



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

FIRST APPEAL NO. 1443 OF 2019

- 1) Devidas S/o Harbaji Munjewar,
Aged about 58 years, Occu.-Labour,
- 2) Smt. Anjanabai W/o Devidas Munjewar,
Aged about 52 years, Occu.-Housewife,
Both R/o. Kharangana,
Tahsil – Arvi, District – Wardha. **APPELLANTS**

// VERSUS //

Union of India,
Through its General Manager,
Central Railway,
Mumbai CST-01. **RESPONDENT**

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

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 24.06.2024.

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 dated 03.09.2015 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/2012/0115, thereby claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) On 18.10.2011, Pankaj Devidas Munjewar was travelling from Nagpur-Amravati Passenger train No. 51262 with journey ticket. He boarded from Wardha Railway Station at around 10.00 am. to proceed for Pulgaon. The train was over crowded. Pankaj was standing near the door of bogie. When the train reached near Km. No. 755/3-1 at Sawangi area between Wardha to Dahegaon, due to the jerk of train and crowd, he fell down from train. He sustained injuries to his vital organs and died on the spot. The applicants contended that they are parents of deceased Pankaj. They are dependents upon the income of deceased Pankaj. Therefore, they prayed for grant of compensation.

(ii) The respondent denied the claim and contended that no such untoward incident took place in the premises of railway as alleged by the applicants. The application is not maintainable as Pankaj was not *bonafide* passenger of any train. Thus, no untoward

incident took place. It is lastly prayed to dismiss the claim of the applicants.

(iii) The 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 bonafide passenger of the train on the relevant day, with valid journey ticket?*
- (3) *Whether the applicants prove that the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application?*

4. The learned Railway Tribunal held that deceased Pankaj was not *bonafide* passenger and no such alleged untoward incident took place. The claim of the applicant was dismissed.

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

- (i) Was it proved by the appellants that in an untoward incident, Pankaj died?

- (ii) Was it proved by the appellants that Pankaj was *bonafide* passenger with having valid journey ticket?
- (iii) Was it proved by the appellants that they are dependents upon the income of Pankaj?
- (iv) Is the impugned judgment is illegal, incorrect and require interference?

6. The learned Advocate for the appellants submitted that the journey ticket of Pankaj was lost. However, initial burden lies upon the respondent to prove that deceased Pankaj was not having it and he is not *bonafide* passenger. For that, he is relying upon the precedential law of ***Union of India Vs. Rina Devi***, reported in ***AIR 2018 SC 2362***. He further submitted that the documentary evidence i.e. spot panchnama, inquest panchanama, shows that said incident took place in the premises of railway. He submitted that the postmortem report shows that there were fracture injuries to the left shoulder and his death has occurred as hemorrhage and shock. The unnatural death of Pankaj is proved. The dependency of the applicants is proved. The learned Railway Tribunal disbelieved the evidence adduced by the applicants and dismissed the claim illegally. He lastly prayed to allow the appeal.

7. Learned Advocate Ms. Neerja Chaubey for the respondent submitted that deceased Pankaj was not bonafide passenger and no untoward incident took place. He was travelling without ticket. The loco pilot of said train deposed that Pankaj was crossing the railway-track therefore he is responsible for occurrence of the accident. The untoward incident is not proved. The Pankaj was *bonafide* passenger is not proved as the journey ticket of railway is not found with him. Therefore, the appellants are not entitled for compensation. The judgment of the learned Tribunal is legal and correct and no interference is warranted in it. It is lastly prayed to dismiss the appeal.

8. Perused the impugned judgment and record and proceedings.

9. The evidence adduced by the parties particularly the postmortem report, spot panchnama and statements of witnesses is not denied. The evidence of witnesses particularly an Affidavit of examination-in-chief of Devidas A.W.-1 - father of deceased Pankaj, is only helpful to prove the appellants dependency on deceased Pankaj. The spot panchnama shows that incident took place at Km. No. 755/3-1 at Sawangi area between Wardha to Dahegaon, Wardha

Railway Station. It shows that incident took place in the premises of railway. In the evidence of Arunkumar – R.W.-1, the Deputy Station Superintendent of Railway Station, Wardha at A-69, stated that he received message that one dead body is lying on the railway track. He sent that message to the Sawargaon Police Station by sending Memo. Thus, he is not eye witness to the incident. The postmortem report and other documents along with entire evidence if considered together, it establishes that the said incident took place in the railway premises and it was untoward incident.

10. It is admitted fact that journey ticket was not found with deceased Pankaj, however, in view of law laid down in ***Union of India Vs. Rina Devi*** cited *supra*, it is held that if journey ticket is not found it is not sufficient to hold that the deceased is not a *bonafide* passenger. It is because initial burden of proof is lies upon the respondent to prove that Pankaj was travelling without ticket and, therefore, he is not *bonafide* passenger, because Ticket Checker can check as to whether the passenger is travelling without ticket. Once the person has been entered in the premises of railway and boarded in train, it means that he was having the journey ticket. Thus, claim cannot be rejected only because the journey ticket is not found by holding him that Pankaj was not *bonafide* passenger. The burden of

proof lies upon the respondent to establish that deceased Pankaj was travelling without ticket and he is not *bonafide* passenger. It is because no evidence is adduced to prove that he was travelling without ticket. Therefore, contention of learned Advocate Ms. Neerja Chaubey for respondent that deceased Pankaj was not *bonafide* passenger is not acceptable.

11. As far as untoward incident is concerned, there is no eye witness to the said incident. The transactions between the railway administration itself shows that Pankaj was travelling by the train and he fell down and sustained injuries, which is corroborated by the postmortem report. Therefore, no such inference can be drawn that deceased Pankaj did not die in the untoward incident. There is no such evidence to disbelieve the case of the appellants. Therefore, liability to pay compensation cannot be denied. The Hon'ble Apex Court in case of *United India Insurance Co. Ltd., Vs. Sunil Kumar*, reported in **2017 (13) SCALE 652**, held that plea of negligence of the victim cannot be allowed. Negligence is no ground to claim compensation.

12. As far as dependency of the appellants is concerned, there is reliable evidence of applicant that they are dependent upon the income of their son deceased Pankaj. The evidence of appellant

(AW-1) is not shaken in the cross examination. They are dependents upon the Pankaj. All these aspects were not properly considered by the learned Railway Tribunal. The learned Tribunal did not appreciate the evidence in its proper perspective and failed to believe the evidence of applicants which is not disproved. The reasons and findings of the learned Tribunal are not legal and correct on fact and law and those are not sustainable in the eyes of law. There is no factual as well as legal reason to deny the compensation to the appellants. The Pankaj was *bonafide* passenger, he died in untoward incident and dependency of applicants is proved hence, point Nos.1 to 4 are answered in the 'affirmative'.

13. The appeal deserves to be allowed. The impugned judgment deserved to be set aside. 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 03.09.2015 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/2012/0115, is hereby quashed and set aside.

Corrected as per
Court's order dated
13.12.2024 passed in
CAF No.3653/2024.

- (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) 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. to both the appellants equally within three months from the date of uploading of this judgment.
- (vi) The Record and proceedings be sent back to the Railway Tribunal.
14. The Appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)

Kirtak