



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

FIRST APPEAL NO. 691 OF 2022

APPELLANTS
 (Original applicant on
 R.A.)

- : 1. Sudhakar s/o Baraku Koli
 Aged about 45 years,
 Occ: Labour,
2. Nilima w/o Sudhakar Koli
 age-47 years, Occu- Housewife
 Both R/o Post – Vadgaon Lambe,
 Tah & Dist. Jalgaon (MS) 424101

//VERSUS//

RESPONDENT
 (Original Respondent)
 (As on R.A.)

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

Ms. Sumesha Chaudhari, Advocate for appellants.
 Mrs. Neeraja Chaubey, Advocate for respondent.

CORAM : G. A. SANAP, J.

DATED : 28th FEBRUARY, 2024

ORAL JUDGMENT

Heard finally with the consent of learned Advocates for the parties.

2. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, “the Act of 1987”), the challenge is to the judgment and order dated 17/07/2019 passed by

the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed under Section 16 of the Act of 1987 on account of death of the appellant's son in an untoward incident was dismissed.

3. Background facts:-

The appellants are parents of the deceased. The deceased was a bachelor. The appellants claim that on 03.07.2017, the deceased was travelling from Jalgaon to Chalisgaon. He had gone to Jalgaon for taking his admission. After attending his work, the deceased met his uncle Ashok Daulat Sonawane. His uncle accompanied him to the railway station to drop him at the railway station. In his presence, the deceased purchased the railway ticket. The deceased travelled by unknown train. The appellants claim that due to a sudden jerk to the train near Chalisgaon Railway Station, he fell from the moving train and died due to the head injury. According to them, death was in an untoward incident. The appellants have stated that the journey ticket was lost in the incident.

4. The respondent-railway filed the written statement and opposed the claim. According to the respondent, death was not in an untoward incident. The deceased was not a *bona fide* passenger.

The journey ticket was not recovered from the spot. The journey ticket was not found from the person of the deceased.

5. Appellant No.1 examined himself as AW-1. AW-2 is Ashok Sonawane an independent witness to prove the fact of the purchase of the ticket by the deceased at Jalgaon Railway Station. The respondent-railway has examined one witness. Learned Member of the Tribunal, on appreciation of the evidence, found that there was no substance in the claim and as such, dismissed the claim. The appellants have come before this Court in appeal.

6. I have heard Ms. Sumesha Chaudhary, learned Advocate for the appellants and Mrs. Neerja Chaubey, learned Advocate for the respondent. Perused the record and proceedings.

7. In view of the facts and circumstances following points fall for my determination.

i) Whether the deceased was a *bona fide* passenger with a valid journey ticket?

ii) Whether the deceased died in an untoward incident as understood by the provisions of Section 123(c)(2) of the Railways Act, 1989?

8. Learned Advocate for the appellants submitted that the

deceased, on the date of the incident, had gone to Jalgaon. Learned Advocate submitted that AW-2 has deposed that he had gone to drop the deceased at Jalgaon Railway Station. Learned Advocate submitted that AW-2 had purchased a ticket with super fast charges and handed over the same to the deceased and in his presence the deceased entered railway station platform No.2. Learned Advocate submitted that this evidence on the affidavit is sufficient to discharge the initial burden. Learned Advocate took me through the contents of the spot panchanama as well as the inquest panchanama and submitted that the panchanamas are silent about the examination of the pocket of the trouser and the pocket of the shirt of the deceased by the police on the spot. Learned Advocate submitted that the clothes of the deceased removed from the dead body at the time of the postmortem were not handed over to the parents of the deceased. Learned Advocate submitted that the record is silent about the disposal of the clothes of the deceased. Learned Advocate submitted that the oral evidence of AW-1 and AW-2, coupled with the circumstances, is sufficient to accept the case of the appellants that the deceased had boarded unknown train after purchasing a valid journey ticket. As far as death in an untoward incident is concerned, learned Advocate submitted that the deceased was a resident of a village near Chalisgaon. Learned

Advocate submitted that appellants have proved that the deceased had gone to Jalgaon for taking admission and in the presence of his uncle had entered platform No.2 for boarding the train to come to Chalisgaon. Learned Advocate submitted that the major injury sustained by the deceased was to his head. There was no amputation of legs or hands. Learned Advocate submitted that the possibility of run over of deceased by any train at the spot of incident has been completely ruled out. Learned Advocate submitted that there is no independent evidence adduced by the railway to establish that the deceased, at the time spot of the incident, was run over by any train. Learned Advocate submitted that the evidence on record is sufficient to prove that the deceased, while travelling to Chalisgaon fell from an unknown train and died due to injuries sustained by him. In order to seek support to her submission, reliance has been placed on the decision of the Hon'ble Apex Court in the case of *Union of India vs. Rina Devi* reported at *AIR 2018 SCC 2362*.

9. Learned Advocate for the respondent-railway, in short, supported the judgment and order passed by the Tribunal. Learned Advocate submitted that AW-2 is a got up witness. Learned Advocate submitted that after one year, he disclosed for the first

time that he had gone to drop the deceased at Jalgaon Railway Station and had purchased a journey ticket for the deceased. Learned Advocate submitted that the evidence of AW-2 is unbelievable. Learned Advocate submitted that if the deceased had travelled with a valid journey ticket then a ticket would have been found on the person of the deceased. Learned Advocate submitted that the deceased was not a *bona fide* passenger. Learned Advocate further submitted that the head of the deceased was completely crushed, and therefore, the possibility of the deceased being dashed by any train cannot be ruled out. Learned Advocate submitted that if the deceased had fallen from the moving train, then co passengers would have immediately reported the same to the station master. Learned Advocate submitted that the evidence is not sufficient to prove that death was in an untoward incident.

10. It is true that immediately after the incident, AW-2 had not gone to the police and reported the facts which has deposed in his evidence. The question is whether the inaction on the part of the AW-2 to inform this fact to the police could be the sole ground to discard his evidence. Undisputedly, Ashok Daulat Sonawane (AW-2) is the uncle of the deceased. AW-1, in his evidence, has

stated that on the date of the incident in the morning, AW-2 informed him that he had dropped the deceased at Jalgaon railway station as well as purchased the journey ticket for him. AW-2 has stated that in the morning of 03.07.2017, he accompanied the deceased to the Jalgaon Railway Station. He purchased a ticket with super fast charges for the deceased and handed over to the same to the deceased. He has further stated that the deceased entered platform No.2 for boarding a train to go to Chalisgao. AW-2 was cross-examined. Perusal of his cross-examination would show that he has reiterated the facts stated by him in his examination-in-chief. It was suggested to him that in order to create the evidence, after one year, he made a false complaint to the Railway Police. He has denied this suggestion. It has come on record that the deceased had come to Jalgaon for taking admission. In the morning of 03.07.2017, the deceased was dropped at the railway station by AW-2. His cross-examination would show that no admission of any significance has been elicited to create doubt about his credibility.

11. It is the case of the appellants that the journey ticket purchased at Jalgaon Railway Station was lost in the incident. In order to make good this possibility, learned Advocate took me

through the inquest and the spot panchanama. The spot panchanama was drawn by the police when the incident was reported to the police. Perusal of the spot panchanama would show that the deceased was wearing a shirt and trouser. Perusal of the spot panchanama would show that the police have not examined either the trouser pocket or shirt pocket of the deceased. Inquest panchanama is also part of the record. Perusal of the inquest panchanama would show that the trouser pocket and shirt pocket of the deceased were not examined by the police. Material on record is silent with regard to the whereabouts of the clothes of the deceased. Generally, the clothes on the dead body are removed at the time of the postmortem. The clothes are handed over to the police constable or police officer carrying the dead body to the hospital for a postmortem. The necessary entry to that effect is generally made in the postmortem report. Perusal of the postmortem report as well as the contemporaneous police record shows that no such entry was made in this report. It needs to be stated that the ticket is kept in the shirt pocket or trouser pocket. In my view, in such a case, it is obligatory on the part of the police to conduct a thorough inspection of the trouser pocket and shirt pocket. It needs to be stated that if such inspection is carried out and journey ticket is not found in the pockets then the railway

authority or the police can contend with authority that the deceased was travelling without a valid journey ticket. The appellants were neither required nor expected to carry out such inspection. They were informed about the incident after drawing the panchanamas. One can visualize their mental condition at the relevant time. In my view, this is most important circumstance to lend credence to the evidence of AW1 and AW-2 on this aspect.

12. In such a claim, the initial burden is on the claimant to prove that the deceased or injured was a *bona fide* passenger. The Hon'ble Apex Court in the case of ***Rina Devi (supra)*** has dealt with this aspect in great detail. Paragraph Nos.17.4 of the decision would be relevant to address this issue. Paragraph No.17.4 is extracted below:-

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing

an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

13. The dead body was found on the railway premises. The Apex Court has held that mere presence of a body on the Railway premises will not be conclusive to hold that the injured or deceased was a *bona fide* passenger. It is held that mere absence of a ticket with such an injured or deceased will not negative the claim that he was a *bona fide* passenger. It is held that the initial burden will be on the claimant, which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. In my view, the case of the appellants would be fully covered by this decision. The evidence of AW-1 and AW-2 is sufficient to discharge the initial burden. I do not see any reason to discard or disbelieve their evidence. Perusal of the judgment and order would show that the learned Member of the Tribunal has failed to properly appreciate the evidence on record as well as the settled legal position. As such, the finding of the Tribunal on this

point cannot be sustained.

14. The next important issue is as to whether the death was in an untoward accident or not. Untoward incident has been defined under Section 123(c)(2) of the Act of 1989. As per this definition, an accidental falling of a passenger from a moving train is an untoward incident. The appellants have adduced the evidence to prove that the deceased, on the given date had boarded an unknown train at Jalgaon to come to Chalisgaon. The dead body was found on the railway premises. The deceased had sustained a major injury to his head. The cause of death was a head injury. The inference of fall of the deceased from a moving train on the basis of injury sustained by him has to be drawn in favour of the appellants. The railway is liable to pay the compensation if the case is covered by the first part of Section 124 -A of the Act of 1989. The railway is not responsible or liable to pay the compensation if the case falls under any of the clauses of proviso to Section 124-A of the Act of 1989. The railway has examined one witness. Sandip Patil (RW-1) at the relevant time was Station Master at Chalisgaon. He was not an eye witness to the incident. The dead body was noticed by the loco pilot of one train and a report was made by the said loco pilot to RW-1. RW-1 informed

the police and thereafter the further action was taken. The deceased was lying by the side of the railway track. The deceased otherwise had no reason to go to the spot of the incident. The spot of the incident is far away from Chalisgao Railway Station. In my view, all these circumstances are required to be borne in mind while appreciating the evidence brought on record.

15. If the deceased was run over by any train while crossing the railway line or while walking on the railway track, then in that event, the loco pilot of the concerned train would have made a report to the Station Master. It is not the case of the respondent-railway that the loco pilot of any train had reported about the run over of any person at the spot of the incident by any train. Similarly, there was no report of ACP. If the deceased was run over by any train while crossing a railway line then the loco pilot of the concerned train would have reported the incident. The incident admittedly occurred during day light. If the deceased was run over by a train then his body would have been cut into pieces. His body was intact. If the deceased at the spot of the incident was dashed by any train then he would have been thrown away and in that eventuality, he would have sustained multiple fractures. At the spot of the incident, ordinarily the trains would be running at high speed. If the deceased was dashed by any train at the spot of the

incident then he would have sustained multiple injuries, including fractures. The deceased had sustained a major injury to his head. Such an injury could be possible due to a fall from the train. In my view, therefore, this evidence, coupled with the circumstances, is sufficient to conclude that death was in an untoward incident. Once the possibility of run over of the deceased by any train or dash to the deceased by any train is ruled out then the next possibility that remains is the accidental fall of the deceased from a moving train. The evidence of AW-1 and AW-2 is sufficient to prove that on the given date, the deceased, by unknown train, was travelling from Jalgaon to Chalisgaon. Ashok Sonawane (AW-2) has categorically stated that he had dropped the deceased at Jalgaon Railway Station. He had purchased the ticket for him. He had stated that the deceased had entered platform No.2. In my view, this evidence is sufficient to prove that the deceased died in an untoward incident. Learned Member of the Tribunal has failed to properly appreciate the oral, documentary and circumstantial evidence. As such, the finding recorded by the learned Member of the Tribunal cannot be sustained. Accordingly, I record my findings affirmative. As a result of this, appeal is allowed.

16. Hence I pass the following order:-

ORDER

- i) The appeal is accordingly allowed.
- ii) The order passed by Railways Claims Tribunal, Nagpur Bench, Nagpur dated 17.07.2019 is quashed and set aside.
- iii) The claim petition filed by the appellants is allowed.
- iv) The respondent-Railway is directed to pay compensation of Rs.8,00,000/- (Rupees Eight Lacs Only) to the appellants and interest at the rate of 6% per annum from the date of incident till realization of the amount.
- v) The amount of compensation be deposited within four months.
- vi) 50% of the amount of compensation shall be paid to the appellant No.1- Sudhakar s/o Baraku Koli. 50% of the amount of compensation be shall be paid to the appellant No.2- Nilima W/o Sudhakar Koli.
- vii) The appellants shall provide the details with regard to their bank accounts to the respondent.

17. The First Appeal stands disposed of.

(G. A. SANAP, J.)