



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

FIRST APPEAL NO. 766 OF 2022

APPELLANTS

- : 1. Smt. Meera Wd/o. Premdas Rathod,
Aged 43 years, Occupation
Household.
2. Ku. Pratiksha D/o. Premdas Rathod,
Aged 21 years, Occ. Student.
3. Ku. Samiksha D/o. Premdas Rathod,
Aged 19 years, Occ. Student.
4. Pratik S/o. Premdas Rathod, Aged 14
years, Occ. Student
Through his natural Guardian Mother
Appellant No.1.
5. Smt. Shakuntala W/o. Baburao
Rathod, Aged 66 years, Occ.
Household.

All R/o. Umalanaik Tanda, Padegaon
Tah. Gangakhed, Dist. Parbhani,
Maharashtra – 431514.

//VERSUS//

RESPONDENT

: Union of India, through General
Manager, South Central Railway,
Secunderabad, Telangana – 500071.

Mr. A.B. Deshpande, Advocate h/f. Mr. V.M. Deshpande,
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 24th December, 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 Premdas Rathod; appellant Nos.2 to 4 are the children of the deceased; and appellant No.5 is the mother of the deceased. The appellants claim that the deceased was a teacher and posted in Gangakhed taluka, Parbhani district. He was staying with the appellants at Nanded. He was commuting by train from Nanded to Gangakhed everyday. The appellants claim that on 29th July, 2018, the deceased left his house to go to Parbhani by train. He was having a Season Railway Pass. He boarded an unknown train at Nanded. It is stated that he fell from a moving train at K.M. 295/5-6 between Pingala and

Parbhani Railway Stations and died due to the injuries sustained by him. At the time of the inquest panchanama, the Season Railway Pass was recovered. According to the appellants, the deceased was a *bona fide* passenger. He died due to fall from a moving train, and as such, the death was in an untoward incident. They claimed compensation.

04] The respondent-Railway filed the written statement and opposed the claim. According to the respondent-Railway, the deceased was not a *bona fide* passenger. The death was not in an untoward incident. The dead body was found at a distance of 10 feet from the railway track. The possibility of the deceased falling from a moving train is, therefore, completely ruled out.

05] Before the Tribunal, appellant No.1 examined herself as a sole witness. The respondent-Railway has not examined any witness. Learned Member of the Tribunal, on appreciation 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. A.B. Deshpande, learned advocate holding for Mr. V.M. Deshpande 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 the Season Railway Pass was found in the trouser pocket of the deceased at the time of the inquest panchanama. It is pointed out that Season Railway Pass No.12260981, dated 15th June, 2018, was valid up to 14th September, 2018. Learned advocate submitted that, despite having such vital evidence on record and the fact that the deceased was found lying dead on the railway premises, learned Member of the Tribunal was not right in discarding the Season Railway Pass. Learned advocate submitted that the inference drawn by learned Member of the Tribunal to come to a conclusion that the death was not in an untoward incident is totally misplaced. Learned advocate

submitted that the evidence adduced by the appellants and the attending circumstances clearly indicate that the deceased, while travelling to Parbhani, fell from an unknown moving train and died due to the injuries sustained by him. Learned advocate submitted that the possibility of the person being thrown at some distance after an accidental fall from a fast-moving train cannot be ruled out. Learned advocate submitted that the deceased had sustained injuries to his head on the left side, a fracture on the right hand, and one leg was broken. Learned advocate submitted that these injuries, particularly the injury to the head, could be possible due to fall from a moving train. Learned advocate submitted that it is not the case of the Railway that the deceased was either dashed or run over by a moving train. Learned advocate submitted that the deceased was serving at a village school in Gangakhed taluka and everyday commuting from Nanded to Gangakhed. Learned advocate submitted that the deceased otherwise had no reason to go to the spot of the incident. Learned advocate submitted that the dead body found lying by the side of the railway track in an injured condition is sufficient to conclude that the deceased fell from a moving train and died.

09] Learned advocate for the respondent-Railway, in short, supported the judgment and order passed by the Tribunal. Learned advocate submitted that the possibility of the deceased consuming alcohol cannot be ruled out, inasmuch as 100 ml. greenish fluid was found in the stomach of the deceased at the time of the postmortem. Learned advocate further submitted that there is no direct evidence to prove that the deceased died due to fall from a moving train.

10] In order to appreciate the rival submissions, I have gone through the record and proceedings. Undisputedly, the deceased was commuting from Nanded to Gangakhed everyday to attend his duty as a teacher. The deceased, with the appellants, was residing at Nanded. The spot of the incident is far away from Nanded as well as from Parbhani. The spot of the incident is not at the railway station. The spot is near the railway track between Pingala and Parbhani Railway Stations. In ordinary circumstances, the deceased had no reason to go to the spot of the incident. The dead body of the deceased found by the side of the railway track is sufficient to probablize the case of the appellants that the deceased had fallen from a moving train and, therefore, the dead body in an injured

condition was lying by the side of the railway track. Learned Member of the Tribunal has observed that since the dead body was lying at a distance of 10 feet from the railway track, the possibility of the deceased falling from a moving train was completely ruled out. In my view, this conclusion arrived at by learned Member of the Tribunal is flawed.

11] The investigation was conducted by the railway police as well as by Nawamondha Police Station, Parbhani. The report of the incharge of the police station is at Exh. A-9. This report was prepared on the basis of the inquiry/investigation. The police in this report has concluded that the deceased died due to fall from a moving train. The respondent-Railway has not explained this circumstance in the written statement. The report of the Inspector, RPF, Parbhani, is at page A-57, dated 30th June, 2019. In this report, the RPF Officer has conveniently avoided to address this point. It needs to be stated that the railway police was supposed to conduct the investigation. The dead body was found by the side of the railway track. This fact was, therefore, against the Railway. The railway police was required to conduct a thorough inquiry and find

out the probable cause of the death of the deceased, if it was not due to fall from a moving train. No investigation or inquiry was conducted. The independent investigation conducted by Nawamondha Police Station, Parbhani reveals that the death was due to fall from a moving train. In my view, this report cannot be discarded. Learned Member of the tribunal, without assigning a cogent reason, has observed that this is a casual observation made by the police. In my view, learned Member of the Tribunal was not right in making such an observation in the absence of any concrete material.

12] It is not the case of the Railway that the deceased was either dashed or run over by a moving train. There is no report of Loco Pilot of any train of run over of any person by a train at the spot of the incident. Similarly, there is no report of any ACP at the spot of the incident. The deceased had sustained an injury to his head on the left side. He had sustained a fracture to his leg, and his hand was broken. Such injuries are not possible in case a person is run over by a train. Such injuries could be possible if a person falls from a moving train. It is to be noted that in case of fall from a

moving train, the said person would invariably fall on the head. In this case, there was a fracture to his leg, and one hand was broken. The injuries sustained by the deceased indicate that he fell from a running train at high speed. It also indicates that after the impact on the ground, he was rolled over and sustained the injuries. The cause of death was hemorrhagic shock due to the injuries sustained by the deceased. The injuries sustained by the deceased could be possible due to fall from a moving train at a high speed. There is no direct evidence about the incident. There was no ACP. The place of the incident is far away from the nearest railway station. Therefore, in such a situation, such an incident would have gone unnoticed by the Guard of the train.

13] Considering the evidence on record, in my view, this case would fall under the first part of Section 124A of the Act of 1989. The case would not fall under any of the clauses of the proviso to Section 124A of the Act of 1989. As per Section 123(c)(2) of the Act of 1989, the accidental falling of any passenger from a train carrying passengers is an 'untoward incident'. In this case, the evidence on record is sufficient to prove that the deceased, while

travelling to Parbhani, fell from a moving train and died due to the injuries sustained by him. The defence of negligence or contributory negligence of the deceased could not be invoked by the Railway, inasmuch as the liability is based on 'no fault theory'. This conclusion is supported by the decision in the case of ***Union of India Vs. Rina Devi [AIR 2018 SC 2362]***.

14] It is to be noted that learned Member of the Tribunal, despite the production of the Season Railway Pass on record, has recorded a finding that the deceased was not a *bona fide* passenger. In my view, learned Member of the Tribunal has overlooked a very vital piece of evidence. It is not the case of the Railway that the Season Railway Pass was either planted or manipulated. In my view, the evidence, if considered in totality, would show that the deceased, while travelling from Nanded to Parbhani, fell from a moving train and died due to the injuries sustained by him. He was a *bona fide* passenger.

15] It is further pertinent to note that at the time of the inquest panchanama, 100 ml. greenish fluid was found in the stomach of the deceased by the Medical Officer. Learned advocate

submitted that this would suggest that the deceased had consumed the liquor. In my view, this submission cannot be accepted. It is to be noted that if the fluid found in the stomach was alcohol, the Medical officer, on the basis of the smell, would have recorded his observation in the post-mortem report. The Medical Officer has recorded that no abnormal smell was perceived in the fluid. In my view, therefore, this submission also cannot be accepted. As such, I record my findings on both the points in the affirmative. As such, the appeal deserves to be allowed.

16] Accordingly, the appeal is **allowed**. The judgment and order dated 24th December, 2021, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/103/2019 is set aside. The claim petition is allowed.

17] 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.

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

19] 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.

20] Out of total compensation, 50% shall be paid to appellant No.1, 10% each shall be paid to appellant Nos.2 to 4, and 20% shall be paid to appellant No.5.

21] 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