



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

FIRST APPEAL NO. 3112 OF 2018

1. Sayyad Khalil s/o Ibrahim Mohd Sayyad
age 41 years, occ. Service
r/o Babhalgaon,
Tq. & Dist. Latur.
2. Sayad Salim s/o IbrahimMohd Sayyad
age 32 years, occ. Business
r/o as above.

.. Appellants

Versus

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

.. Respondent

Mr. P. S. Agrawal, Advocate for the appellant.
Mr. S. S. Rathi, Advocate for respondent.

CORAM : R. M. JOSHI, J.

DATE : 8th February, 2024.

JUDGMENT :

1. Admit.
2. By consent of learned counsel for both the sides, heard finally at the stage of admission.

3. This appeal is filed by claimants under Section 23 of the Railways Claims Tribunal Act, 1987 against dismissal of claim by Railways Claim Tribunal, Nagpur by judgment and order dated 17th July, 2018, in claim application No. OA(IIU)/NGP/87/2016 filed under Section 124(c) of Railways Act, 1989 (for short 'The Act').

4. Facts which led to filing of the present appeal can be narrated in short as under :-

Ibrahim Mohd Sayyad was travelling from Nanded railway station to Mudkhed by unknown train on 27th May, 2015. While travelling due to sudden jerk he fell down and came between the platform and the wheels of the train and died on the spot. Claimants are the sons of deceased and they preferred claim seeking compensation of Rs. 4,00,000/- from respondent.

5. Respondent, pursuant to the summons, appeared in the proceedings and denied the claim. It is alleged that due to own negligence deceased died and it cannot be termed as untoward incident as defined under Section 123(c) of the Act. Railways Claim Tribunal, Nagpur dismissed the claim of appellants on the ground

that the deceased did not die in an untoward incident and therefore claimants were held to be not entitled for compensation.

6. Learned counsel for claimants submits that the Tribunal has committed serious error in not considering the material evidence on record in proper perspective. It is his contention that a railway ticket was found on the spot which indicates that the deceased was holding valid ticket. It is his further submission that admittedly, as per the statement of the loco pilot of the train, he heard from the passengers standing on the platform that a person has fallen from rake. It is his submission that the Tribunal has committed serious error in dismissing the claim on the basis of conjuncture and surmises holding that the ticket was indicating that four passengers travelled together and that none of these passengers have come forward which according to the Tribunal indicates that the ticket did not belong to the deceased. It is further canvassed that under notification with effect from 1st January, 2017, compensation payable on death in untoward incident is Rs. 8,00,000/-. It is his submission that though under the Act or rules framed thereunder, there is no provision for awarding any interest on the amount of compensation, as per the dictum of the Hon'ble Apex Court in case of Union of India

vs. Rina Devi, **AIR 2018 SC 2362**, reasonable interest deserves to be granted.

7. Learned counsel for respondent opposed the said submission by referring to the evidence on record. It is his contention that the basic requirement for seeking compensation is that the deceased must be a bonfide passenger and travelling in a passenger carriage train. According to him, the evidence on record indicates that the train was empty and did not mean to carry any passenger at relevant time. According to him, these facts are more than sufficient to discard the claim of claimants. It is also submitted that the claimants did not state as to with whom the deceased was travelling and that the ticket which was found pertained to four passengers travelling together. It is his submission that the deceased was the only person found at the place of the accident and that none other supposedly travelling with him has come forward to disclose identity or extend help. In such circumstances, according to him, the Tribunal was fully justified in rejecting the claim of the claimants. Without prejudice to his contentions, he submits that in the event this Court is inclined to grant any compensation to the claimants the compensation would be as per the notification on the date of the

accident and that compensation cannot be more than Rs. 4,00,000/- and in view of judgment of Hon'ble Apex Court in case of Union of India vs. Rina Devi (supra), the total amount of compensation cannot exceed Rs. 8,00,000/- which was the compensation payable as on the date of passing of the award.

8. It is settled law that the initial burden is on the claimants to prove that the deceased was passenger as defined under Section 2(29) of the Act and has died on account of untoward incident within meaning of Section 123(c) read with Section 124(A) of the Act. This, however, does not mean that the claimants are required to prove their case beyond reasonable doubt. On preponderance of probabilities, the said case is required to be established. Section 2(29) defines 'Passenger' thus:-

2(29) "passenger" means a person traveling with a valid pass or ticket;

Term 'untoward incident' is defined in Section 123 to say that :

Untoward incident" means –

(1)(i) the commission of a terrorist act within the meaning of sub-section (1) of sec. 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), or

- (ii) the making of 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.)

In the light of above provisions, claimants were required to prove that the deceased was a passenger holding valid ticket and that while boarding or alighting from the train his death is caused. Since claimants did not accompany deceased at the time of occurrence of incident, it can not be expected from them to plead the untoward incident with precision. On the basis of available information claim is expected to be filed before Tribunal. Claimant No. 1 examined himself and relied upon documentary evidence. Admittedly, he is not eye witness to the accident nor has personal knowledge about the same, including valid ticket held by deceased at relevant time. There is however sufficient documentary evidence on record indicating that ticket was found/recovered by Railway police

and it is part of record of enquiry conducted by Divisional Railway Manager.

9. As far as the said evidence of valid ticket is concerned, the Tribunal has refused to believe the said evidence and discarded the same on the ground that if the deceased was travelling with three other passengers then at the time of accident they must also be present on the platform and they should have identified the dead body. By referring to the Spot Panchanama and Inquest Panchanama, it is claimed that there is no mention of any co-passengers and that identification of deceased was established by the police officials. On these findings, it is held that deceased was not bonafide passenger. The said findings recorded by the Tribunal are nothing short of speculation. There is absolutely no evidence on record to indicate that the ticket found/seized by the concerned authority did not belong to the deceased. Merely because the ticket was for four persons, there cannot be any presumption that the said persons shall come forward and identify the deceased or lack of their names in Panchanams presume their absence. The ticket is not produced by claimants. During the course of enquiry of accidental death conducted by authorities, the ticket in question came to be

seized. Thus, there is absolutely no evidence on record to show that it was the claimant who has prepared/fabricated bogus ticket and planted the same in record. There is no suggestion made to the claimant in this regard. In the absence of any evidence to conclude that the deceased was not a bonafide passenger, the findings recorded by the Tribunal in that regard are perverse and not sustainable.

10. Perusal of record clearly indicates that the incident has occurred at Nanded Railway Platform No. 2. There is further no dispute about the fact that this is not a case of train having ran over the deceased. Admittedly, deceased fell down from the train. Evidence of the loco pilot Ganesh Ambadas Kamble shows that he heard shouts of passengers standing on the platform indicating that some one has fallen from the train. As regard the untoward incident, the Tribunal, by relying upon the evidence of loco pilot has held that train No. 17688 under which the deceased died was an empty rake on platform No. 2 at Nanded railway station. It is thus sought to be claimed by respondent that since the train was not passenger train, the claimants are not entitled to claim any compensation. Pertinently, it is not claim of respondent that it was

goods carriage train or only engine without bogies. There is no denial of the fact that the train from which deceased fell, was passenger carriage train. The question sought to be raised is that at relevant time, the train was not carrying passengers and all doors were closed. The said train was set to resume its journey with passenger from different location/railway station. It is therefore necessary to see whether the respondent has succeeded in proving so.

11. Though it is sought to be claimed by witness of respondent that the doors of the rake/coaches were closed, but his admission in cross-examination shows that he did not personally check it. Thus, there is no evidence to hold that the doors of coaches were closed. Resultantly, there is no conclusive evidence on record to hold that the said rake was empty rake. Even otherwise, one cannot ignore the other relevant circumstances such as the time of occurrence of accident, age of deceased etc. Undoubtedly, deceased was about 72 to 75 years of age. The incident has occurred at midnight time. There is no evidence on record to indicate that any announcement was made before exit of train No. 17688 from platform that it was an empty rake and nobody was expected to board the said

train. These circumstances show that in all probabilities, believing the train to be passenger carrying train, deceased attempted to board the same which has resulted into occurrence of the accident. The burden on respondent to prove that the train did not carry passengers or passengers were prevented from entry in the bogies, is not discharged as there is no conclusive evidence to hold to that effect.

12. Section 124 A of the Act provides that when in the course of working of railway an untoward incident occurs, then irrespective of the fact whether there involves any wrongful act or negligence of railway administration, injured or dependent of deceased passenger, would be entitled to claim compensation. It however further provides that no compensation shall be payable under this section, if passenger dies or suffers injury due to (i) suicide or attempted suicide by him: (ii) self-inflicted injury (iii) his own criminal act (iv) any act committed by him in a state of intoxication or insanity; (v) any natural cause or disease etc.

13. Once claimants have been able to discharge initial burden to prove that the deceased was passenger as defined under

Section 2(29) of the Act and that he died in an untoward incident defined by Section 123, the onus shifts on respondent to prove that present case is covered by the exceptions provided hereinabove under Section 124A. There is no evidence on record to indicate that it is a case of commission of suicide nor respondent succeeded in proving any sheer negligence on part of the deceased. There is nothing on record to indicate that the accident has not genuinely occurred while deceased was attempting to board the train in question. Without recording any finding to the effect that it is suicidal death or the accident has occurred due to sheer negligence on the part of the deceased, the Tribunal is not justified in dismissing the claim. Thus, case is made out by claimants to cause interference therein.

14. Notification dated 25th October, 1997, issued by Authority of Railways, in exercise of Section 129 of the Act, amended rules with effect from 1st November, 1997, whereby compensation for death is fixed at Rs. 4,00,000/-. This amount came to be further enhanced to Rs. 8,00,000/- with effect from 1st January, 2017. In the instant case, incident has occurred on 27th May, 2015. At this stage it would be relevant to refer to judgment of Hon'ble Apex Court in case of Rina Devi (supra) wherein it is held thus :-

15.4 Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon* (supra) and *Kalandi Charan Sahoo* (supra) stands explained accordingly. The 4 Judge Bench judgment in *Pratap Narain Singh Deo* (supra) holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.

Considering facts of the case and binding precedent, compensation payable on account of death of deceased would be Rs. 4,00,000/-. The law on the point of payment of interest on such amount is also fairly settled by now to say that compensation will be

payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the said amount would have been paid to the claimants immediately, at least they could have earned interest payable by the Nationalised Banks. Considering the average interest payable during the period from 2015 onward, this Court finds it appropriate to award simple interest at the rate of 7% per annum. The claimants therefore would be entitled to receive compensation of Rs. 4,00,000/- along with interest at the rate of 7% per annum from the date of claim petition but not more than total sum of Rs. 8,00,000/-.

15. In above terms, appeal stands allowed. Impugned judgment and award dated 17th July, 2018 passed by Railways Claim Tribunal, Nagpur is set aside.

16. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge