pan Shop which is 1 km. away from the spot of the incident. Therefore, in absence of any evidence of travelling in a train and falling down from running train, it is most probable that the deceased met with an accident while crossing the track.

11. It is regular practice, who live close to the railway track or run the business, they used to cross railway tracks frequently during the course of their daily affairs, that can not saddle the Railway Administration with a liability of compensation in the event of person gets hit or run over by train while doing so.

12. The travelling of the deceased was itself doubtful, a perusal of statements, evidence and depositions nowhere suggest that the deceased had undertaken a journey, therefore, the Tribunal has rightly rejected the claim, interference at the hands of this Court is not required. The appeal stands dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)