



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

FIRST APPEAL NO. 531 OF 2022

APPELLANT : 1. The Union of India,
 (Original respondent on RA) General Manager,
 South Central Railway,
 Secundarabad

//VERSUS//

RESPONDENT : 1. Smt. Sindhutai w/o Atmaram Kotkar,
 (Original applicant on R.A.) Age 32 years, Occ.- House wife,
 2. Chaitanya s/o Atmaram Kotkar
 Age 11 years, Occ. Education
 3. Anurudra s/o Atmaram Kotkar
 Age 8 years, Occ.- Education
 Applicants Nos.2 and 3 are minor and
 represented through Mother as a
 natural guardian
 All resident of Kharwad, Tq.
 Kalamnuri, District- Hingoli
 (Maharashtra) 431702

Ms Neerja Chaubey, Advocate for appellant.

Mr. N.R. Mankar, Advocate for respondent Nos.1 to 3.

CORAM : **G. A. SANAP, J.**
DATED : **3rd JANUARY, 2024**

ORAL JUDGMENT

1. 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 07.02.2020 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the respondents was allowed.

2. Background facts:-

The respondents are dependents of the deceased Atmaram Kotkar. On 25.07.2016 the deceased was traveling from Nijamabad to Nanded by train No.57561 (i.e. Kachiguda Manmad Passenger train). Gulab Sheshrao Tawale, the friend of the deceased, was co-passenger of the deceased. They had purchased a combine ticket for the journey. It is stated that there was rush in the train. It is further case of the claimant that near Mudkhed railway station the deceased fell from running train. He sustained serious injuries and died. It is stated that death was in an untoward incident.

3. The appellant-railway opposed the claim. It is the contention of the railway that death was not in an untoward incident. Deceased was negligent while traveling in the train. He fell from the train due to his negligence. It is further contention of the railway that ticket produced on record is bogus ticket procured

by Gulab Tawale.

4. Learned Member of the Tribunal on appreciation of the material on record found that the deceased was traveling in the train with valid journey ticket. The Tribunal also found that the deceased died in an untoward incident. The appellant-railway being aggrieved by this order has come before this Court in appeal.

5. I have heard Ms Neeraja Chaubey, learned Advocate for the appellant-railway and Mr. N.R. Mankar, learned Advocate for the respondents. Perused the record and proceedings.

6. In view of the facts and circumstances following points fall for my determination:-

- i. Whether the death of Atamaram Kotkar was in an untoward incident?
- ii. Whether the deceased was traveling as a *bona fide* passenger with valid journey ticket?

7. Learned Advocate for the appellant-railway submitted that evidence on record is not sufficient to accept the case of the respondents on both the counts. Learned Advocate submitted that evidence on record is sufficient to draw the inference that ticket

was subsequently manipulated by Gulab Tawale to help the respondents. Learned Advocate submitted that there was no report either by loco pilot or guard of the concerned train with regard to the fall of any passenger from the running train. Learned Advocate submitted that Member of the Tribunal has not properly appreciated the material on record and has come to a wrong conclusion.

8. Learned Advocate for the respondents supported the judgment and order passed by the learned Member of the Tribunal. Learned Advocate submitted that evidence adduced by the claimants is sufficient to prove the basic facts touching the two points as above. Learned Advocate submitted that the well reasoned judgment and order passed by the learned Member of the Tribunal does not warrant interference.

9. I have minutely perused the record and proceedings. On going through the record and proceedings, I am satisfied that there is no mistake on the part of learned Member of the Tribunal in accepting the claim filed by the respondents/claimants. Gulab Tawale has been examined by the claimants. Dead body of the deceased was found in the railway premises. Witness No.1- Sindhutai Atmaram Kotkar is wife of the deceased. Witness No.2-

Gulab Tavale is the co-passenger. The defence of the railway that deceased died due to his negligence needs consideration. It is to be noted that liability is strict liability. The defence of negligence is not available in case of strict liability or a case based on no fault liability theory. Legal position in this regard has been well settled by the Hon'ble Apex Court in the case of *Union of India vs. Rina Devi* reported in *AIR 2018 SCC 2362*. The evidence on record is sufficient to prove that the deceased fell from running train while traveling from Nijamabad to Nanded. The spot panchanama is part of record. Similarly, the inquest panchanama of the dead body is a part of record. In the teeth of the evidence available on record the defence of negligence raised by the appellant-railway has been completely negated. Therefore, in my view, there is no need to interfere with the finding of the Tribunal that the deceased died in an untoward incident while traveling in the railway.

10. As far as the journey ticket is concerned, the defence of the railway that it was subsequently obtained to suit the cause of respondents, needs appreciation. Exh-A-5 is the journey ticket. The journey ticket bearing No.D 81064548 was purchased on 25.07.2016. The price of the ticket was Rs.50/- It was composite ticket for journey by two passengers. The ticket was handed over

to the family members of the deceased by Gulab Sheshrao Tawale. AW-1 is the wife of deceased. AW-2 is Gulab Tawale. Appellant-railway has not been able to demonstrate that this ticket was manipulated in any manner by the claimants. Learned Member of the Tribunal has properly considered this aspect. The defence of the railway of manipulation of ticket, in my opinion has been properly considered and rightly negatived. Accordingly, I record findings on both points in the affirmative.

11. On re-appreciation of the evidence and materials on record, I do not see any reason to interfere with the well reasoned judgment and order passed by the railway Tribunal.

12. In my view the appeal is devoid of substance and merits. It is accordingly **dismissed**.

13. Learned Advocate for the appellant-railway submits that railway has deposited the amount of compensation as ordered by the Tribunal. Learned Advocate further submits that amount be paid to the respondents. The respondents are allowed to withdraw the amount of compensation deposited in this Court with the accrued interest.

14. The First Appeal stands **disposed of**, accordingly.

(G. A. SANAP, J.)

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