



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

FIRST APPEAL NO. 988 OF 2022

APPELLANTS

- : 1. Rajashri Wd/o. Dipak Raut, Aged about 20 years, Occu. : Housewife.
2. Rutuja D/o. Deepak Raut, Age 1 year, Occu. Nil.
- (Applicant No.2 being minor through mother natural guardian)
- Applicant Nos.1 & 2 R/o. : Khandrao Nagar, Pimprala, Tah. & Dist. Jalgaon (M.S.). 425001
3. Devidas S/o. Hari Raut, Age 54 years, Occu. Labour, R/o. Uday Ganpat Bhoir Chawl, Near Siddhivinayak Society, Gothavali Gaon Ghansoli, Dist. Thane (M.S.) 400701.
4. Latabai W/o. Devidas Raut, Age 48 years, Occu. Nil, R/o. : Shital Sachin Patil, R.No.1 Padam Patil Chawl, Behind Amar Patil's House Gothavali Gaon, Ghansoli S.O., Dist. Thane (M.S.) 400701.

//VERSUS//

RESPONDENT

: Union of India, General Manager, Central Railway, C.S.T. Mumbai.

Ms. Sumesha Choudhari, Advocate for the Appellants.
 Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 13th MARCH, 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 17th March, 2022, 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 Dipak Raut; appellant No.2 is the daughter of the deceased; and appellant Nos.3 and 4 are the parents of the deceased. The appellants claim that on 22nd September, 2018, the deceased, while travelling from Thane to Jalgaon by Train No.11057 Amritsar Express, fell from the moving train between railway K.M. No.378/6-8 near Pardhade Railway Station. He sustained injuries to his head and died on the spot. The journey ticket was recovered. He was a *bona fide*

passenger. He died in an untoward incident.

04] The respondent-Railway filed the written statement and opposed the claim. It was contended that the deceased was not a *bona fide* passenger travelling with a valid journey ticket by any train. The deceased, while crossing the railway track, was run over or dashed by any train. The death was not in an untoward incident.

05] Appellant No.1 examined herself as a sole witness in support of the claim. The respondent-Railway examined two witnesses. RW-1 is the Muqaddam who noticed the dead body on the spot. RW-2 is the Guard of Amritsar Express. Learned Member of the Tribunal, on consideration of the evidence, found that the evidence was not sufficient to prove the claim and, as such, dismissed the same. The appellants, being aggrieved by this judgment and order, are before this Court in appeal.

06] 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.

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 at the time of the inquest panchanama, the journey ticket was found in the pocket of the deceased. Learned advocate pointed out that the journey ticket was purchased on 21st September, 2018 at 11:14 p.m. Learned advocate submitted that the said ticket was valid for the journey from Thane to Jalgaon by Amritsar Express. Learned advocate submitted that learned Member of the Tribunal has not properly appreciated this evidence. Learned advocate submitted that the dead body was found on the railway premises. Learned advocate submitted that the deceased was proceeding to Jalgaon to meet his wife and, on the way, fell from the moving train and died due to the injuries sustained by him. Learned advocate submitted that the injuries sustained by the deceased clearly suggest that it was not a case of run over or dash to the deceased by any train. Learned

advocate submitted that there is no report of Loco Pilot of any train with regard to the run over of any person or dash to any person at the spot. Learned advocate submitted that the deceased, who was the resident of Navi Mumbai, otherwise had no reason to go to the spot of the incident. Learned advocate submitted that learned Member of the Tribunal has committed a patent mistake in rejecting the claim.

09] Learned advocate for the respondent-Railway supported the judgment and order passed by the Tribunal. Learned advocate submitted that the injuries found on the body suggest that the deceased was dashed by some train on the spot. Learned advocate submitted that the multiple tickets found with the deceased created doubt in the mind of learned Member and, therefore, learned Member of the Tribunal was justified in rejecting the claim.

10] I have perused the record and proceedings. It is undisputed that AW-1 did not travel with the deceased. However, in her evidence, she has stated that the deceased, before boarding the train, had made a phone call to her and informed her that he was coming to Jalgaon by train. The journey ticket dated 21st September,

2018, purchased at 11:14 p.m. for the journey from Thane to Jalgaon by express train was recovered from the pocket of the deceased at the time of the spot panchanama. The recovery of more than one railway tickets, in my view, cannot be given any weightage or importance. The question is whether the ticket in question was valid for the journey from Thane to Jalgaon. In my view, this ticket is sufficient evidence to corroborate the evidence of AW-1 that the deceased, for coming to Jalgaon from Thane, had boarded the Amritsar Express at Thane. Learned Member of the Tribunal has given undue importance to certain irrelevant statement of AW-1 made while recording her statement. The evidence on record is sufficient to conclude that the deceased travelled by Amritsar Express from Thane to go to Jalgaon with a valid journey ticket. The deceased was a *bona fide* passenger. Therefore, on this point, the finding recorded by learned Member of the Tribunal has to be held as perverse, inasmuch as this finding has been recorded ignoring the evidence on record. As such, it cannot be sustained.

11] The next important question is whether the death was in an untoward incident or not. The finding recorded by me, as above,

is sufficient to conclude that the deceased, with a valid journey ticket, had boarded the Amritsar Express at Thane for Jalgaon. The evidence placed on record, therefore, clearly rules out the possibility of run over of the deceased by any train or dash to the deceased by any train while crossing the railway line. The Amritsar Express might have passed through the spot of the incident, if it was on time, by 5:30 a.m. The deceased otherwise had no reason to go to the spot of the incident. He was the resident of Navi Mumbai. His wife had gone to her father's house on account of the Diwali festival to Jalgaon. It is the case of the appellants that the deceased was coming to Jalgaon to join AW-1 for the Diwali festival and then to take her back to Navi Mumbai. It is to be noted that the railway has not adduced any evidence to establish that any person on the spot was run over by any train or dashed by any train. If a person is run over or dashed, then generally the report of the same is made by the Loco Pilot of the concerned train. RW-1 has been examined to prove that there was no ACP of Amritsar Express. In my view, on the basis of this evidence, the defence of the railway that the deceased was dashed by unknown train cannot be accepted.

12] There is one more important circumstance on record to rule out the possibility of the deceased being run over by any train. The body of the deceased was intact. If a person is run over by a train while crossing the railway line, then his body is bound to be cut into pieces. Similarly, even if a person is dashed by a train running at high speed, then such a person is likely to suffer multiple injuries, including fractures. In this case, the deceased had sustained injury to his head. The injury to the head could be possible due to a fall from a moving train. The injuries sustained to other parts of the body of the deceased could also be possible due to a fall from a fast-moving train. In my view, this is an important factor in favour of the appellants. As per Section 123(c) of the Act of 1989, the accidental falling of any passenger from a moving train is an 'untoward incident'. There was no eyewitness to the incident.

13] In the facts and circumstances, the possibility of the deceased falling from a moving train has been established. He would have come near the compartment door because his destination, i.e., Jalgaon Railway Station, was hardly 39 km. away. The evidence on record is sufficient to prove that the deceased, while travelling by

Amritsar Express, fell from the moving train and died on the spot due to the injuries sustained by him. In my view, in the teeth of such voluminous evidence in favour of the appellants, learned Member of the Tribunal was not right in rejecting the claim. The appellants have proved that the deceased was a *bona fide* passenger. They have also proved that the deceased died due to a fall from a moving train, and as such, the death was 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 17th March, 2022, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/100/2019 is set aside. The claim application 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, 40 % shall be paid to appellant No.1; 30% shall be paid to appellant No.2; and balance 30% shall be paid together to appellant Nos.3 and 4.

14] 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