



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

FIRST APPEAL NO. 49 OF 2024

APPELLANTS

- : 1. Smt. Nilamdevi wd/o. Ajay Ram, Aged 30 years, Occ. Household.
2. Rajnish Ranjan S/o. Ajay Ram, Aged 10 years, Occ. Education.
3. Kritika Kumari D/o. Ajay Ram, Aged 7 years, Occ. Nil.
4. Ritika Kumari D/o. Ajay Ram, Aged 6 years, Occ. Nil.
- Appellant Nos.2 to 4 are minors, under guardianship of mother Smt. Nilamdevi wd/o. Ajay Ram i.e. Appellant No.1.
5. Shambhu Ram S/o. Ganeshi Ram, Aged 66 years, Occ. Nil.
6. Kusumdevi W/o. Shambhu Ram, Aged 51 years, Occ. Household.

All R/o. Gram Narullahpur, Post Office Kabirpur, Panapur Haveli, Dist. Muzaffarpur Kanti, Bihar – 843109.

//VERSUS//

RESPONDENT

: Union of India, through General Manager, Central Railway, C.S.T. Mumbai

Mr. D.S. Lambat, Advocate for the Appellants.

Ms. A.S. Athalye, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 19th MARCH, 2024.

ORAL JUDGMENT

. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, “the Act of 1987”), challenge is to the judgment and order dated 25th October, 2023, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants/claimants came to be dismissed.

02] BACKGROUND FACTS:

Appellant No.1 is the wife of the deceased Ajay Kumar; appellant Nos.2 to 4 are the children of the deceased; and appellant Nos.5 and 6 are the parents of the deceased. On 12th July, 2019, the deceased was travelling by Antyodaya Express. He had purchased a journey ticket at Manmad Railway Station and boarded the said train to go to Chhapra. It is stated that when the train came at Shirsoli Railway Station at midnight, the deceased, due to a sudden jerk, fell from the moving train. He sustained injuries and died.

The journey ticket was recovered. He was a *bona fide* passenger. It is stated that the death was in an untoward incident.

03] The respondent-Railway filed the written statement and opposed the claim. It was contended that the deceased was not a *bona fide* passenger travelling with a valid journey ticket. According to the railway, the Antyodaya Express was stopped at Shirsoli Railway Station to give precedence to Durgam Express coming from the opposite direction. The deceased got down from the train and was moving on the railway track. The Loco Pilot of the Durgam Express blew horn to alert the deceased; however, he did not pay any heed. He was dashed by the Durgam Express and died due to the injuries sustained by him. It is stated that the injuries sustained by the deceased were self-inflicted injuries due to his negligent act.

04] The appellants examined three witnesses. The railway also examined three witnesses. Learned Members of the Tribunal, on appreciation of the evidence, found that there was no substance in the claim and dismissed the claim. The appellants, being aggrieved by this judgment and order, are before this Court in appeal.

05] I have heard Mr. D.S. Lambat, learned advocate for the appellants and Ms. A.S. Athalye, learned advocate for the respondent-Railway. Perused the record and proceedings.

06] The following points fall for my determination:

(a) *Whether the deceased was a bona fide passenger travelling with a valid journey ticket at the time of the incident?*

(b) *Whether the deceased died in an untoward incident as understood by Section 123(c)(2) of the Railways Act, 1989 (for short, “the Act of 1989”)?*

07] Learned advocate for the appellants submitted that the deceased was travelling with a valid journey ticket and the ticket was found at the time of panchanama. Learned advocate submitted that learned Members of the Tribunal have failed to consider this evidence. Learned advocate further submitted that the Antyodaya Express was stopped at Shirsoli Railway Station to give precedence to Duronto Express. Learned advocate submitted that the incident occurred in the night time and therefore, the contention of the Railway that the deceased got down from off side at the railway station and was dashed by Duronto Express, cannot be accepted.

Learned advocate submitted that AW-2, who was a co-passenger with the deceased, has categorically stated that the deceased, due to a sudden jerk, fell down and sustained the injuries. Learned advocate submitted that the evidence of the Loco Pilot of Duronto Express cannot be believed because if the deceased was dashed by the Duronto Express running at a speed of 80 km. per hour, then he would have been thrown away at some distance towards Antyodaya Express. Learned advocate submitted that the dead body was lying by the side of the track on which Duronto Express had passed. Learned advocate submitted that the possibility of the deceased falling down on the track when Duronto Express was passing through the station, cannot be ruled out. Learned advocate submitted that in this case, the first part of Section 124A of the Act of 1989 would be applicable and not the proviso.

08] Learned advocate for the respondent-Railway submitted that there is no reason to discard and disbelieve the evidence of the Loco Pilot of Duronto Express. Learned advocate submitted that the evidence of AW-2, co-passenger with the deceased, cannot be believed because he had not witnessed the incident. Learned

advocate further submitted that the act of the deceased getting down from the offside of the train and walking on the railway line was nothing short of an attempt to commit suicide. Learned advocate, in short, supported the judgment and order passed by the Tribunal.

09] I have gone through the record and proceedings. The journey ticket found at the time of the inquest panchanama is part of the record. The deceased was travelling from Manmad to Chhapra by the Antyodaya Express. The deceased was, therefore, a *bona fide* passenger, travelling with a valid journey ticket.

10] The important question is as to whether the death was in an untoward incident or whether it would be covered under the proviso to Section 124A of the Act of 1989. In my view, for the purpose of appreciation of the evidence of the Loco Pilot, perusal of the evidence of the Station Master, RW-3, would be necessary. He has stated that the Antyodaya Express was stopped for want of line clearance at 22.57 hrs. and for giving precedence to the Duronto Express, i.e., Train No.12293. He has stated that the Duronto Express passed through Shirsoli Railway Station at 23:06 hrs. from

the main line. He has further stated that the Antyodaya Express departed at 23:17 hrs. It is, therefore, apparent that within 7 to 8 minutes of the halting of the Antyodaya Express, the Duronto Express passed through the main line. As per the case of the railway, the deceased had deboarded the train from the offside and came on the railway line, and despite blowing the horn, he did not leave the track and, therefore, he was dashed by Duronto Express. It is to be noted that it was midnight. On the other side of the Antyodaya Express, there was a platform. In the ordinary circumstances, the deceased would not have deboarded the train, which had no scheduled halt at Shirsoli Railway Station, from the offside. The case put forth by the railway is not, therefore, probable.

11] The Antyodaya Express had no scheduled halt at Shirsoli Railway Station. It was halted to give passage/pass over to Duronto Express. Within 6 to 7 minutes, the Duronto Express passed through the Shirsoli Railway Station. RW-3, Station Master at Shirsoli Railway Station, in his evidence, has not stated a word about the precaution taken by him to avoid such incidents. He has not stated that any warning was given to the passengers or any announcement

was made about the unscheduled halt of the train at Shirsoli Railway Station. He has also not stated that the passengers were informed about the approximate time required for departure of the train. Similarly, he has not stated that the passengers were informed by making an announcement that the Durgam Express was coming from the opposite direction and passing through Shirsoli Railway Station at a high speed. After the departure of the Durgam Express, the Antyodaya Express was given a signal to depart. It is the duty of the railway to take proper precaution in such situations. The deceased otherwise had no reason to get down at the Shirsoli Railway Station. Even if the train had halted at such a station, he would have deboarded on the platform. Therefore, on this count also, the case of the railway cannot be accepted.

12] In my view, in the above factual background, the evidence of the Loco Pilot of Durgam Express deserves appreciation. AW-2 is the co-passenger, travelling with the deceased. He has stated that the deceased was travelling with him. He has stated that the deceased, due to a sudden jerk to the train, fell down and sustained injuries in the incident. He has stated that as soon as the deceased fell from the

train, Duranto Express came from the opposite direction and gave dash to the deceased. RW-2, the Loco Pilot of Durant Express, has stated that the passenger was talking on his mobile phone or taking a selfie. In my view, this statement of the Loco Pilot cannot be accepted. If the deceased wanted to get down at Shirsoli Railway Station, then he would have deboarded on the platform and not from the offside. The dead body was lying between two tracks. If the deceased was dashed by the Duronto Express, as stated, then he would have been thrown away, most probably towards Antyodaya Express. It is seen that the dead body was lying near the main track through which Duronto Express passed through. This fact, therefore, clearly suggests that after falling from the train, the deceased might have been dashed by Duranto Express and therefore, the deceased was lying between two railway lines. The evidence on record and the time of the incident clearly suggest that the deceased had no reason to get down from the offside at Shirsoli Railway Station. The deceased was proceeding to Chhapra. The Antyodaya Express had no scheduled halt at Shirsoli Railway Station. The deceased, therefore, would not have taken the risk to get down from the train from the offside. In my view, learned Members of the

Tribunal have failed to properly appreciate the evidence on record.

13] The deceased was admittedly not run over by the Duronto Express. This fact suggests that the deceased was not standing on the railway track. It appears to be the case of the Railway that while taking selfie on the side of Antyoday Express, he was dashed by Duronto Express. In my view, the contention of the Railway that the deceased was taking selfie, cannot be accepted. The railway administration was responsible for this lapse. Whenever the train is halted at a railway station where it has no scheduled halt, the necessary precaution is required to be taken. Such precaution is necessary during night. The incident occurred at midnight. Therefore, in my view, this case would fall under the first part of Section 124A of the Act of 1989. The case would not fall under the proviso to Section 124A of the Act of 1989. It is the case of the railway that the deceased was negligent and, therefore, the incident occurred. In my view, such defence will not be available to the railway. The railway cannot be held liable to pay compensation if the case is covered under the proviso to Section 124A of the Act of 1989. The Hon'ble Apex Court in the case of *Union of India Vs.*

Rina Devi [AIR 2018 SC 2362] has considered this issue. Paragraph 16.6 would be relevant for the purpose of addressing this issue. It is extracted below:

“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. v. 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.”

14] In view of the law laid down by the Hon’ble Apex Court, the defence of negligence is not available, inasmuch as the liability is based on ‘no fault theory’. It is further held that for causing self-inflicted injury, intention would be required. It is held that mere negligence is not sufficient to reject the claim. It is held that death or injury in the course of boarding or deboarding a train will be an ‘untoward incident’ entitling a victim to compensation and will not

fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.

15] In this case, the evidence on record is sufficient to establish that the deceased fell from the train and sustained injuries. As per Section 123(c)(2) of the Act of 1989, the accidental falling of any passenger from a train carrying passengers falls within the ambit of an 'untoward incident'. Admittedly, the Railway has not adduced any evidence to prove that on account of unscheduled stoppage of the train at Shirsoli Railway Station, any care or precaution was taken. The passengers travelling by the said train were not informed about the reasons for unscheduled stoppage and the time taken for departure. The deceased otherwise had no reason to get down from the train. Ordinarily, in case of unscheduled stoppage of a train, the passengers may not de-board the train. Even if some passengers de-board the train, they would de-board on the platform side. Failure to take care and precaution in such a situation is a serious lapse on the part of the Railway. In my view, occurrence of such an incident on account of failure of the Railway Administration to take proper care and precaution, will go against the Railway. The death

or injury in such an incident would, therefore, fall within the definition of an 'untoward incident'. In this case, the deceased was travelling by train to Chhapra. He was not either crossing the railway line or roaming at the railway station. The death of a passenger due to the injuries sustained in this manner would fall within the definition of an 'untoward incident'. Therefore, I conclude that learned Members of the Tribunal were not right in rejecting the claim. As such, I record my findings on both the points in the affirmative. Hence, the following order is passed:

- a) The appeal is **allowed**.
- b) The judgment and order dated 25th October, 2023, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/16/2020 is set aside. The claim application is allowed.
- c) The respondent-Railway is directed to pay compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the appellants. The respondent-Railway is also directed to pay interest @ 6% per annum from the date of the incident till realization of the amount.

- d) The amount of compensation be deposited within four months from the date of uploading of this judgment.
- e) The amount of compensation be deposited directly in the bank accounts of the appellants. The appellants are directed to provide their bank account details to the respondent-Railway.
- f) Out of total compensation, 50% shall be paid to appellant No.1; 30% shall be paid together to appellant Nos.2, 3 and 4; and balance 20% shall be paid together to appellant Nos.5 and 6.

16] The First Appeal stands disposed of in the aforesaid terms.
No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

Vijay