



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

FIRST APPEAL NO. 66 OF 2022

APPELLANTS : 1. Dagadu S/o. Bhila Patil, Aged about 65 years, Occ. Labour.
2. Ashabai W/o. Dagdu Patil, Age-46 years, Occu. Housewife.

R/o. Vill.-Bhadgaon, Savde, Dist.
Jalgaon (MS) 424103.

//VERSUS//

RESPONDENT : The Union of India, General Manager
Central Railway, CSMT, Mumbai.

Ms. Sumesha Chaudhari, Advocate for the Appellants.
Ms. A.S. Athalye, Advocate for the Respondent.

CORAM : G. A. SANAP, J.
DATED : 11th JANUARY, 2024.

ORAL JUDGMENT

. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, "the Act of 1987"), the challenge is to the judgment and order dated 6th December, 2019, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants came to be dismissed.

02] BACKGROUND FACTS:

The appellants are the parents of the deceased Swapnil Patil. They claim that on 4th August, 2016, the deceased, after attending his medical fitness examination at Nanded, had started his journey with his cousin to Jalgaon. At Manmad Railway Station, the deceased and his cousin Anil Patil boarded the Down Punjab Mail Train No.12137. According to the appellants, the deceased fell down from a running train between Km.342/6 and 342/8 in Tandalwadi Shivar of Railway Station Kajgaon. He sustained serious injuries and died. According to the appellants, the composite railway ticket purchased for the journey by the deceased and Anil Patil was with the deceased. The railway ticket was lost in the incident. The deceased was a *bona fide* passenger. The death was in an untoward incident, as understood by Section 123(c)(2) of the Railways Act, 1989 (for short, “the Act of 1989”). On these averments, the appellants claimed the compensation.

03] The respondent-Railway filed the written statement and contested the claim. It is the case of the Railway that the death was not in an untoward incident. The deceased might have fallen from the train due to his negligence. It is further contended that the journey ticket was not recovered either from the spot or from the

pocket of the deceased. The deceased was not a *bona fide* passenger and, therefore, the claim was not maintainable.

04] The parties adduced the evidence before the Tribunal. The learned Member of the Tribunal, on consideration of the evidence, found that the claim was without substance and, as such, dismissed the claim. Being aggrieved by this judgment and order of the Tribunal, the appellants have come before this Court in appeal.

05] I have heard Ms. Sumesha Chaudhary, learned advocate for the appellants and Ms. A.S. Athalye, learned advocate for the respondent-Railway. Perused the record and proceedings.

06] The following points fall for my determination:

- (a) Whether the deceased died in an untoward incident as understood by Section 123(c)(2) of the Act of 1989 ?
- (b) Whether the deceased was a *bona fide* passenger travelling in the train with a valid journey ticket ?

07] The learned advocate for the appellants submitted that there is ample evidence in the form of the DRM report and the RPF investigation report that the deceased was not run over by any train while crossing the railway line. The learned advocate submitted that

the deceased, while travelling in a train, fell from the moving train and sustained serious injuries, and as such, the death was in an untoward incident. The learned advocate further submitted that there is no evidence adduced by the respondent-Railway to establish that the Loco Pilot of any train reported the run over of any person by any train at the spot of the incident. The learned advocate submitted that the injuries found on the dead body of the deceased completely rule out the possibility of the deceased being run over by any train. The learned advocate submitted that the inquiry conducted by the DRM as well as by the RPF revealed that the deceased was travelling from Nanded to Jalgaon with his cousin Anil Patil. The learned advocate submitted that there is no evidence adduced by the respondent-Railway to disprove the fact that the deceased was travelling with a valid journey ticket on the given date, as has been proved on the basis of the DRM report and other evidence. The learned advocate submitted that the mother of the deceased came to know from Anil Patil that they had purchased the composite journey ticket at Nanded to come to Jalgaon, and the said ticket was kept by the deceased with him. The learned advocate submitted that Anil Patil, after joining the Armed Forces, could not

attend the Court and, therefore, has not been examined. The learned advocate submitted that the statement of Anil Patil recorded by the Police during the course of the inquiry has been considered by the DRM while conducting the inquiry and for the purpose of drawing a conclusion as to the incident.

08] The learned advocate for the respondent-Railway submitted that failure to examine Anil Patil by the appellants is the glaring defect in the case of the appellants and, therefore, the statement of Anil Patil recorded by the Police could not be used as evidence. The learned advocate submitted that no explanation has been put forth for the non-examination of Anil Patil as a witness. The learned advocate submitted that the conclusion drawn by the DRM on the basis of the statement of Anil Patil and other material cannot be made use of by the appellants. The learned advocate submitted that the affidavit of evidence filed by appellant No.2 is not sufficient to discharge the initial burden that the deceased was a *bona fide* passenger. The learned advocate, in short, supported the impugned judgment and order passed by the learned Member of the Tribunal.

09] In order to appreciate the rival submissions advanced by the learned advocates for the parties, I have gone through the record and proceedings. It is to be noted at the outset that there is no evidence adduced by the respondent-Railway to establish that any passenger was run over by any train on the given date at the spot of the incident. At the outset, it is necessary to mention that, as per Section 124A of the Act of 1989, the Railway is liable to pay the compensation when in the course of working a railway, an untoward incident occurs, whether or not there has been any wrongful Act, neglect, or default on the part of the railway administration. It would entitle a passenger who has been injured or dependent of a passenger who has died to claim the compensation. The Railway cannot be held liable to pay the compensation if the case is covered by any of the clauses of the proviso to Section 124A of the Act of 1989.

10] The accidental falling of a passenger from a railway train is not covered by any of the clauses of the proviso to Section 124A of the Act of 1989. It has come on record that the dead body was found between Km.342/6 and 342/8 in Tandalwadi Shivar of Railway

Station Kajgaon. It has come on record that the deceased, along with his cousin Anil Patil, boarded the Down Punjab Mail at Manmad Railway Station for an onward journey to Jalgaon. It is undisputed that the said train passed through Kajgaon Railway Station at about 2:00 a.m. on 4th August, 2016. The dead body was found lying by the side of the bridge near the railway track. The Railway has not proved that on the given date at the spot of the incident, it was reported by the Loco Pilot of any train that any person while crossing the railway line was either dashed by the train or run over by the train. The injuries sustained by the deceased clearly indicate that the deceased was not run over by any train. If the deceased was run over by any train, then his body would have been cut into pieces. The dead body in that contingency would have been found lying on the railway track. The post-mortem report clearly indicates that the death was due to Cardio respiratory arrest due to massive hemorrhage shock due to polytrauma. The deceased was a resident of Jalgaon district. The spot of the incident is far away from Jalgaon Railway Station. It, therefore, goes without saying that the deceased had no reason to go to the spot of the incident. The material on record is sufficient to prove that the deceased, while travelling by

train, fell from the moving train and died due to the injuries sustained by him. It is true that there is no eyewitness to the accidental fall of the deceased from the railway train. It is undisputed that the incident occurred at about 2:00 a.m. on 4th August, 2016. During the night, it is not possible to notice the accidental falling of any passenger from the train by a co-passenger because most of the passengers are either sleeping or sitting in the coach. In this case, therefore, the case of the appellants would be covered by the first part of Section 124A of the Act of 1989. The case would not be covered by any of the clauses of the proviso of Section 124A of the Act of 1989. In the facts and circumstances, I conclude that the appellants have proved that the deceased died in an untoward incident.

11] The next important issue that needs to be addressed is whether the deceased was a *bona fide* passenger travelling with a valid journey ticket. It is undisputed that the cousin of the deceased, by name Anil Patil has not been examined. His statement was recorded during the course of the DRM inquiry as well as the police inquiry. A statement is part of a record. Certain conclusions have

been drawn in the DRM report on the basis of the statement of Anil Patil. This fact would establish the existence of a person by name Anil Patil and the recording of his statement. In the DRM report, the conclusion has not been drawn that the statement made by Anil Patil was found completely unbelievable or false. It needs to be stated that since the statement has been relied upon by the DRM to draw the conclusion, the same now cannot be discarded. The statement of the father of the deceased was also recorded. Appellant No.2, the mother of the deceased, has made a statement on affidavit that the deceased and Anil Patil had gone to Nanded for recruitment in the Armed Forces. The deceased was selected, and after attending his test, the deceased, along with Anil Patil, was returning to Jalgaon by train. This statement has been made by appellant No.2 on the basis of information conveyed to her by Anil Patil. In her affidavit of evidence, she categorically stated that the deceased and Anil Patil had purchased a ticket and were coming back to Jalgaon. A major part of the DRM's report is devoted to the analysis of the statement of Anil Patil. It was stated in the conclusion part of the DRM's report that Anil Patil did not tell the journey fare and, therefore, it could not be said that the deceased was travelling with a valid

journey ticket. In my view, the statement of Anil Patil was accepted and relied upon to draw the conclusion in the DRM inquiry. The respondent-Railway can not contend that the part of the statement of Anil Patil, favourable to the Railway, shall be accepted and the part of the statement, against the Railway, shall be rejected. The statement has to be discarded or accepted in its entirety. The statement has been converted into a finding. It has been treated as evidence for the purpose of finding in favour of the Railway. The DRM inquiry does not indicate that the statement made by Anil Patil was either false or unbelievable. In my view, considering the nature of this proceeding in the absence of the examination of Anil Patil as a witness and, more particularly, the fact that the said statement was made the basis of the DRM inquiry, the said statement cannot be discarded. The Railway was required to adduce evidence to disprove the facts established on the basis of the statement of appellant No.2 coupled with the statement of Anil Patil.

12] Undisputedly, the deceased was selected for the Armed Forces. Anil Patil was also selected for the Armed Forces. They were

returning back after attending the test. They travelled together from Nanded to Jalgaon. From Manmad to Jalgaon, they were travelling by Down Punjab Mail. If they were travelling without a ticket, then they would have been caught by the Ticket Controller. This is one more fact that goes against the Railway. Even if it is held that this could not be the sole fact to draw any inference against the Railway, in my view, there is another most important circumstance that makes the case of the appellants probable on this count. The train in question passed through Kajgaon Railway Station at about 2:00 a.m. on 4th August, 2016. The dead body was noticed by Keyman on 4th August, 2016 at 16:40 hrs. The report was made to the Station Master. The dead body was shifted to the hospital. In the hospital, the inquest panchanama was drawn. It is not the case of the Railway that, at the time of removing the dead body from the spot in the presence of independent witnesses, an inspection was carried out, and during that inspection neither any article nor the journey ticket was found on the spot. It is true that the journey ticket was not found on the person of the deceased while drawing the inquest panchanama. The spot panchanama was drawn on 5th August, 2016 between 8:30 a.m. and 9:00 a.m. It is not the case of the Railway

that, after the removal of the dead body, the spot was guarded by the Railway Police. The spot is in an open area. The perusal of the panchanama would indicate that, apart from taking note of the boundaries of the spot, no search or inspection of the spot was carried out. Therefore, the possibility of losing a ticket on the spot cannot be ruled out. The mother of the deceased, in her affidavit, categorically stated that the deceased and Anil Patil were travelling together with a valid journey ticket. She has stated that she was informed by Anil Patil that after attending the test at Nanded, they were returning after purchasing the ticket. In my view, therefore, this affidavit would be sufficient to discharge the initial burden cast on the shoulders of the appellants. The contents of the affidavit, more or less, have been supported by the conclusion drawn in the DRM Report.

13] In this factual position and in the teeth of the evidence, it would be appropriate to consider the law on the subject laid down in the case of *Union of India Vs. Rina Devi [AIR 2018 SC 2362]*. Paragraph 17.4 would be relevant for the purpose of addressing this issue. It is extracted below:

“17.4. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

14] In my view, this settled position supports the contention of the appellants. The initial burden in this case has been discharged by filing the affidavit of the relevant facts. The material collected during the course of the DRM inquiry and the Police inquiry clearly revealed that Anil Patil was travelling with the deceased. The statement of Anil Patil has been made the basis of the DRM inquiry. This DRM inquiry report, which has considered the statement of Anil Patil, would also be relevant and would be of immense help to the appellants to discharge the initial burden. It is to be noted that this issue has to be dealt with from case to case on the basis of the facts found in the said case.

15] In the teeth of the material on record, I am satisfied that the appellants have proved this fact as well. I do not see any reason to disbelieve the evidence available on record. The evidence is sufficient to prove that the deceased was travelling with a valid journey ticket on the given date by Down Punjab Mail from Manmad to Jalgaon. The learned Member of the Tribunal has failed to consider all these aspects. Therefore, on both counts, the findings of fact recorded by the Tribunal cannot be sustained. Accordingly, I record my findings on the above points in the affirmative. The impugned judgment and order deserves to be set aside.

16] The learned advocate for the appellants submits that in view of the law laid down in the case of *Union of India Vs. Radha Yadav [(2019) 3 SCC 410]*, the appellants would be entitled to get the compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest. The learned advocate has relied upon a Notification issued by the Ministry of Railways (Railway Board) dated 22nd December, 2016, wherein it is stated that in case of the death claim, the claimants are entitled to a compensation of Rs.8,00,000/-. In view of the decision in the case of Radha Yadav (supra), appellants are

entitled to a compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest.

17] Accordingly, the first appeal is **allowed**.

- i. The judgment and order dated 6th December, 2019, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/046/2018 is set aside. The claim petition is allowed.
- ii. The respondent-Railway shall pay the compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the appellants within four months from the date of this judgment. If the amount is not deposited within four months from the date of this judgment, then the respondent-Railway shall pay interest @ 6% per annum from the date of this judgment till its realization.
- iii. 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.

iv. Out of total compensation, appellant Nos.1 and 2 shall be entitled to get 50% share each.

18] 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