



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

FIRST APPEAL NO. 130 OF 2022

APPELLANTS

(Original applicants on RA)

- : 1. Mr. Vilas s/o Hari Herode
Age about : 41 Yrs, Occu:- Labour
2. Mrs. Sangita w/o Vilas Herode,
Age about : 36 Yrs., Occu.: Housewife
Both are the R/o at 57, Thakur
Raghuvir Singh Marg,
Post-Burhanpur,
District-Burhanpur
(M.P.) 450331

//VERSUS//

RESPONDENT

(Original respondent on RA)

- : 1. Union of India,
through General Manager,
Central Railway, Mumbai (CST)

Mrs. Uma A. Bhattad, Advocate for appellants.

Mrs. Neeraja Chaubey, Advocate for respondent.

CORAM : G. A. SANAP, J.

DATED : 29th JANUARY, 2024

ORAL JUDGMENT

1. 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 25.07.2017 passed by

the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants/claimants for compensation was dismissed.

2. Background facts:-

The appellants-claimants are the parents of the deceased Rohit, s/o Vilas Herode. The appellants claimed that on 30.11.2014, the deceased had boarded the train for a journey to Burhanpur via Bhusawal. He was a permanent resident of Burhanpur. The appellants claimed that the deceased fell from the running train near Bhusawal Railway Station due to a sudden jerk to the train. He sustained serious injuries and died on the spot. According to them, the death of the deceased was in an untoward incident. The deceased was a *bona fide* passenger travelling with a valid journey ticket. On this count, they claimed compensation.

3. The respondent-railway filed the written statement and opposed the claim. According to the respondent-railway, the deceased was not a *bona fide* passenger travelling with a valid journey ticket. The death was not in an untoward incident. The deceased was negligent while undertaking his journey. He was run over by some unknown train at Bhusawal Railway Station. The

death was, therefore, not in an untoward incident.

4. The parties adduced the evidence before the Tribunal. Vilas s/o Hari Herode (AW-1) is the appellant No.1. Shri Imran Khan (RW-1) is the Deputy Station Manger, at Bhusawal Railway Station. Learned Member of the Tribunal, on consideration of the evidence, disbelieved the evidence of claimants and ultimately dismissed the claim. Being aggrieved by the judgment and order, the appellants are before this Court.

5. I have heard Mrs. Uma Bhattad, learned Advocate for the appellants and Mrs. Neeraja Chaubey, learned Advocate for the respondent. Perused the record and proceedings.

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

- i) Whether the deceased was travelling as a *bona fide* passenger with a valid journey ticket?
- ii) Whether the deceased died in an untoward incident as understood by Section 123 clause (c)(2) of the Railways Act, 1989?

7. Learned Advocate for the appellants submitted that a journey ticket was found from the person of the deceased at the time of Panchanama. Learned Advocate submitted that the railway ticket found on the person of the deceased is sufficient to corroborate the contention of the appellants that the deceased boarded a train at Badnera and while proceeding to Burhanpur via Bhusawal, fell from running train and died. Learned Advocate submitted that only on the basis of the injuries sustained by the deceased a conclusion that the deceased was run over by an unknown train at Bhusawal Railway yard, cannot be drawn. Learned Advocate submitted that the inquiry conducted by the DRM revealed that the deceased might have fallen from a moving train at Bhusawal Railway Station. Learned Advocate pointed out that the DRM report is based on the papers of investigation as well as an independent inquiry conducted by the DRM. Learned Advocate submitted that the deceased might have boarded any train at Badnera after purchasing the ticket at about 04.08 p.m. Learned Advocate submitted that therefore, the presumption that the deceased, while travelling from Badnera to Bhusawal by train, might have fallen down at Bhusawal Railway Station needs to be drawn. Learned Advocate submitted that there was no report of ACP at Bhusawal Railway Station. Similarly, there was no report

by any loco pilot about run over of any person by any known or unknown train. Learned Advocate submitted that these facts are in the favour of the appellants and therefore, the judgment and order passed by the learned Member of the Tribunal cannot be sustained.

8. Learned Advocate for the respondent-railway, in short, supported the judgment and order passed by the learned Member of the Tribunal. Learned Advocate submitted that Shalimar Express was the only available train after 4.00 p.m., and therefore, the arrival of the said train at Bhusawal Railway Station prior to 8.30 p.m. was not possible. Learned Advocate pointed out that the dead body was noticed on the track at 8.00 p.m. Learned Advocate submitted that all these facts and circumstances have not been properly explained and therefore, the conclusion arrived at by the learned Member of the Tribunal cannot be interfered with.

9. In this case, the railway ticket purchased by the deceased at 04.08 p.m. was recovered from the person of the deceased at the time of Panchanama. Other articles were also found. The ticket was for a journey from Badnera to Burhanpur via Bhusawal. The ticket was for Rs.75/-. In my view, this evidence clearly supports the contention of the appellants that on the given date, the

deceased travelled from Badnera to Bhusawal by some unknown train. He met with an accident at Bhusawal Railway Station. The ticket and particularly the timing of the ticket do not permit me to accept the contention of the railway that there is no evidence to substantiate the contention of the appellants that he travelled from Badnera to Bhusawal. The evidence which was collected during the course of the investigation in the form of a ticket is sufficient to conclude that the deceased, at the time of the accident, was travelling by a train as a *bona fide* passenger with a valid journey ticket.

10. The next important aspect that needs to be addressed is whether the case in question was of a run over by any train or an accidental fall from a moving train? The deceased was travelling from Badnera to Burhanpur via Bhusawal. The deceased was required to change the train at Bhusawal Railway Station to undertake his journey from Bhusawal to Burhanpur. The dead body was found in the yard of the Bhusawal Railway Station. There was no eye witness to the incident. Similarly, there was no ACP of any train. Similarly, the loco pilot of any train did not report to the Station Master about run over of any passenger by a train. It could be said in the teeth of the evidence that the deceased

would have undertaken his journey after purchasing the ticket at about 04.08 p.m. and he would have taken three and a half hours to come to Bhusawal. So the time, when the dead body was noticed, clearly indicates that the deceased had travelled to Bhusawal by some unknown train. The incident would have occurred between 7.30 p.m. to 8.30 p.m. because by that time, in any case, he would have reached Bhusawal Railway Station. There was no report by any loco pilot about run over of any passenger during this period at Bhusawal Railway Station.

11. A case of run over is sought to be made out on the basis of injuries sustained by the deceased. It is seen that the dead body was cut into two parts. The question is simply because of the nature of these injuries, a conclusion of run over of the deceased by any train could be drawn or not? It is true that such injuries are possible in the case of run over of a person by a train. However, at the same time, it needs to be stated that even by an accidental fall of a passenger from a moving train, such injuries could be possible, as well. The place of the occurrence indicates that at the said place, the train would have slowed down its speed. The deceased had to go to Burhanpur. In this situation, the possibility of the deceased getting down from the train hurriedly cannot be ruled out.

Similarly, in this process, the deceased getting stuck in any part of the train after fall from the running train cannot be ruled out. If this happens, then the person can come under the train and sustain the injuries of the nature found on the person of the deceased. There is no eye witness to the incident. In the absence of any categorical report, by the loco pilot, of the run over of any passenger at the spot of the incident, at the relevant time, the possibility of the deceased falling from a moving train and getting under the wheels of the train cannot be ruled out. In my view, the learned Member of the Tribunal was required to take care while appreciating the evidence. The report of DRM concludes that the deceased might have died due to a fall from the running train. The DRM has concluded that at the time of his fall, the deceased might have been standing at the door of the compartment or sitting at the footboard of the train. In view of this, conclusion drawn by the DRM, on the basis of the available investigation papers as well as the result of his own inquiry, the learned Member was required to record the cogent reasons to discard this report. In the facts and circumstances of the case, I am of the view that this finding of fact arrived at by the Member of the Tribunal cannot be sustained. It is not possible to accept the case of the railway that the deceased was run over by any train. If the deceased was run over by any train at

the spot of the incident, at the relevant time, then the loco pilot of the train would have reported the same to the Station Master. If all these facts are taken into consideration, it would show that the case of the appellants would fall under the first part of Section 124-A of the Railways Act, 1989 (for short, "the Act of 1989). The case would not fall under any of the clauses of proviso to Section 124-A of the Act of 1989. In such a case the liability is based on the no fault theory and therefore, the defence of contributory negligence is not available.

12. In this case, there is one more possibility in favour of the appellants. The deceased, after getting down at Bhusawal Railway Station, might have tried to board the train for Burhanpur. In that process, the possibility of the deceased falling while boarding the train could not be ruled out. In any case, the death while boarding or deboarding of a train would be a death in an untoward accident. In such a case, the defence of contributory negligence is not available to the railway. Therefore, I conclude that the learned Member of the Tribunal was not right in rejecting the claim. Accordingly, I record my findings on both the points in the affirmative. The judgment and order deserves to be set aside.

13. The learned Advocates for the railway submits that in view of the law laid down in the case of *Union of India vs. Radha Yadav* reported in *[(2019) 3 SCC 410]*, the appellants would be entitled to get the compensation of Rs.8,00,000/- (Rupees Eight Lacs Only) without interest. The learned Advocate has relied upon a Notification issued by the Ministry of Railways (Railway Board) dated 22.12.2016, wherein it is stated that in case of the death claim, the claimants are entitled to get a compensation of Rs.8,00,000/-. In view of the decision in the case of Radha Yadav (*supra*), the appellants are entitled to get a compensation of Rs.8,00,000/- (Rupees Eight Lacs Only) without interest.

14. Accordingly, the appeal is **allowed**.

15. The judgment and order dated 25.07.2017 passed by Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim No.OA(IIu)/NGP/2015/0072 is hereby quashed and set aside. The claim petition is allowed.

16. The respondent-Railway shall pay the compensation of Rs.8,00,000/- (Rupees Eight Lacs Only) to the appellants within four month from the date of the judgment without interest. If the

amount is not deposited within four months from the date of the judgment then the respondent-Railway shall pay interest @ 6% per annum from the date of this judgment till its realization.

17. 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. Out of total compensation, appellant Nos.1 and 2 shall be entitled to get 50% share each.

18. The First Appeal stands disposed of. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)