



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

FIRST APPEAL NO. 467 OF 2019

- 1) Sheelabai Wd/o Sanjay Maske,
Aged about 32 years, Occu.-Labour,
- 2) Rahul S/o Sanjay Maske,
Aged about 5 years, minor,
- 3) Vishal S/o Sanjay Maske,
Aged about 3 years, minor,
- 4) Mangala D/o Sanjay Maske,
Aged about 18 months, minor,

Applicants Nos.2 to 4 are minors
through their natural guardian
mother i.e. applicant No.1.

- 5) Chandrakala W/o Devidas Maske,
Aged about 55 years, Occu.-Nil,
- 6) ~~Devidas S/o Appa Maske,~~
~~Aged about 60 years, Occ.-Nil.~~

Deleted as per
Court's order
dt.16.04.2024

All R/o. Hirpur, Tq. Murtizapur,
District Akola (Maharashtra)

.... **APPELLANTS**

// **VERSUS** //

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

.... **RESPONDENT**

Mr. Parimal Kavishwar, Advocate for Appellants.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 22nd AUGUST, 2024.

ORAL JUDGMENT.

1. Heard. **Admit.** Heard finally by the consent of the learned Advocates for the parties.

2. This appeal is preferred against the Judgment and order dated 06.01.2016 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Iiu)/NGP/2014/0054. The claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the applicants' case are as under :

(i) An application was filed for compensation on account of death of husband of applicant No.1, father of applicant Nos.2 to 4 and son of applicant No.5 namely Sanjay Devidas Maske, who died in the railway accident.

(ii) On 18.10.2013, Sanjay Maske purchased a general class ticket for journey by Howrah-Mumbai Kurla Express Train No. 18030 and proceeded along with applicant No.1 from Murtizapur to Mumbai. He boarded in general bogie. When the train reached at Malkapur Railway Station, he alighted from train for bringing the water at platform of railway station. After taking water, he tried to

board in the train, due to huge rush in the bogie, he could not enter into the bogie. However, he was compelled to stand near it's door. Suddenly the train started and due to jerk of the train, he fell down from the bogie and sustained serious injuries. He was admitted in the hospital and during treatment, he died on 19.10.2013. Therefore, the applicants filed an application for grant of compensation as they were dependent upon the deceased Sanjay Maske.

4. The respondent denied the claim and contended that no such untoward incident took place in the premises of railway as alleged by the applicants. It is also contended that deceased Sanjay was not having journey ticket and therefore, he was not a *bona fide* passenger. There is no any eye witness to that incident to prove it. There was no any jerk to the train and because of that, Sanjay fell down and untoward incident took place in the premises of railway. No any untoward incident took place. It is lastly prayed to dismiss the appeal.

5. The learned Railway Tribunal cast the following issues :

(1) *Whether the Applicants prove that they are the dependents of the deceased within the meaning of Section 123 (b) of the Railway Act?*

- (2) *Whether the Respondent Railway proves that deceased was not a bona fide passenger of the train on the relevant day, with valid journey ticket and the deceased was not involved in untoward incident?*
- (3) *Whether the Applicants proves that the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application?*

6. The learned Railway Tribunal held that applicants have failed to prove that it was untoward incident and Sanjay was a *bona fide* passenger. The claim of the applicants was dismissed.

7. The learned Advocate Mr. P. U. Kavishwar for the applicants submitted that they have proved their case by adducing cogent and acceptable evidence. The evidence of applicant No.1 establishes that deceased Sanjay was a *bona fide* passenger. The documentary evidence adduced by the applicants about the investigation of the said case establishes that Sanjay sustained injuries as he fell down from the said train. The postmortem report also corroborates the evidence of the applicants. DMR report establishes occurrence of incident in the premises of Railway. The applicants are relying upon the documents i.e. letter issued by Deputy Station Superintendent, Malkapur to G.R.P. about one person lying in an injured condition at Exhibit-A1, Accidental death information at Exhibit A-2, Spot

panchnama at Exhibit-A3, Inquest at Exhibit A-4, Postmortem report at Exhibit-A-5, which establishes that untoward incident occurred in the Railway premises. In her cross-examination, A.W.-1 had stated that she had not personally witnessed that incident. But it does not disprove the above discussed evidence. The untoward incident is proved.

8. Learned Advocate for the applicants further submitted that applicant No.1 and deceased Sanjay were travelling together. The journey ticket was kept with applicant No.1 and when she reached at the Railway Station, Mumbai, the said journey ticket was handed over to Ticket Collector on his demand at Mumbai. Therefore, journey ticket was not found with deceased Sanjay. There is no such evidence on record that Sanjay was travelling without ticket. However, as per precedential law of *Union of India Vs. Rina Devi*, reported in *AIR 2018 SC 2362*, the Hon'ble Supreme Court held that the burden lies upon the respondent to prove that passenger was travelling without journey ticket. He submitted that the Ticket Checker has not caught hold Sanjay without ticket. The respondent failed to prove that Sanjay was travelling without journey ticket. He lastly prayed to allow the appeal and claim by setting aside the impugned judgment.

9. The learned Advocate Ms. Neerja Chaubey for the respondent strongly objected the appeal and contended that the journey ticket is not found with deceased Sanjay. The applicants have not adduced necessary evidence for it. As per Section 3(2)(ii) of the Railway Passengers Cancellation of Ticket and Refund of Fair Rules copy of ticket ought to have obtained by the appellants. The impugned judgment is legal and correct and no any interference is warranted in it. It is lastly prayed to dismiss the appeal.

10. Perused the record and proceedings and impugned judgment.

11. The following points emerged for consideration :

- (i) *Was it proved by the appellants that in an untoward incident Sanjay 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 Sanjay?*
- (iii) *Is the impugned judgment illegal and require interference?*

12. The evidence of Sheelabai (AW-1) is not shaken in the cross-examination that deceased Sanjay was travelling by the said train.

He sustained injuries and died on the next day of incident. However, Ticket Checker has not taken any action against Sanjay for not having journey ticket with him at the relevant time. The burden lies upon the respondent to prove that he was not having journey ticket of train. However, learned Railway Tribunal failed to consider the *ratio* laid down in the precedential law of ***Union of India Vs. Rina Devi*** cited *supra* that burden of proof lies upon the railway administration – respondent to prove that passenger Sanjay was not having valid journey ticket. Thus, learned Tribunal erred in this regard and held that deceased Sanjay was not a *bona fide* passenger as journey ticket of train was not found with him.

13. As far as untoward incident is concerned, the documentary evidence of letter issued by Deputy Station Superintendent, Malkapur to G.R.P. about that incident that one person is lying in an injured condition which is at Exhibit-A1, Accidental death information at Exhibit A-2, Spot panchnama at Exhibit-A3, Inquest at Exhibit A-4, Postmortem report at Exhibit-A-5 if considered together, it establishes that incident took place in the premises of railway and Sanjay sustained injuries in that incident and died. The above evidence is corroborating with each other as discussed above. The learned Railway Tribunal failed to consider all these proved facts in it's

proper perspective and wrongly held that the applicants failed to prove untoward incident and that Sanjay was not a *bona fide* passenger having no journey ticket of train.

14. The evidence of witness Smt. Sheelabai Maske (A.W.-1) - wife of deceased Sanjay is sufficient to prove the appellants dependency on deceased Sanjay. It is not shaken in the cross examination.

15. The reasons and findings of the learned Tribunal are not legal and correct and interference is warranted in it. Thus, *bona fide* passenger, untoward incident and dependency of the applicants are proved. Hence, point Nos.1 to 3 are answered in the 'affirmative'.

16. The appeal deserves to be allowed. The impugned judgment deserved to be set aside. The claim deserves to be allowed. For the reasons discussed above, the argument of learned Advocate for the respondent is not acceptable. Hence, the following order :

- (i) The Appeal is **allowed**.
- (ii) The Judgment dated 06.01.2016 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/2014/0054, is set aside.

- (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) to the appellants. The compensation amount be deposited within six months before the Railway Tribunal.
 - (iv) The appellants to submit their bank details for getting that compensation amount.
 - (v) The respondent is directed to pay that amount through electronic mode like NEFT, RTGS etc.
 - (vi) The Record and proceedings be sent back to the Railway Tribunal.
17. The Appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)