



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

**FIRST APPEAL NO.30 OF 2022**

**APPELLANTS**

(Original applicant on RA)

- : 1. Harshwardhan s/o Narayan  
Khandare  
Age 60 Years, Occ- Labour
2. Rutika d/o Harshwardhan  
Khandare, Age 26 yrs. Occu.  
Education
3. Swapnil s/o Harshwardhan  
Khandare  
Age 29 Yrs, Occ- Education  
R/o Behind Noel School, Shilpkar  
Colony, Kapil Vastu Nagar, Akola  
TQ and Dist. Akola

**//VERSUS//**

**RESPONDENT**

( Ori/N.A. on R.A.)

- : 1. The Union of India  
through General Manager  
Central Railway  
CST, Mumbai

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Mr. C.N. Wankhade, Advocate for appellants.

Ms N.G. Ghoubey, Advocate for respondent-railway.

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**CORAM :**

**G. A. SANAP, J.**

**DATED :**

**9<sup>th</sup> JANUARY, 2024**

**ORAL JUDGEMENT**

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 January 18, 2021, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants seeking compensation was dismissed.

2. Background facts:

Appellant No. is the husband of a deceased. Appellant Nos. 2 and 3 are the children of the deceased. The deceased was doing service at Civil Hospital, Murtizapur. She was staying at Akola with her family. She was commuting from Akola to Murtizapur. The appellants claimed that on August 11, 2018, at about 21.00 hrs., the deceased boarded a train at Akola Railway Station for going to Murtizapur. She was having monthly Season Ticket Pass. She was employed as a Nurse. It is stated that due to sudden jerk, she fell from the train near K.M. No. 622-2-4. She sustained injuries and died due to the injuries. Monthly Season Ticket was lost in the

incident. According to the appellants, the deceased died in an untoward incident.

3. Respondent-railway filed the written statement and opposed the claim application. The railway denied that deceased was holding monthly journey ticket. She was not a *bona fide* passenger. It is contended that deceased was run over by unknown train while crossing the railway track. The death was not in an untoward incident. The deceased was negligent and solely responsible for the accident.

4. Parties adduced the evidence before the Tribunal. Learned Member of the Tribunal on consideration of the evidence found that there was no substance in the claim and as such dismissed the claim. Being aggrieved by this judgment and order the appellants have come before this Court in appeal.

5. I have heard Mr. C.N. Wankhade, learned Advocate for the appellants and Ms N.G. Choubey, learned Advocate for the respondent-railway. Perused the record and proceedings.

6. In view of the facts and circumstances, the following points fall under my determination:

- i. Whether the deceased was a *bona fide* passenger of the train on the relevant day with a valid journey ticket?
- ii. Whether the death of the deceased was a result of an untoward incident within the meaning of Section 124-A r/w Section 123(c)(2) of Railways Act, 1989?

7. Learned Advocate for the appellants submitted that in the affidavit of evidence, appellant No. 1 has categorically stated that the deceased was having monthly Season Ticket for to and fro journey from Akola to Murtizapur. Learned Advocate submitted that Season Ticket Identity Card issued to the deceased is part of the record and marked as Exh. A-37. Learned Advocate pointed out that there is hardly any dispute about the fact that the deceased was serving as a nurse and posted at Civil Hospital, Murtizapur. Learned Advocate submitted that the incident occurred at about 7.30 p.m. and the dead body was noticed thereafter. It is further pointed out that inquest panchanama was drawn in the night and after inquest

panchanama the dead body was carried to the hospital. It is pointed out that spot panchanama was drawn at 12.00 clock on the next day. Learned Advocate submitted that in the night, the police might not have inspected the spot carefully and therefore, a season journey ticket could not have been noticed on the spot. Learned Advocate pointed out that other articles including the bag were found by the police. Learned Advocate submitted that possibility of deceased over traveling in the train due to mistake at some distance from Murtizapur Railway Station cannot be ruled out. Learned Advocate submitted that even if it is accepted that the dead body was found at a distance of 2 km. from Murtizapur Railway Station, it cannot be presumed that the deceased intended to do the journey to any other destination without journey ticket. Learned Advocate submitted that the deceased, might have forgotten to get down at Murtizapur Railway Station and therefore, after realizing that the train had departed from Murtizapur Railway Station, she would have come near to the gate in disturbed state of mind and therefore, possibility of falling from the running train cannot be ruled out. Learned Advocate further submitted that possibility of run over of deceased at the spot of incident has been completely ruled out on the basis of

available evidence on record. Learned Advocate submitted that the learned Member of the Tribunal has failed to appreciate the evidence available on record and as such has come to a wrong conclusion.

8. Learned Advocate for the respondent-railway submitted that the other articles of the deceased including her purse were recovered at the time of the inquest Panchanama. Learned Advocate submitted that journey pass was not recovered and therefore, the Tribunal was right in holding that the deceased was not a *bona fide* passenger. Learned Advocate submitted that possibility of run over of deceased by train while passing the railway line at the railway crossing near Government Hospital cannot be ruled out. Learned Advocate submitted that the deceased had no reason to travel beyond Murtizapur when she had to alight at Murtizapur Railway Station to attend her duty. Learned Advocate pointed out that railway crossing where dead body was found is close to the hospital and therefore, the possibility of the deceased crossing the said track and sustaining the dash cannot be ruled out. Learned Advocate

submitted that the evidence adduced by the appellants is not sufficient to accept the claim of the appellants.

9. I have minutely perused the record and proceedings. Undisputed facts need to be stated at the outset. The deceased was serving as a nurse and was posted at the Government Hospital Murtizapur. She was residing at Akola with the appellants, and for attending her job, she was commuting from Akola to Murtizapur. The railway identity pass is produced on record at Exh. A-37. It was issued on October 19, 2016, to the deceased. This identity card was used by the deceased for obtaining the monthly pass. This document indicates that the deceased was residing at Akola. The dead body was found by the side of the track by loco pilot of one train. The spot of incident is at a distance of 2 km away from Mrutizapur Railway Station. The deceased was not supposed to travel beyond Murtizapur inasmuch as she had to attend the duty in the Government Hospital. There was no ACP or report by the loco pilot of any train with regard to the running over of any person at the spot of the incident. The injuries sustained by the deceased,

undisputed, show that it was not a case of run over. The deceased died due to injuries sustained by her.

10. Appellant No. 1-the husband of the deceased-has stated that on August 11, 2018, the deceased went to Akola Railway Station with a monthly season ticket pass to attend her duty at Murtizapur. He has stated that the deceased had boarded the general bogie of the express train. It has come on record in the evidence of Vikas Chauhan, Dy. Station Superintendent (RW-1) that he received information about the incident at about 19.00, and at 19.03 hrs. He informed the RPF and GRP about the said incident. He has further stated that the loco pilot of train No. 11403, Shri Dange, saw the dead body by the side of the track and informed him about the same. As far as, time is concerned, it would suggest that dead body was noticed prior to 19 hrs. by loco pilot. The deceased according to the appellants boarded the train at Akola Railway Station at 6.00 PM. There is no report either by the guard or by the loco pilot of any train, about run over of any passenger at the spot of the incident between 6.00 p.m. to 8.00 p.m. Therefore, the defence of respondent that it was a case of run over while crossing railway line



cannot be accepted. The case of the appellants, that deceased due to jerk fell from a running train, deserves acceptance. Undisputed facts and circumstances brought on record are sufficient to arrive at this conclusion.

11. It is true that dead boy was found at distance of 2 km from Murtizapur on the Nagpur side. This fact at the most would indicate that the deceased had not alighted at Murtizapur Railway Station. The possibility of deceased over traveling, due to mistake cannot be ruled out. The claim of the appellants cannot be rejected on this basis. The deceased had no intention to travel without ticket beyond Murtizapur because she had to attend the duty as a nurse at Government Hospital. In my view, in such situation intention of party needs to be considered. The possibility of the deceased traveling or over-travelling beyond Murtizapur Railway Station due to mistake cannot be ruled out. The possibility of deceased trying to find a solution to get down at the spot of incident for the purpose of attending duty cannot be ruled out. A person placed in a situation of deceased, in such circumstances would obviously get disturb and would spent anxious moments. A person in such a situation would

make an attempt to find solution to the situation. In such a situation, the possibility of a passenger coming near to the door of the compartment cannot be ruled out. In the process, if the passenger falls from train, it could not be equated with the self-inflicted injury. The facts and circumstances, if considered together, would show that the death was due to a fall from a running train. The affidavit of Harshwardhan Khandare (AW-1) is sufficient to discharge the initial burden cast on the appellants to prove that the deceased was a *bona fide* passenger travelling with a ticket. The possibility of loss of ticket cannot be ruled out. The Panchanama was drawn 15 to 16 hours after the incident. The spot of the incident was not guarded or protected by the police. The spot was not carefully examined by the police at the time of the inquest, Panchanama. It, therefore, appears that the lost ticket on the spot might have been unnoticed at that time. The identity ticket pass indicates that it was obtained for the purpose of getting the monthly journey pass by the deceased.

12. In the facts and circumstances, I conclude that the evidence on record is sufficient to prove the case of the appellants. The deceased was a *bona fide* passenger. The death was in an

untoward incident. As such, I record my findings on both points in the affirmative. In view of this, the order passed by learned Member of Tribunal needs to be set aside.

13. Learned Advocates pointed out that in view of the notification issued by the Ministry of Railways (Railway Board) dated December 22, 2016, in case of a death claim the respondent shall be liable to pay compensation of Rs. 8,00,000/- (Rs. Eight Lacs Only). Learned Advocates further submit that appellants are entitled to get compensation of Rs. 8,00,000/- but without interest. In view of the decision of the Hon'ble Apex Court in the case of *Union of India vs. Radha Yadav* reported in *(2019) 3 SCC 410*.

14. Accordingly, the appeal is allowed.

15. The judgment and order dated January 18, 2021, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, is quashed and set aside.

16. The appellants are found entitled to get compensation of Rs. 8,00,000/- (Rs. Eight Lakhs Only) without interest.

i) The appellant No. 1, Harshwardhan, s/o Narayan Khandare, shall be entitled to get 80% of the amount of compensation.

ii) Appellant Nos. 2 and 3: Rutika d/o Harshwardhan Khandare and Swapnil s/o Harshwardhan Khandare shall be entitled get compensation of 10% each.

iii) The amount of compensation shall be deposited in the bank accounts of the appellants.

iv) The respondent-Railway is directed to deposit the amount of compensation within four months from the date of receipt of this order.

v) The appellants shall provide bank account details to the respondent-Railway.

vi) If the compensation is not deposited within four months, it shall carry interest of 6% from the date of receipt of this order until the realization of the amount.

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

(G. A. SANAP, J.)

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