



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

FIRST APPEAL NO.100 OF 2022

APPELLANTS
(Original applicants on
RA)

- : 1. Smt. Ushabai Wd/o Dharmaling Patil,
Age about : 47 Yrs. Occu: Housewife
2. Savita d/o Dharmaling Patil,
Age about : 22 Yrs., Occu.: Nil
3. Chetan s/o Dharmaling Patil
Age about : 20 Yrs., Occu. : Education
All r/o Near Swami Samarth Temple,
Shankar Nagar, Kajgaon,
Taluka- Chalisgaon, Dist.- Jalgaon
(Maharashtra) - 424103

//VERSUS//

RESPONDENT
(Original respondent on
RA)

- : 1. Union of India,
through General Manager,
Central Railway, Mumbai (C.S.T.)

Mrs Uma A. Bhattad, Advocate for appellants.

Mrs. N.G. Choubey, Advocate for respondent.

CORAM : G. A. SANAP, J.

DATED : 31st JANUARY, 2024

ORAL JUDGMENT

1. Heard finally with the consent of learned Advocates for the parties.

2. 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 17/07/2018 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants/claimants under Section 16 of the Act of 1987 was dismissed.

3. Background facts:-

Appellant No.1 is the wife of the deceased. Appellant Nos.2 and 3 are the children of the deceased. The appellants claim that on 17/06/2015 the deceased Dharmaling Patil had gone to Chalisgaon to meet his daughter. On the same day, alongwith his son-in-law, he came to Chalisgaon Railway Station and after purchasing a general class railway ticket, boarded a train for the journey to Kajgaon. It is stated that at Kajgaon Railway Station, due to a sudden jerk and heavy rush in the train, he fell down and sustained injuries. The journey ticket was lost or misplaced on the spot. It is stated that the deceased was a *bona fide* passenger. The death was in an untoward incident. On these averments, the appellants claimed the compensation.

4. The respondent-railway filed the written statement and opposed the claim. It is contended that the deceased was not a *bona fide* passenger travelling with a valid journey ticket. The ticket was not recovered from the person of the deceased. The deceased was either run over or dashed by any train while crossing the railway line. According to the respondent, the death was not in an untoward incident.

5. Appellant No.1 examined herself as a sole witness. The railway has examined any witness. The learned Member of the Tribunal, on consideration of the evidence, found that the evidence was not sufficient to believe the case of the claimants and as such, dismissed the claim. Being aggrieved by this judgment and order, the appellants are before this Court in appeal.

6. I have heard Mrs. Uma A. Bhattad, learned Advocate for the appellants and Mrs. N. G. Choubey, learned Advocate for the respondent. Perused the record and proceedings.

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

i) Whether the deceased was travelling 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?

8. It is the case of the appellants that the deceased, after purchasing journey ticket at Chalisgaon Railway Station, had boarded some unknown train to go to Kajgaon. It is their case that the ticket was purchased in presence of his son-in-law at Chalisgaon Railway Station. The railway ticket was not found either on the spot or on the person of the deceased at the time of Panchanama. It is the case of the appellants that the ticket was either misplaced or lost in the accident. Ushabai (AW-1) was not an eye witness either to the purchase of the ticket by the deceased or the boarding of the deceased in any particular train. The appellants have not filed an affidavit of son-in-law. They have not placed on record a plausible explanation for the non filing of such affidavit. It is the case of the appellants that the deceased had gone to meet his daughter at Chalisgaon and after meeting, he alongwith his son-in-law came to Chalisgaon Railway Station and purchased the ticket. If the ticket was purchased then the ticket would have been found on the person of the deceased at the time of the inquest panchanama. The initial burden is on the appellants/

claimants to prove that the deceased was a *bona fide* passenger travelling with a valid journey ticket. The Hon'ble Apex Court in the case of *Union of India vs. Rina Devi* reported at *AIR 2018 SC 2362* has held that mere absence of a ticket with an injured or deceased person will not negative the claim that he was a *bona fide* passenger. The 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 based on the facts shown in the attending circumstances. In order to discharge this burden, the appellants could have filed the affidavit of son-in-law in whose presence according to them, the ticket was purchased by the deceased. In this case, this vital evidence is missing. Admittedly, Ushabai (AW-1) was not an eye witness to this fact. Her evidence on this aspect could be said to be hearsay evidence. The evidence on record is not sufficient to discharge the initial burden. On the basis of the evidence, the appellants have not been able to establish that the ticket was lost or misplaced. On this point, the learned Member of the Tribunal has properly appreciated the evidence.

9. Learned Member of the Tribunal has held that the death was not in an untoward incident. A finding has been recorded that

the deceased might have been run over or dashed by any train while crossing the railway line. On going through the entire material on record, I am satisfied that this finding is also based on the proper appreciation of the evidence. The place of residence of the deceased was at the distance of one and a half kilometers from the spot of the incident. The deceased was undisputedly residing in the vicinity of the spot. The son-in-law has not been examined to establish that the deceased boarded the train at Chalisgaon for Kajgaon. This vital evidence is missing in this case. If the deceased had travelled from Chalisgaon to Kajgaon then he would have deboarded the train at Kajgaon Railway Station. The spot of the incidence is at some distance away from the Kajgaon Railway Station on a down line towards a Pachora side. If the deceased had deboarded at Kajgaon then there was no reason for him to fall from a train ahead of Kajgaon Railway Station at the spot of the incident. It is also not the case of the appellants that for one reason or another, the deceased over travelled Kajgaon Railway Station. It is the case of the appellants that there was a heavy rush in the train and therefore, due to a sudden jerk deceased fell from the running train. There was no ACP of any train at Kajgaon Railway Station. If there was a heavy rush in the train then co-passengers would have seen the deceased falling from the train and would have

reported the same to the Railway Administration. The co-passengers, in all probability would have pulled the chain. This is one more circumstance against the appellants.

10. Admittedly, the deceased was not run over by train No.11026. The record reveals that the loco pilot of train No.11026 reported the Station Master, Kajgaon Railway Station, about the dead body beside the railway track in injured condition. If the deceased was run over by train No.11026 the loco pilot would have made a report of the same to the Station Master. This fact would indicate that the deceased did not fall from the train No.11026. This further indicates that he was not travelling by this train. The deceased had sustained serious injuries. He had sustained the fractures. His head was smashed. These injuries sustained by the deceased clearly indicate that the deceased might have been dashed by some train. The deceased would have sustained these injuries due to a forceful impact on the ground after the dash.

11. In my view, all these factors and the available evidence have been taken into consideration by the learned Member of the Tribunal to record the finding that the death was not due to a fall from running train. On re-appreciation of the evidence, I am

satisfied that the learned Member of the Tribunal has not committed any mistake. I do not see any reason to interfere with the finding of fact recorded by the Tribunal. As such, I record my findings on both points in the negative. Accordingly, I pass the following order:-

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

(G. A. SANAP, J.)