



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

FIRST APPEAL NO. 92 OF 2022

APPELLANTS : 1. Dnyaneshwar S/o. Mangru Rahandale,
 Aged about 64 years, Occ : Priest
 (Pujari).

2. Shakuntala W/o. Dnyaneshwar
 Rahandale, Aged about ; 59 Years,
 Occ: Household.

R/o. Ashirwad Nagar, Lane No.4,
 Dalve Hospital, near Garoba Maidan,
 Nagpur.

//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.

Mr. P.V. Navlani, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 7th FEBRUARY, 2024.

ORAL JUDGMENT

. 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 19th November, 2018,
 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur,

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

02] BACKGROUND FACTS:

The appellants are the parents of the deceased Atul Rahandale. The appellants claim that on 7th June, 2014, the deceased, with a valid journey ticket, boarded an unknown train at Itwari, Nagpur, to go to Rewral. According to them, the deceased, while travelling, fell down due to a sudden jerk to the train. He sustained serious injuries and died on the spot. According to them, the death was in an untoward incident. They, therefore, claimed the compensation.

03] The respondent-Railway filed the written statement and opposed the claim. According to the Railway, there was no substance in the claim. The Railway contended that the death was not in an untoward incident. The deceased was run over by unknown train at Rewral Railway Station. The death was due to negligence or contributory negligence of the deceased.

04] Appellant No.1 examined himself as a sole witness in support of the claim. The respondent-Railway examined one witness. Learned Member of the Tribunal, on consideration of the

evidence, found the claim 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. R.S. Mankar, learned advocate holding for Mr. P.S. Mirache for the appellants and Mr. P.V. Navlani, 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 a valid journey ticket was found on the person of the deceased. Learned advocate pointed out that the ticket was duly verified by the officials of the Railway. It is submitted that, therefore, the possibility of plantation or manipulation of ticket has been completely ruled out.

Learned advocate submitted that the defence of negligence or contributory negligence cannot be invoked in such a case. Learned advocate submitted that there was no ACP or report by the Loco Pilot of any train about run over of any passenger or dash to any passenger while crossing the railway line at the spot of the incident. Learned advocate submitted that the dead body was found on the railway premises at Rewral Railway. It is submitted that, on the basis of the evidence, it has been proved that the death was in an untoward incident. Learned advocate submitted that learned Member of the Tribunal has not properly appreciated the evidence and has come to a wrong conclusion.

08] Learned advocate for the respondent-Railway submitted that merely because of the valid journey ticket, the presumption of death in an untoward incident cannot be drawn. Learned advocate took me through the inquest panchanama and spot panchanama and pointed out that the dead body was cut into two pieces. Learned advocate submitted that such injuries could be possible due to run over of a person by a train while crossing the railway line. Learned advocate further submitted that the spot was beyond Rewral Railway

Station and, therefore, the possibility of the deceased travelling beyond Rewral Railway Station on the basis of the ticket in question has been completely ruled out. It is submitted that the journey beyond Rewral Railway Station would be an unauthorized journey and, therefore, the appellants would not be entitled to get compensation. In short, learned advocate supported the judgment and order passed by learned Member of the Tribunal.

09] With the able assistance of learned advocates for the parties, I have gone through the record and proceedings. The dead body was undisputedly noticed by the Loco Pilot of a goods train at 1:50 a.m. on 8th June, 2014. The last passenger train on the said track departed from Rewral Railway Station at 23:20 hrs. of 7th June, 2014. The deceased, as can be seen from the railway ticket, had undertaken a journey from Itwari to Rewral. The ticket in question was purchased at 19:42 hrs. on 7th June, 2014. The distance between Itwari and Rewral is 40 kms. As per the Railway, this was the only passenger train at the relevant time. The railway ticket found on the person of the deceased clearly indicates that the deceased travelled between Itwari and Rewral with a valid journey ticket. The ticket

was duly verified by the railway officials. It was a genuine ticket.

10] The second point with regard to the death in an untoward incident needs to be appreciated, keeping in mind the proved fact that the deceased was a *bona fide* passenger travelled by passenger train with a valid journey ticket.

11] It is the case of the Railway that the deceased died due to his negligence or contributory negligence. According to the Railway, the deceased was run over by an unknown train beyond Rewral Railway Station, and as such, the death was not in an untoward incident. Admittedly, the dead body was found on the railway premises. The spot of the incident is at Rewral Railway Station. The dead body was cut into two pieces. In order to accept the defence of run over of the deceased by any train at the spot of the incident, the available material on record needs to be properly appreciated. Admittedly, the passenger train by which the deceased travelled reached Rewral Railway Station at 23:20 hrs. on 7th June, 2014. The dead body was noticed at 1:50 a.m. on 8th June, 2014. It has come on record that, in between, more than one train passed through the

said railway line. Except the train in question, there was no other passenger train for the journey by the deceased. If the deceased was run over at Rewral Railway Station as sought to be contended, then there ought to have been a report by the Loco Pilot of any train. It is undisputed that the Loco Pilot of goods train noticed the dead body on the railway track at 1:50 a.m. and, therefore, stopped the train. If the deceased was run over, then the Loco Pilot of any train would have reported the same to the Station Master. In the absence of report of any Loco Pilot about the run over of any person on the railway track at Rewral Railway Station, the available evidence deserves proper consideration.

12] The deceased was a resident of Nagpur. His father has stated that the deceased had gone to Rewral for his personal work. A valid journey ticket was found on the person of the deceased. On the basis of this, it has been proved that the deceased had boarded an unknown train at Itwari, Nagpur, and undertook a journey to Rewral with a valid journey ticket. The case of run over is tried to be established on the basis of the nature of injuries sustained by the deceased. In my view, merely because of the injury and the body

being cut into two pieces, an inference of run over cannot be drawn. Such injuries could be caused even in case of falling of passenger from the running train. A person while falling from a running train if gets stuck to some part of the railway, then the person may come under the wheels of the train. It depends upon the speed of the train and the manner in which the person falls from the moving train. Considering the spot of the incident, it can be safely said that the train must be moving at a slow speed. In a slow-moving train, if a passenger tries to get down and gets stuck in any part of the train, then the passenger may come under the wheels of the train. Therefore, simply because of the injuries, inference cannot be drawn that the deceased was run over. The evidence, in my view, is sufficient to accept the case of the appellants. The defence of negligence or contributory negligence is not available in such a claim, inasmuch as the liability is based on 'no fault theory'. The case would be covered by the first part of Section 124A of the Act of 1989. In the teeth of the evidence available on record, the case would not be covered under any of the clauses of the proviso to Section 124A of the Act of 1989. The death of a passenger while boarding or deboarding a train falls within the definition of an

‘untoward incident’. In such a claim, the contention based on contributory negligence cannot be accepted. This issue has been considered by the Hon’ble Apex Court in the case of ***Union of India Vs. Rina Devi [AIR 2018 SC 2362]***. Paragraph 16.6 of the decision is relevant for deciding 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.”

13] In my view, this case is covered by the law laid down in the case of ***Rina Devi*** (supra). As such, I record my findings on both the points in the affirmative. As a result of this, the appeal is **allowed**. The judgment and order dated 19th November, 2018, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim

Application No.OA(IIu)/NGP/2015/76 is set aside. The claim petition is allowed.

14] In this case, the accident occurred on 7th June, 2014. 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 would be entitled to get compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only), without interest.

15] 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.

16] 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.

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

18] 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