



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

FIRST APPEAL NO.1318 OF 2018

APPELLANTS
 (Original claimant on RA)

- : 1. Nahida Begam wd/o Bilal Khan,
 Aged 27 Years, Occ- Household
2. Abdul Quyyum Khan, S/o Abdul Latif
 Khan, Aged 54 yrs. Occu. Business
3. Mumtaz Bejum w/o Quyyum Khan,
 Aged 50 Yrs, Occ- Household
 R/o Near Zam Zam School Plot no.29
 Galli No.19, Sadat Nagar,
 Aurangabad (M.S.)

//VERSUS//

RESPONDENT
 (on R.A.)

- : 1. Union of India
 It's General Manager
 South Central Railway
 Secunderabad (A.P.)

Mr. R.G. Bagul, Advocate for appellants.

Ms Meghna Munshi, Advocate for respondent-railway.

CORAM : **G. A. SANAP, J.**
DATED : **9th JANUARY, 2024**

ORAL JUDGMENT

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 judgement and order dated July 27, 2016, passed

by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim application filed by the appellants seeking compensation was dismissed.

2. Background facts:

Appellant No. 1 is the wife of a deceased person. Appellant Nos. 2 and 3 are the parents of the deceased. The appellants claimed that on January 3, 2014, the deceased had purchased a railway ticket for a journey from Parbhani to Aurangabad. He was waiting at platform No. 2 for the arrival of the train. It is stated that the deceased was hit by a DEMU train. He sustained an injury to his head and died on the spot. Appellants' claim that the deceased died in an untoward incident. He was a *bona fide* passenger holding a valid journey ticket.

3. Respondent-railway filed the written statement and contested the claim application. It is contended that death was not in an untoward incident. The death was due to the negligent acts of the deceased. The deceased was not a *bona fide* passenger. The railway could not be held liable to pay compensation merely because the dead body was found lying on the platform.

4. On consideration of the evidence adduced by the parties, the learned Member of the Tribunal found that the claim was without any substance and ultimately dismissed the same. Being aggrieved by this judgment and order, the appellants have come before this Court in appeal.

5. I have heard Mr. R.G. Bagul, learned Advocate for the appellants, and Ms. Meghna Munshi, learned Advocate for the respondent-railway. I have perused the record and proceedings.

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

- i. Whether the deceased died in an untoward incident as understood by Section 123 clause (c)(2) of the Railways Act, 1989?
- ii. Whether the deceased was a *bona fide* passenger travelling with a valid journey ticket?

7. Learned Advocate for the appellants submitted that, on facts as well as while applying the provisions of law, learned Member of the Tribunal has committed an error. Learned Advocate submitted that the ticket was found in the pocket of the

deceased at the time of the panchanama. It is pointed out that the railway authority has certified that it was valid journey ticket. Learned Advocate submitted that dead body with an injury to the head was found on the railway platform, and therefore, the burden was on the railway to establish that the deceased did not sustain any injury on the railway premises. Learned Advocate submitted that there is ample material to come to the conclusion that the deceased, either while boarding a train or while attempting to board a train, fell from the train, sustained an injury, and died on the spot. Learned Advocate submitted that the claim application was drafted on the basis of available case papers, and therefore, the learned Member of the Tribunal was required to analyze the entire material and evidence and reach a correct conclusion. Learned Advocate submitted that the Train Signal Register produced on record maintained at Parbhani Railway Station clearly indicates that before this DEMU train, a passenger train had come to Parbhani Railway Station at 23.04 hrs. and departure at 23.15 hrs. Learned Advocate submitted that the possibility of the deceased falling from this train while boarding cannot be ruled out. In order to fortify this contention, he has relied upon the DRM Report, wherein it has been stated that neither the loco pilot nor guard of the DEMU train reported any incident of injury to any person at

Parbhani Railway Station due to the dash given by the DEMU train. Learned Advocate submitted that the Deputy Station Superintendent was not an eyewitness to the incident. He had made a report on the basis of information provided by an unknown passenger about the incident. Learned Advocate submitted that in this case, the learned Member of the Tribunal has not properly appreciated the evidence on record and has come to a wrong conclusion.

8. Learned Advocate for the respondent-railway submitted that the learned Member of the Claims Tribunal has properly analyzed the material on record and has come to a right conclusion. Learned Advocate submitted that it is not the case of the appellants that he was dashed by any other train. It is pointed out that it is the case of the appellants that the deceased was dashed by a DEMU train while he was waiting at platform No.2 for the arrival of his train. Learned Advocate submitted that, therefore, the death of the deceased could not be said to be in an untoward incident as understood by Section 124(A) read with Section 123(c)(2) of the Railway Act, 1989.

9. In order to appreciate the rival submissions, I have gone through the record and proceedings. In my view, the perusal of the record would show that the learned Member of the Tribunal has not properly appreciated the material on record and has come to a wrong conclusion. Undisputed facts need to be stated at the outset. The dead body of the deceased was found on platform No. 2. He had sustained an injury to his head. The death was due to injury sustained by him. At the time of panchanama, the journey ticket purchased at 10.37 PM on January 3, 2014 for the journey from Parbhani to Aurangabad was found in the pocket of the deceased. Deputy Station Superintendent was not an eyewitness to the incident. During the course of the inquiry Guard as well as the loco pilot of the DEMU train stated that at Parbhani Railway Station, there was no any incident of dash to any person either at the railway station or while crossing the railway track. The DRM inquiry also fortified this fact. A reference has been made in the DRM inquiry about the candid statement made by the guard of the DEMU train and the pilot of the DEMU train. The records undisputedly indicate that no passenger or person standing at platform No. 2 of Parbhani Railway Station was dashed by a DEMU train. The person who had informed about the incident to the Deputy Station Superintendent at Parbhani Railway Station

was unknown to the Deputy Station Superintendent. He was not examined. The report of the Deputy Station Superintendent, Parbhani Railway Station, is based on hearsay information.

10. In the teeth of the above-stated undisputed facts, the issues raised in this appeal need consideration. It is seen on perusal of the Train Register Book for Signal Line report at page A-63 that the DEMU train did not halt at Parbhani Railway Station. The deceased had purchased a railway ticket at 10.37 p.m. and was waiting for the train. The Train Signal Register indicates that before this DEMU train one passenger train had passed through Parbhani Railway Station towards Aurangabad. The said passenger train had arrived at 23.04 hours and departed at 23.15 hours. Before the arrival of this passenger train, the deceased had purchased the railway ticket from the railway station at 10.37 PM and was waiting for the train to go to Aurangabad. In my view, there is a gap of 30 minutes between the arrival of the DEMU train and departure of passenger train. The deceased was to travel to Aurangabad. There was no question of the deceased attempting to board the DEMU train, which had no scheduled halt at Parbhani. At the most, he would have tried to board a passenger train, which definitely would have scheduled halt at Aurangabad Railway

Station either on arrival or at the time of departure of the said train at 23.15 hours. In my view, this aspect ought to have been explained by the railway. In the absence of proper explanation of this fact by railway a vacuum is created. This vacuum could have been explained by the evidence of the Deputy Station Superintendent. The deceased was found with a valid journey ticket. He was found lying in an injured condition on platform No.2 of the Parbhani Railway Station. In the facts situation the only inference that can be drawn is that the deceased, while boarding a train, might have fallen, and sustained the injury, and died. It is to be noted that if any train had not passed through Parbhani Railway Station towards Aurangabad from the time of the purchase of the ticket by the deceased at 10.37 till the passing of DEMU train at 23.33 hours, then the case of the appellants would have deserved rejection. Undisputedly, there was no eyewitness to the incident. The possibility of the deceased being hit by the DEMU train has been completely ruled out on the basis of the available material.

11. The evidence on record therefore clearly indicates that the deceased might have fallen down while boarding a passenger train proceeding towards Aurangabad from Parbhani Railway

Station at 23.15 hours. He was possessing a valid journey ticket. He was as such a *bona fide* passenger.

12. The respondent-railway has contended that the injury sustained by the deceased was due to his negligence and as such, a self inflicted injury. In the totality of undisputed facts and circumstances, it is not possible to conclude that the case of the deceased would be covered by any of the clauses of proviso to Section 124(A). In this case, in my view, the defence of negligence would not be available to the railway. The liability in such a case is based on the principle of no fault theory, or a strict liability. The defence of contributory negligence in such a case is not available. In this case, on both counts, the learned Member of the Tribunal has failed to properly appreciate the material. In the teeth of the available material on record, I am of the view that the appellants have established that the deceased died in an untoward incident. The undisputed facts would crystallize the issue. The deceased was a *bona fide* passenger. The appellants, in my view, would be entitled to get the compensation.

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 submits 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 case of *Union of India vs. Radha Yadav* reported in (2019) 3 SCC 410.

14. Accordingly, appeal is allowed.

15. The judgment and order dated July 27, 2016, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, cannot be sustained. It is accordingly, quashed and set aside. I record my findings on both points in the affirmative.

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, Nahida Begum, w/o Bilal Khan, shall be entitled to get 60% of the amount of compensation.

ii) Appellant Nos. 2 and 3-Abdul Quyyum Khan and Mumtaz Bejum w/o Quyyum Khan—shall be entitled to compensation of 20% 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 6% from the date of receipt of this order until the realization.

17. The First Appeal stands **disposed of**, accordingly.

(G. A. SANAP, J.)