



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

FIRST APPEAL NO. 771 OF 2022

APPELLANT

(Original Applicant on RA)

1. Ramesh S/o Haribhau Gabhane
(Died on 23-04-2021)
2. Nirmala Wd/o Ramesh Gabhane
Age - 53 Yrs, Occu - housewife.

(R/o Plot No.24D, Hudkeshwar Rd.,
Dube Nagar, Hudkeshwar Bk, Pipla,
Nagpur (M.S.) 440034.

// V E R S U S //

RESPONDENT :

(Original Respondent on RA)

Union of India,
Through General Manager,
Central Railway, CSMT Mumbai.

Ms. Sumesha Chaudhari, Advocate for appellants.
Ms. Neerja Chaubey, Advocate for respondent-sole.

CORAM : G. A. SANAP, J.

DATED : 05/03/2024

ORAL JUDGMENT :

1. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as “the Act of 1987” for short), challenge is to the judgment and order dated 22/04/2022 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the applicants under Section 16 of the Act of 1987 for compensation was dismissed.

2. Background facts :-

The Claimant No.1 since deceased was the father of the deceased. Now, sole claimant - appellant No.2 is the mother of the deceased Devendra Gabhane. The appellant claims that on 10/09/2019, the deceased was travelling from Pune to Nagpur by Train No.12113 Garibrath Express with a valid reservation ticket. It is stated that while travelling in a train due to heavy rush and push blow of the passengers, the deceased fell from running train at the spot of incident and died due to injuries sustained by him. The death was in an untoward incident. He was a bonafide passenger.

3. The respondent - Railway filed written statement. It was denied that the deceased was a bonafide passenger. It was also denied that the deceased died in an untoward incident. According to Railway, the deceased was run over by a Goods Train at the spot of incident. The appellant No.2 examined herself as a sole witness. The respondent - Railway examined two witnesses. The learned Member of the Tribunal discarded the evidence adduced by the appellant and dismissed the claim. The appellant is before this Court in appeal.

4. I have heard learned Advocates for the parties.
Perused the record and proceedings.

5. In the facts and circumstances, following points fall for my determination :-

- i] Whether the deceased was a bona fide passenger travelling by the train in question with valid journey ticket ?*
- ii] Whether the deceased died in an untoward incident within the meaning of Section 123 of the Railways Act, 1989 ?*

6. Learned Advocate for the appellant submitted that a valid reservation ticket for journey from Pune to Nagpur by Garibrath Express was found at the time of panchnama. It is marked as Exh. A-1. Learned Advocate submitted that the learned Member has accepted the case of the appellant that the deceased was holding valid journey ticket. Learned Advocate submitted that the learned Member has not properly appreciated the evidence and has come to a wrong conclusion that the death was not in an untoward incident. Learned Advocate submitted that the learned Member has placed reliance on the evidence of RW-1 the Loco Pilot of Goods Train No. BJW / BTPN. Learned Advocate submitted that the evidence of this RW-1 is contrary to the information recorded by the Deputy Station Master, Bodwad

Railway Station. Learned Advocate submitted that the evidence of RW-2 the Guard of the Garibrath Train is sufficient to discard the evidence of RW-1. Learned Advocate submitted that the nature of injuries sustained by the deceased would suggest that the deceased during the night time accidentally fell from a moving train and died on the spot.

7. Learned Advocate for the Railway in short supported the Judgment and order passed by learned Member of the Tribunal. Learned Advocate submitted that RW-1 the Loco Pilot of a Goods Train saw the deceased standing on the railway line and being dashed by the train. Learned Advocate submitted that the necessary entry was made by him in his rough journal. Learned Advocate submitted that the evidence on record is sufficient to reject the claim of the appellant that the death was in an untoward incident.

8. I have minutely perused the record and proceedings. The spot of incident is not far away from Bodwad Railway Station. It is a case of the Railway that the Station Master at Bodwad Railway Station saw unknown person standing on the foot rest of the 5th Coach from the rear side of the train. The door

was closed as the train was fully Air Conditioned. It is further stated that the Station Master instructed the Loco Pilot to stop the train. The train was inspected by RW-2 the Guard of the Train, but he did not find any passenger standing on the foot rest of the 5th Coach from the rear side. The Guard of Garibrath Train RW-2 has stated that the train was started and at that time, he noticed one unknown person was lying on the track at KM No.475/05. He has stated that after departure of a train from the said spot, he informed the Station Master about the said person lying on the track. RW-1 is the Loco Pilot of Goods Train. It is the defence of the Railway that the deceased was standing on the railway line and he was dashed by the Goods Train.

9. The question is whether the evidence of RW-1 Loco Pilot of the Goods Train and the corresponding entry made in the Register inspires the confidence or not. In my view, the evidence of RW-1 has to be appreciated keeping in mind the station diary entry made by the Station Master at Bodwad Railway Station. It is marked as Exh.A-2. This document is the most important document. This entry which was made on the basis of information received from RW-1 the Loco Pilot of the Goods Train. The perusal of this entry would show that the RW-1 had reported to the

Station Master that one unknown person was lying on up route of Khamkhed Railway Station at 476/15-13 in unconscious state. It is to be noted that if the deceased was run over at the spot of incident by Goods Train, then the Loco Pilot would have reported accordingly to the Station Master. The information received from the Loco Pilot and recorded by the Station Master is different from the nature of the incident recorded by RW-1 in his register. Learned Advocate submitted that in order to save himself, he has made this entry subsequently. In my view, the evidence on record is sufficient to accept the case of the appellant that the deceased fell from a moving train at the spot of incident and died. There is inconsistency in the evidence of RW-1 and RW-2. The RW-2 has stated that he saw that one person was lying on the railway line at the spot of incident. He accordingly informed the said fact to the Station Master. The Station Master has not produced any evidence of receipt of such intimation from the Guard of Garibrath Train. The deceased was travelling by Garibrath Train. It is to be noted that if for some reason or the other, he was unable to board the compartment at Bodwad Railway Station, then after stopping the train on the instructions of the Station Master, he would have approached to the Guard of the Train and ensured his safe entry in

the Coach. He was travelling with a reservation ticket in AC-III compartment. The Guard of the train after re-start of the train from the said spot, noticed one person lying on the railway line. The possibility of the deceased falling from the foot board in the meantime, before halting of the train cannot be ruled out. The deceased otherwise had no reason to get down at the spot. It needs to be stated that if for some reason or the other, the deceased was not able to board the said train, then he would have approached the nearest Railway Station i.e. Bodwad Railway Station. He would not have taken the risk of boarding the train. The journey ticket in my view is the best evidence to substantiate the case of the appellant. The evidence on record is sufficient to accept the claim of the appellant. The accidental falling of a passenger from moving train is in an untoward incident. The death or injury to the passenger while boarding or deboarding the train is covered within the ambit of "untoward incident". In the facts and circumstances, I conclude on both the counts. The learned Member was not right in rejecting the claim. As such, I record the finding on both points in the affirmative.

10. Accordingly, the first appeal is allowed.

i] The judgment and order dated 22/04/2022, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, in Claim Application No. OA(IIu)/NGP/0021/2020 is quashed and set aside. The claim petition is allowed.

ii] The respondent - Railway is directed to pay compensation of Rs.8,00,000/- to the appellant No.2 with interest @ 6 % per annum from the date of incident, till actual realization.

iii] The amount of compensation be deposited directly in the bank account of the appellant No.2 with interest within four months from today. The appellant No.2 is directed to provide her bank account details to the respondent-Railway.

11. The first appeal stands disposed of in the aforesaid terms. No order as to costs.

[G. A. SANAP, J.]