



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

FIRST APPEAL NO. 293 OF 2024

- 1) Rajesh S/o Ramaji Shegamwar,
Aged about 51 years, Occ.– Labour work,
- 2) Smt. Kavita W/o Rajesh Shegamwar,
Aged about 40 years, Occ.- Housewife,

Both R/o. Hospital Ward,
Kumbhar Wadi, Chandrapur,
Dist. Chandrapur (M.S.)

.... **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 : 27.09.2024.

DATE OF PRONOUNCING THE JUDGMENT : 04.10.2024.

JUDGMENT.

1. **Admit.** Heard finally with the consent of the learned Advocates appearing for the parties.
2. This appeal is preferred against the Judgment and order dated 21.12.2023 passed by the learned Railway Claims Tribunal,

Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/45/2022, thereby the claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) On 27.11.2019, son of the applicants, namely Sumit S/o Rajesh Shegamwar, was travelling from Dahegaon to Wardha and Wardha to Malkapur for the visit of Sailani Baba Darshan. He was travelling with valid journey ticket of train along with his friends, Sumit Thengne and Akram Sheikh. While the train was passing from Wardha to Dahegaon Station at KM No.752/15-17, Sumit fell down from the running train at Wardha Railway Station and died on the spot due to a head injury. The Police Station Officer, Sawangi (Meghe) Police Station, registered a Merg Khabri No.75/2019 regarding accidental death. The applicants contended that the deceased Sumit was a *bona fide* passenger and died in an untoward incident. They further stated that they were dependent on the deceased Sumit and therefore, they filed an application for compensation.

(ii) The respondent strongly opposed the said application and submitted that no such untoward incident took place as per the provision of Section 123(c) read with Section 124-A of the Railways

Act. It argued that the application of the applicants was not maintainable and that the deceased Sumit was not a *bona fide* passenger of any train. Therefore, the applicants are not entitled to compensation and lastly prayed for dismissal of the application.

4. The learned trial Court cast following issues :

- (1) *Whether 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 it was not an untoward incident, and therefore rejected the claim of the applicants/appellants.

6. The learned Advocate for the appellants pointed out the grounds of objection to this appeal along with evidence on record. He submitted that it is an admitted fact that incident took place on the railway premises; therefore, an Inquest panchnama, Exhibit A-5, was drawn. Spot panchnama, Exhibit A-4, was also prepared. Friend of deceased, Sumit Nilkanth Thenge, informed Police Station Sawangi

(Meghe) that the deceased had fallen from the train and died on the spot. It was an accidental death. The journey ticket No.76544448 was also proved. He further pointed out that the Affidavit of applicant No.1, the father of the deceased Sumit, marked as Exhibit AW-1. The Affidavit of co-passenger namely Akram Younus Shaikh, a friend of the deceased Sumit marked as AW-2, as well as affidavit of other co-passenger, Sumit Nilkanth Thengane, marked as AW-3. He referred to the ticket purchased by the deceased, the Accidental Death Report, Spot Panchnama, Inquest Panchnama and Postmortem Report of deceased Sumit.

7. The learned Advocate for the appellants submitted that journey ticket was found with the deceased Sumit. Therefore, he is a *bona fide* passenger. The deceased Sumit was travelling along with his friends and one of them namely Sumit Thengne, had informed about the said incident to the Police Station Sawangi Meghe. The observations and findings of the learned Tribunal regarding the cause of death are neither legal nor correct. It was an untoward incident occurred on the railway premises itself. However, reasons and findings of the Tribunal are flawed and he prayed to allow the appeal and quash and set aside the impugned judgment of the Tribunal.

8. In support of his contention, learned Advocate for the appellants has relied upon the authority of ***Union of India Vs. Rina Devi***, reported in ***AIR 2018 SC 2362***, wherein it was held that mere absence of ticket with such injured or deceased does not negate the claim that he/she was a *bona fide* passenger. Burden lies upon the respondent to prove that Sumit was not a *bona fide* passenger. He lastly submitted to allow the appeal.

9. The learned Advocate Ms. Neerja Chaubey, for respondent submitted that it was not an untoward incident, which is requisite as per law. She further argued that the alleged journey ticket submitted belongs to the co-passengers of the deceased i.e. Akram shaikh and Sumit Thengane. She argued that when Sawangi Meghe police searched the clothes of the deceased Sumit, no journey ticket was found with him. Therefore, it can be established that the deceased is not a *bona fide* passenger of any train. Father of the deceased Sumit – appellant No.1 had no knowledge of the journey, and no any loco-pilot were examined to prove the alleged untoward incident. Learned Advocate for the respondent also pointed out evidence of RW-1, Rajendra S/o Shankarrao Bondre, who was working as “Trackman”, Central Railway, Nagpur. He deposed in his evidence, that on 27.11.2019, he was working as trackman at Wardha Station, that time Senior Section Engineer informed him via

phone that at Wardha-Dahegao Section at Km. No.752/15-17 one unknown person is lying near the track. Thereafter, he reached the spot of incident and during the investigation, Sawangi Meghe Police staff checked the clothes of deceased, they found only one mobile phone and Rs.390/- with deceased. No any journey ticket was found with deceased. Therefore, it is lastly prayed to dismiss the Appeal.

10. Following points emerged for consideration which are answered with reasons and findings as under :

- (i) Was it proved by the appellants that in an untoward incident, Sumit was died?*
- (ii) Was it proved by the appellants that Sumit was a bona fide passenger holding a valid journey ticket?*
- (iii) Is the impugned judgment illegal and requires interference?*

11. Perused the evidence of the father of deceased Sumit, he reiterated as per contentions in claim application. It also revealed that he was not present on the spot of incident at the time of accident. He also relied upon documentary evidence i.e. journey ticket Exhibit-A1, Accidental Report Exhibit-A2, Spot Panchnama Exhibit-A3, Inquest Panchnama Exhibit-A-4, Postmortem Report Exhibit-A5, Death Certificate Exhibit A-6. Appellants/applicants also

examined the co-passenger Akram Sheikh AW-2 and Sumit Thengane AW-3, who were the friends of the deceased Sumit. They both deposed that the deceased Sumit, was travelling with them by passenger train from Ballharsha to Wardha and then Wardha to Malkapur. When train was running at Wardha Railway Station in between Poll No. 752/5 & 752/13 the deceased Sumit fell down and died on the spot before availing medical treatment. The evidence of AW-2 Akram Sheikh, and AW-3 Sumit Thengane, corroborates the evidence of AW-1 applicant's evidence. The dead body of deceased Sumit, was found in the railway premises. Postmortem report Exhibit-A5 shows that the deceased Sumit was died due to a head injury. The said evidence is natural and probable. Therefore, it can be safely held that the said incident was an untoward incident. Such case is to be decided on preponderance of probability and strict proof is not necessary. The requirement for getting compensation as per Section 124-A of the Railways Act are that, there must be an untoward incident occurred due to the wrongful act, neglect or default on the part of railway administration for claiming damages. Further requirement is that passenger must be valid passenger holding journey ticket of the train to travel by it. A ticket of deceased Sumit was found, which is natural and probable evidence. It can be safely relied upon. On the basis of evidence of Shri Rajendra Shankarrao

Bondre, railway trackman, the evidences of the applicants AW-1, AW-2 Akram Sheikh and AW-3 Sumit Thengane are not disproved by it. Their testimonies are not shaken in the cross examination. This shows that evidence was not appreciated properly.

12. 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 like co-passenger is also on record. Thus, the reasons and findings of the learned Tribunal are not legal and correct. It caused injustice to the appellants. The appellants have established their claim as appellant No.1 is father, appellant No.2 is mother of deceased Sumit, they are dependent on deceased Sumit. Therefore they are entitled for compensation as prayed by them.

13. For the reasons discussed above, the argument of learned Advocate for the respondent is not acceptable that Sumit was not a *bona fide* passenger etc. The impugned Judgment deserves to be quashed and set aside. The appeal deserves to be allowed. The application for compensation deserves to be allowed. Therefore, points Nos.1 to 3 are answered accordingly. Hence, the following order :

- (i) The Appeal is **allowed**.
- (ii) The impugned Judgment and order dated 21.12.2023 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/45/2022 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 accident 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.)