



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

FIRST APPEAL NO. 622 OF 2022

APPELLANTS
(Original applicant on
R.A.)

- : 1. Anita wd/o Ravindr Patil,
Age : 53 years, Occu.: House wife
2. Yogita D/o Ravindr Patil
Age : 18 years, Occu. Education
3. Kunal s/o Ravindr Patil
Age : 13 years, Occu. Education
(through Appellant No.1, natural
guardian)
4. Sugandhabai wd/o Shamrav Patil
Age : 67 years, Occu. House wife
All R/o. Station Road, at Po.
Nimbhora Bu: Tal. Raver, District
Jalgaon (M.S.) 425506

//VERSUS//

RESPONDENT
(Original Respondent as on
R.A.)

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

Ms. Sumesh Choudhary, Advocate for appellants.
Mrs. Neeraja Chaubey, Advocate for respondent.

CORAM : G. A. SANAP, J.

DATED : 28th FEBRUARY, 2024

ORAL JUDGMENT

Heard.

2. ADMIT. Taken up for final disposal with the consent of learned Advocates for the parties.

3. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, “the Act of 1987”), the challenge is to the judgment and order dated 18/03/2021, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants under Section 16 of the Act of 1987 for compensation on account of death of deceased Ravindra Patil was dismissed.

4. Background facts:-

Appellant No.1 is wife of the deceased. Appellant Nos.2 and 3 are the children of the deceased and appellant No.4 is the mother of the deceased. The appellants claim that on 18.09.2018, the deceased Ravindra Patil was going to Raver for his personal work. He went to Nimbhora Railway Station, where he met his nephew by name, Ravindra Vichwe, who was going to Burhanpur. After purchasing the ticket, the deceased and his nephew boarded train No.51187, Bhusawal-Katni Passenger. There was a heavy rush in the train. Due to the heavy rush and push given by the passengers, the deceased fell from the moving train between

railway K.M. No.468/10 to 468/08 on the down loop line at Railway Station Nimbhora. He sustained serious injuries and died on the spot. According to the appellants, the deceased was a *bona fide* passenger travelling with a valid journey ticket. He fell from the moving train due to the heavy rush of the passengers and the push given by the passengers. He died due to the injuries sustained by him. The death was in an untoward incident.

5. The respondent-railway filed the written statement and opposed the claim. According to respondent-railway, the death was not in an untoward incident. The deceased was run over by a moving train while crossing the railway line. The body was cut into two parts. The railway ticket relied upon by the appellants was not a genuine ticket.

6. Appellant No.1 examined herself in support of the claim. Ravindra Vichwe (AW-2), the nephew of the deceased, has also been examined to corroborate the claim of the appellants. The railway has examined two witnesses. Learned Member of the Tribunal, on appreciation of the evidence found that the claim was without substance and ultimately dismissed the claim. The appellants have come before this Court in appeal.

7. I have heard Ms. Sumesha Choudhary, learned Advocate for the appellants and Mrs. Neeraja Chaubey, learned Advocate for the respondent-railway. Perused the record and proceedings.

8. In view of the facts and circumstances following points fall for my determination.

i) Whether the deceased was travelling in Bhusawal-Katni Passenger Train No.51187 as a *bona fide* passenger with a valid journey ticket?

ii) Whether the deceased died in an untoward incident as understood by the provisions of Section 123(c)(2) of the Railways Act, 1989?

9. Learned Advocate for the appellants submitted that the journey ticket purchased by the AW-2 and handed over to the deceased was found in the trouser pocket of the deceased at the time of the inquest panchanama. Learned Advocate submitted that AW-2 has categorically deposed that he had purchased a ticket for his uncle and they boarded together in Bhusawal-Katni Passenger Train. Learned Advocate submitted that the learned Member of the Tribunal has failed to properly appreciate this evidence. Learned Advocate submitted that the finding recorded by the

learned Member of the Tribunal cannot be sustained.

10. As far as the death in an untoward incident is concerned, the learned Advocate submitted that the incident occurred on the loop line by the side of the platform on the down line. Learned Advocate submitted that AW-2 has categorically stated that he along with his uncle together boarded the said train and due to the heavy rush of the passengers, his uncle was pushed towards the door side. Learned Advocate submitted that there was no report of a loco pilot with regard to the running over of any passenger at the spot. Learned Advocate submitted that considering the spot of the incident and the fact that at the spot of the incident the train would be moving at a slow speed, the loco pilot would have easily noticed the dash given to any passenger by his train. Learned Advocate submitted that defence of negligence or contributory negligence is not available in this case inasmuch as the liability is based on no fault theory. Learned Advocate submitted that the case of the appellants would be covered by the first part of Section 124-A of the Railways Act, 1989 (for short “the Act of 1989”) and not by the proviso. In order to seek support to this submission, reliance has been placed on the decision of Hon’ble Apex Court in the case of *Union of India vs. Rina Devi* reported in *AIR 2018 SCC 2362*.

11. Learned Advocate for the respondent-railway submitted that the dead body was cut into two parts and therefore, learned Member of the Tribunal was right in holding that it was a case of the run over by a train. Learned Advocate submitted that if the deceased had fallen from the moving train at a slow speed then he would not have come under the wheels of the train and cut into two pieces. Learned Advocate further submitted that the journey ticket placed on record was smeared with blood and therefore, the observations recorded in the inquest panchanama as to the date and time of the purchase of the ticket are contrary to the facts established on record. Learned Advocate submitted that the appellants have not discharged the initial burden to establish that the deceased was travelling with a valid journey ticket. Learned Advocate, in short, supported the judgment and order passed by the Tribunal.

12. On going through the record, I am satisfied that the evidence on record is sufficient to accept the contention of the appellants that the deceased, after purchasing the ticket had boarded the train in question and as such, at the time of the incident, he was a *bona fide* passenger. AW-2, who is the nephew of the deceased, has categorically stated that he had purchased a

ticket for the deceased and after handing over the ticket to the deceased, they together boarded the train in question. This statement has been made by him on an affidavit. It is evident that a railway ticket was recovered from the trouser pocket of the deceased at the time of the inquest panchanama. The facts established on record corroborate the versions of Anita wd/o Ravindra Patil (AW-1) and AW-2 on this aspect. The incident occurred on 18.09.2018. The train No.51187, Bhusawal-Katni Passenger train arrived at Nimbhora Railway Station at 10.25 am and departed at 10.28 am. Exh. A5 is the journey ticket recovered from the trouser pocket of the deceased. In the inquest panchanama, the necessary details of the ticket have been mentioned. The ticket was smeared with blood. In the inquest panchanama, police have recorded that the said ticket was purchased at 10.10 a.m. on 18.09.2018. It is to be noted that this panchanama was drawn by the railway police. The ticket was not sent for verification. On the basis of this ticket as well as the evidence of AW-2, the appellants have proved that the deceased, after purchasing a valid journey ticket had boarded the train in question at Nimbhora Railway Station. The initial burden is on the appellants. The Hon'ble Apex Court in the case of ***Union of India vs. Rina Devi*** reported at ***AIR 2018 SCC 2362*** has considered

this aspect in great detail. Paragraph No.17.4 would be relevant for the purpose of addressing this issue. The same are extracted below:-

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

13. The Apex Court has held that the initial burden will be on the claimant and the same can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or on the

basis of attending circumstances. In my view, in this case, the appellants by leading cogent evidence have discharged this initial burden. The respondent-railway has not adduced any evidence in rebuttal to make good his defence that this ticket was not a genuine ticket. As such I conclude that the learned Member of the Tribunal was not right in rejecting the contention of the appellants on this point.

14. The dead body was found on the railway premises. It is the contention of the railway that the death was due to run over of the deceased by the train in question. First and foremost, it would be necessary to consider the evidence adduced by the appellants. AW-2 claims to be an eye witness to the part of the incident, namely the boarding of the deceased in the train in question with him. He has stated that they boarded together in Bhusawal-Katni Passenger train. He has stated that there was a rush in the train and due to the push by the passengers, the deceased was moved towards the door. He has stated that therefore, they got separated in the compartment. The evidence of AW-2 is sufficient to accept the case of the appellants that the deceased, after purchasing a journey ticket, had boarded the train in question. In view of this factual scenario, the defence of the respondent-railway needs

proper appreciation.

15. The incident occurred at the railway station. The train was on a down loop line. The spot of the incident is by the side of the platform. It is to be noted that on the loop line at the railway station the train moves slowly. At the railway station the loco pilot is extra attentive and careful. It is easy for the loco pilot when the train moves slowly on the loop line to notice a person crossing or walking on the railway line. In this case, it is the contention of the railway that the deceased was run over by Bhusawal-Katni Passenger Train. In this factual scenario, the loco pilot was expected to make report of run over of any passenger at Nimbhora Railway Station. In my view, this is an important circumstance in favour of the appellants.

16. It is true that the dead body was cut into two parts. The question is whether simply because of this, inference can be drawn that the deceased was run over by a train while crossing the railway line? In my view, in this case, such inference can not be drawn. There is ample evidence to prove that the deceased had boarded the said train at Nimbhora Railway Station. I have already observed that at the platform, the train moves at a slow speed. If a

passenger falls from a slow moving train then it is possible that while falling from the train, the passenger may get stuck in any part of the train and come under the wheels of the train. A passenger falling from the slow moving train may not fall far away from the train. In my view, therefore, the possibility of the deceased coming under the wheels cannot be ruled out. This possibility has been supported by other evidence. As per Section 123 (c) of the Act of 1989, the accidental falling of any passenger from a moving train is an untoward incident. The liability is based on the no fault theory. The defence of negligence or contributory negligence has no place in such a claim. The Hon'ble Apex Court in the case of Rina Devi (*supra*) has considered this position. Paragraph No.16.6 is relevant in this context.

The same are extracted below:-

“16.6 We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar reported in (AIR 2017 SC 5710) laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault

theory’ under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.”

17. In my view, this decision would be squarely applicable to the case of the appellants as per Section 124-A of the Act of 1989. The liability to pay the compensation is regardless of any wrongful act, negligence or default on the part of the railway administration. The railway is not liable to pay compensation in case death of the passenger or injury to the passenger is caused due to any of the reasons enumerated in clauses (a) to (e) of the proviso to Section 124-A of the Act of 1989. In this case, the case of the appellants would fall in first part of Section 124-A of the Act of 1989. Even if it is assumed for the sake of the argument that there was some negligence on the part of the deceased while standing near the door, then it could not be the ground to reject the claim. As such, I conclude that the learned Member was not right in rejecting the claim. The evidence on record is sufficient to prove that the deceased was a *bona fide* passenger. It has also been proved that the death was in an untoward incident. Accordingly, I record my

findings on both points in the affirmative. In view of this, appeal deserves to be allowed. Hence I pass the following order:-

ORDER

- i). The appeal is accordingly allowed.
- ii). The judgment and order passed by Railways Claims Tribunal, Nagpur Bench, Nagpur dated 18.03.2021 in case No.OA(IIU)/NGP/265/2018 is quashed and set aside.
- iii). The claim petition filed by the appellants is allowed.
- iv) The respondent-Railway is directed to pay compensation of Rs.8,00,000/- (Rupees Eight Lacs Only) to the appellants and interest at the rate of 6% per annum from the date of incident till realization of the amount
- v) The amount of compensation be deposited within four months.
- vi) 50% of the amount of compensation shall be paid to the appellant No.1-Anita wd/o Ravindra Patil. 15% each amount of compensation be paid to the appellant No.2 -Yogita D/o Ravindra Patil and appellant No.3- Kunal S/o Ravindra Patil and 20% amount of compensation shall be paid to the appellant No.4-Sugandhabai wd/o Shamrav Patil.

vii) The appellants shall provide the details with regard to his bank account to the respondent.

18. The First Appeal stands disposed of.

(G. A. SANAP, J.)