



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

FIRST APPEAL NO. 621 OF 2022

APPELLANTS : 1. M. Rajakumar, Aged about 53 years,
 Occ. : Labour.

2. Mangalagiri Usharani, Age 52 years,
 Occ. : Housewife.

Both R/o. Plot No.124/2, Nirmal
 Kunj, Adarsh Nagar, Near Rustomji
 School, Jalgaon, Tah. & Dist. Jalgaon
 (M.S.) 425001.

//VERSUS//

RESPONDENT : Union of India, through General
 Manager, South Central Railway,
 Secunderabad.

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 17th March, 2022,
 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur,

whereby the claim filed by the appellants/claimants came to be dismissed.

02] BACKGROUND FACTS:

The appellants are the parents of the deceased. The appellants claim that on 17th February, 2018, the deceased, while travelling from Vijaywada to Rajahmundry, fell from a moving train and died due to the injuries sustained by him. He was studying chartered accountancy at Vijaywada. He was travelling with a valid journey ticket. The journey ticket was lost in the incident.

03] The respondent-Railway filed the written statement and opposed the claim. It was contended that the journey ticket was not found on the person of the deceased. Similarly, the ticket was not found on the spot. The deceased was travelling without a ticket. He was not a *bona fide* passenger. It was further contended that the death was not in an untoward incident. The multiple injuries sustained by the deceased would show that he was run over by an unknown train.

04] Appellant No.1 examined himself as a sole witness. The respondent-Railway examined two witnesses. Learned Member of

the Tribunal, on appreciation of the evidence, found that the claim was without substance and ultimately dismissed the same. 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 the railway ticket was lost in the incident. Learned advocate submitted that the evidence on affidavit adduced by appellant No.1 is sufficient to discharge the initial burden cast on the appellants. Learned advocate submitted that the appellants have proved that the

deceased was a *bona fide* passenger travelling with a valid journey ticket. Learned advocate further submitted that there was no ACP of any train. Learned advocate submitted that there was no report of the Loco Pilot of any train about run over of any person at the spot of the incident by a train. Learned advocate submitted that, only on the basis of the multiple injuries, including amputation of his legs, the inference of run over of the deceased by any train cannot be drawn. Learned advocate submitted that learned Member of the Tribunal has failed to properly appreciate the evidence on record and has come to a wrong conclusion.

08] Learned advocate for the respondent-Railway, in short, supported the judgment and order passed by the Tribunal. Learned advocate submitted that learned Member of the Tribunal, on proper appreciation of the evidence, has rejected the claim. Learned advocate submitted that the possibility of loss of ticket has not been established. Learned advocate pointed out that both legs of the deceased were cut from the thigh, the brain was completely crushed, and there were other major injuries on the body. Learned advocate submitted that it was a case of run over and not accidental falling

from any train.

09] I have gone through the record and proceedings. The dead body was found between Vatluru and Eluru Railway Stations. The deceased was taking education at Vijaywada. The dead body was noticed on the spot by a railway employee. After this, the report was made to the RPF. The RPF conducted the inquest panchanama of the dead body as well as drew the spot panchanama. The police found the mobile phone and the spectacles of the deceased on the spot. It has been categorically stated in the crime detail form that the dead body was thoroughly inspected, but the ticket was not found. The perusal of the record would show that the inquest panchanama was drawn on 17th February, 2018, immediately after the dead body was found. Similarly, the spot panchanama was drawn. The ticket was not found on the spot. It is the case of the appellants that, in the incident, the ticket was lost.

10] AW-1 was not an eyewitness to the purchase of the ticket by the deceased at railway station. Similarly, he had not seen the deceased boarding the train in question. The appellants have been residing at Jalgaon. The deceased, with his brother, was taking

education at Vijaywada. In my view, therefore, the facts stated in the affidavit that the deceased had purchased the ticket and boarded the train cannot be accepted. They had no personal knowledge about it. If the deceased had purchased the ticket and boarded the train, then the ticket would have been found on his person or in his trouser pockets. It was not found. Similarly, the ticket was not found on the spot. The initial burden is on the appellants to prove that the deceased was a *bona fide* passenger travelling with a valid journey ticket. The evidence adduced by the appellants is not sufficient to discharge the initial burden. As such, I conclude that learned Member of the Tribunal was right in holding that the deceased was not a *bona fide* passenger.

11] As far as the death in an untoward incident is concerned, in my view, learned Member of the Tribunal was right in holding that it was a case of run over. It is pertinent to note that there was no eyewitness to the incident. There was no ACP. Similarly, there was no report of any Loco Pilot about run over of any passenger at the spot. The dead body was admittedly found on the track. The head of the deceased was broken from middle, and his brain was scattered all over. His left hand was cut from the elbow. His both legs were cut

from the thigh. At the time of the spot panchanama, the grease marks and injuries on the chest and stomach were found. There was extensive damage and destruction of the entire body. In my view, such injuries could not be possible due to a fall. The spot of the incident is not at the railway station. The train at the spot of the incident would be moving at a high speed. If a person falls from the fast-moving train, then he would fall at some distance away from the track. He would not, in any case, fall on the track. In this case, the dead body, in an injured condition, was lying on the track. In this case, the possibility of falling of the deceased from a moving train has been ruled out. Learned Member of the Tribunal has properly appreciated the material on record. The run over of passenger by a railway would not fall within the definition of an 'untoward incident'. Learned Member of the Tribunal, in my view, was right in dismissing the claim. I record my findings on both the points in the negative. As such, I conclude that there is no substance in the appeal. The appeal is, accordingly, **dismissed**.

(G. A. SANAP, J.)