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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.169 OF 2016

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| 1. | Laxman s/o Maroti Shilgire
Age - 53 years, Occ - Labour
R/o Kondalpur, Taluka - Biloli
District - Nanded | APPELLANTS |
| 2. | Irabai w/o Laxman Shilgire
Age - 52 years, Occ - Household
R/o As above | |

VERSUS

Union of India Through General Manager, South Central Railways Secundrabad (Andra Pradesh)	RESPONDENT
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Mr. Pavankumar S. Agrawal, Advocate for the appellants
Mr. Manish N. Navandar, Advocate for respondent sole

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 9th JULY, 2024
PRONOUNCED ON : 16th JULY, 2024

JUDGMENT:

1. This appeal, filed under section 23 of the Railways Claims Tribunal Act, 1987, takes exception to the order dated 3rd November, 2015 passed by Railways Claims Tribunal, Nagpur in OA (IIU)/NGP/2012/0194.
2. For the sake of convenience, parties will be referred to as "claimants" and "railways".

3. Claimants filed claim before the Tribunal contending that on 25th April, 2012 their son Ramchandra, along with relative Kerba Gangaram Iptekar boarded Manmad – Dharmabad Marathwada Express, Train No. 17687 from Selu Railway Station for going to Nanded, At about 11.10 p.m, the train reached platform No.2 at Nanded Railway Station. For alighting at Nanded, Ramchandra was standing in the door of the coach. Due to sudden jerk, he fell down from the train between platform and train and came under the wheels and died on the spot. Train ticket, kept in his pocket was lost in the incident. Claimants, therefore, prayed for compensation of Rs.4 lakhs from the railways.

4. By filing written statement / reply, to the claim, railways denied all the contentions of the claimants. It is contended that deceased was not a *bona fide* passenger. He died due to his own negligence and mistake. The accident does not fall within the purview of section 123 (c) of the Railways Act, 1989.

5. Tribunal, after recording evidence and hearing the parties, dismissed the claim. Hence, this appeal.

6. Heard learned advocate for claimants and learned advocate for Railways. Perused the appeal memo, record and proceedings and the impugned order.

7. Learned advocate for claimants assailed the impugned decision of the Tribunal contending that though dead body of Ramchandra was found on the track at the platform, the Tribunal erroneously rejected the claim holding that death of Ramchandra has not taken place in an untoward incident, claimants have not led any evidence to prove that death of Ramchandra has occurred in an untoward incident. According to him, the Tribunal has recorded a perverse finding that considering the fact that head of deceased was severed from the body, it appears that somebody else has severed his head and threw the body near foot over bridge of Nanded Railway Station. The Tribunal has further held that since Kerba is not examined, the claimants have failed to prove that death of Ramchandra has taken place in an untoward incident and he was a *bona fide* passenger. He submits that there is sufficient material on record to show that death of Ramchandra has taken place in an untoward incident and merely because no ticket was found with him, that by itself is not sufficient to come to a conclusion that he was not a *bona fide* passenger. In support of his submissions, he relied on following decisions :

- I. First Appeal No. 2412 of 2016 (Sudam Nivrutti Dugane and Another V/s Union of India) dated 5th July, 2024
- ii. “Union of India V/s Radha Yadav” (2019) 3 SCC 410

iii. “Union of India V/s Rina Devi” AIR 2018 SC 2362

8. Per contra, learned advocate for Railways supported the impugned decision of the Tribunal. He submits that considering the fact that no ticket was found with the deceased, he cannot be considered as *bona fide* passenger. There are no circumstances to show that Ramchandra died in an untoward incident. Tribunal has assigned proper reasons while rejecting the claim and the decision of the Tribunal is not liable to be interfered with. In support of his submissions, he relied on decision of learned Single Judge in First Appeal No. 1169 of 2018 (Dropadibai @ Dhurpata Shivaji Bhalande V/s Union of India) dated 16th August, 2018.

9. In support of the claim, claimant Laxman had filed affidavit of evidence has had relied on following documents :

- I. Certified copy of AD Report No. 34/2012
- ii. Certified copy of Spot Panchanama
- iii. Certified copy of Inquest Panchanama
- iv. Certified copy of PM report
- v. Certified copy of dead body receipt
- vi. Certified copy of Railway Memo
- vii. Certified copy of summary report
- viii. Certified copy of statement of claimant
- ix. Certified copy of statement of Kerba

- x. Certified copy of death certificate
- xi. Certified copy of ration card.

10. Accidental death of Ramchandra and finding of his dead body on the railway track of platform No.2 at Nanded Junction, is a matter of record, which is also reflected in spot panchanama and inquest panchanama conducted by Railway Police. In the Post mortem report, following injuries are mentioned :

- I. Decapitation of head at lower neck
- ii. Contused abrasion over right side face below eye
- iii. Contused abrasion over right side chin
- iv. Multiple small abrasions over neck

Cause of death stated in the Post Mortem Report as, "*death due to decapitation of head*"

11. A.D. No. 34 of 2012 was registered on 26th April, 2012 under section 174 of the Criminal Procedure Code, in which inquiry was conducted by the Railway Police. It is mentioned in the AD report that the accident occurred as deceased had fallen down from train. During the course of inquiry under section 174 of the Criminal Procedure Code, statement of father of deceased / claimant No.1 was recorded on 26th April, 2024, wherein, he has stated that on 23rd April, 2012, Ramchandra left village at 10.00 a.m. telling him that he is going to visit Narendra Maharaj temple

at Selu and would come back and on 25th April, 2012, Ramchandra, while traveling by Marathwada express from Selu to Nanded, fell down from the running train and expired. This is immediate disclosure on the part of claimant No.1 and there is no reason to disbelieve it.

12. Head Constable B. No. 187 (Investigating Officer) of Nanded Railway Police Station submitted accidental death summary report, concluding that -

“In all after completing investigation the said deceased person while returning from Selu after taking darshan of Narendra Maharaj while travelling by Manmad Dharmabad Marathwada Express Train fallen down from train and his head is separated from train and died on the spot. In the investigation done till today of the said A.D. we have no any doubt, complaint or suspicion against anybody. So this is A.D. summary report is prepared and send with all original documents.”

13. At the time of preparing spot panchanama, claimant Laxman was present and he told that deceased is his son Ramchandra and he was returning from Selu. In the backside pocket of pant of dead body, handicap card (deceased had disability to his right hand), Railway ticket from Dharmabad to Selu dated 23rd April, 2012 was also found. Finding of ticket dated 23rd April, 2012 corroborates claimant's version that deceased had

left Dharmabad to visit Selu on 23rd April, 2012 and he was returning on 25th April, 2012, when he died in the accident.

14. On 4th December, 2012, report in respect of claim on account of death of Ramchandra was forwarded by Divisional Safety Commissioner. The report concludes that Police have expressed possibility of death of Ramchandra due to falling from a running train. Claimant has specifically stated that Ramchandra (deceased) was standing in the door of compartment, which is an offence punishable under section 156 of the Act. No ticket was found with the deceased. Hence, deceased himself is responsible for his death. Hence, railways does not owe any liability in this case.

15. All the above circumstances, statements and panchanamas clearly indicate that on 25th April, 2012, Ramchandra died due to falling from a running train, which is certainly an untoward incident. Claimants have discharged their initial burden of proving that deceased died in an untoward incident and the burden was on the railways to prove otherwise, which, it has failed to discharge. Tribunal has misread and misconstrued the material on record to come to a conclusion that deceased has not died in an untoward incident.

16. Kerba, who was traveling with Ramchandra, in his

statement, has stated that he met deceased after visiting Narendra Maharaj Temple at Selu. He reached Selu Railway Station at 7.30 p.m. There he met his nephew Ramchandra (deceased). They both were going to Nanded and hence they both purchased tickets. Kerba purchased ticket up to Dharmabad and Ramchandra purchased ticket up to Nanded. They both boarded the train. Since there was too much crowd in the train, he got seat away from Ramchandra. On 26th April, 2012, he received call from Ramchandra's father, Laxman about the accident. He then went to village and attended funeral.

Statement of Kerba is recorded on 4th May, 2012 during the inquiry under section 174 of the Criminal Procedure Code. This statement corroborates statement of claimant No.1 Laxman. Merely because his statement is recorded after eight days of the accident, that cannot be a ground to discard the same. As it was not his fault that his statement was recorded belatedly.

17. In the backdrop of the above facts, finding of the Tribunal that deceased was not *bona fide* passenger, as no valid railway ticket was found with him, is also unacceptable.

18. The Tribunal has failed to appreciate material on record in the proper perspective and has erroneously dismissed the claim of the claimants.

19. In **“Dalit V/s Union of India” MANU/MH/1829/2019**, this Court has relied on **“Union of India V/s Bimala Pintho Tudu and Others” (2012) 3 Mh.L.J. 883**, wherein it is held,

“Fact that deceased was not detected as passenger travelling without ticket, would give rise to an inference that he was travelling with valid ticket. Unless the negative is proved or there is evidence, may be, circumstantial in nature, that the deceased was not holding valid ticket, it would be desirable, to presume that deceased was authorized passenger”

20. In **“Union of India V/s Nandabai Sheshrao Dangat and Others” (2015) 6 Mh.L.J. 295**, this Court at Nagpur Bench has observed:

“Merely because railway ticket was not recovered from dead body, it cannot be said that deceased was travelling without ticket. Possibility that ticket may have been lost during course of untoward incident cannot be ruled out and, therefore, presumption need to be drawn that the deceased was a bona fide passenger”

21. Decision in **Sudam Dugane** (*supra*) is rendered in similar facts and both aforesaid rulings support the case of claimants.

22. The Tribunal has recorded a perverse finding that since head of deceased was severed from his body, somebody else has done

it and threw dead body on the track, which is based on surmise and imagination of the Tribunal. The adverse findings recorded by the Tribunal, therefore, are unsustainable in law and facts of the present case. While dismissing the claim, Tribunal has lost sight of the authoritative pronouncement of the Apex Court in **“Union of India V/s Prabhakaran Vijay Kumar and Others” MANU/SC/7608/2008**, wherein it is held:

“11. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the above mentioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred...”

12. It is well settled 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....”

23. In the case in hand, interpretation that deceased had died in an untoward incident, would be the one which advances the object of the statute. In the light of the above ruling, adverse

finding recorded by the Tribunal cannot be sustained.

24. Learned advocate for claimant has relied on **“Radha Yadav”** (Supra), wherein it is held :

“11. The issue in the matter does not really require any elaboration as in our view, this judgment of this Court in the case of 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 the 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.”

25. Learned advocate for Railways has relied on decision in First Appeal No. 1169 of 2017, which is rendered in the different facts. In that case, skull of the deceased was totally smashed and his brain had come out of the skull vault. This Court, therefore, observed that:

“After a person falls from the train, he may die due to head injury, but he will not come under the train. The bogey is much broader than the track. The wheels of the train and the rail track are much inside the outer edge of bogey. His head may dash on hard pole or hard floor but will not be smashed by mere fall.....”

26. In the case in hand, material on record indicates that deceased was standing in the door of the compartment and while train was arriving at platform No.2, due to sudden jerk, he fell down from the train and came under the wheels. Thus, deceased has in fact fell on platform side and came under the wheels. Therefore, this decision is of no help to the railways.

27. For the aforesaid reasons, the appeal deserves to be allowed. In view of the ratio in **“Radha Yadva”** (supra), claimants are entitled for compensation of Rs.8 lakh.

28. In the result, following order:

ORDER

- a. First Appeal is allowed.
- b. Impugned order dated 3rd November, 2015 passed by learned Railways Claim Tribunal, Nagpur in OA (IIU)/NGP/2012/0194 is hereby quashed and set aside.
- c. Claim application No. OA (IIU)/NGP/2012/0194 filed by claimants is allowed.
- d. Respondent – Railways to pay compensation of Rs.8,00,000/- (Rupees Eight lakh only) to the claimants, within a period of twelve weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE