



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

FIRST APPEAL NO. 722 OF 2022

APPELLANTS

(Orig. Claimants)
On R.A.

1. Smt. Vanita wd/o Somaji @ Suraj
Khobragade, Age about 31 years,
Occ. Housewife (wife of deceased)
2. Master Vivek s/o Somaji @ Suraj
Khobragade, Age about 05 years,
Occ. Education.
3. Master Sujal s/o Somaji @ Suraj
Khobragade, Aged 02 years,
Occp. Nil.

(Applicant no.2 & 3 being minor
through their natural guardian
mother).

4. Vijay s/o Bhahgwan Khobragade,
age about 62 years, Occ. Labour
(Father of deceased) **(Since Died)**
5. Smt. Mainabai wd/o Vijay Khobragade
Age about 57 years, Occ. Housewife
(Mother of deceased)

All R/o Shivaji Nagar, Ward No.8,
Rajura, Tah. Rajura, Dist. Chandrapur
(M. S.)

// V E R S U S //

RESPONDENT :

On R. A.
(Orig. Respondent)

Union of India,
Through The General Manager,
Central Railway, CST Mumbai.

Shri R. G. Bagul, Advocate for appellants.
Ms. Neerja Chaubey, Advocate for respondent-sole.

CORAM : G. A. SANAP, J.
DATED : 05/03/2024

ORAL JUDGMENT :

1. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as “the Act of 1987” for short), challenge is to the judgment and order dated 16/12/2015 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants under Section 16 of the Act of 1987 for compensation was dismissed.

2. Background facts :-

The appellant No.1 is the wife of the deceased. The appellant Nos.2 and 3 are the children of the deceased. The appellant No.5 is the mother of the deceased. The appellants claim that on 27/07/2011, the deceased while travelling from Ballarshah to Tirupati by some unknown train accidentally fell from the running train between kilometers 201/30-32 at Sirpur Kagaznagar Railway Station Yard of down line. He sustained injuries to his vital organs and died on the spot. The appellants claim that the deceased was going to Tirupati Balaji for offering prayers. Due to heavy rush in the general compartment of the train, he fell down and died. The ticket was lost in the incident.

3. The respondent - Railway has filed the written statement and opposed the claim. It was contended that the deceased was not a bonafide passenger. The journey ticket was not recovered from the person of the deceased at the time of panchnama. The death was not in an untoward incident. The deceased was negligent while travelling in the train. The possibility of the suicide by the deceased cannot be ruled out.

4. The parties adduced the evidence before the Tribunal. AW-1 is the appellant No.1. RW-1 is Deputy Station Superintendent, Sirpur Kagaznagar Railway Station. The learned Member of the Tribunal, on analysis of the evidence, dismissed the claim. The appellants are, therefore, before this Court in appeal.

5. I have heard learned Advocates for the parties. Perused the record and proceedings.

6. In the facts and circumstances, following points fall for my determination :-

- i] Whether the deceased was a bona fide passenger travelling by the train in question with valid journey ticket ?*
- ii] Whether the deceased died in an untoward incident within the meaning of Section 123 of the Railways Act, 1989 ?*

7. Learned Advocate for the appellants submitted that AW-1 has categorically deposed that the deceased was travelling by unknown train to Tirupati Balaji. Learned Advocate submitted that the spot of incident is 500 kms away from the native place of the deceased. Learned Advocate submitted that the deceased had no reason to go to the said place in the ordinary circumstances. Learned Advocate submitted that the person undertaking journey from Ballarshah to Tirupati Balaji, which is about 950 kms would not dare to travel without ticket. Learned Advocate submitted that if he had travelled without ticket, then during his journey for 500 kms, he would have been caught. Learned Advocate further submitted that the dead body was noticed after passing of Train No.6360 i.e. Patna-Ernakulam Express through Sirpur Kagaznagar Railway Station. Learned Advocate submitted that it is not the case of the Railways that the death was due to run over or dash by unknown train to the deceased. Learned Advocate submitted that the injuries sustained by the deceased could be possible due to fall from slow moving train.

8. Learned Advocate for the respondent - Railway submitted that the ticket was not found at the time of the panchnama. Learned Advocate pointed out that other articles

belonging to the deceased were found. Learned Advocate submitted that the evidence is not sufficient to discharge the initial burden that the deceased was a bonafide passenger. Learned Advocate submitted that both the legs of the deceased were cut in the accident and therefore, the Tribunal was right in concluding that it was a case of run over. Learned Advocate in short supported the Judgment and order.

9. With the able assistance of learned Advocate for the parties, I have gone through the record and proceedings. AW-1 is the wife of the deceased. She has filed affidavit of evidence. She has stated that on 27/07/2011, the deceased had gone to Tirupati Balaji by boarding a train at Ballarshah. She was not a witness to the purchase of ticket by the deceased as well as the boarding of the deceased in any train. Her evidence is sufficient to accept the contention that on the given date, the deceased was travelling from Ballarshah to Tirupati by a train. She has stated that the deceased was travelling after purchasing a journey ticket at Ballarshah Railway Station. The initial burden is on the appellants to prove that the deceased was a bonafide passenger travelling with valid journey ticket. The burden has to be discharged by leading evidence.

10. The nature of the evidence adduced to prove this fact may vary from case to case. The direct evidence as well as circumstantial evidence can be taken into consideration. In this case, the evidence of AW-1 is sufficient to prove that on the given date, the deceased was going to Tirupati Balaji by unknown train. The dead body was found at shifting point of loop line at Sirpur Kagaznagar Railway Station. The dead body was found on the railway premises. The spot of incident is at a distance of 500 kms from Ballarshah. The deceased otherwise had no reason to go to the spot of incident. The evidence on record clearly indicates that the deceased had boarded at Ballarshah to go to Tirupati and on the way, he died in the incident. A person travelling such a long distance by a train would not take risk of journey without ticket. It is a common knowledge that every compartment of the train is scrupulously monitored and checked by the Ticket Checkers. The passengers travelling without ticket are required to pay the fine / penalty. The possibility of the deceased taking risk to travel without ticket a distance of 950 kms is not acceptable. If he had travelled such a long distance without ticket, then he would have been caught by the Ticket Checker. It is not the case of Railway that on the said railway line, there was no routine checking of the

unauthorized passengers. In my view, this fact is in favour of the appellants.

11. There is one more circumstance which is in favour of the appellants. The panchnama is part of record. The valuable articles were found from the trouser pocket of the deceased. The panchnama is silent about the examination of the shirt pocket. The panchnama is silent about the inspection of the spot. The incident occurred at about 20:30 hours of 27/07/2011. The spot panchnama was drawn on 28/07/2011 at about 10 a.m. The perusal of the panchanam would show that there is no specific mention of careful examination of the spot of incident. The possibility of loss of a ticket in the incident on the spot cannot be ruled out. In order to negative the case of loss of a ticket, there must be a specific mention in the panchnama about the careful inspection of the spot of incident. It is further seen that the trouser pockets of the deceased were examined. The shirt pocket was not examined. The record is silent about the disposal of the clothes on the person of the deceased. It is not stated anywhere that the clothes were handed over to any member of the family of the deceased. In my view, all these facts are in support of the contention of the appellants that journey ticket was lost. In this

context, it would be appropriate to make reference to the decision in the case of *Union of India .vs. Rina Devi, reported at AIR 2018 SC 2362*. Paragraph No.17.4 is relevant for deciding the issue in this case. It is extracted below:-

“17.4. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

12. The Hon'ble Apex Court has held that initial burden is on the claimants to prove that the deceased or injured was a bonafide passenger. The burden can be discharged by filing the affidavit of the relevant facts. It is held that mere absence of a ticket with such injured or deceased will not negative the claim that he was a bonafide passenger. It is held that the issue can be decided from the facts shown or attending circumstances. This will have to be dealt with from case to case, on the basis of the facts. In my view, the evidence of the appellant No.1 coupled with the

undisputed circumstances, as stated above, are sufficient to discharge the initial burden. No evidence has been adduced by the Railway to rule out the possibility of loss of a ticket. As such, I conclude on this point. The learned Member was not right in rejecting the contention of the appellants.

13. The next important point is with regard to death in an untoward incident. The finding as above is sufficient to conclude that the deceased had boarded the train at Ballarshah to go to Tirupati Balaji. The evidence is sufficient to prove that he has travelled by unknown train from Ballarahah for Tirupati Balaji. The spot of incident, as stated above, is at 500 kms away from Ballarshah. The deceased had no reason to go to the spot of incident. This fact supports the claim of the appellants that the deceased while travelling by unknown train, fell from moving train on the spot and died due to the injuries sustained by him.

14. The incident occurred at the shifting point. It is common knowledge that while passing through shifting point on a loop line to approach the main line, the train moves at a slow speed. This fact is required to be borne in mind while appreciating the materials on record.

15. The deceased had sustained multiple injuries. His both legs were cut. On the basis of the injuries sustained by the deceased, it is contended that the death was not in an untoward incident, but it was due to run over. In my view, this contention cannot be accepted. It is not the case of the Railway that at spot of incident, any person was run over or dashed by any train. There is no report of Loco Pilot of any train of such incident on the spot of incident. RW-1 has admitted in his cross-examination that the dead body was noticed immediately after the passing of the Train No.6360 i.e. Patna-Ernakulam Express proceeding towards Tirupati. In my view, this admission of the RW-1 is sufficient to lend an assurance to the claim of the appellants. If the deceased was run over by Patna-Ernakulam Express, then the Loco Pilot would have reported the same to the Deputy Station Master of Sirpur Kagaznagar Railway Station. Therefore, in this case, the possibility of run over or dash to the deceased by unknown train is completely ruled out. On the basis of injuries sustained by the deceased, inference cannot be drawn that the deceased was run over or dashed by any other train. A person falling from the slow moving train can come under the wheels of the train. A person falling from slow train if gets stuck in any part of the train, then he

can come under the wheels of the train. In this case, the possibility of accidental fall of the deceased on the spot is highly probable. The train at the shifting point is slow as there is curve to the line while crossing the shifting point. Therefore, the possibility of a person standing at the door of the train losing his balance is eminent. Therefore, in my view, the material on record is sufficient to conclude that the death was not due to run over of the deceased by a train. The evidence and circumstances clearly suggest that the deceased at the shifting point of a loop line, fell from moving train and came under the wheels of the train and died due to injuries sustained by him. The death was, therefore, in an untoward incident. In my view, therefore, on this point also, the learned Member was not right in rejecting the claim. As such, I record my findings on both points in the affirmative.

16. In this case, the accident occurred on 27/07/2011. In view of the Notification issued by the Ministry of Railways (Railway Board) dated 22/12/2016, came into effect from 01/01/2017, in case of death claim, the claimant/s is/are entitled to get compensation of Rs.8,00,000/- (Rupees Eight lakhs only). In view of the decision of the Hon'ble Apex Court in *Union of India vs. Radha Yadav*, reported at (2019) 3 SCC 410, in case of

old claim, after this notification, the claimants/appellants would be entitled to get compensation of Rs.8,00,000/-, without interest, if the compensation provided earlier with interest is less than Rs.8,00,000/-. Learned advocate submitted that the compensation provided earlier i.e. Rs.4,00,000/- with interest would not be more than Rs.8,00,000/-. Therefore, in this case, the appellants/claimants would be entitled to get Rs.8,00,000/- (Rupees Eight Lakhs only), without interest.

17. Accordingly, the first appeal is allowed.

i] The judgment and order dated 16/12/2015, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, in Claim Application No. OA(IIu)/NGP/2011/0347, is set aside. The claim petition is allowed.

ii] Respondent – Railway is directed to pay Rs. 8,00,000/- (Rupees Eight Lakhs only) towards compensation to the appellants within four months from the date of this judgment.

iii] The amount be deposited directly in the bank account of the appellants within four months from today. The appellants are directed to provide their bank account details to the respondent-Railway.

iv] The appellant no.1 shall be entitled to get 60% amount, appellant nos.2 and 3 shall be entitled to get 10% each of the amount of compensation and the appellant No.5 shall be entitled to get 20% amount.

18. The first appeal stands disposed of in the aforesaid terms. No order as to costs.

[G. A. SANAP, J.]