



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

FIRST APPEAL NO. 291 OF 2024

- 1) Padma W/o Banshi Chandve,
Aged about 42 years, Occu.-Labour,
- 2) Banshi S/o Govind Chandve,
Aged about 49 years, Occu.-Labour,
Both R/o. Wasai Ward, Pandhurna,
District – Chindwara (M.P).

.... **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 : 23.07.2024.

DATE OF PRONOUNCING THE JUDGMENT : 20.08.2024.

JUDGMENT.

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

2. This appeal is preferred against the Judgment and order dated 05.12.2023 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/43/2023, thereby claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) On 06.06.2019, Master Robi S/o Bansi Chandve aged about 9 years was travelling from Nagpur to Kohli by Nagpur-Amla Passenger with ticket No.UFG 01893759 along with his family members/applicants. The alleged passenger train was stopped in the area of Kohli Railway Station. They get down from the train. When they were walking at the side of railway track towards railway station Kohli, one train came from opposite direction in the high speed and gave dash to the Robi. Due to dash, Robi sustained injuries and died on the spot. Therefore, applicants prayed for grant of compensation.

(ii) The respondent denied the claim and contended that deceased Robi was not *bonafide* passenger as he was not having any ticket. He was not travelling by any train. No any untoward incident took place as per Section 124-A read with Section 123 (c)(2) of the Railways Act. Therefore, railway administration is not liable to pay compensation. The applicants were not dependents upon the

deceased Robi as he was child. It is lastly prayed to dismiss the application.

(iii) The learned Tribunal cast the following issues :

- (1) *Whether deceased was a bonafide passenger of the train on the relevant day, with valid journey ticket?*
- (2) *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)(2) of Railways Act?*

4. The learned Railway Tribunal held that deceased Robi was not a *bonafide* passenger and no such alleged untoward incident took place. The applicants have not produced any document to show that they are dependent upon deceased Robi. Therefore, claim of the applicants was dismissed.

5. Perused the impugned judgment and record and proceedings. The following points emerged for consideration :

- (i) Was it proved by the appellants that in an untoward incident, Master Robi was died?
- (ii) Was it proved by the appellants that Master Robi was a *bonafide* passenger with having valid journey ticket?

- (iii) Is the impugned judgment illegal and require interference?

6. The learned Advocate for the appellants submitted that railway ticket was found on the spot of incident. The alleged incident is noted by the railway administration by their DMR report. The inquest panchnama was drawn up, postmortem was conducted. All these facts are established. However, only fact not established is that which train gave dash to the deceased Robi, on that basis, claim cannot be denied. The applicant No.1 – Smt. Padma W/o Bansi Chandve (AW-1) adduced her evidence on an affidavit of examination-in-chief. She was cross examined, however, in her cross examination it is asserted that unknown train dashed to the deceased Robi. She denied that due to the criminal overt act of the Robi i.e. criminal negligence, incident took place. The documentary evidence i.e. railway ticket – Exhibit A-1, Registration of Unnatural Death – Exhibit A-2, Spot panchnama – Exhibit A-3, Inquest – Exhibit A-4 along with Postmortem Report – Exhibit A-5 corroborated the case of the appellants. He prayed to allow the appeal by setting aside the impugned judgment.

7. No doubt, there is evidence of Shri Kamalkumar Tukaram Hurmade, who is Mail Express Train Manager, Central Railway, Amla as (R.W.-1) at page A-125, in which he has stated that on 06.06.2019, in his duty hours, as he was acting as Senior Passenger Train Manager (Train Guard) of the Passenger Train No. 51293 (Nagpur-Amla Passenger), no such incident took place and no such untoward incident was reported to him through his journey. His evidence is negative as railway ticket was found on the spot. The correspondence between the appellants and railway administration establishes that untoward incident took place in the premises of railway. The original journey ticket of train is on record at Exhibit A-1, having No.UFG 01893759, dated 06.06.2019 issuing at 16.45 hours for three adults shows that, it was issued for journey from Nagpur to Kohli. The incident took place by dash of the train and it was not accidental fall, as observed by the Railway Tribunal in para 5.14, which does not comes within the purview of “Self-inflicted injury” and “his own criminal act”. It is not sustainable to held that it was not untoward incident.

8. The postmortem report and other documents along with entire evidence if considered together, it establishes that the

untoward incident took place in the railway premises. Considering all these aspects, the appellants claim deserves to be allowed as the incident took place in the railway premises and negligence cannot be held as own criminal act. There is no evidence of self-inflicted injuries, such evidence is not adduced by the respondent, however, the learned Tribunal held that it was self-inflicted injury. The burden lies upon the respondent to prove that it was self-inflicted injury or own criminal act.

9. All these aspects were not properly considered by the learned Railway Tribunal. The learned Tribunal did not appreciate the evidence in proper perspective and failed to believe the evidence of applicants. The reasons and findings of the learned Tribunal are not sustainable in the eyes of law. There is no factual as well as legal reason to deny the compensation to the appellants.

10. Considering all these aspects, the appeal deserves to be allowed. The appellants have certainly proved that said incident took place and it was untoward incident and deceased Robi was a *bonafide* passenger and the appellants are legal representatives of deceased Robi as defined in the definition of dependents. Hence, point Nos.1 to 3 are answered in the 'affirmative'. The appeal deserves to be allowed. The impugned judgment deserves 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 and order dated 05.12.2023 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/43/2023, is quashed and set aside.
- (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 equally. The compensation amount be deposited **within four 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.

Corrected as per Court's order dt.13.12.2024 passed in CAF No.3652/2024
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11. The Appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)