



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

FIRST APPEAL NO.111/2023

1. Latabai W/o Rangrao Mahale,
age about 48 Yrs., Occ. Nil.
 2. Rangrao S/o Sukhdev Mahale,
aged about 52 Yrs., Occ. Farming,
R/o At Post Anturli, Tah. Bhadgaon,
Dist. Jalgaon. ... Appellants
- Versus -
- Union of India,
through The General Manager,
Central Railway CST, Mumbai. ... Respondent

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

CORAM :- MRS. VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT :- 3.11.2023
DATE OF PRONOUNCING THE JUDGMENT :- 5.1.2024

JUDGMENT

Heard the learned Counsel for the parties.

2. **Admit.**
3. Being aggrieved by the judgment passed by the
Railway Claims Tribunal, Nagpur in O.A.(Ilu)
No.NGP2012/0369, dated 13.6.2016 dismissing the death claim

of the deceased Dinesh in railway accident, the claimants have filed the present appeal.

4. Deceased Dinesh was travelling on 30.4.2012 from Bhusawal to Nashik by Bhusawal Mumbai Passenger Train. He was having valid ticket from Bhusawal to Nashik. Due to heavy rush in the train the deceased was standing near the door of the general bogie. When the train reached at Nagardewala Railway Station the deceased accidentally fell down from running train at KM No.535/32 to 354/0 and came under wheels of train and died on the spot.

5. The appellants are the dependents and claimants in claim petition. The deceased was a married person. Before a year his marriage was performed. His wife had given undertaking that she will not claim anything as she is going to perform marriage. The undertaking is filed on record and, therefore, the wife of the deceased is not claimant in the claim petition.

6. The respondent Railway has resisted the claim stating that deceased was not a *bona fide* passenger of the train and he

died because of dash or the train ran over while he was crossing the track.

7. The Railway Claims Tribunal has rejected the claim on the ground that though the railway ticket was found at the time of inquest panchanama which was crushed it could not be verified whether ticket was from Bhusawal to Nashik, therefore, the Tribunal has held that deceased was not a *bona fide* passenger and considering the postmortem report and the injuries sustained by the deceased it is not the case of falling down from the train because such type of injuries will cause only if the train ran over and, therefore, it was not an “untoward incident”. There is no eye witness to the accident and nothing is brought on record by the claimants to prove the accident. Hence the Tribunal rejected the claim petition filed by the claimants.

8. Heard the learned counsel for the parties. Perused the record.

9. Following points fall for my determination:-

(i) *Whether the deceased died due to fall from running train and as such death was in an “untoward incident”?*

(ii) Whether the deceased was a bona fide passenger of the relevant train with a valid journey ticket?

10. This is a case of railway accident. The body was found near Nagardewala Railway Station at KM No.535/32 to 354/0. The deceased was travelling from Bhusawal to Nashik by Bhusawal Mumbai Passenger and fell down due to heavy rush in said train. He was travelling in general bogie. The information was received by the Stationmaster that body is lying on the track. Thereafter inquest panchanama and spot panchanama were prepared. The body was crushed. The head and face were crushed and both the legs were amputated in said accident. The mobile which was found at the time of panchanama was in broken condition. The ticket was found in crushed condition.

11. Considering the position of the body and even the head face and the parts of the body were crushed there is no question of getting any intact ticket to verify whether deceased was travelling by said train. In such peculiar circumstances, it is important that the ticket was found at the time of inquest

panchanama. It is necessary to come to the conclusion that the deceased was travelling and he was a *bona fide* passenger. Due to accident the ticket was crushed and it was not verified from which station the deceased was travelling and what was his destination. In this case, in my view, the claimants have discharged the initial burden cast on them. It is sufficient to accept that the deceased was a *bona fide* passenger travelling with a valid journey ticket which was found with the body. In my view, therefore, in this case, learned Member of Tribunal was not right in rejecting the claim of appellants that the deceased was not a *bona fide* passenger.

12. The next important question is whether the death was in an “untoward incident” as understood by Section 123(c)(2) of the Railway Act.

13. The evidence of Rangrao (A.W.1) shows that he was going to Nashik from Bhusawal. The body was immediately identified. The ticket was found which was crushed. The injuries on the person are caused by the accident is not disputed by the respondent. The Tribunal by presuming that said injuries

are possible by running over the train come to the conclusion that it was not an “untoward incident” and deceased was hit by some running train while crossing the railway track. No such evidence is brought on record by the respondent that he was crossing the railway track and run over by running train. After going through the documents on record it appears that each and every document shows that the deceased died while travelling by said train. When said train passed from Nagardewala Railway Station the accident took place. Nothing is brought on record to deny that deceased was travelling by said train. All the railway documents filed on record show that he fell down from running train. Only on assumptions and presumptions the Tribunal has come to the conclusion that the deceased was not travelling in any train and due to dash of the unknown train he died on track and, therefore, the Railway is not liable to pay the compensation. The actual condition of dead body and the situation prevailing on the spot have been reflected in the spot panchanama. In the facts and circumstances, therefore, the case of appellant that the deceased

fell from running train and died due to injuries sustained cannot be discarded and disbelieved.

14. The Observations of the Hon'ble Supreme Court in the case of Union of India V/s. Rina Devi reported in **AIR 2018**

SC 2362 in paragraph Nos.14 and 15 are reproduced as under:-

14. It is the case of the respondent/Railway that the deceased might have acted in negligent manner and solely responsible for his fall from running train. In my view, this defence cannot be sustained. It is to be noted that the accident claim is based on 'strict liability' or 'no fault theory'. In a case based on 'no fault theory,' the defence of contributory negligence is not available. The Hon'ble Supreme Court in the case of Rina Devi (supra) has held 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 contributory factor.

15. The claimants can be denied the compensation, if the respondent/Railway is able to establish any of the clauses of the proviso to Section 124A of the Act of 1989. If the case falls in first part of Section 124A of the Act of 1989, then the Railway is liable to pay the compensation. In this case, it is noticed that the learned Member of the Tribunal has not properly appreciated the facts and evidence. He has come to a wrong conclusion. As such, I record my findings on the above points in the affirmative."

15. In inquest panchanama itself the ticket is found in the pocket which was crushed due to accident, shows that the deceased was a *bona fide* passenger and travelling in said train. Therefore, the claimants are entitled for the death claim of the deceased who died in railway accident.

16. Learned advocate for the appellants submits that in view of the law laid down in the case of Union of India Vs. Radha Yadav [(2019) 3 SCC 410], the appellants would be entitled to get the compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest. Learned advocate has relied upon a Notification issued by the Ministry of Railways (Railway Board) dated 22nd December, 2016, wherein it is stated that in case of death claim the claimants are entitled to get the compensation of Rs.8,00,000/-. In view of the decision in the case of Radha Yadav (supra), appellants are entitled to get the compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest.

17. In view of the facts and circumstances and in view of the submissions advanced by the learned advocate for the appellants, the respondent/Railway shall pay the compensation of

Rs.8,00,000/- (rupees eight lakhs only) to the appellant No.1 within four months. The compensation be directly deposited in the bank account of Appellant Nos.1 and 2 and they shall provide particulars of the bank account to the respondent/Railway. If the amount is not deposited within four months, then the respondent/Railway shall pay interest @ 7% per annum from the date of this order till realization.

18. The appeal is allowed and disposed of accordingly. No order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)