



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

FIRST APPEAL NO. 432 OF 2023

Lata Wd/o Tulsiram Kalbande,
Aged about 50 years, Occu.-Labour,
R/o. Kata, Tq. and Dist. Washim.

.... **APPELLANT**

// VERSUS //

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

.... **RESPONDENT**

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

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 25.06.2024.

DATE OF PRONOUNCING THE JUDGMENT : 20.08.2024.

JUDGMENT.

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

2. This appeal is preferred against the Judgment dated 20.12.2017 passed by the learned Railway Claims Tribunal, Nagpur

Bench, Nagpur in Case No. OA (IIu)/NGP/2015/0124, thereby claim of the applicant/appellant for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) On 16.11.2014, Tulsiram Gangaram Kalbande was travelling from Hingoli to Akola by unknown train by purchasing IInd class ticket No. E40248569 of Rs.60/-. He was standing near the door of bogie and when train reached near the Barshi Takli railway station, due to the strong jerk and over crowded, Tulsiram fell down and sustained grievous injuries. Due to injuries, he died on the spot.

(ii) The inquest was drawn up by taking cognizance of that accident by the Railway Police. All the formalities were completed and postmortem was carried out. The applicant claimed that she is wife of deceased Tulsiram and was dependent upon him. She claimed Rs.4,00,000/- with 12% interest from date of filing of claim application as deceased Tulsiram was died in an untoward incident.

(iii) The respondent – railway has denied the claim by contending that it was not untoward incident within the meaning of Section 123(C) read with Section 124-A of the Railways Act. Therefore, the application is not maintainable. Deceased Tulsiram

was not *bona fide* passenger and having valid ticket of the journey by train. The applicant was not dependent upon the deceased Tulsiram. It is lastly prayed to dismiss the application.

(iv) The learned Tribunal cast the following issues :

- (1) *Whether the Applicant is the dependents of the deceased within the meaning of Section 123 (b) of the Railway Act?*
- (2) *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 124-1 r/w 123(C) of Railways Act?*
- (3) *Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?*

4. The learned Railway Tribunal held that no such untoward incident took place, deceased Tulsiram was not a *bona fide* passenger as ticket of journey was not found with him. The applicant was not dependent upon him. The application is thus, dismissed.

5. The learned Advocate for the applicant/claimant submitted that ticket was found with the Tulsiram on the spot. The

evidences of witnesses were not properly appreciated. The untoward incident is proved by the spot panchnama and correspondence between the railway administration itself. The dependency of the applicant is not challenged. The reasons and findings of the learned Railway Tribunal are not legal and correct and it is lastly prayed to allow the appeal.

6. Learned Advocate Ms. Neerja Chaubey for the respondent strongly objected the appeal and submitted that the incident is not untoward incident. Tulsiram was not bonafide passenger and ticket was not found with him. The reasons and findings of the learned Railway Tribunal are legal and correct and there is no scope for interference in it.

7. Perused the record and proceedings. The following points emerges for consideration :

- (i) Was it proved by the applicant that in an untoward incident, Tulsiram died?
- (ii) Was it proved by the applicant that Tulsiram was *bona fide* passenger with having valid journey ticket of train?

(iii) Was it proved by the applicant that she was dependents upon the Tulsiram?

(iv) Is the impugned judgment illegal, incorrect and require interference?

8. The documentary evidence particularly spot panchnama and postmortem report shows that incident took place in the premises of railway at Pole No.3 K.M. No.769. The information of incident was given by Shri Ananta Bhagwan Gadge, Police Patil. The evidence of applicant Lata (A.W.-1) shows that she was not travelling with the deceased Tulsiram and therefore, she had no knowledge about the alleged incident. Her evidence, if considered, along with spot panchnama – Exhibit A3 and postmortem report – Exhibit A5, it shows that deceased Tulsiram died in the untoward incident which took place in the railway premises. He was having valid ticket which was found in his pocket. This fact was not properly appreciated by the learned Tribunal. The essential ingredients of Section 123 (C) and 124-1 of the Railways Act is to prove the death in the incident. It is proved in the evidence adduced by the applicant as discussed above. Further, the ticket of the deceased Tulsiram was found in his pocket, said evidence

cannot be easily jettisoned. It is also proved that the applicant is dependent upon the deceased Tulsiram.

9. On reappreciation of entire evidence, the untoward incident is proved. It is also proved that deceased Tulsiram was *bonafide* passenger. However, the evidence adduced on record is not properly appreciated by the learned Tribunal. Thus, reasons and findings of the learned Tribunal are not legal and corrected. Therefore interference is warranted in the impugned judgment. The *bonafide* passenger, untoward incident and dependency of applicant is proved hence, point Nos.1 to 4 are answered in the 'affirmative'. The appeal deserves to be allowed. The impugned judgment deserved to be set aside. For the reasons discussed above, the argument of learned Advocate for the respondent is not acceptable. Hence, the following order :

- (i) The Appeal is **allowed**.
- (ii) The Judgment and order dated dated 20.12.2017 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/2015/0124, is quashed and set aside.
- (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) to the appellant.

The compensation amount be deposited within six months before the Railway Tribunal.

- (iv) The appellant to submit her bank details for getting that compensation amount.
 - (v) The respondent is directed to pay that amount through electronic mode like NEFT, RTGS etc.
 - (vi) The Record and proceedings be sent back to the Railway Tribunal.
10. The Appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)