



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

FIRST APPEAL NO. 626 OF 2024

- 1) Mahima Wd/o Mahesh Kumr
Aged about 29 years, Occ.– Housewife/Labour,
- 2) Mayank S/o Mahesh,
Aged about 6 years, Occ.-Nil.
- 3) Ritik S/o Mahesh,
Aged about 5 years, Occ.-Nil,
- 4) Pannalal S/o Shiv Nath,
Aged about 60 years, Occ.-Labour,
- 5) Ramkali W/o Panna Lal,
Aged about 57 years, Occ.-Housewife,

All R/o. 463, Bada Dera, Bihuni Kalan,
Hamirpur (U.P) 210506

.... **APPELLANTS**

// VERSUS //

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

.... **RESPONDENT**

Ms. Sumesha Chaudhari, Advocate for Appellants.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 19.08.2024.

DATE OF PRONOUNCING THE JUDGMENT : 04.10.2024.

JUDGMENT.

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

2. This appeal is preferred against the Judgment dated 16.01.2024 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/78/2019, thereby claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) On 09.08.2018, Mahesh S/o Pannalal was travelling along with his friend Shri Hariom S/o Kranti Singh with valid journey ticket of train No.UFC 26169671 from Kalyan to Jhansi. They both boarded in the train from Kalyan. When the said train reached up to Jalgaon Railway Station, Mahesh has got some need like water or snacks. Therefore he alighted on the platform. Meanwhile, the said train went towards Jhansi. Mahesh had again purchased a valid ticket No. UFC 22065009 from Jalgaon to Jhansi and boarded in the unknown train. There was heavy crowd in the general bogie of that train. Due to heavy crowd and push blow of the passengers, Mahesh fell down from running train in between railway pole KM No.305/29-31 near diamond crossing at Jalgaon railway station and sustained serious injuries to his neck and shoulder. He died on the spot. During investigation from the pocket of deceased Mahesh, the police had recovered original Adhar Card, two travelling tickets and one Intex Make mobile phone's handset. The police through the mobile handset

contacted the relatives of deceased Mahesh. His brother identified the dead body. All the applicants were depending upon the income of the deceased Mahesh. Therefore, they filed an application for compensation.

(ii) The respondent strongly opposed the said application and submitted that no such untoward incident took place as per the provision of Section 123(c) read with Section 124-A of the Railways Act. The deceased Mahesh was not a *bona fide* passenger of any train. The deceased Mahesh had committed suicide. The application is not maintainable. Therefore, applicants are not entitled for compensation. It is lastly prayed to dismiss the application.

4. The learned trial Court cast following issues :

- (1) *Whether Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railways 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 Railways Act?*

5. The learned Railway Tribunal held that deceased was not a *bona fide* passenger and not involved in an untoward incident as

defined in Section 124-A of the Railways Act. He committed suicide. The claim of the applicants/appellants was rejected.

6. The learned Advocate Ms. Sumesha Chaudhari for the appellants pointed out the grounds of objections of this appeal along with evidence on record. She submitted that it is admitted fact that incident took place in the railway premises. Therefore, Report was made to GRP Jalgaon by Deputy Station Manager, Jalgaon Exhibit A-2, First Information Report Exhibit A-3, Accidental Death Report Exhibit A-4, Spot panchnama Exhibit A-5 and Inquest at Exhibit A-6 was also drawn up. It is an accidental death. He further pointed out an Affidavit of examination-in-chief of applicant No.1 – wife of the deceased Mahesh Exhibit AW-1. He also pointed out Postmortem Report Exhibit A-9 of deceased Mahesh and submitted that it was untoward incident occurred at the railway premises.

7. The learned Advocate for the appellants further submitted that railway ticket is found with the deceased Mahesh. Therefore, it is proved that the deceased Mahesh was a *bona fide* passenger. The reasons and findings of the Tribunal are not legal and correct. It is lastly prayed to allow the appeal and set aside the impugned judgment and allow the application by awarding compensation.

8. The learned Advocate Ms. Neerja Chaubey for respondent submitted that there is no evidence of eye-witness to prove the incident that it took place at the railway premises. An untoward incident is requisite as per law. Wife of the deceased Mahesh – appellant No.1 though deposed that she was not having knowledge of that incident. No any co-passenger or loco-pilot were examined to prove the untoward incident. Learned Advocate for the respondent pointed out an affidavit of evidence of Ratnesh Kumar S/o Shri Shailendra Prasad (RW-1), Senior Assistant Loco Pilot, Nandurbar Railway Station.

9. Learned Advocate for the respondent further submitted that mere findings of journey ticket of the train with deceased Mahesh is not sufficient to hold that it was untoward incident. Considering the evidence of Ratnesh Kumar Shri Shailendra Prasad (RW-1), it is proved that Mahesh committed suicide. Therefore, it was not an untoward incident. She submitted that impugned judgment is legal and correct and no any interference is warranted in it. She lastly prayed to dismiss the appeal.

10. Perused the impugned judgment and record and proceedings.

11. Following points emerged for consideration as follows :

- (i) *Was it proved by the appellants that in an untoward incident, Mahesh died?*
- (ii) *Was it proved by the appellants that Mahesh was a bona fide passenger and having valid journey ticket of train?*
- (iii) *Is the impugned judgment illegal and requires interference?*

12. The evidence of Mahima (AW-1), the wife of deceased Mahesh reveals that she was not accompanying with deceased Mahesh at the time of incident. The co-passenger is not examined. However, from the Memo issued by Deputy Station Manager, Inquest and Spot Panchnama it reveals that the dead-body of the Mahesh was found on the railway track. Inquest at Exhibit A-4 as well as Memo of Deputy Station Superintendent, Malkapur Exhibit A-1 is corroborating the case of appellants' that the dead body of deceased Mahesh was found in railway premises. Postmortem report at Exhibit A-9 shows that cause of death is to hemorrhagic shock due to multiple injuries. The said evidence is natural and probable. Therefore, it can be safely relied upon to hold that said incident occurred in the Railway premises. Such cases are to be decided on preponderance of probability and strict proof is not necessary.

13. There is evidence of Ratnesh Kumar (RW-1) that he noticed that one person was proceeding to the train's engine. He scolded him and thereafter he came under the wheels of the train. He also deposed that it is case of suicide. In his cross-examination, he admitted that he had not given any written memo of that incident to the Station Master as soon as incident took place on 09.08.2018. This itself is not natural and probable conduct of the Ratnesh Kumar (RW-1). No any other witness is examined to corroborate his evidence. His evidence is shaken in the cross-examination as he did not report that incident to the Station Master. His evidence is not natural, probable and acceptable. However, the learned Railway Tribunal erred in believing his evidence, which is not natural and reliable.

14. As far as mismatching of journey ticket of Mahesh is concerned, learned Advocate for the appellants pointed out the precedential law of ***Union of India Vs. Rina Devi***, reported in ***AIR 2018 SC 2362***. She submits that burden to prove that Mahesh was travelling without ticket lies on the respondent. No any Ticket Checker has caught hold him without ticket. Mere mismatching of one ticket was considered but, one of the ticket for Kalyan to Jhansi is

matched. Thus, it shows that deceased Mahesh was travelling with valid journey ticket. The tribunal erred in this regard.

15. The requirement for getting compensation as per Section 124-A of the Railways Act are that, there must be occurrence of untoward incident. Further requirement is that passenger must be a valid journey ticket of the train to travel. A ticket of deceased Mahesh from Kalyan to Jhansi was found with him, which is natural and most probable evidence. It can be safely relied upon. Thus, merely because there is evidence of Ratnesh Kumar S/o Shri Shailendra Prasad (RW-1), Senior Assistant Loco Pilot, Nandurbar Railway Station, the evidence of journey ticket from Kalyan to Jhansi is not disproved by it. Thus, evidence was not properly appreciated by the learned Railway Tribunal.

16. The negligence of a person who sustained injuries or death in the premises of railway having valid ticket can not be ground to deny compensation, said law is laid down by the Hon'ble Supreme Court in the case of *United India Insurance Co. Ltd., Vs. Sunil Kumar*, reported in **2017 (13) SCALE 652**. Therefore, negligence of the deceased Mahesh is no ground to reject the claim.

17. An untoward incident took place and it was a case of death during the journey but it was not a case of suicide. The evidence of independent witness like co-passenger is highly improbable in such cases as the peoples are not interested for deposing such incidents. Thus, the reasons and findings of the learned Tribunal are not legal and correct. It causes injustice to the appellants. The appellants have established their claim as appellant No.1 being a wife and appellant Nos.2 and 3 are sons and appellant Nos.4 and 5 are parents of deceased Mahesh and they were dependents upon his income. Therefore they are entitled for compensation as prayed by them. Learned Railway Tribunal failed to consider evidence and all above factual and legal aspects in its proper perspective.

18. For the reasons discussed above, the argument of learned Advocate for the respondent is not acceptable that deceased Mahesh was not a *bona fide* passenger and he committed suicide. The impugned Judgment deserves to be set aside. The appeal deserves to be allowed. The claim application deserves to be allowed. Therefore, points Nos.1 to 3 are answered in the 'affirmative'. Hence, the following order :

- (i) The Appeal is **allowed**.
 - (ii) The impugned Judgment dated 16.01.2024 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/78/2024 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) along with **6% interest** thereon from the date of incident to the appellants within four months from the date of uploading of this judgment.
 - (iv) The Record and proceedings be sent back to the Tribunal.
19. The Appeal is disposed of accordingly.

(SANJAY A. DESHMUKH, J.)