



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

FIRST APPEAL NO. 443 OF 2024

- 1) Smt. Rachna Wd/o Pratik Kale,
Aged about 26 years, Occu.-Household,
- 2) Prarthana D/o. Pratik Kale,
Aged about 11 months, Occ.-Nil,
(Minor under guardianship of her
mother Smt. Rachna)
- 3) Smt. Lata Wd/o Nagesh Rao Kale,
Aged about 57 years, Occu.-Household,
All R/o. Sneha Pratik Niwas,
Dargah Road, Kurban Ali Shah Nagar,
Parbhani – 431401.

.... **APPELLANTS**

// VERSUS //

Union of India,
Through General Manager,
South Central Railway,
Secunderabad (A.P.)

.... **RESPONDENT**

Mr. D. S. Lambat, 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 consent of the learned
Advocates for the parties.

2. This appeal is preferred against the Judgment dated 07.02.2024 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/82/2022, whereby claim of the applicants/appellants for grant of compensation has been dismissed.

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

(i) On 25.08.2022, Pratik Nageshrao Kale was travelling by Secunderabad-Manmad Ajanta Express Train No.17064 from Secunderabad to Aurangabad. In the midnight of 25.08.2022 and 26.08.2022, due to sudden jerk, Pratik accidentally fell down from the train at KM 290/2 – 290/1 at Parbhani Railway Station and sustained serious injuries to his head. He died in the hospital on 29.08.2022 during treatment. The applicant No.1 is wife, applicant No.2 is daughter and applicant No.3 is mother of deceased Pratik. The applicants contended that they are dependent upon the income of deceased Pratik, 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. It is also contended that deceased Pratik was not having journey ticket of train and therefore, he was not a *bonafide* passenger. There is no any eye witness to that incident to

prove that there was any jerk and because of that, Pratik fell down and untoward incident took place in the premises of railway. No untoward incident took place. It is lastly prayed to dismiss the claim of the applicants.

(iii) The learned Railway Tribunal cast the following issues :

- (1) *Whether Applicants are the dependents of the deceased with the meaning of Section 123 (b) of the Railway Act?*
- (2) *Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?*
- (3) *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 Railway Act?*

4. The learned Railway Tribunal held that alleged untoward incident is not proved by the applicants. Pratik was not a *bonafide* passenger and no any eye witness is examined to prove the death occurred in premises of railway. Thus, the claim of the applicants 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 Pratik died and he was a bonafide passenger with having valid journey ticket of train?*
- (ii) *Was it proved by the appellants that they are dependents upon the Pratik?*
- (iii) *Is the impugned judgment illegal and require interference?*

6. The learned Advocate for the appellants submitted that one of the friend of Pratik is examined, who has stated that railway ticket of Pratik was drawn up by him. He further pointed out the documentary evidence particularly DMR report, spot panchnama, inquest and postmortem report, which shows that incident took place in the premises of railway. However, learned Railway Tribunal erred and disbelieved the evidence adduced by the applicants and dismissed the claim illegally. He further submitted that reasons and findings of the learned Railway Tribunal are not legal, correct and convincing. It is lastly prayed to allow the appeal by setting aside the impugned judgment.

7. Learned Advocate Ms. Neerja Chaubey for the respondent submitted that deceased Pratik was not a *bonafide* passenger and no any untoward incident took place. He was travelling without ticket. Thus, untoward incident is not proved and also Pratik was

a *bonafide* passenger. The claim is not proved. 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. To prove their case, the applicants adduced evidence by filing affidavit of examination-in-chief of Smt. Rachna Kale (A.W.-1). She deposed as per the claim. Vishal Namdevrao Tanpure (A.W.-2) is on the point that deceased Pratik on 25.08.2022, in his presence, obtained one journey ticket of train for travelling from Secunderabad to Aurangabad for train viz. Secunderabad-Manmad Ajanta Express Train No.17064. In his presence, deceased Pratik boarded in the said train for travelling upto Aurangabad. The untoward incident also noticed by him. The learned Advocate for the appellants, therefore, submitted that this witness has proved that deceased Pratik was a *bonafide* passenger. Further he pointed out that precedential law of ***Union of India Vs. Rina Devi***, reported in ***AIR 2018 SC 2362***, in which it is held that the burden lies upon the respondent to prove that deceased was travelling without ticket. There is no such evidence on record that Ticket Checker found Pratik while travelling without ticket. Thus, the learned Railway Tribunal failed to consider this aspect in it's

proper perspective and come to the wrong conclusion that deceased Pratik was not a *bonafide* passenger.

9. To prove the untoward incident, there is evidence of Vishal Tanpure (A.W.-2) as well as documentary evidence i.e. Electronic Reservation Slip – Exhibit A-1, letter about information of death of unknown person – Exhibit A-2, Registration of Unnatural death – Exhibit A-3, Spot panchnama – Exhibit A-4, Inquest panchnama – Exhibit A-5, etc. If all these documents are considered together along with postmortem report – Exhibit A-6 which shows 18 injuries sustained to the deceased Pratik, the untoward incident is certainly proved. The above discussed evidence is sufficient to hold that the deceased Pratik died in the accident which was untoward incident. Considering all these aspects, it is held that untoward incident is proved by the appellants.

10. The evidence of witness Smt. Rachna Kale (A.W.-1) - wife of deceased Pratik is sufficient to prove the appellants dependency on deceased Pratik.

11. The learned Railway Tribunal erred in holding that deceased Pratik was not a *bonafide* passenger and no any untoward incident took place. The reasons and findings of the learned Tribunal are not legal and correct and therefore, interference is warranted in it. Thus, *bona fide* passenger, untoward incident and dependency is proved by the claimants hence, point Nos.1 to 3 are answered in the 'affirmative'.

12. 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 and order dated 07.02.2024 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/82/2022, is 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 incident to the appellants. Out of amount of Rs.8,00,000/-, Rs.2,00,000/- to be deposited in fixed deposit (FD) in name of appellant No.2 in the Bank till he attained major.

Rs.1,00,000/- be paid to the appellant No.3 and remaining amount be paid to the appellant No.1. 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.

13. The Appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)