



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

FIRST APPEAL NO. 308 OF 2023

- 1) Baburao S/o Nagorao Dudhare,
Aged about 46 years, Occ.– Peon,
- 2) Nitin S/o Baburao Dudhare,
Aged about 21 years, Occ.- Education,
Both R/o. Hadoli, Tq. Bhokar,
Dist. Nanded (M.S.) - 431801.

.... **APPELLANTS**

// VERSUS //

Union of India,
Through the General Manager,
South Central Railway,
Secunderabad.

.... **RESPONDENT**

Mr. R. G. Bagul, Advocate for Appellants.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 28.11.2024.

DATE OF PRONOUNCING THE JUDGMENT : 11.12.2024.

JUDGMENT.

1. **Admit.** Heard finally by consent of the learned Advocates appearing for the parties.

2. This appeal is preferred against the Judgment and order dated 04.02.2019 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Iiu)/NGP/181/2017, thereby

claim of the applicants/appellants for grant of compensation was dismissed.

3. Brief facts of the case are as follows :

(i) On 07.09.2016, Nagorao Vitthal Dudhare was travelling from Bhokar to H. Sahib Nanded by Nandigram Express with a 2nd Class ordinary ticket No.23455930 along with his cousin, younger brother Bhimrao Pandurang Dudhare, and his wife Shilpa Bhimrao Dudhare. There was huge crowd in the said train, therefore, Nagorao fell down from running train. As a result, he sustained injuries over right leg, multiple fracture to his rib etc. and eventually died due to the accidental injuries. The applicants were dependent on the income of deceased Nagorao, therefore they filed application for compensation.

(ii) The respondent strongly opposed the said application and contended that Nagorao was crossing the railway track to attend the nature's call unauthorizedly. The respondent further contended that no such untoward incident occurred as per the provision of Section 123(c) read with Section 124-A of the Railways Act. The application filed by the applicants is not maintainable, as the deceased Nagorao was not a *bonafide* passenger of any train.

Therefore, the applicants are not entitled for compensation and lastly prayed to dismiss the claim of the applicants.

(iii) The learned Railway Tribunal framed following issues :

- (1) *Whether the Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railway Act?*
- (2) *Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?*
- (3) *Whether the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application within the meaning of Section 124-A r/w 123 (c) of Railway Act?*

4. The learned Railway Tribunal held that deceased was not a *bona fide* passenger and it was not an untoward incident. The deceased Nagorao was not travelling by any train, at the time of incident, but while crossing the Railway track to attend nature's call, he dashed with the train. He was run over by empty Rake of Bikaner Express at the spot of incident. It was further held that applicant No.2 is not dependent on deceased Nagorao. The claim of the applicant/appellant was rejected.

5. Heard learned Advocates for both sides. Perused the impugned judgment as well as record and proceedings.

6. The following points emerged for consideration, which are answered with reasons and findings are as follows :

- (i) *Was it proved by the appellants that in an untoward incident, Nagorao was died?*
- (ii) *Was it proved by the appellants that Nagorao was a bona fide passenger with having valid journey ticket?*
- (iii) *Is the impugned judgment illegal and require interference?*

7. The learned Advocate for the appellants pointed out the grounds of objections of this appeal, along with evidence on record. He submitted that it is an admitted fact that the incident occurred within the railway premises therefore, an Inquest Exhibit A-3 was drawn up. Spot panchnama Exhibit A-4 was also drawn up. Report of Police Station Nanded is at Exhibit-A-2. Railway ticket at Exhibit A-1 was also found with the deceased Nagorao. The said incident was an accidental death of Nagorao. The learned Advocate further pointed out that Affidavit of claimants – son of the deceased Nagorao, Exhibit AW-1 at page A-92 and her cross-examination at page A-97. He further pointed out the Postmortem Report of deceased Nagorao Exhibit A-6,

8. The learned Advocate for the appellants submitted that railway ticket was found with the deceased Nagorao and that establishes that deceased was a *bona fide* passenger. The untoward

incident is proved by aforementioned documents. The observations and findings of the learned Tribunal regarding cause of death are neither legal nor correct, as it was an untoward incident that occurred within the railway premises. It is lastly prayed to allow the appeal by setting aside the impugned judgment of the learned Tribunal.

9. The learned Advocate, Ms. Neerja Chaubey for respondent, submitted that there is no evidence of eye-witness to prove the alleged incident that occurred within the railway premises. It was not an untoward incident, which is requisite, as per Section 123(c) read with Section 124-A of the Railways Act. The son of the deceased appellant No.1 was not accompanying with the deceased at the time of incident. No co-passenger or loco-pilot was examined to prove the untoward incident. The learned Advocate pointed out the evidence of Shri Deepak Kumar (RW-1), the Guard of Nandigram Express, who deposed that on 07.09.2016, he was working as a Guard of Nandigram Express Train No.11402 from Adilabad to Purna. On that day, no any untoward incident such as a passengers accidentally fall from train, was noticed or reported to him, either by Loco-pilot or Station Master or by any other person. There was no alarm chain pulling, jerk or rush in the train. The learned Advocate for the respondent also referred to the evidence Shri Aashish Kumar

Jha (RW-2) Station Master, Bhokar Railway Station, who deposed that on 07.09.2016 he was working as Station Master at Bhokar Railway Station and his duty hours were 08.00 hrs. to 20.30 hrs. On that day, at about 17.10 hrs., an unknown person came to his office and informed him that, one unknown person aged about 55 years was runover by Empty Rack of Bikaner Express at KM No.20/4. The person had died on the spot. He further deposed that, after receiving this information, he issued a written memo to Local Police, Bhokar. There was no such untoward incident as alleged and it was noticed or reported to him by Guard or Loco-pilot of any train or by any other person. The learned Advocate for the respondent submitted that mere findings of journey ticket with Nagorao, is not sufficient to hold that it was an untoward incident. The impugned judgment is legal and correct and no interference warranted in it. It is lastly prayed to dismiss the appeal.

10. To prove the claim, the applicants filed an affidavit of the examination-in-chief of applicant No.1-Baburao Nagorao Dudhare as AW-1. He was neither an eye witness to the accident nor he was accompanying with the deceased, but he admitted that spot of the incident was very near from his residence. Nitin Baburao Dudhare also examined as AW-2, who deposed that he neither personally

witnesses the incident nor seen deceased while purchasing the journey ticket. The statement of Nitin Dudhare was recorded by the Police authority on 26.10.2016, in which he stated that on 7.9.2016, his grandfather, uncle and his wife came to Bhokar from Hadoli, his uncle purchased the journey tickets of Nandigram Express. Thereafter, all three of them boarded the said train, and train started for Nanded. At around 4.30 pm. he received a phone call from his uncle who informed him that, his grandfather is not traceable and told him to go to Bhokar Station and find out. Accordingly, he went to the Bhokar Railway Station and enquired about his grandfather, the people informed him that a person is lying near the overbridge. The said person was his grandfather and he subsequently informed the Dy. S. S. Bhokar. Thus, the fact about the journey ticket stated by AW-2 in his affidavit is contradicting his statement, that he gave to the police. The AW-2, in his affidavit stated that deceased purchased the journey ticket himself, whereas, in his statement, he stated that the journey ticket was purchased by his uncle. Hence, testimony of AW-2 does not inspire confidence and creates doubt as to whether really journey ticket of Nagorao was drawn or not certainty.

11. So far as the occurrence of an untoward incident is concerned, the Memo Exhibit R-5, clearly states that it has been informed by Shri Nitin at 17.10 hrs., that a person named Nagorao

was run over by Bikaner Empty Rake between Bhokar and Bimbari Railway Station at KM No.20/4 and he also informed that the deceased was going to attend nature's call. The respondent led the evidence of RW-1, who is working as a Guard of Nandigram Express Train No.111402, he deposed that his train arrived at Bhokar Railway Station at 16.06 hrs. and departed at 16.07 hrs. No any untoward incident of accidental fell down of any passenger was noticed or reported to him by a Loco Pilot, Station Master or any other person and there was no alarm of chain pulling or any jerk or rush in the train. The respondent also examined RW-2 Ashish Kumar Jha, who was working as a Station Master at Bhokar Railway Station. He deposed that an unknown person came to his office and informed that an unknown person aged about 55 years had been run over by Empty Rake of Bikaner Express at KM No.20/4 and died on the spot. Upon receiving the said information, he informed to Control Room through phone and also issued a written memo and made an entry in his Station Master Diary. He further deposed that no untoward incident of accidental fell down of any passenger was noticed or reported to him by a Guard, Loco Pilot or any other person. Both the respondent's witnesses RW-1 and RW-2 are natural witnesses and they have no any reason to give false evidence, as they have no any enmity with the applicants.

12. There is also no any explanation from the relatives, who were allegedly travelling with the deceased in the said train, as to why they did not pull the chain and immediately they would have informed the Railway or Police authorities about the accident. As per the DRM report, deceased was run over by empty rake of Bikaner Express while trespassing at KM No.20/4-5. The incident occurred due to the carelessness and negligent act of the deceased Nagorao. The contradictory evidence regarding the purchase of journey ticket has already been discussed above. It also appears that the place of the incident was very close to his residence, which is admitted by AW-1, therefore, it creates reasonable doubts. Consequently, the deceased Nagorao was not a *bona fide* passenger and no any untoward incident occurred in the premises of the Railway. Therefore, the argument advanced by the learned Advocate for the applicants is not acceptable in this regard.

13. In the result, the point 1 to 3 answered in the “Negative”. The appeal being devoid of merit and deserves to be dismissed. The appeal is **dismissed**. No costs.

(SANJAY A. DESHMUKH, J.)