



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

FIRST APPEAL NO. 871 OF 2022

APPELLANTS : 1. Smt. Sangita Wd/o. Sambhaji Patil,
 Age 40 years, Occu. Labour.

2. Sagar S/o. Sambhaji Patil, Age 18
 years, Occu. Education.

Both, R/o. Pathrad Khurd, Post Paldhi,
 Taluka Dharangaon, Dist. Jalgaon,
 Maharashtra – 425013.

//VERSUS//

RESPONDENT : Union of India, through the General
 Manager, Western Railway,
 Churchgate, Mumbai.

Mr. N.R. Mankar, Advocate for the Appellants.
 Mr. P.V. Navlani, Advocate for the Respondent.

CORAM : G. A. SANAP, J.
DATED : 21st FEBRUARY, 2024.

ORAL JUDGMENT

. **Admit.** Heard finally with the consent of learned
 advocates for the parties.

02] In this appeal, filed under Section 23 of the Railway
 Claims Tribunal Act, 1987 (for short, “the Act of 1987”),
 challenge is to the judgment and order dated 14th June, 2021,

passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants/claimants came to be dismissed.

03] BACKGROUND FACTS:

Appellant No.1 is the wife of the deceased, and appellant No.2 is the son of the deceased. They claim that on 26th May, 2018, the deceased Sambhaji Patil, while travelling from Paldhi to Chawalkhede by an unknown train, fell from the said train due to a sudden jerk and died due to the injuries sustained by him. According to the appellants, the deceased had purchased the ticket at Paldhi Railway Station and boarded an unknown train. He fell from the moving train at K.M. No.290/29-31 between Paldhi and Chawalkhede Up Line. The ticket and his bag were lost. On these averments, they claimed compensation.

04] The respondent-Railway filed the written statement and opposed the claim. According to the Railway, the death was not in an untoward incident. The deceased was dashed by a moving train while crossing the railway line and died due to the injuries sustained by him. The deceased was not travelling in any train. He was not a *bona fide* passenger. The ticket was not recovered after the incident.

05] Appellant No.1 examined herself as a sole witness. The respondent-Railway also examined one witness. Learned Member of the Tribunal, on consideration of the evidence, found that the claim was without substance and ultimately dismissed the same. The appellants, being aggrieved by this judgment and order, are before this Court in appeal.

06] I have heard Mr. N.R. Mankar, learned advocate for the appellants and Mr. P.V. Navlani, learned advocate for the respondent-Railway. Perused the record and proceedings.

07] The following points fall for my determination:

- (a) Whether the deceased was a *bona fide* passenger travelling with a valid journey ticket at the time of the incident?
- (b) Whether the deceased died in an untoward incident as understood by Section 123(c)(2) of the Railways Act, 1989 (for short, “the Act of 1989”)?

08] Learned advocate for the appellants submitted that there was no report of ACP of any train around the spot. Similarly, there was no report of any Loco Pilot or Guard of any train of run over of any person while crossing the railway line at the spot of the incident.

Learned advocate took me through the record and submitted that if the deceased was run over by any train, then his body would have been cut into pieces. It is pointed out that his body, apart from the injuries sustained by him, was intact. Learned advocate submitted that the dead body was lying by the side of the railway track and, therefore, the possibility of run over or dash to the deceased by any train while crossing the railway line has been completely ruled out. Learned advocate submitted that the deceased, after purchasing a railway ticket, had boarded a train at Paldhi Railway Station to go to Chawalkhede. Learned advocate submitted that the spot panchanama was drawn after 4-5 hours of the incident. There is no mention in the spot panchanama that the spot was inspected and the ticket was not found on the spot. Learned advocate further submitted that at the time of the inquest panchanama, the trouser and shirt pockets of the deceased were not examined, and, therefore, the contention of the Railway that the ticket was not found cannot be accepted. Learned advocate took me through the record and submitted that the clothes of the deceased were neither handed over to the appellants nor there is any record of disposal of the clothes. Learned advocate submitted that in the absence of examination of

the trouser pocket, the conclusion arrived at by the railway police and the DRM that the deceased was travelling without a ticket cannot be sustained. Learned advocate submitted that learned Member of the Tribunal has failed to take all these facts into consideration.

09] Learned advocate for the respondent-Railway, in short, supported the judgment and order passed by the Tribunal. Learned advocate took me through the record and submitted that there is ample material on record to conclude that the deceased, while crossing the railway line, was dashed by an unknown train. Learned advocate submitted that RW-1 has deposed that there was neither any ACP nor the report of any Loco Pilot about the incident of an accidental falling of any passenger from the train.

10] I have gone through the record and proceedings. AW-1 is the wife of the deceased. She has stated that the deceased, after purchasing a ticket at Paldhi Railway Station, boarded an unknown train to go to Chawalkhede. She has deposed that after a few hours, the people reported to her that her husband died in a railway accident. It is true that AW-1 had not seen the deceased purchasing

the ticket. The question is whether this fact by itself is sufficient to jump to a conclusion that the deceased had not purchased the ticket and boarded an unknown train at Paldhi Railway Station to go to Chawalkhede. The initial burden is on the claimant to prove that the deceased or injured person was a *bona fide* passenger travelling with a valid journey ticket. The burden can be discharged by leading evidence. Similarly, evidence in the form of admitted facts and the available documents on record can be made use of. In my view, in this case, there is ample evidence on record to substantiate the contention of the appellants that the ticket was lost in the incident. The inquest panchanama is part of the record at Exh.4, page A-67. The incident occurred on 26th May, 2018 at about 11:50 a.m. The inquest panchanama was conducted between 13:00 and 13:30 hrs. at the spot of the incident. The Police Officer examined the dead body. The deceased was wearing a shirt and trouser.

11] The perusal of the inquest panchanama would show that at the time of the inspection of the dead body, the shirt and trouser pockets were not checked or examined. Generally, the ticket purchased for a journey is kept in the pocket. In my view, this is an

important piece of material in favour of the appellants. The appellants had no reason to go to the spot and inspect the shirt and trouser pockets of the deceased. A tragedy had befallen on them. One can visualize their mental condition. There is one more circumstance in favour of the appellants. The postmortem was conducted at the General Hospital, Jalgaon.

12] The perusal of the post-mortem report would show that there is no mention of the clothes on the dead body as well as the seizure of the clothes on the dead body. Generally, the clothes are removed at the time of the postmortem. The clothes are packed, sealed, and handed over to the constable accompanying the dead body. The post-mortem report is silent about it. The dead body was found lying by the side of the railway track. The dead body was on the railway premises. If the ticket was lost, as stated by the appellants, then the said ticket would have been recovered from the spot. The spot panchanama is silent about the minute examination/inspection of the spot. If the ticket had not fallen on the spot after the incident, then it must be lying in the pocket. The trouser and shirt pockets were not examined. Generally, the entire body, including the pockets, is examined, and a note is taken in the

inquest panchanama. It is not the case of the Railway that, immediately after the incident, the inspection of the spot was carried out by the railway personnel, and at the time of the said inspection, the ticket was not found. In my view, therefore, this evidence of the appellants, who knew that her husband went to Chawalkhede from Paldhi, is sufficient to conclude that the deceased travelled by an unknown train from Paldhi to Chawalkhede. The failure to examine the trouser pockets and whereabouts of the clothes after the inquest panchanama are strong circumstances in favour of the appellants. On the basis of these circumstances, a strong possibility of loss of ticket has been established. These circumstances, coupled with the evidence of appellant No.1, cannot be discarded. In my view, therefore, this evidence would be sufficient to discharge the initial burden. As such, I conclude that the deceased was travelling from Paldhi to Chawalkhede, and on the way, he fell from the moving train and died. It has been proved by direct and circumstantial evidence that the ticket was lost in the incident.

13] As far as the death in an untoward incident is concerned, the material on record is required to be appreciated very carefully.

Witness No.1, examined by the Railway, was not an eyewitness to the incident. There is no eyewitness to the incident as sought to be contended by the Railway. It is to be noted that if a person is run over by a train while crossing the railway line or dashed by a Railway, then the report of such an incident is made by the Loco Pilot of the concerned train. It is not the case of the Railway that there was a report by the Loco Pilot of any train about run over or dash to any person while crossing the railway line. If the deceased was dashed or run over, as sought to be contended, then the Loco Pilot of the concerned train would have made a report of the incident.

14] The injuries sustained by the deceased are sufficient to conclude that the deceased was neither run over nor dashed by any train. If the deceased was run over while crossing the railway line, then his body would have been cut into pieces. Similarly, if the deceased had sustained the dash, then he would have been thrown away and sustained multiple fractures. The deceased had sustained injuries to his head and other parts of his body. His right leg was fractured. There was a deep injury to the head on the right side. The

injuries sustained by the deceased, if considered in totality, would show that these injuries could be possible due to fall from a moving train. The injuries sustained to the head clearly indicate that the deceased fell from a moving train and sustained the injuries. The possibility of run over as well as dash to the deceased while crossing the railway line has been completely ruled out on the basis of the evidence. The Railway has not adduced any evidence to establish its defence. The material on record is sufficient to conclude that the deceased died due to fall from a moving train. In my view, therefore, learned Member of the Tribunal was not right in rejecting the claim of the appellants. As such, I record my findings on both the points in the affirmative. The appeal deserves to be allowed.

15] Accordingly, the appeal is **allowed**. The judgment and order dated 14th June, 2021, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/120/2019 is set aside. The claim petition is allowed.

16] The respondent-Railway is directed to pay compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the appellants. The

respondent-Railway is also directed to pay interest @ 6% per annum from the date of the incident till realization of the amount.

17] The amount of compensation be deposited within four months from the date of uploading of this judgment.

18] The amount of compensation be deposited directly in the bank accounts of the appellants. The appellants are directed to provide their bank account details to the respondent-Railway.

19] Out of total compensation, 70% shall be paid to appellant No.1, and balance 30% shall be paid to appellant No.2.

20] The first appeal stands disposed of in the aforesaid terms. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

Vijay