



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

FIRST APPEAL NO. 1537 OF 2019

- 1) Laxmibai Wd/o Devrao Hivre,
Aged about 47 years, Occ.-Household,
- 2) Ganpat S/o Devrao Hivre,
Aged about 27 years, Occ.-Labour,
- 3) Anil S/o Devrao Hivre,
Aged about 24 years, Occ.-Labour,
- 4) Chandu S/o Devrao Hivre,
Aged about 19 years, Occ.-Labour,
All R/o. Ward No.17,
Near Nutun School, Wadi Rasta,
Wadi Road, Umri, Tq. Umri,
District Nanded.
- 5) Dhurpat D/o Devrao Hivre,
(@ Dhurpat W/o Piraji Mudhewad)
Aged about 20 years, Occ.-Housewife,
R/o. Wadar Galli, Bhokar,
District Nanded.

.... **APPELLANTS**

// VERSUS //

Union of India,
Through The General Manager,
South Central Railway,
Secunderabad (Andhra Pradesh).

.... **RESPONDENT**

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

CORAM : SANJAY A. DESHMUKH, J.

DATE : 21st AUGUST, 2024.

ORAL JUDGMENT.

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

2. This appeal is preferred by the unsuccessful applicants against the Judgment dated 22.10.2018 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/36/2017, thereby claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the applicant's case are as under :

(i) On 06.08.2016, husband of applicant No.1 and father of applicant Nos.2 to 5 namely Devrao S/o Shankar Hivre was travelling by the unknown train from Fakhrabad to Bolsa with valid journey ticket. There was huge crowd in the train, therefore, he fell down from the train at Kherkeli-Dharmabad railway line at KM No.420/400. He sustained serious injuries. His body was divided into two halves. DMR Report was submitted. An inquest was drawn up and postmortem was conducted. While drawing the spot panchnama, two railway tickets, Ex. Umri to Nizamabad bearing

No.32472063 and another Ex. Fakhrabad to Bolsa bearing No.14200 were found there. The applicants claims that they were dependent upon an income of deceased Devrao. Therefore, they filed application for grant of compensation before the Railway Tribunal.

(ii) The respondent denied the claim of the applicants and contended that no such untoward incident took place in the premises of railway as alleged by the applicants. Deceased Devrao was not *bonafide* passenger as alleged that he boarded in an unknown train without journey ticket. It is denied that he fell down and found under the wheels of train and died there. There is no evidence that deceased Devrao died by felling down from the train. No any untoward incident took place. It is lastly prayed to dismiss the application.

(iii) The learned Tribunal cast the following issues :

- (1) *Whether the Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railways Act?*
- (2) *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 Railways Act?*

(3) *Whether deceased was a bonafide passenger of the alleged train on the relevant day, with valid journey ticket?*

4. The learned Railway Tribunal held that no such alleged untoward incident is proved and deceased Devrao was not *bonafide* passenger. Thus, the claim of the applicants was dismissed.

5. Heard learned Advocates for both sides.

6. The learned Advocate for the appellants submitted that there are some admitted documents i.e. DMR report, two tickets found with deceased Devrao, a postmortem report. He further pointed out that evidence of Dattatray Deshmukh, a ticket agent, he stated in his statement during the investigation before the police that he sold those tickets Exhibit A-2 to the Devrao. The Memo clearly establishes the spot of incident is one and half kilometer away from the Dharmabad Railway Station, where the dead body of the Devrao was found. He submitted that reasons and findings of the learned Railway Tribunal are not legal and correct. It is lastly prayed to allow the appeal and application by granting compensation to the appellants.

7. Learned Advocate Ms. Neerja Chaubey for the respondent strongly opposed the appeal and submitted that the untoward incident is not proved. No any eye witness is examined to prove how Devrao died. He was not *bonafide* passenger. The reasons and findings of the learned Railway Tribunal are legal correct and no interference is warranted in it. It is lastly prayed to dismiss the appeal.

8. The following points emerged for consideration :

- (i) Was it proved by the appellants that in an untoward incident, Devrao died and he was *bonafide* passenger with having valid journey ticket of the train?
- (ii) Was it proved by the appellants that they are dependents upon the Devrao?
- (iii) Is the impugned judgment illegal and require interference?

9. Perused the impugned judgment and record and proceedings.

10. The applicant Laxmibai Hivre (AW-1) adduced her evidence by filing an affidavit of examination-in-chief at Exhibit A-1. She reiterated the material contentions raised in her application for

compensation. It is not necessary to reproduce the same before this Court.

11. The applicants are also relying upon the documents i.e. Railway tickets – Exhibit A-2, Accidental death report – Exhibit A-3, Crime Details Form – Exhibit A-4, Inquest – Exhibit A-5, Letter issued by Police Station Dharmabad to Rural Medical Hospital, Dharmabad – Exhibit A-6, Dead body form – Exhibit A-7, Postmortem report – Exhibit A-8, Aadhar Card – Exhibit A-11 and Death certificate – Exhibit A-12.

12. To disprove the evidence of applicant, the respondent has examined Shri Kirodilal Meena(RW-1), Station Master, Dharmabad Railway Station, Division Hyderabad SCR. He deposed that during his duty hours in between 07.00 to 19.00 hrs on 07.08.2016, he received information that a dead body of a male is lying on the railway track at KM No.420/400 between Dharmabad/Karkheli Railway Station. He did not receive any information about the untoward incident of accidental fell down of that person from any train by Guard, Loco-pilot or any other person.

13. The respondent has also examined Mo. Raisoddin (RW-2), Guard of the train. He deposed that he was a Guard of the train No.57593 Nizamabad-Nanded passenger between 18.10 to 23.00 hours. He also deposed that no chain pulling, no jerk and no any untoward incident took place in respect of that train and neither loco-pilot nor any passenger informed him about that incident.

14. The negligence of any person who sustained injuries or death in the premises of railway having valid ticket cannot be considered, which is held by the Hon'ble Supreme Court in the case of *United India Insurance Co. Ltd., Vs. Sunil Kumar*, reported in **2017 (13) SCALE 652**.

15. The postmortem report corroborates the case of the applicants that Devrao died and his body was found in two pieces on the railway track which is proved by postmortem report and spot panchnama. The valid ticket issued by Dattatray Deshmukh is also proved, which was found with the dead body of Devrao. It is natural and probable evidence. The reasons given by the Railway Tribunal are not found legal and correct particularly para Nos.11 and 14. No any independent evidence of witness is necessary to corroborate the case of the appellants that Devrao died in that untoward incident

which took place in the premises of railway. The evidence collected by the Investigating Officer in the routine course of investigation is independent and natural. To corroborates the case of appellants, evidence of eye witness is not necessary. It is sufficient evidence.

16. As far as dependency of the appellants is concerned, there is reliable evidence of applicant Laxmibai (AW-1) that they were dependents upon the income of deceased Devrao. All these aspects were not properly considered by the learned Railway Tribunal. The learned Tribunal did not appreciate the evidence in its proper perspective and failed to believe the evidence of applicants. Therefore, reasons and findings of the learned Tribunal are not sustainable in the eyes of law. There is no factual as well as legal reason to deny the compensation to the applicants. Thus, *bonafide* passenger, untoward incident and dependency of the claimants is proved. Hence, point Nos.1 to 3 are answered in the 'affirmative'.

17. The appeal deserves to be allowed. The impugned judgment deserved to be set aside. For the reasons discussed above, the argument of learned Advocate for the respondent is not acceptable. Hence, the following order :

- (i) The Appeal is **allowed**.
- (ii) The Judgment and order dated 22.10.2018 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/36/2017, is set aside.
- (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) to the appellants equally. The compensation amount be deposited **within four months** before 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
dt.13.12.2024
passed in CAF
No.3651/2024.

18. The Appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)

Kirtak