



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

FIRST APPEAL NO. 620 OF 2022

APPELLANTS

- : 1. Meera Devi Wd/o. Santosh Kumar,
Aged about 28 years, Occ : Housewife.
2. Mahashi D/o. Santosh Kumar, Age 9
years, Occ. : Education.
3. Manasi D/o. Santosh Rajbhar, Age 5
years, Occu. Nil.
4. Tina D/o. Santosh Rajbhar, Age 3
years, Occ. Nil.
5. Pritika D/o. Santosh Rajbhar, Age 1
year, Occ. Nil.
- (Applicant Nos.2 to 5 through
Applicant No.1 mother the natural
guardian).
6. Kanhaiyalal S/o. Rambahal, Age 61
years, Occu. Labour.
7. Kumari W/o. Kanhaiyalal, Age 57
years, Occu. Nil.

Applicant Nos.1 to 7 R/o. Gram –
Miyapur, Tah. Sabrahad, Dist. Jaunpur,
Shahganj, (U.P.) 223 101.

//VERSUS//

RESPONDENT

: The Union of India, through General
Manager, Central Railway, CST,
Mumbai.

Ms. Sumesha Choudhari, Advocate for the Appellants.

Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 27th FEBRUARY, 2024.

ORAL JUDGMENT

. 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 19th March, 2020, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants/claimants came to be dismissed.

02] BACKGROUND FACTS:

Appellant No.1 is the wife of the deceased Santosh Kumar; appellant Nos.2 to 5 are the children of the deceased; and appellant Nos.6 and 7 are the parents of the deceased. The appellants claim that on 5th February, 2019, the deceased, after purchasing a journey ticket, boarded Godan Express Train No.11056 at Shahganj Railway Station for Mumbai. The appellants claim that the deceased fell from a moving train at

K.M. No.416/4-6 on Up Track near Harivitthal Nagar near Jalgaon Railway Station. He sustained head injury and died on the spot. According to the appellants, the death was in an untoward incident. The journey ticket was found in the trouser pocket of the deceased at the time of the inquest panchanama. He was a *bona fide* passenger.

03] The respondent-Railway filed the written statement and opposed the claim. It was contended that the deceased was not a bona fide passenger. The ticket was planted in the pocket of the deceased. The death was not in an untoward incident.

04] Appellant No.1 examined herself as a sole witness in support of the claim. The respondent-Railway examined one witness. Learned Member of the Tribunal, on appreciation of the evidence, found that the claim was without substance and, therefore, dismissed the claim. The appellants, being aggrieved by this judgment and order, are before this Court in appeal.

05] I have heard Ms. Sumesha Choudhari, learned advocate for the appellants and Ms. Neerja Chaubey, learned advocate for the respondent-Railway. Perused the record and proceedings.

06] 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”)?

07] Learned advocate for the appellants submitted that at the time of the inquest panchanama, the journey ticket purchased on 5th February, 2019 at 10:59 a.m. for the journey from Shahganj to Lokmanya Tilak Terminus, Mumbai, was recovered. Learned advocate submitted that, despite the recovery of the ticket, learned Member has recorded a finding that the deceased was not a *bona fide* passenger. It is submitted that this finding is perverse. Learned advocate submitted that the deceased was the resident of Shahganj in the State of Uttar Pradesh. Learned advocate submitted that on 5th February, 2019, he boarded the Godan Express to go to Mumbai. Learned advocate submitted that the deceased, on the way to Mumbai, fell from a moving train and died due to the injuries sustained by him. Learned advocate submitted that the deceased

otherwise had no reason to come to Jalgaon, where his dead body was found. Learned advocate submitted that the evidence on record is sufficient to accept the claim of the appellants that the deceased, during the course of the journey, fell from a moving train and died due to the injuries sustained by him. Learned advocate submitted that on both the above-stated points, the finding recorded by learned Member of the Tribunal is perverse, inasmuch as the finding has been arrived at by ignoring the evidence brought on record.

08] Learned advocate for the respondent-Railway supported the judgment and order passed by the Tribunal. Learned advocate submitted that the dead body was noticed by Gangman on 7th February, 2019, and, therefore, learned Member of the Tribunal was right in holding that the deceased was not a *bona fide* passenger travelling without a valid journey ticket and the death was not in an untoward incident. Learned advocate pointed out that the head of the deceased was severed from his body. Learned advocate submitted that this would indicate that the deceased was run over by some unknown train.

09] I have minutely perused the evidence on record. The inquest panchanama was drawn by the railway police. The journey ticket produced on record was recovered from the trouser pocket of the deceased. The journey ticket was purchased on 5th February, 2019 at 10:59 a.m. The departure time of the Godan Express from Shahganj Railway Station was around 12:00 o'clock. The price of the ticket was Rs.330/-. It was purchased for the journey from Shahganj to Lokmanya Tilak Terminus, Mumbai. The dead body was found at K.M. No.416/4-6 on Up Track near Harivitthal Nagar at Jalgaon Railway Station. The Godan Express departed from Jalgaon Railway Station on 6th February, 2019 at 18:50 hrs. The dead body was noticed on 7th February, 2019 at 21:25 hrs. The deceased was travelling alone. The intimation of death of the deceased was sent to his family members after the dead body was found. Therefore, the possibility of plantation of ticket has been completely ruled out. The railway police had no reason to plant the ticket in the pocket of the deceased. The DRM, in his report, has categorically stated that the railway ticket for the journey from Shahganj to Lokmanya Tilak Terminus, Mumbai, was found in the trouser pocket of the deceased. In my view, despite having such evidence on record, learned

Member recorded a finding that the deceased was not a *bona fide* passenger. In my view, learned Member appears to have committed a grave error. Learned Member has ignored the admissible evidence. No reasons have been recorded for discarding vital evidence. Learned Member was required to take care. As such, the finding on this point cannot be sustained.

10] The deceased was admittedly the resident of Shahganj in the State of Uttar Pradesh. The journey ticket found on the person of the deceased clearly indicates that the ticket was purchased by him at Shahganj for the journey from Shahganj to Lokmanya Tilak Terminus, Mumbai. The ticket was purchased on 5th February, 2019 at 10:59 a.m. The Godan Express departed from Shahganj Railway Station around 12:00 o'clock on 5th February, 2019. The said train reached Jalgaon Railway Station on 6th February, 2019 at 18:50 hrs. It has come on record that the train was delayed. This fact, in my view, would be sufficient to conclude that, on the basis of the valid journey ticket, the deceased had boarded the Godan Express at Shahganj Railway Station. The deceased was proceeding to Mumbai. The spot of the incident is not at the railway station. The deceased,

therefore, had no reason to alight from the train at the spot of the incident. Even otherwise, when the deceased was travelling by train to Mumbai, he had no reason to alight from the train at the spot of the incident. In my opinion, these facts have not been kept in mind by learned Member of the Tribunal. In view of the facts, circumstances, and evidence on record, the possibility of the deceased being run over by any train while crossing the railway line or dashed by any train has been completely ruled out.

11] The evidence, coupled with the facts and circumstances, clearly indicates that during the course of the journey from Shahganj to Mumbai, the deceased fell from the moving train on the spot. There is no eyewitness to the incident. This issue, in my view, has to be decided keeping in mind the probabilities. The accidental falling of a passenger from a moving train falls within the definition of 'an untoward incident'. As per Section 124A of the Act of 1989, the railway is responsible to pay the compensation. The railway cannot be held responsible to pay the compensation if the case is covered under any of the clauses to the proviso to Section 124A. It is to be noted that the defence of negligence or contributory negligence of

the passenger while travelling by train with a valid journey ticket is not available. This position has been considered by the Hon'ble Apex Court in the case of *Union of India Vs. Rina Devi [AIR 2018 SC 2362]*.

12] In my view, learned Member of the Tribunal has failed to appreciate the evidence on record in proper perspective. The Tribunal held that head was separated from the body and therefore, the death was not in an untoward incident. In my view, simply because of such injury a finding cannot be reached that the death was not in an untoward incident. Such injury could be possible due to fall, as well. It needs to be stated that the deceased sustained injury to his head. The head was crushed. The injury to the head could be possible in case of a fall from a moving train. There were no other major injuries on the body of the deceased. In my view, therefore, learned Member of the Tribunal on this count was not right in holding that the death was not in an untoward incident. As such, I conclude that the judgment and order cannot be sustained. I record my findings on both the points in the affirmative. Hence, the following order is passed:

- a) The appeal is **allowed**.
- b) The judgment and order dated 19th March, 2020, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/114/2019 is set aside. The claim petition is allowed.
- c) 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.
- d) The amount of compensation be deposited within four months from the date of uploading of this judgment.
- e) 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.
- f) Out of total compensation, 80% amount shall be paid together to appellant Nos.1 to 5, and 20% amount shall be paid to appellant Nos.6 and 7.

13] 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