



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

FIRST APPEAL NO. 1363 OF 2018

APPELLANT : The Union of India,
(Original respondent on RA) General Manager Western Railway,
Churchgate, Mumbai

//VERSUS//

RESPONDENT : 1. Sushma w/o Ramkrushna Choudhari,
(Original applicant on RA) Aged 45 years, Occ.- Nil
2. Deepika D/o Ramkrushna Choudhari,
Aged 21 years, Occ. Student
3. Nilima D/o Ramkrushna Choudhari,
Aged 18 years, Occ. Student
4. Bhagwan s/o Narayan Choudhari,
Aged 70 years, Occ. Nil,
5. Manubai w/o Bhagwan Choudhari
Aged 65 years, Occu. Nil
All R/o Amalgaon, Tq. Amalner, Dist.
Jalgaon, Maharashtra, 425401

Mrs. Neeraja Chaubey, Advocate for appellant.

CORAM : G. A. SANAP, J.
DATED : 29th JANUARY, 2024

ORAL JUDGMENT

1. 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 08.03.2017 in the main claim application and order dated 14.03.2018 in review application passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur whereby the claim filed by the respondents/claimants for compensation under Section 16 of the Act of 1987 was allowed.

2. Background facts:-

Respondent No.1 is the wife of the deceased. Respondent Nos.2 and 3 are children of the deceased. Respondent Nos.4 and 5 are the parents of the deceased. It is stated that on 13.11.2013 the deceased was travelling from Jalgaon to Bardoli by Bhusawal-Surat Passenger Train No.59078 after purchasing a valid journey ticket. The deceased, according to the respondents, fell from a moving train between KM No.209/16 - 210/01 near Shindkheda Railway Station yard. He died due to injuries sustained in the accident. According to the claimants, the death was in an untoward incident. Therefore, they claimed the compensation.

3. The appellant-railway filed the written statement and opposed the claim. It is contended that death was not in an untoward incident. The deceased was run over by a train while crossing the railway line. The learned Member of the Tribunal, on consideration of the evidence accepted the claim and directed the railway to pay the compensation. The appellant-railway, being aggrieved by the judgment and order has come before this Court in appeal.

4. I have heard Mrs. Neeraja Chaubey, learned Advocate for the appellant. Respondent Nos.1 to 5 though served have failed to appear before this Court. Perused the record and proceedings.

5. In view of the facts and circumstances following points fall for my determination.

i) Whether the deceased was travelling in Bhusawal-Surat Passenger Train No.59078 as a *bona fide* passenger with a valid journey ticket?

ii) Whether the deceased died in an untoward incident as understood by Section 123 clause (c)(2) of the Railways Act, 1989?

6. Learned Advocate for the appellant submitted that a ticket was found on the person of the deceased at the time of panchanama. Learned Advocate submitted that merely because of this, it could not be presumed that the death was due to fall from a moving train and as such, in an untoward incident. Learned Advocate submitted that the dead body was cut into two parts. It is submitted that it is suggestive of the fact that the deceased was run over by some train while crossing the railway line. Learned Advocate submitted that the Member of the Tribunal has not properly appreciated the evidence and has come to a wrong conclusion.

7. In order to appreciate the submissions advanced by learned Advocate for the appellant, I have gone through the record and proceedings. The deceased was travelling from Bhusawal to Bardoli by Bhusawal-Surat Passenger Train No.59078. The dead body was found in the yard between two railway tracks. The body was cut into two parts. Similarly, there were other injuries on the parts of the body of deceased. It is undisputed that after this incident, Station Master made a report to the police. At the time of panchanama, the police recovered a journey ticket for Rs.50/- purchased on 13.11.2013 for journey from Jalgaon to Bardoli. The

time of purchase of the ticket is mentioned on the ticket. The time and place of the accident and other connected evidence clearly indicate that the deceased was travelling with a valid journey ticket by Bhusawal-Surat Passenger train.

8. The next important issue is whether the death was in an untoward incident, as stated by the claimants/respondents. The perusal of the materials placed on record and the order passed by the learned Member of the Tribunal would show that on this count, there is no reason to interfere with the finding of fact arrived at by the Member of the Tribunal. The loco pilot of the Bhusawal-Surat Passenger train reported that no passenger was run over by his train at the spot of the incident. Undisputedly, the train departed from Shindkheda Railway Station at 3.16 p.m. and immediately, thereafter, there was chain pulling. After chain pulling, the train left the said spot on 3.23 p.m. It has come on record, in the report of the Ranjan Kumar Mallick (RW-1), that immediately after the departure of the train he was informed that one passenger was run over by the said train. Learned Member of the Tribunal has disbelieved the case of the railway on this point. Undisputedly, the deceased was travelling by Bhusawal-Surat Passenger train. In view of this, the deceased could not have been

run over by Bhusawal-Surat Passenger train. It is also not the case of the railway that he was run over by another train. There is no report by the loco pilot of the next train about run over of any passenger by his train on the said spot. Learned Advocate for the appellant-railway, on the basis of the injuries sustained by the deceased submitted that in case of fall from the train, the body could not have been cut in two parts. In my view, on the basis of these injuries, a conclusion of run over of deceased by the said train cannot be drawn. The possibility of the deceased getting entangled, at the time of fall, in any part of the train and thereby coming under the wheels and getting crushed could not be ruled out. There was no eye witness to the incident. In this case, therefore, the possibility of deceased being run over by this train has been completely ruled out. Learned Member of the Tribunal has made threadbare analysis of the evidence on record and has accepted the claim.

9. In this case, in the teeth of the material placed on record, the defence of negligence or contributory negligence would not be available to the railway. The deceased, as can be seen from the material placed on record, was travelling by this train. The only possibility that has been established on the basis of the evidence is

that while travelling in the said train, he would have lost his balance and fallen from the moving train and died. In this case, the first part of Section 124-A of the Railways Act, 1989 (for short “the Act of 1989”) would get attracted. In the teeth of the undisputed facts and evidence, it is not possible to conclude that the case would fall under any of the clauses of proviso to Section 124-A of the Act of 1989. I do not see any reason to interfere with the finding of fact recorded by the learned Member of the Tribunal. It is seen that in the review application, the order was passed on 14.03.2018 and the appellant-railway was directed to pay compensation of Rs.8,00,000/- (Rupees Eight Lacs Only). It is to be noted that in view of the law laid down by the Hon’ble Apex Court in the case of *Union of India vs. Radha Yadav* reported at *[(2019) 3 SCC 410]* learned Member was justified in awarding the compensation of Rs.8,00,000/- (Rupees Eight Lacs Only). I do not see any reason to interfere with this order.

10. As such, I record my findings on both the points in affirmative. The appeal deserves to be dismissed.

11. Accordingly, the appeal stands dismissed.

12. The appellant shall pay/deposit amount of compensation of Rs.8,00,000/- (Rupees Eight Lacs Only) if it is not already paid/deposited.

13. The First Appeal stands disposed of. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)