



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

FIRST APPEAL NO.917 OF 2024

- 1] Dasaribai wd/o Duleshwar Nishad,
Age : 25 years, Occu.: Housewife.
 - 2] Parmin s/o Duleshwar Nishad,
Age : 8 years, Occ.: Education.
 - 3] Chandraprakash s/o Duleshwar Nishad,
Age : 5 years, Occu.: Nil.
- (applicant no.2&3 are through mother,
natural Guardian)
- 4] Santram s/o Darbari Nishad,
Age : 53 years, Occ.: Labour.
 - 5] Kevra w/o Santram Nishad,
Age : 47 years, Occ.: Housewife.

All R/o. Vil-Khairagadh, Kusum
Atariya, Dist-Rajnandgaon-491885,
Chattisgarh.

..

Appellants

.. Versus..

Union of India,
Through General Manager,
Western Railway,
Churchgate, Mumbai.

..

Respondent

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Ms. S.M. Chaudhari, Advocate for Appellants.
Ms. N.G. Chaubey, Advocate for Respondent.

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**CORAM : SANJAY A. DESHMUKH, J.
DATE : 11/12/2024.**

JUDGMENT :

1. This appeal is preferred against the judgment of the learned Railway Tribunal dated 25.03.2019 in Case No.OA(IIu)/NGP/236/2017. The application for compensation on account of death of husband of appellant no.1 in the railway premises was rejected.

FACTUAL MATRIX :

2. On 02.08.2016, Duleshwar s/o Santram Nishad was travelling from Surat to Durg via Nagpur by Train No.12844 i.e. Ahmedabad Puri Express. It is averred that he fell from the running train at K.M. No.297/08-09, before the arrival of train at Jalgaon Railway Station, District-Jalgaon. He sustained serious injuries and died. Duleshwar was travelling with a second class journey ticket of the train. His ticket was lost in that untoward incident, therefore, it was not recovered from the spot of the incident. The inquest was drawn.

3. The appellants contended that they were depending on the Duleshwar's income, therefore, they were entitled for compensation from the respondent.

4. The respondent denied the material contention raised by the appellants in their application and contended that the deceased did not have a valid journey ticket of the train and that he was not travelling by the alleged train. The Loco Pilot of the train No.BCNHL noticed that an unknown person suddenly came and stood on the railway track and despite the whistle was blown by the Loco Pilot, he did not move away and, therefore, he was dashed by the engine of the train and died on the spot. It was also contended that no journey ticket was found with him while spot panchanama was drawn there. The appellants were not depending upon the income of Duleshwar.

5. Learned Tribunal framed the following issues :

- (i) *Whether deceased was a bona fide passenger of the alleged train on the relevant day with valid journey ticket.?*
- (ii) *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.?*

6. The learned Tribunal held that Duleshwar was not bona fide passenger. No such untoward incident took place. It is a case of suicide and dismissed the claim.

7. Learned advocate for the appellants argued that the Tribunal believed the evidence of RW-1 Krishna Chandra Pal working as Loco Pilot of BCNHL (Engine No.24633) of the train. His statement was recorded after the filing of the claim. It was further submitted that though the journey ticket of the train was not found with Duleshwar, the burden lies upon the respondent to prove that he was travelling without journey ticket of the train. As per law laid down in the case of **Union of India .vs. Rina Devi, AIR 2018 SC 2362**, it is submitted that it is not death by suicide but a fall from the train. The appellants are the dependents. The reasons and the findings of the Tribunal are not sustainable in the eyes of law as those are perverse and illegal and also prayed to allow the claim by allowing this appeal and setting aside the impugned judgment.

8. Learned advocate for the respondent strongly opposed the appeal by contending that all the reasons and findings of the

Tribunal are legal and correct and supported with the evidence of RW-1 Krishna Chandra Pal, who stated that he saw Duleshwar committing suicide. His evidence is rightly relied upon by the Tribunal and there is no scope for interference in the findings of the Tribunal. The journey ticket of the train was also not found with Dhuleshwar. There is no scope for interference in the findings of the Tribunal as no such untoward incident took place. She lastly prayed to dismiss the appeal.

9. Perused the impugned judgment, grounds of objections of this appeal as well as the evidence adduced by both the sides.

10. Following points emerged for consideration :

- (i) Was it proved by the appellants that in an untoward incident Duleshwar died and he was a bona fide passenger with valid journey ticket.?*
- (ii) Was it proved by the appellants that they were dependents upon the income of Duleshwar.?*
- (iii) Is the impugned judgment illegal and require interference.?*

11. Admitted facts are that the dead body of Duleshwar was found in the premises of the respondent-railway. The spot panchanama, the inquest and the post-mortem are proved by the evidence of wife of Duleshwar AW-1. The post-mortem report Exh.A-68 on which the name of Duleshwar's father has been corrected by the Medical Officer, who issued that post-mortem report. As per column no.17, there are 12 injuries, including a fracture to the index finger of the right hand. The Medical Officer opined that the cause of death was due to haemorrhagic shock accompanied with a head injury. If the spot panchanama, inquest and post-mortem report are considered together, it establishes that Duleshwar died in the premises of the railway. The said evidence is not much disputed by the respondent.

12. To disprove the evidence of appellants, the respondent adduced evidence of RW-1 Krishna Chandra Pal, the Loco Pilot of Train No.24633. According to him, the train left the Jalgaon Railway Station before it reach to Paldhi Railway Station at K.M. No.297/08-09 at about 04.25 hours. He deposed that one person suddenly came and stood in between two lines of the railway track. He blew the whistle of the train but that person did not

respond to the whistle, therefore, he suddenly applied the brakes. However, that person was dashed with the engine of the train. He immediately informed that fact to the guard and Station Registrar of Paldhi. In his cross-examination, Krishna Chandra Pal admits that he had not given any written memo to the Deputy Station Superintendent. His statement as RW-1 is recorded on 15.01.2018 by RPF Nandurbad. The application for compensation was filed on 20.12.2016 before Railway Tribunal. Thus, it is recorded after the filing of the claim application. Why it was not recorded earlier to filing of the claim application is not clarified. This shows that it was recorded deliberately after the receiving the notice of the claim in order to raise this defence. This fact was not considered by the Tribunal in its proper perspective. No reason is given as to why the said statement was not recorded immediately. Except his evidence, there is a driver's note book at RW-1 (A-103) it shows endorsement in the remark column i.e. a person stood suddenly in front of the train and was dashed by the engine and the train was stopped. There is no any signature near to that entry. At the bottom of the said driver's note book, there is space for signature of the foreman. The said foreman had also not signed (Exh.A-103). Therefore, the possibility cannot be

ruled out that the driver might have inserted and fabricated that entry. This aspect was also not considered by the Tribunal. Thus, the evidence of RW-1, which was believed by the Tribunal, is found reasonably doubtful and it cannot be relied upon, even on the principles of preponderance of the probability.

13. The journey ticket of the train is not traced out with the deceased Duleshwar. However law is settled as per precedential law of **Union of India .vs. Rina Devi** cited supra, it is held that the burden of proof lies upon the respondent to prove that the passenger of the train Duleshwar was not having valid journey ticket of the train. It is because the ticket checker might have checked him and if the ticket is not found with him, he must have been restrained from proceeding further for journey by the train. Thus, in the absence of any evidence, the respondent failed to prove that Duleshwar was travelling without valid ticket of the train. Thus, it is proved that he was bonafide passenger. It is also proved that he died in the untoward incident that took place within the premises of the railway.

14. From the evidence of the appellants, it is proved that they were depending upon the income of deceased Duleshwar. The said evidence is not disproved. All these aspects were not properly considered by the learned Tribunal. It erred in holding that it was not an untoward incident and Duleshwar was not bona fide passenger as he was not having journey ticket of the train and the dependency of the appellants is proved. The impugned judgment therefore deserves to be set aside. For the reasons stated above, the argument of the learned advocate for the respondent is not accepted. The appeal deserves to be allowed. The impugned judgment deserves to be set aside. The application for compensation deserves to be allowed. Hence, Point Nos.1 to 3 are answered in the affirmative. Therefore, the following order :

ORDER

- (1) The Appeal is allowed.
- (2) The impugned judgment is set aside.
- (3) The application for compensation is allowed.
- (4) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) to the appellants within a

period of **four months** from the date of receipt of copy of this judgment in the Railway Tribunal.

(5) The respondent is further directed that out of an amount of Rs.8,00,000/-, an amount of Rs.4,00,000/- be paid to the Appellant No.1–Dasaribai wd/o Duleshwar Nishad and an amount of Rs.1,00,000/- (Rs. One Lac) each be given to rest of the appellants.

(6) It is clarified that an amount of Rs.1,00,000/- (Rs. One Lac) each be deposited as 'Fix Deposit' in the nationalized Bank in the names of appellant no.2-Parmin s/o Duleshwar Nishad and appellant no.3-Chandraprakash s/o Duleshwar Nishad, till they attain the majority.

(7) The appeal stands disposed of accordingly.

(Sanjay A. Deshmukh, J.)