



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO. 290 OF 2024

- 1) Minakshi Wd/o Govind Kurre,
Aged about 20 years, Occu.-Labour,
- 2) Ramadhar S/o Makhan Kurre,
Aged about 58 years, Occu.-Labour,
- 3) Usha Bai W/o Ramadhar Kurre,
Aged about 55 years, Occu.-labour,
All R/o. Mehendi Bagh Road,
Near Dadu Mahajan Akhada,
New Mangalwari, Nagpur-440014.

.... **APPELLANTS**

// VERSUS //

Union of India,
Through General Manager,
South Central Railway,
Secunderabad.

.... **RESPONDENT**

Mr. R. G. Bagul, Advocate for Appellants.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 24.06.2024.

DATE OF PRONOUNCING THE JUDGMENT : 26.07.2024.

JUDGMENT.

1. **Admit.** Heard finally with consent of the learned
Advocates for the parties.

2. This appeal is preferred against the Judgment and order dated 20.09.2023 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/17/2022, thereby the claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) Deceased Govind Kurre met with an untoward incident of accident occurred on 07.01.2019 when he was travelling by the railway from Aurangabad to Nagpur vide train No.11401 i.e. Nandigram Express. He purchased valid ticket of general bogie of that train. He was standing near the door of train. When the train was passing from Aurangabad railway station to Chikhalthana KM No.113/9 to 114/0, due to the jerk of the train, he was pushed by crowd of passengers. He fell down from the running train and due to severe injuries, he died on the spot. He was taken to the Civil Hospital at Aurangabad. Therefore, the applicants have filed an application for grant of compensation.

(ii) The applicant No.1 is widow and applicant Nos.2 and 3 are parents of the deceased Govind.

(iii) The respondent by its written-statement denied the untoward incident and contended that deceased Govind was not *bona fide* passenger, as he was not having valid ticket of that train. The respondent lastly prayed to reject the application.

4. The following issues were framed by the learned Tribunal :

- (1) *Whether Applicants are the dependents of the deceased within the meaning of Section 123(b) of the Railway Act?*
- (2) *Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?*
- (3) *Whether the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application within the meaning of Section 124-A r/w 123(C) of the Railway Act?*

5. The learned Tribunal held that the applicants have not established by reliable evidence that death of Govind occurred during journey by that train. The untoward incident was not proved and therefore, claim of the applicants was dismissed.

6. Heard Mr. Bagul learned Advocate for the applicants/appellants and Ms. Neerja Chaubey for the respondent.

7. The learned Advocate Mr. Bagul for the appellants argued that the panchnama drawn by the Railway authority after finding the dead-body of deceased Govind in the premises of railway is sufficient proof and it is corroborated with the Postmortem Report to establish untoward incident. He submitted that in view of judgment passed by the Hon'ble Supreme Court in ***Union of India Vs. Rina Devi***, reported in ***AIR 2018 SC 2362***, burden lies upon the respondent to prove that deceased Govind was not having ticket and he was travelling without ticket. The evidence of co-passenger is highly impossible. He lastly prayed to quash and set aside the impugned judgment passed by Railway Tribunal and allow the appeal as the Tribunal erred in granting compensation.

8. The learned Advocate Ms. Chaubey for the respondent submitted that the reasons and the findings of the learned Tribunal are based on the evidence. The railway ticket was not found with the deceased Govind. There is absolutely no evidence to establish that he was *bona fide* passenger and died in the untoward incident by the jerk of railway due to the pushing pressure of crowd. There is no any

perversity and illegality in the judgment of the learned Tribunal. She lastly, prayed to dismiss the appeal.

9. Following points arose for the determination which are answered with the reasons and findings as under :

- (i) Was it proved that it was untoward incident of death of Govind and he was *bona fide* passenger?
- (ii) Was the Railway Tribunal illegal and incorrect in rejecting the claim of the applicants/appellants?

10. Admitted facts are that dead-body of Govind was found in between the railway track, which appears from the evidence of one Narayan Pandurang Thorat (RW-1) for the respondent, who was Track Man on 07.01.2019 in the area where dead body of Govind was found. He noticed dead body of Govind there and accordingly he made a report. His statement is recorded which is at page A-143. His evidence is corroborated by the Postmortem report. Thus, there is no any doubt about as to the death of Govind occurred in the premises of railway at the relevant time.

11. No doubt, there are admissions of AW-1 Minakshi, widow of deceased Govind. In her cross examination, she stated that she has not filed journey ticket of Govind. She cannot tell name and number of the train. She further admitted that deceased Govind was not travelling by that train on 07.01.2019. She further admits that she do not know contents of her affidavit. Lastly she admits that railway administration is not responsible to pay compensation for the said incident. All these admissions are evidential admissions. These are weaker admission as she is not eye witness of the incident.

12. The learned Railway Tribunal by relying upon the admissions held that there is no journey ticket and therefore deceased Govind was not *bona fide* passenger. The provisions of Indian Evidence Act, 1872 (for short the "IE Act") cannot be strictly applied in such cases before the Railway Tribunal. The Admissions are weaker kinds of evidence and not conclusive proof as per Section 31 of the IE Act.

13. Oral admission are generally weaker, therefore, though there is principle that admitted fact need not be proved as per Section 58 of the IE Act, the Proviso of it says that, if the Court requires further proof of facts even though there is admission that fact has to be proved by the party upon whom burden of proof lies.

Her admissions that deceased Govind was not travelling by the said train and she is not having railway ticket are of no use to disbelieve the fact that deceased Govind died in the railway accident. It is because there is evidence of Postmortem report as well as the statement of Narayan Thorat (RW-1) at A-143, which establishes that untoward incident took place. The burden of proof lies upon the respondent to prove that deceased Govind was not holding railway ticket as per law laid down in the case of ***Union of India Vs. Rina Devi*** cited *supra*. Though, there is no direct evidence of alleged untoward incident that due to the sudden jerk deceased Govind fell down from the train and died on spot. There is sufficient evidence to draw legitimate inference on the basis of preponderance of probability that untoward incident took place and Govind died in it. The appellants have discharged their burden. Onus lies upon the respondent to disprove the evidence. The evidence of Narayan Thorat RW-1 is not useful to the respondent. The learned Tribunal erred on this point and came to the wrong conclusion by relying upon the admissions of AW-1 Minakshi and the findings on all the issues given by the Tribunal is not sustainable in the eye of law. The judgment and order passed by the learned Tribunal, therefore, deserves to be set aside. Hence, point Nos.1 and 2 are answered in the affirmative. The appeal deserves to be allowed. Hence, the following order :

- (i) The Appeal is **allowed**.
- (ii) The Judgment and order dated 20.09.2023 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/17/2022 is quashed and set aside.
- (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) with **6%** interest thereon to the appellants equally. The compensation amount be deposited **within three months** in the Railway Tribunal.
- (iv) The appellants to submit their bank details for getting that compensation amount.
- (v) The respondent is directed to pay that amount through electronic mode like NEFT, RTGS etc.
- (vi) The Record and proceedings be sent back to the Railway Tribunal.

Corrected as per
Court's order
dated 13.12.2024
passed in CAF
No.3650/2024.

14. The Appeal is disposed of accordingly.

(SANJAY A. DESHMUKH, J.)