



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.2412 OF 2016

1. Sudam s/o Nivrutti Dugane,
Age: 54 Years, Occu: Agri,
R/o Anandgaon, Tq. Partur,
District: Jalna
2. Smt. Kantabai w/o Sudam Dugane,
Age: 50 Years, Occu: Household,
R/o As above.

... Appellants
(Orig. Claimants)

Versus

Union of India,
Through General Manager,
South Central Railways,
Secundrabad (Andra Pradesh)

... Respondent

...
Mr. P.S. Agrawal, Advocate for Appellants
Mr. Swapnil Rathi, Advocate for Respondent
...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 20th JUNE, 2024
PRONOUNCED ON : 05th JULY, 2024**

ORDER :

1. This appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, takes exception to the judgment and order dated 02/03/2016, passed by the Railway Claims Tribunal, Nagpur, in case No.OA(Ilu)/NGP/2012/0053, filed by appellants/claimants.
2. Claimants filed claim application before the Tribunal contending that on 26/05/2011 son of claimants Balu Sudam Dugane along with his brother Datta came to Partur Railway Station. Datta purchased second class railway ticket for Balu's journey from Partur to Nashik and handed it over to Balu. Balu kept ticket in his

pocket and boarded Nandigram Express, Train No.11402. Due to heavy rush in train, as Balu was standing near the door of compartment, he fell down from running train at KM No.258/24-26 Manmad Railway Station due to jerk of running train and came under the wheels of said running train and succumbed to injuries on the spot. In the said incident, the ticket which Balu had kept in his pocket was lost. Claimants, therefore, claimed compensation of Rs.4,00,000/- for death of Balu in railway accident.

3. Respondent/Railways opposed the claim by filing written statement contending that no such incident as alleged by claimants causing death of deceased within the meaning of Section 123(c) read with Section 124-A of the Railways Act, has taken place. Deceased was not a bonafide passenger of any train. As such, claim application is not maintainable. Railways denied all claims made in claim application and prayed for dismissal of the same. Tribunal after recording evidence and hearing the parties dismissed the claim application.

4. Heard learned advocate for appellants and learned advocate for respondent.

5. Learned advocate for appellants assailed the judgment and order of Tribunal contending that Tribunal has erred in recording finding that deceased has not died in an untoward incident and that he was not bonafide passenger. He submits that there is sufficient material on record to show that deceased had fallen from running

train. Tribunal failed to appreciate the material on record in proper perspective. Dismissal of claim by Tribunal is contrary to the letter and spirit of beneficial legislation. In support of his submissions, he relied on ***Kamukayi and Others Vs. Union of India and Others [AIR 2023 SC 2761]***, ***Rathi Menon Vs. Union of India [MANU/SC/0165/2001]***, ***Union of India Vs. Prabhakaran Vijaya Kumar and Others [MANU/SC/7608/2008]***, ***Jameela and Others Vs. Union of India [MANU/SC/0656/2010]***, ***Union of India Vs. Rina Devi [MANU/SC/0522/2018]***, ***Ramdhan and Others Vs. Union of India and Others [MANU/MH/1535/2008]***, ***The Union of India Vs. Sitabai Vasane and Others [MANU/MH/0847/2013]***, ***Dalit Vs. Union of India [MANU/MH/1829/2019]***, ***Rajkumari and Another Vs. Union of India [1993 STPL 4596 MP]***, ***Union of India Vs. Hari Narayan Gupta [2007 STPL 1616 Rajasthan]***, ***Union of India Vs. Parameswaran Pillai [2013 STPL 1418 Kerala]***, ***N. Parameswaran Pillai Vs. Union of India and Another [2002 STPL 6915 SC]***, ***Tahazhathe Purayil Sarabi and Others Vs. Union of India and Another [2009 STPL 10447 SC]***.

6. Per contra, learned advocate for respondent / Railways supported the impugned judgment and order, he submits that Tribunal has properly appreciated the evidence on record and has rightly come to conclusion that deceased had not died in an untoward incident within the meaning of Section 123(c). Since no

valid ticket was found with the dead body, deceased cannot be said to be a bonafide passenger. In support of his submissions he relied on the decision of learned Single Judge of this Court in ***First Appeal No.3545 of 2018 (Ashok s/o Sahebrao Ughade and Others Vs. Union of India)*** and ***Union of India (UOI) Vs. Rina Devi, [MANU/SC/0522/2018]***.

7. Heard learned advocate for appellants and learned advocate for respondent at length. Perused the record.

8. In support of the claim, claimant, father of deceased, has filed evidence affidavit. He reiterated the contentions raised in claim application. It is specifically averred in his affidavit that Datta, brother of deceased, had purchased second class railway ticket for journey from Partur to Nashik and handed it over to Balu, which Balu kept in his pocket. Along with evidence affidavit Sudam has produced following documents:-

- (1) True copy of the ration card (AW-1/1)
- (2) Certified copy of A.D. report No.40/2011 (AW-1/2)
- (3) Certified copy of spot panchanama (AW-1/3)
- (4) Certified copy of inquest panchanama (AW-1/4)
- (5) Certified copy of Postmortem report (AW-1/5)
- (6) Certified copy of dead body receipt (AW-1/6)
- (7) Certified copy of summary report (AW-1/7)
- (8) Certified copy of statement of Datta (AW-1/8)
- (9) Original death certificate of deceased Balu (AW-1/9)
- (10) Attested true copy of election card of claimant No.1 (AW-1/10)
- (10) Attested true copy of election card of claimant No.2 (AW-1/11)

9. It is a matter of record that deceased has died in an

accident on 26/05/2011. On receipt of the information about accidental death (for short 'A.D.') of deceased, A.D. No.40/11 is registered and spot panchanama and inquest panchanama were conducted by Railway Police Force (for short 'R.P.F.'). It is recorded in spot panchanama that dead body was found on the track, it was removed and kept aside to clear the track. In the A.D. report it is stated that deceased had fallen from some running train and died due to profuse bleeding from injuries to his head. Relatives of deceased were intimated about accidental death on 26/05/2011. In A.D. inquiry, statement of Datta, brother of deceased, was recorded on 26/05/2011, wherein he has stated that on 25/05/2011 his father asked him to drop Balu at Partur railway Station. Accordingly, at about 07:00 p.m. he went to Partur Railway Station, purchased a ticket for Nashik and gave it to Balu. On the next day, in the afternoon they received information about unfortunate death of Balu in railway accident.

10. Police Inspector of R.P.F. Manmad Police Station submitted A.D. summary report to the Sub-Divisional Magistrate, Malegaon, concluding that, *'So, on the conclusion and after taking investigation the said deceased person died due to fallen down from some unknown running train. So, on his death accidental death summary may kindly be sanctioned.'* In postmortem report opinion as to probable cause of death is mentioned as *'due to haemorrhagic shock due to head injury'*. Head injury suffered by deceased in an

untoward incident is clear from these documents.

Report dated 03/07/2012 in respect of claim on account of death of deceased, was forwarded by the Divisional Railway Manager, Bhusawal. In the said report, under the caption 'Inquiry Conclusion' it is stated that, *"deceased Balu was traveling without ticket, by sitting in open door of a coach or in standing condition and he was negligent, due to this he has died in accident. Hence, the railway does not owe any liability in this case"*.

11. All the aforestated documents clearly indicate that on 26/05/2011 deceased Balu died due to falling from a running train, which is an untoward incident. Tribunal has misread and misconstrued the documents on record and has erroneously recorded a finding that deceased has not died in an untoward incident.

12. Finding of the Tribunal that deceased was not bonafide passenger as no valid railway ticket was found with him, is also unsustainable in the facts of the present case. On the date of accidental death i.e. on 26/05/2011, immediately the statement of Datta, brother of deceased, is recorded wherein he has categorically stated that he went to drop Balu and purchased ticket for journey from Partur to Nashik and handed it over to Balu. This aspect is also stated on affidavit by claimants. Since the statement of Datta is immediately recorded after accident, it cannot be said to be afterthought and there is no reason to disbelieve the same. Hence,

claimants have discharged their initial burden to prove that deceased was a bonafide passenger.

13. Tribunal has failed to appreciate material on record in proper perspective and has erroneously dismissed claim of the claimants. While doing so the Tribunal has ignored settled legal position 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'*.

14. In ***Dalit*** (supra), this Court has relied on ***Union of India Vs. Bimala wd/o 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 authorised passenger."

15. In ***Union of India Vs. Nandabai w/o. 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 traveling

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.”

16. These above judgments are followed by learned Single Judge of this Court in **Dalit** (supra). In present case, circumstantial evidence and material on record are sufficient to show that deceased had fallen from running train and died in an accident. The adverse findings recorded by the Tribunal, therefore, are unsustainable in law and facts of present case. While dismissing the claim, Tribunal has lost sight of authoritative pronouncement of the Apex Court in **Prabhakaran Vijaya Kumar** (supra), 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....”

17. 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 above ruling, adverse finding recorded by the Tribunal cannot be sustained.

18. Learned advocate for Railways has relied on decision of learned Single Judge in First Appeal No.3545/2018, wherein by relying on **Rina Devi** (supra) in the facts of that case it is held,

"Thus, it is trite that the initial burden is on the claimants to prove death or cause of injury to a bonafide passenger in an untoward incident as contemplated by Section 123 of the Act. Section 101 of Evidence Act, provides that burden would be on person who asserts the existence of a fact. Thus, onus shifts upon railway only when the initial burden is discharged by leading evidence on affidavit or relying upon documentary evidence. Similarly, factum of the deceased being a bonafide passengers need not be proved by producing a valid ticket only but it can be done on the basis of evidence indicating the purchase of ticket or it's loss."

19. In **Rina Devi** (supra), the Apex Court has held,

"17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

20. In the case in hand, there is sufficient material on record showing that deceased was a bonafide passenger and he died in an untoward incident occurred on 26/05/2011, by falling from a running train. Therefore, the above rulings are of no help to respondent / Railways.

21. In the result, following order:-

O R D E R

- (I) First appeal is allowed.
- (II) Impugned order dated 02/03/2016, passed by Railway Claims Tribunal, Nagpur, in case No.OA(IIu)/NGP/2012/0053, is hereby quashed and set aside.
- (III) Claim application No.OA(IIu)/NGP/2012/0053, filed by claimants is allowed.
- (IV) Railways/respondent to pay the interest on the compensation amount at the rate of 6.5 % per annum from the date of filing of claim application till it's realisation.

(NITIN B. SURYAWANSHI, J.)