



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2775 OF 2018

1. Sunanda Nana Chavan
Age- 50 years, Occ- Nil
2. Nana Shankar Chavan
Age- 55 years, Occ- Labour
R/o. Near Old Ram Mandir
Tal- Pachora, Dist. Jalgaon.Appellants

VERSUS

Union Of India
Through General Manager
Central Railway, C.S.T.
Mumbai.Respondents

.....
Mr. Datta A. Madake, Advocate h/f. Mr. G.A. Nagori, Advocate for
appellants
Mr. M.N. Navandar, Advocate for respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 19th JUNE, 2024

ORDER :

1. This appeal filed under section 23 of Railway Claims Tribunal Act, 1987 takes exception to the judgment and order dated 24.04.2018, passed by Railway Claims Tribunal, Nagpur Bench in Case No. OA(Ilu)/NGP/2015/0016.

2. Son of appellants, Mukesh was traveling on 27.06.2013 from Jalgaon to Pachora by train No. 18030 Shalimar

Bhagyawant Punde

Express. He was doing work of computer repairing at Jalgaon, so he used to do up and down from Pachora to Jalgaon and he had monthly railway pass. Due to rush in the compartment, he fell down from the running train near pole No. 12 on platform, main railway line, and sustained injuries. He was shifted to General Hospital, Jalgaon where he succumbed to the injuries on 28.06.2013. Appellants-Claimants filed claim application claiming compensation of Rs. 4,00,000/- from respondent.

3. Respondent- Railway opposed the claim by filing written statement and raising preliminary objections. Railway contended that no such incident causing death of the deceased within the meaning of provision of Section 123(c) read with Section 124-A of the Railways Act has taken place and therefore claim application is not maintainable in law. It is contended that applicants are not entitled for any compensation. The Tribunal framed issues and after recording evidence rejected the claim. Hence, the first appeal.

4. Heard learned advocate for appellants and learned advocate for respondent. Perused the record.

5. Learned advocate for appellant assailed the

impugned judgment on the ground that Tribunal has recorded erroneous finding that deceased has not died in a untoward incident and rejected claim of the claimants. In support of his submission he relied on *Union of India v. Rina Devi*, AIR 2018 SC 2362 and decision of learned Single Judge in First Appeal No. 116 of 2022 at Nagpur Bench.

6. Learned advocate for Railway has supported the impugned judgment and order of the Tribunal stating that Tribunal is justified in rejecting the claim as claimants have failed to prove that there was untoward incident, which caused death of deceased.

7. Admittedly, deceased was having valid railway pass. The spot panchnama shows that deceased was found in injured condition near the platform on up main line and both his legs were cut. Investigating officer/Sub Inspector, Railway Protection Force, Jalgaon, on the basis of documents prepared by railway police and statement of mother of deceased has submitted a report stating that deceased tried to board the train from platform No. 2 of Jalgaon railway station going towards Pachora and in that attempt he came under the train and as his both legs were cut he expired. He has stated that this incident has

occurred due to negligence of deceased. Doctor who conducted post mortem has given an opinion as to probable cause of death "*hemorrhagic shock+subdural hematoma due to amputation injury to lower limb and head injury respectively sustained in railway accident*". It is thus clear that deceased died due to railway accident.

8. Even if it is accepted that deceased died while he was boarding the train, still from the documents placed on record this Court is of the opinion that it will fall within the definition of an untoward incident.

9. In Rina Devi (supra), Apex Court has ruled on similar facts;

"16.5. *In Shyam Narayan (2017 AAC 1833 (Del.)) (supra), same view was taken which is as follows:*

"6(ii) *I cannot agree with the arguments urged on behalf of the appellants/applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury the compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on*

account of suicide or attempted suicide, self inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity."

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 bases on 'no fault theory'. We may in this connection refer to judgment of this Court in *United India Insurance Co. Ltd v. Sunil Kumar* 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 124-A merely on the plea of negligence of the victim as a contributing factor."

The case in hand is squarely covered by the above observations.

10. In similar facts learned Single Judge of this Court in First Appeal No. 116 of 2022 decided at Nagpur has held;

"20. The underlying object of Section 124-A is to compensate a bonafde passenger holding a valid journey ticket if he becomes a victim of an untoward incident. The proviso to Section 124-A has carved out circumstances under which the passenger is not entitled for compensation. Ravindra's case does not

come within the proviso to Section 124-A.

21. In such view of the matter, I have no hesitation in holding that Ravindra who purchased a valid ticket for travelling, by a train carrying passenger and became a victim of an untoward incident cannot be deprived of the compensation which a passenger is entitled to under Section 124-A of the Railways Act, merely because he did not have a valid ticket beyond Kamptee railway station where the train does not have a scheduled halt. Accordingly, I hold Ravindra to be a 'passenger' within the meaning of clause (ii) of the explanation to Section 124-A of the Railways Act.

22. -----

*25. The Tribunal proceeded on the footing that Ravindra died due to a self-inflicted injury within the meaning of proviso (b) to Section 124A of the Railways Act. Such finding of the Tribunal is in the teeth of the decision in **Rina Devi's case (supra)**. The Tribunal relied upon the decision of this Court in the case of **Fakira s/o Mangal Gautel v/s. Union of India in F.A.No.406 of 2002** in support of its conclusion that Ravindra is not entitled for compensation as the train had no halt at the station where the appellant tried to de-board. The decision of the Supreme Court in **Rina Devi (supra)** binds me. The decision in **Fakira s/o. Mangal Gautel (supra)** was rendered much before the decision in **Rina Devi**", and therefore does not now apply."*

The aforesaid observations are applicable to the facts of the present case.

11. In view of aforesaid ratios finding recorded by the Tribunal that "*deceased died while he was trying to board the*

running train, during his process he slipped and fell down and run-over by the train. Hence, the story of the applicants that the deceased fell down from the train due to heavy crowd is not convincing, but rather fabricated, concocted and the claim application has been filed to claim false compensation” is unsustainable in law and facts of the present case. The finding recorded by the Tribunal that *“conduct of the deceased in trying to board the running train is not expected of any passenger and the same amounts to an act of rashness and criminal negligence”* can be said to be perverse. The Tribunal has erroneously drawn a conclusion that *“act of the deceased was with full knowledge of the imminent possibility of endangering his life or limb and therefore, it squarely comes within the term “self inflicted injury” defined in Section 124-A Proviso (b) of the Act.”* In the light of ratios quoted herein-above the Tribunal has failed to appreciate the evidence on record in the proper perspective and has committed an error apparent on the face of record in rejecting the claim of appellants.

12. While rejecting the claim, the Tribunal has failed to consider relevant material on record and misinterpreted provisions of Section 123 and 124-A of the said Act and

misapplied these provisions to the facts of the present case.

13. For the aforestated reasons, impugned judgment and order passed by Railway Claims Tribunal, Nagpur is unsustainable in law and facts of the case. Hence, the following order:

ORDER

- (I) First Appeal is allowed.
- (II) Impugned judgment and order dated 24.04.2018, passed by Member (Judicial)/RCT/Jaipur Circuit Bench at Nagpur in Case No. OA(IIu)/NGP/2015/0016 is quashed and set aside.
- (III) Claim Application filed by appellants is allowed in terms of prayers made therein.

[NITIN B. SURYAWANSHI, J.]