



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

FIRST APPEAL NO. 1321 OF 2018

APPELLANTS : 1. Mr. Jagannath S/o. Mangluji Shende,
 Aged 65 years, Occ. Labour.

2. Smt. Baranbai W/o. Jagannath Shende,
 Aged 58 years, Occ. Household, Both
 R/o. Ward No.1, Khaparkheda, Tah.
 Saoner, Dist. Nagpur.

//VERSUS//

RESPONDENT : The Union of India, through its
 General Manager, South East Central
 Railway, Bilaspur, C.G.

Ms. Shilpa G. Barbate, Advocate for the Appellants.
 Ms. N.G. Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.
DATED : 5th JANUARY, 2024.

ORAL JUDGMENT

In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short “the Act of 1987”), challenge is to the judgment and order dated 9th May, 2018, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby learned Member of the Tribunal dismissed the claim application filed by the appellants under Section 16 of the Act of 1987.

02] BACKGROUND FACTS :-

The appellants are the parents of deceased Dinesh Jagannath Shende. It is the case of the appellants that on 7th June, 2015, the deceased had gone to Saoner for his personal work and after completion of his work, he was coming back from Saoner to Khaparkheda by unknown train. It is stated that during the journey, the deceased fell from running train near Down Home Signal at Khaparkheda. He sustained multiple injuries and died due to the injuries. The incident occurred at 00.40 hrs. on 8th June, 2015. It is further case of the appellants that the deceased was travelling as a *bona fide* passenger with a valid journey ticket. The journey ticket was lost in the unfortunate incident.

03] The respondent-Railway contested the claim. The Railway denied the material facts pleaded in the application. It is contended that the case in question was of run over of the deceased by a train while crossing the railway line. The death was not in an untoward incident. The deceased was not a *bona fide* passenger. The journey ticket was not found on the person of the deceased or on the spot.

04] The parties adduced the evidence before the Tribunal. Learned Member of the Tribunal, on appreciation of the materials

placed on record, found the evidence insufficient to accept the claim of the appellants. Learned Member of the Tribunal, therefore, dismissed the application. Being aggrieved by this judgment and order of the Tribunal, the appellants have come before this Court in appeal.

05] I have heard Ms. Shilpa G. Barbate, learned advocate for the appellant and Ms. N.G. Chaubey, learned advocate for the respondent-Railway. Perused the record and proceedings.

06] Following points fall for my determination :-

- 1) Whether the deceased died due to fall from running train and as such his death was in untoward incident?
- 2) Whether the deceased was a *bona fide* passenger travelling with a valid journey ticket at the time of the incident?

07] Learned advocate for the appellants submitted that it is the specific case of the appellants that the deceased was travelling as a *bona fide* passenger with a valid journey ticket. Learned advocate took me through the spot panchanama as well as the inquest panchanama and pointed out the position prevailing on the spot at the time of drawing of the spot panchanama. Learned advocate pointed out that the panchanama was drawn in the night and, therefore, the possibility of loss of ticket cannot be ruled out.

Learned advocate submitted that the Investigating Officer might not have noticed the ticket on the spot in the night time. Learned advocate pointed out that the red shirt worn by the deceased was torn and it was lying by the side of the dead body. It is also pointed out that his trouser was in torn condition. It is submitted that this fact is sufficient to infer that the journey ticket might have been lost in this incident. Learned advocate further submitted that there is ample evidence in the form of DRM Report to conclude that the deceased died due to fall from running train. Learned advocate submitted that the Loco Pilot of the train, which passed through the station, had not reported about run over of the train on any person. Learned advocate, therefore, submitted that learned Tribunal has completely missed the substance of the matter and has wrongly dismissed the claim of the appellants. Learned advocate submitted that the oral evidence adduced by the appellants has been supported by circumstantial evidence to conclude that the deceased was travelling as a *bona fide* passenger. Learned advocate submitted that this evidence is sufficient to discharge the initial onus of proof.

08] Learned advocate for the respondent-Railway supported the judgment and order passed by the Tribunal. Learned advocate

submitted that on both the counts, learned Member of the Tribunal has properly appreciated the evidence and rightly dismissed the claim application. Learned advocate submitted that while drawing the panchanama, proper care was taken by the Police Officer. It is submitted that if the ticket was lost on the spot as stated, then the ticket would have been noticed on the spot by the Investigating Officer. Learned advocate submitted that, therefore, the findings recorded by the Tribunal do not warrant interference.

09] It is undisputed that AW-1, who is the father of the deceased, was not an eye witness to the incident. In his evidence, he has stated that the deceased on the date of the incident had gone to Saoner for his personal work and while coming back to Khaparkheda, he fell from running train and died. The respondent-Railway has denied this fact in the written statement. It is to be noted that it is not the case of the Railway that the case in question is of run over by a train. Similarly, this conclusion cannot be reached on the basis of available evidence. The DRM Report is on record at page 22 of the record. The result of the enquiry conducted by the DRM clearly indicates that the death was found to have been caused due to fall from running train. This conclusion was arrived at by the DRM on the basis of the available material.

Besides, the possibility of run over of deceased by any train has been completely ruled out. The dead body was noticed by the Gateman after passing of Train No.58836 from Khaparkheda towards Itwari at 23:40 hrs. In this factual situation, the Railway was expected to examine the Loco Pilot of Train No.58836, to substantiate its defence of run over. If the Loco Pilot of Train No.58836 had noticed the dash to any person while crossing the railway line at the relevant time, he would have reported the same to the Station Master.

10] Learned Member of the Tribunal has observed that since there was no report of any ACP by passenger after the incident, the contention of the appellants that the deceased died due to fall from running train could not be accepted. In my view, this finding cannot be sustained for more than one reason. The first important reason would be that the Railway has not examined the Loco Pilot of the train in question. The Loco Pilot of the said train had not reported to the Station Master about run over. In my view, therefore, the case of the Railway that it was a case of run over cannot be accepted.

11] The dead body was found by the side of the track. The deceased had sustained serious multiple injuries. He died due to

the injuries sustained in the accident. AW-1, the father of the deceased, has categorically stated that he had gone to Saoner for his personal work and while coming back, he fell from running train and died. The position prevailing on the spot and the condition of dead body would clearly suggest that it was a case of fall from running train and not the case of run over of the deceased by any train. Therefore, in my view, since the dead body was found in the railway premises, learned Member of the Tribunal ought to have accepted the contention of the appellants on this point. The material, in my opinion, is sufficient to conclude that the deceased while travelling from Saoner to Khaparkheda fell from running train and died on the spot due to the multiple injuries sustained by him. As such, the finding of the Tribunal on this point cannot be sustained.

12] The Tribunal has held that since the ticket was not found on the person of the deceased or on the spot, he could not be said to be a *bona fide* passenger. It is undisputed that AW-1 was not an eye witness to the incident. Similarly, he has not stated that he had seen the deceased purchasing the railway ticket for journey. However, he has stated that the deceased had gone to Saoner for his personal work by a train. He has stated that the deceased had

purchased the journey ticket and as such he was a *bona fide* passenger. He has stated that the ticket was lost in the unfortunate incident.

13] The question is whether this evidence is sufficient to prove that the deceased was a *bona fide* passenger. It is necessary to see whether the appellants have discharged the initial burden cast on their shoulder by leading evidence. The deceased was doing labour work. It is not the case of the Railway that the deceased had come to the Railway Station at odd hours of the night without any reason or was roaming at the railway station. The possibility of the deceased crossing the railway line in the night on the available material has been completely ruled out. It is the case of the appellants that the ticket was lost in the unfortunate incident. In my view, the material on record is sufficient to accept the submission made by learned advocate for the appellants that at the time of panchanama, the police might not have noticed the ticket lying on the spot in the night. It has come on record that the panchanama was drawn with the help of torch light as well as the light at the railway station. The red shirt on the person of the deceased was torn and was lying by the side of the dead body. Generally, the article like a ticket is kept in the shirt pocket. It is

further seen that the trouser worn by the deceased was also torn. The shirt and trouser were not seized. Perusal of the panchanama does not indicate that the entire spot was inspected minutely by the Officer, who had drawn the panchanama. It is quite possible that the Investigating Officer might not have noticed the ticket on the spot.

14] In the facts and circumstances, in my view, the evidence on record is sufficient to discharge the initial burden cast on the shoulders of the appellants. The respondent-Railway has not adduced any evidence in rebuttal to disprove this fact and presumption. In my view, therefore, learned Member of the Tribunal was not right in dismissing the claim. Learned Member of the Tribunal has not considered all these aspects while deciding the claim application. Therefore, I record my findings on both the points in the affirmative. The impugned judgment and order dated 9th May, 2018, passed by learned Member of the Tribunal, therefore, cannot be sustained. The impugned judgment and order is accordingly set aside.

15] 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.

16] The respondent/Railway shall pay the compensation of Rs.8,00,000/- (rupees eight lakhs only) to the appellants within four months. If the amount is not deposited within four months, then the respondent/Railway shall pay interest @ 6% per annum from the date of this order till realization.

17] The appeal is **allowed** and disposed of accordingly. No order as to costs.

(G. A. SANAP, J.)

Vijay