



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

FIRST APPEAL NO. 348 OF 2024

- 1) Jaya Wd/o Gopal Kalyankar,
Aged about 35 years, Occ.– Household,
- 2) Anjali D/o Gopal Kalyankar,
(Name **deleted** as she died)
- 3) Samiksha D/o Gopal Kalyankar,
Aged about 8 years, Occ.- Student,
- 4) Vaidahi D/o Gopal Kalyankar,
Aged about 5 years, Occ.- Student,
- 5) Sanika D/o Gopal Kalyankar,
Aged about 3 years, Occ.- Student,
(Appellant Nos.3 to 5 being minor
are represented through their
mother Appellant No.1.)
- 6) Narmadabai W/o Vasantrao Kalyankar,
Aged about 69 years, Occ.- Household,

All R/o. Punoti Bujruk, Tq. Barshitakli,
District Akola – 444401.

.... **APPELLANTS**

// VERSUS //

Union of India,
Through the General Manager,
Central Railway, CST Mumbai.

.... **RESPONDENT**

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

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 04.07.2024.

DATE OF PRONOUNCING THE JUDGMENT : 23.09.2024

JUDGMENT.

1. **Admit.** The appeal was heard finally with the consent of the learned Advocates appearing for the parties.

2. This appeal was preferred against the Judgment dated 20.12.2023 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/78/2021, whereby the claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) On 12.08.2018, husband of applicant No.1, father of applicant Nos.3 to 5 and son of applicant No.6, namely Gopal S/o Vasant Kalyankar, was travelling in local train from Diva to Sion and from Sion to Diva with 2nd Class ordinary return ticket No.25535877. Due to the overcrowding of passengers, he was standing near the door of the said general bogie in the said local train. Thereafter at about 14.15 hours between Kurla to Sion, KM No.13/13 to 13/14, near the down slow railway track enroute Diva Jn. to Sion Railway track, he fell down from the said train due to heavy rush and sustained serious injuries and died on the spot. The Deputy Station Superintendent, prepared a Memo regarding lying of dead body.

All the appellants are dependents on the income of deceased Gopal, therefore, they filed an application for compensation.

(ii) The respondent strongly opposed the said application and submitted that no untoward incident occurred as per the provision of Section 123(c) read with Section 124-A of the Railways Act. The application filed by the applicants is not maintainable. The deceased Gopal was not a *bona fide* passenger of any train. The deceased Gopal died after being hit by a local train, while crossing the railway track. Therefore, the applicants are not entitled for compensation and lastly prayed to dismiss the claim of the applicants.

4. The learned trial Court cast following issues :

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

5. The learned Railway Tribunal held that the deceased was not a *bona fide* passenger and that it was not an untoward incident and rejected the claim of the applicants/appellants.

6. The learned Advocate for the appellants pointed out the grounds of objection of this appeal, along with evidence on record. He submitted that, it is admitted fact that incident occurred within the railway premises therefore, an Inquest Exhibit A-3 was drawn and a Spot panchnama Exhibit A-2 was also drawn up. Cause of Death Certificate Exhibit A-5 is prepared. Railway ticket at Exhibit A-1 was also found. It is an accidental death. He further pointed out that Affidavit of examination-in-chief of claimant – wife of the deceased Gopal Exhibit AW-1, at page A-140 and her cross-examination at page A-152. He pointed out a journey ticket purchased by deceased, Memo issued by Deputy Station Manager, the letter issued by Police Officer after completion of Inquest and the Postmortem Report of deceased Gopal.

7. The learned Advocate for the appellants submitted that railway ticket was found with the deceased Gopal. The observations and findings of the learned Tribunal regarding the cause of death are not legal and correct, it was an untoward incident occurred within the railway premises itself. However, the reasons and findings of the Tribunal are not legal and correct and prayed to allow the appeal and quash and set aside the impugned judgment of the Tribunal.

8. The learned Advocate Ms. Neerja Chaubey for respondent, submitted that there is no evidence of eye-witness to prove that the alleged incident which occurred within the railway premises. It was not an untoward incident, requisite as per law are not proved. Wife of the deceased Gopal – appellant No.1, was not having any knowledge. No any co-passenger or loco-pilot were examined to prove the untoward incident. Mere finding of the ticket belonging to the deceased Gopal, is not sufficient to hold that, it was an untoward incident. It is lastly prayed that the Appeal be dismissed.

9. Following points emerged for consideration as under :

- (i) *Was it proved by the appellants that Gopal died due to an untoward incident?*
- (ii) *Was it proved by the appellants that Gopal was a bona fide passenger with having a valid journey ticket?*
- (iii) *Is the impugned judgment illegal and requires interference?*

10. Perused the evidence of Jaya (AW-1), wife of deceased Gopal, it reveals that she was not present at the spot of incident, at the time of incident. No co-passenger has been examined. However, the Memo issued by Deputy Station Manager and the Spot Panchnama shows that the dead-body of the deceased Gopal was found on the railway track. The Inquest Panchnama at Exhibit A-3 as

well as C.R.PF. report Exhibit A-4 corroborated the appellants' case that, dead body of deceased Gopal was found in the railway premises. The Postmortem report at page No. A-94 along with Death Certificate at Exhibit A-9 shows that hemorrhage and multiple injuries were caused to the deceased Gopal. The said evidence is natural and probable. Therefore, it can be safely held that the said incident was an untoward incident. Such case should be decided on preponderance of probability and strict proof is not necessary.

11. The requirement for claiming compensation as per Section 124-A of the Railways Act are that, there must be an untoward incident occurred in the premises of Railway for claiming damages. Further, the passenger must be a *bona fide* passenger, possessing a valid journey ticket for the train in which he was travelling. A journey ticket of deceased Gopal was found with him, which is natural and probable evidence, it can be safely relied upon. Thus, merely because the evidence of Shri R. N. Jaibhai, Police Head Constable, Dadar Railway Police Station (RW-1), the evidence of the applicants AW-1 is not disproved by it. This shows that the evidence was not properly appreciated.

12. The negligence of any person who sustained injuries or death in the premises of railway having valid journey ticket cannot be considered even if he/she was negligent, 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***.

13. The learned Railway Tribunal failed to consider all these factual and legal aspects in its proper perspective that an untoward incident took place and it was a death due to the railway accident. The examination of independent witness such as co-passenger, is often improbable in such cases, as people are not interested to depose before Court or Tribunal for giving evidence. Thus, the reasons and findings of the learned Tribunal are neither legal nor correct. It caused injustice to the appellants. The appellants have established their claim, as appellant No.1 being wife, appellant Nos.2 to 4 minor daughters and appellant No.6 is 69 years old aged mother of deceased Gopal, they are dependent on the income of deceased Gopal. Therefore they are entitled for compensation as prayed by them.

14. For the reasons discussed above, the argument of learned Advocate for the respondent is not acceptable that Gopal was not a *bona fide* passenger etc. The impugned Judgment and order

therefore deserves to be set aside. Consequently, the appeal deserves to be allowed. Therefore, points Nos.1 to 3 are answered in the 'affirmative'. Hence, the following order :

- (i) The Appeal is **allowed**.
- (ii) The impugned Judgment dated 20.12.2023 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/78/2021 is quashed and set aside and the application is allowed.
- (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) along with **6% interest** thereon, from the date of incident, to the appellants, within four months from the date of uploading of this judgment.
- (iv) The Record and proceedings be sent back to the Tribunal.

(SANJAY A. DESHMUKH, J.)