



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

FIRST APPEAL NO. 404 OF 2022

APPELLANTS : 1. Narayan S/o. Hannu Doye, Aged
about 60 years, Occ. Labour.

2. Kanta W/o. Narayan Doye, Aged
about 59 years, Occ. Household.

Both R/o. Plot No. At Oteksam, Post –
Swarikhurd, Tah. - Lanji, Balaghat.

//VERSUS//

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

Ms. R.S. Mankar, Advocate h/f. Mr. P.S. Mirache, Advocate for
the Appellants.

Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 14th 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 29th August, 2018,
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 father of the deceased Dindayal Doye, and appellant No. 2 is the mother of the deceased. The appellants claim that on 23rd April, 2015, the deceased, after purchasing a valid journey ticket, boarded an unknown train at Gondia to come to Nagpur. According to them, due to a sudden jerk, the deceased fell from a moving train at Gram Pahuni Shiwar Railway Line, Pole No. 1076/2-4. He sustained injuries. He died on the spot. The dead body was not noticed for about four days. On these averments, they claimed compensation.

03] The respondent-Railway filed the written statement and opposed the claim. According to the Railway, the deceased was not a *bona fide* passenger travelling with a valid journey ticket. The ticket was not recovered from the dead body when it was found on 28th April, 2015. There was no eyewitness to the incident. The death was not in an untoward incident.

04] The parties adduced the evidence before the Tribunal. Learned Members of the Tribunal, on appreciation of the evidence, found that there was no substance in the claim application and

ultimately dismissed the same. The appellants, the parents of the deceased, are before this Court in appeal.

05] I have heard Ms. R.S. Mankar, learned advocate holding for Mr. P.S. Mirache 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 dead body was noticed by the Railway Inspector on 28th April, 2015 in a decomposed condition. Learned advocate submitted that at the time of drawing the inquest panchanama of the dead body, a wallet was found in the trouser pocket of the deceased. In the said wallet, the journey ticket was found. Learned advocate pointed out that this

ticket was duly verified by the Railway Authority and was found to be a valid journey ticket from Gondia to Nagpur purchased on 23rd April, 2015. Learned advocate submitted that, therefore, the finding recorded by the Tribunal that the journey ticket was not recovered is totally perverse. Learned advocate further submitted that the place of the incident is 20 kms. away from the nearest railway station. Learned advocate pointed out that the deceased was a resident of Balaghat in the state of Madhya Pradesh. Learned advocate submitted that the deceased had no reason to go to the spot of the incident in ordinary circumstances. Learned advocate submitted that AW-1 has categorically stated that the deceased had gone to Gondia for personal work and, while coming back to Nagpur from Gondia, fell from the moving train and died due to the injuries sustained by him. Learned advocate submitted that the attending circumstances, particularly the circumstance that the dead body was found lying in the bushes near the railway track, probablize the case of the appellants that the deceased fell from the moving train and died due to the injuries sustained by him. Learned advocate submitted that the younger brother of the deceased had given a missing complaint to the concerned police station when the deceased did not return

from Gondia. Learned advocate further submitted that the evidence brought on record and the attending circumstances are sufficient to presume that the deceased, while travelling from Gondia to Nagpur by train, fell from the moving train and died due to the injuries sustained by him. Learned advocate submitted that it is not the case of the respondent-Railway that the deceased was either run over by a moving train or dashed by any train at the spot of the incident. Learned advocate submitted that, therefore, the order passed by the Tribunal cannot be sustained.

08] Learned advocate for the respondent-Railway, in short, supported the judgment and order passed by the Tribunal. Learned advocate submitted that there is evidence to suggest that this ticket was planted on the person of the deceased. Learned advocate further submitted that there is no presumption of death in an untoward incident merely because of the fact that the dead body is found lying on the railway premises or by the side of the track. Learned advocate submitted that the learned Members of the Tribunal have properly appreciated the material on record and, on doing so, have rightly rejected the claim.

09] In order to appreciate the rival submissions, I have gone through the record and proceedings. It is undisputed that the dead body was found on 28th April, 2015, by the Railway Inspector while attending work in connection with the derailment of the goods train. He immediately informed the Station Master. The Station Master conveyed the information to the Bhandara Police Station. It is undisputed that the police did the inquest panchanama of the dead body. The dead body was fully decomposed. The wallet was found in the trouser pocket of the deceased. In the said wallet, apart from other articles, the journey ticket, purchased on 23rd April, 2015, for a journey from Gondia to Nagpur, was found. The ticket was sent to the Railway Authority for verification. The Railway Authority, on verification of the ticket, reported that it was a genuine ticket issued on 23rd April, 2015. On the basis of the evidence of court witness No. 1, a case is sought to be made out that, on his instructions, the head constable had gone to the spot and reported to him that the ticket was not found with the deceased. In my view, the evidence of the witnesses examined by the Railway as well as the court witness go counter to the facts proved on the basis of the evidence.

10] After a statutory investigation, the DRM prepared his report. In the report, the DRM categorically observed that the ticket was found on the person of the deceased for a journey from Gondia to Nagpur. In my view, in the teeth of this positive material, the learned Members of the Tribunal were not right in recording the finding that the ticket was not found on the person of the deceased. No evidence has been adduced by the Railway to discard and disbelieve the facts recorded on this point in the inquest panchanama. The ticket found in the wallet of the deceased for a journey from Gondia to Nagpur dated 23rd April, 2015 clearly indicates that the deceased had purchased the ticket at Gondia to come to Nagpur. The concrete material on record is sufficient to infer that, after purchasing the ticket, the deceased had boarded a train at Gondia to come to Nagpur. There is no material on record to rebut this possibility/presumption. The theory of plantation of ticket, therefore, cannot be accepted.

11] The parents of the deceased are the residents of Balaghat. The deceased did not return on 23rd April, 2015, and, therefore, his younger brother, after a few days, lodged a missing complaint of the

deceased. The parents of the deceased were informed by the police after the dead body was located on 28th April, 2015. The documents found in the wallet could provide a clue as to the identity of the deceased and the place of his residence. After getting the information from the police, the parents of the deceased went to Bhandara. It, therefore, goes without saying that in this factual background, the theory of plantation of ticket is not at all acceptable. The inquest panchanama was drawn by the Bhandara Police Station. The Bhadara Police Station had no reason or business to plant the ticket on the person of the deceased. In the teeth of this evidence, the case of the respondent-Railway that the deceased was not a *bona fide* passenger cannot be accepted. In my view, this clinching evidence is sufficient to record a finding in favour of the appellants. The material on record is sufficient to prove that the deceased, after purchasing a journey ticket at Gondia, had boarded an unknown train at Gondia to come to Nagpur, and on the way, he fell from the moving train. In my view, therefore, the finding recorded by the Tribunal cannot be sustained.

12] The next important issue is as to whether the death was in an untoward incident or not. Section 124A of the Act of 1989 provides for compensation on account of an untoward incident. Untoward incident has been defined in Section 123(c)(1) & (2). As per Section 123(c)(2), 'untoward incident' means the accidental falling of any passenger from a train carrying passengers. For the purpose of understanding the issue, it would be appropriate to reproduce Section 124A of the Act of 1989. It reads thus:

[124-A. Compensation on account of untoward incidents. –
When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to –

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or*

surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation. – For the purposes of this section, “passenger” includes –

- (i) a railway servant on duty ; and*
- (ii) a person who has purchased a valid ticket for traveling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]*

13] In this context, Section 123(c)(1) & (2) is also required to be reproduced. It reads thus:

*“123. **Definitions.** - In this Chapter, unless the context otherwise requires,-*

[(c) “Untoward incident” means –

- (1)(i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), or*
- (ii) the making of violent attack or the commission of robbery or dacoity; or*
- (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or*
- (2) the accidental falling of any passenger from a train carrying passengers.]”*

14] As per Section 124A of the Act of 1989, the compensation is payable on account of an ‘untoward incident’. As

per Section 123(c)(2), the accidental falling of any passenger from a train carrying passengers is an 'untoward incident'. As per Section 124A, the Railway is liable to pay compensation when, in the course of working a railway, an untoward incident occurs. As per Section 124A, the Railway is liable to pay the compensation whether or not there has been any wrongful act, neglect, or default on the part of the railway administration. It is to be noted that if the case falls under the first part of Section 124A, then the Railway is liable to pay the compensation. The Railway cannot be held liable to pay the compensation if the case falls under any of the clauses of the proviso to Section 124A. It needs to be stated that the accidental falling of any passenger from a train could not be said to be an act covered under Clauses (a) to (e) of the proviso to Section 124A. In order to deny compensation to the victim of an untoward incident, a case must be made out under any of the clauses to the proviso.

15] Keeping this provision in mind, the evidence on record needs appreciation. It is not the case of the Railway that the deceased was run over by any unknown train or dashed by any unknown train. The possibility of run over or dash to the deceased by any train

is also ruled out in view of the injuries sustained by the deceased. The dead body was found on the side of the track. This is one more fact to conclude that the case in question is not of run over by any train. If the deceased was run over by a train, then his body would have been cut into pieces. If the deceased was dashed by any moving train, then he would have been thrown at some distance, and there would have been multiple fractures in the body of the deceased. There is no ACP of any train near the spot of the incident on 23rd April, 2015. Similarly, there was no report, either by any Guard or the Loco Pilot of any train, about run over of any passenger at the spot of the incident. The dead body was found on 28th April, 2015, in a fully decomposed condition. As per the post-mortem report, if the time is calculated, then it would show that the death might have occurred on 23rd April, 2015. There is no eyewitness to the incident. The circumstances brought on record, therefore, deserve proper appreciation to come to a just conclusion. In my view, the material on record and the attending circumstances are sufficient to conclude that the deceased had fallen from a moving train and died due to the injuries sustained by him. No evidence has been adduced by the Railway to demolish the case of the appellants. In the factual

situation, the only defence that could have been raised by the Railway was that the incident occurred due to the negligence or contributory negligence of the deceased.

16] The next important issue, therefore, is whether such a defence can be entertained. In my view, if the definition of ‘untoward incident’ as set out hereinabove and clauses (a) to (e) to the proviso to Section 124A are considered together, it would show that such a defence cannot be pressed into service by the Railway. In my view, in this context, a useful reference can be made to the decision of the Hon’ble Apex Court in the case of ***Union of India Vs. Rina Devi [AIR 2018 SC 2362]***. Paragraph 16.6 would be relevant for the purpose of addressing this issue. It is 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 [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 163A 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 124A merely on the plea of negligence of the victim as a contributing factor."

17] The Hon'ble Apex Court has held that the defence of contributory negligence cannot be entertained in the case of liability based on 'no fault theory'. The plea of negligence of the victim in such a case based on 'no fault theory' cannot be accepted. It is held that the death or injury in the course of boarding or deboarding a train will be an 'untoward incident' entitling a victim to compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor. In my view, therefore, the defence of contributory negligence cannot be entertained in this case. The accidental falling of a passenger from a moving train in this matter would be covered by the definition of an 'untoward incident'. As such, I conclude that the evidence on record is sufficient to prove that the deceased, while travelling by unknown train, fell from the train at the spot of the incident and died due to the injuries sustained by him. There is no evidence adduced by the Railway to show any overt act committed

by the deceased, due to which he fell from the train. In order to establish such a defence, there must be concrete evidence. In my view, therefore, the learned Members of the Tribunal were not right in concluding that the death was not in an 'untoward incident'. As such, the judgment and order passed by the Tribunal is required to be set aside. As such, I record my findings on the above points in the affirmative.

18] As a result of this, the appeal is **allowed**. The judgment and order dated 29th August, 2018, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/2015/223 is set aside. The claim petition is allowed.

19] In this case, the accident occurred on 23rd April, 2015. In view of the Notification issued by the Ministry of Railways (Railway Board) dated 22.12.2016, came into effect from 01.01.2017, in case of death claim, the claimant/s is/are entitled to get compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only). In view of the decision of the Hon'ble Apex Court in the case of *Union of India Vs. Radha*

Yadav [(2019) 3 SCC 410], in case of old claim after this notification, the claimants/appellants would be entitled to get compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only), without interest, if the compensation provided earlier with interest is less than Rs.8,00,000/-. Learned advocate submitted that the compensation provided earlier i.e. Rs.4,00,000/- with interest would not be more than Rs.8,00,000/-. Therefore, in this case, the appellants/claimants would be entitled to get compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only), without interest.

20] The respondent-Railway shall pay the compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the appellants within four months from the date of uploading of this judgment. If the amount is not deposited within four months from the date of uploading of this judgment, then the respondent-Railway shall pay interest @ 6% per annum from the date of this judgment till its realization.

21] 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.

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

23] 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