



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

FIRST APPEAL NO. 419 OF 2023

Pushpa W/o. Abhiraj Vishwakarma,
Aged about 45 years,
Occupation – Household,
R/o. Sagar Society Chawl,
Akruli Road Ayappa Mandir,
Hanuman Nagar, Kadam Wadi,
Mumbai 400 101.

.... **APPELLANT**

// VERSUS //

Union of India,
Through General Manager,
Central Railway, CST Mumbai.

.... **RESPONDENT**

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

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 14.06.2024.

DATE OF PRONOUNCING THE JUDGMENT : 12.07.2024.

JUDGMENT.

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

2. This appeal is preferred against the Judgment and order dated 16.04.2018 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/2015/0142,

thereby claim of the applicant/appellant for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) On 25.06.2014, daughter of the appellant namely Jyoti was travelling along with her maternal grandfather from Shegaon to Dadar by Mumbai CST - Amravati Superfast Express train No. 12112. Jyoti and her grandfather both were having general class tickets, which was kept in her purse. They both boarded in the general bogie of the said train. There were huge number of passengers and crowd in the said general bogie, therefore, she left her grandfather there and boarded in the ladies bogie. There were also huge number of passengers and crowd in the said ladies bogie therefore, she was standing near the door of the bogie. When the said train reached at KM No.545/41-43, near Shegaon Railway Station, she failed down from the train because of heavy jerk to the train and sustained severe injuries and died on the spot. The inquest was drawn up and postmortem was conducted.

(ii) The appellant/mother of the deceased Jyoti by filing an application No. OA (Iiu)/NGP/2015/0142 prayed for compensation as she was dependent of Jyoti.

(iii) The respondent strongly opposed the said application and submitted that no such untoward incident took place. The application of the applicant is not maintainable. The applicant is not entitled for compensation and lastly prayed to dismiss the claim of the applicant.

(iv) The learned trial Court cast following issues :

- (1) *Whether the Applicant is the dependent of the deceased within the meaning of Section 123 (b) of the Railways Act?*
- (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) of Railways Act?*
- (3) *Whether deceased was a bonafide passenger of the train on the relevant day, with valid journey ticket?*

(v) The learned Railway Tribunal held that deceased was not a *bona fide* passenger and it was not an untoward incident occurred at the Shegaon Railway Station and rejected the claim of the applicant/appellant.

4. The learned Advocate for the appellant pointed out the grounds of objection of this appeal along with evidence on record. He submitted that it is admitted fact that incident took place on the railway platform, an Inquest panchnama Exhibit A-5 was drawn up.

Spot panchnama Exhibit A-4 was also drawn. Noticing of dead-body Memo Exhibit A-2 shows that it was reported by one of the passenger. Railway ticket at Exhibit A-1 was found in the purse of deceased Jyoti. Postmortem Report at Exhibit A-6 shows that there were vital injuries to her body. It is accidental death. He further pointed out that Affidavit of claimant – mother of the deceased Jyoti Exhibit AW-1 at page A-54 and her evidence at page A-58. He pointed out SM Diary Exhibit R-2 at page A-62 in which, it is mentioned that the passengers pointed out the dead-body of deceased Jyoti.

5. The learned Advocate for the appellant submitted that railway ticket is found in the purse of deceased Jyoti. The observations and findings of the learned trial Court regarding cause of death are not legal and correct, it was untoward incident occurred on the railway station itself. However, reasons and findings of the Tribunal are not legal and correct and prayed to allow the appeal and quash and set aside the impugned judgment of the Tribunal. In support of his contention, he is relying upon the authority of ***Union of India Vs. Rina Devi***, reported in ***AIR 2018 SC 2362***, in which it is held that mere absence of ticket with such injured or deceased does not negate claim that he/she was *bona fide* passenger. Burden lies upon the respondent to prove that passenger was not *bonafide* passenger.

6. The learned Advocate Ms. Neerja Chaubey for respondent submitted that there is no evidence of eye-witness to prove the alleged incident which took place on the railway station. It was not untoward incident, which is requisite for claim of compensation. Mother of the deceased Jyoti – claimant was not having knowledge, no any co-passenger or loco-pilot were examined to prove the untoward incident. Mere findings of ticket of the deceased Jyoti in her purse is not sufficient to hold that it was untoward incident. It is lastly prayed that Appeal be dismissed. She is relying up on the authority of *Union of India Vs. Prabhakaran Vijaya Kumar & Ors.*, reported in *(2008) 9 SCC 527* in which para 47 reads as under :

“47. However, apart from the principle of strict liability in Section 124-A of the Railways Act and other statutes, we can and should develop the law of strict liability dehors statutory provisions in view of the Constitution Bench decision of this Court in M.C. Mehta (1987) 1 SCC 395 case. In our opinion, we have to develop new principles for fixing liability in cases like the present one.”

7. Following points emerged for consideration which are answered with reasons and findings as under :

- (i) *Was it prove by the appellant that in untoward incident, Jyoti was died?*
- (ii) *Was it proved by the appellant that Jyoti was bonafide passenger with having valid journey ticket?*

(iii) Is the impugned judgment illegal and requires interference?

8. Perused the evidence of the mother of deceased Jyoti, it reveals that she was not present at the spot of incident at the time of incident. The co-passenger is not examined. However, from the report of Station Master Exhibit R-2 at page A-62 reveals that the dead-body of the Jyoti was found on the railway station. DRM report at page A-23 as well as C.R.P.F. report at page A-25 corroborated the appellant's case that Jyoti was found in the injured condition at the railway station. Postmortem report at Exhibit A-6 along with Death Certificate at Exhibit A-9 shows that injuries were caused to the head of the Jyoti. The said evidence is natural and probable. Therefore, it can be safely held that said incident was untoward incident. Such case is to be decided on preponderance of probability and strict proof is not necessary. The requirement for getting compensation as per Section 124-A of the Railways Act are that, there must be untoward incident occurred due to the wrongful act or neglect or default on the part of railway administration for claiming damages. Further requirement is that passenger must be valid passenger having ticket of the train to travel by it. A ticket of deceased Jyoti was found in her purse along with mobile handset, which is natural and probable evidence and it can be safely relied upon. Thus, merely because

evidence of Ashok Wamanrao Deshmukh, Station Master at Shegaon railway station who filed affidavit of examination in chief is in accordance with written statement, the evidence of the applicant/appellant AW-1 is not disproved by it. This shows that evidence was not appreciated properly.

9. Learned Railway Tribunal failed to consider all these factual and legal aspects in its proper perspective that untoward incident took place and it was a death due to the railway accident. The examination of independent witness like co-passenger is improbable in such cases as the peoples are not interested to come before Court or Tribunal for giving evidence. Thus, the reasons and findings of the learned Tribunal are not legal and correct. It caused injustice to the appellant. The appellant had established her claim as she is mother of Jyoti and dependent of deceased Jyoti. Therefore she is entitled for compensation as prayed by her.

10. For the reasons discussed above, case law of ***Union of India Vs. Rina Devi*** cited on behalf of appellant is applicable to the case on the point of proof of travelling ticket. The argument of learned Advocate for the respondent is not acceptable that Jyoti was not *bona fide* passenger etc. The learned Tribunal grossly erred in rejecting claim of the appellant. Therefore, impugned Judgment and

order thereby deserves to be quashed and set aside. The appeal deserves to be allowed. The application deserves to be allowed. Therefore, points Nos.1 to 3 are answered accordingly. Hence, the following order :

- (i) The Appeal is **allowed**.
- (ii) The impugned Judgment and order dated 16.04.2018, passed by Railway Claims Tribunal, Nagpur in Case No. OA (Ilu)/NGP/2015/0142 is quashed and set aside and the application is allowed.
- (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) to the appellant within four months from the date of uploading of this judgment.
- (iv) The Record and proceedings be sent back to the Tribunal.

(SANJAY A. DESHMUKH, J.)