



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

FIRST APPEAL NO. 1024 OF 2023

- 1) Suwarna w/o. Dipak Ghatage,
Aged about 35 years, Occ.– Household,

R/o. Salapuri, Tq. & Dist. Parbhani,
At present Krishi Nagar, Parbhani,
Tq. and Dist. Parbhani.
- 2) Vaishnavi d/o. Dipak Ghatage,
Aged about 15 years, Occ.-Education.
- 3) Onkar S/o. Dipak Ghatage,
Aged about 13 years, Occ.-Education.

Both Appellant Nos.2 and 3 U/g
of real mother i.e. Appellant
No.1, R/o. as above.
- 4) Dhanwanti W/o. Sahebrao Ghatage,
Aged about 63 years, Occ.-Household,
R/o. Salapuri,
Tq. & Dist. Parbhani-431104.

.... **APPELLANTS**

// VERSUS //

The Union of India,
Through General Manager,
South Central Railway,
Secunderabad.

.... **RESPONDENT**

Mr. D. S. Lambat, Advocate for Appellants.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.
DATE : 09th DECEMBER, 2024.

ORAL JUDGMENT.

1. This appeal is preferred against the Judgment dated 12.05.2023 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/205/2019, whereby claim of the applicants/appellants filed under Section 16 of the Railway Claims Tribunal Act, 1987 for grant of compensation was dismissed.

2. Brief facts of the case are as under :

(i) The Dipak s/o Sahebrao Ghatage was traveling from Aurangabad to Parbhani by unknown train holding a valid journey ticket bearing No.55524616 of the train on 09/10/2018. When the train was passing from KM No.191/09 to 192 near Hijwan Shivar between Jalna to Partur Railway Station, he fell down from the running train and died. The journey ticket purchased by Dipak was found during the investigation. The applicant No.1 is wife, applicant Nos.2 and 3 are daughter and son and applicant No.4 is mother of deceased Dipak. They were dependent on the income of deceased Dipak's, and therefore, they filed an application for grant of compensation.

(ii) The respondent opposed the claim and denied the material contentions raised in the claim. It is contended that the deceased Dipak was not travelling by any train and was not a *bona*

fide passenger. No any untoward incident occurred within the premises of railway. Therefore, it does not fall within a preview of untoward incident as contemplated by Section 123(c) read with Section 124-A of the Railways Act. The respondent further contended that the deceased Dipak was responsible for that incident and the Railway is not liable for paying compensation. It is lastly prayed to dismiss the application.

3. The learned Railway Tribunal cast following issues :

- (1) *Whether the Applicants are the dependents of the deceased within the meaning of Section 123 (b) of the Railways Act?*
- (2) *Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?*
- (3) *Whether the death of the deceased had occurred as a result of an untoward incident as alleged in the claim application within the meaning of Section 124-A r/w 123 (c) (2) of Railways Act?*

4. The learned Railway Tribunal held that deceased Dipak was not a *bona fide* passenger and involved in an untoward incident. He died as result of self inflicted injuries. The applicants are not dependents on the income of deceased Dipak. It is lastly held that the applicants failed to prove all the essential ingredients and requisites for allowing the claim and rejected the claim.

5. Perused the impugned judgment and record and proceedings.

6. Following points emerged for consideration :-

- (i) *Was it proved by the appellants that Dipak died in an untoward incident ?*
- (ii) *Was it proved by the appellants that Dipak was a bona fide passenger and having valid journey ticket of the train?*
- (iii) *Was it proved by the appellants that they are dependent upon the deceased Dipak?*
- (iv) *Is the impugned judgment illegal and requires interference?*

7. Heard learned Advocates for both sides.

8. The Learned Advocate for the appellants pointed out the DRM Report Exhibit A-2, Inquest Exhibit A-6, Spot Panchnama Exhibit A-5 and important documents of investigation i.e. Postmortem Report Exhibit A-7 of deceased Dipak etc. and submitted that, based on the aforesaid documents, it is established that the dead body of the deceased Dipak, was found within the premises of Railway. This constitutes an untoward incident. He further submitted that a valid journey ticket of the train was found with deceased Dipak. Therefore, it proved that he was a *bona fide* passenger. He further submitted that reasons and findings of the learned Tribunal

are neither legal nor correct and therefore, interference is warranted in it. It is lastly prayed to allow the appeal by setting aside the impugned judgment.

9. Learned Advocate Ms. Neerja Chaubey for the respondent, strongly opposed the appeal and submitted that mere finding of the dead-body within the railway premises does not make the Railway Administration responsible for the accident. The deceased himself is responsible for the accident and all the injuries are self-inflicted. Therefore, it was not an untoward incident. She further submitted that mere discovery of railway journey ticket with the deceased Dipak is not sufficient to establish that he was a *bona fide* passenger. The Learned Railway Tribunal rightly held that applicants failed to prove the requisites for allowing the claim, that deceased Dipak was a *bona fide* passenger and that an untoward incident occurred within the railway premises. She submitted that reasons and findings of the learned Tribunal are legal and correct and no interference is warranted in it. It is lastly prayed to dismiss the appeal.

10. The evidence of applicant No.1 – Suvarna Ghatage (AW-1) is as per the facts stated in the application. Her evidence is relevant for inferring that the applicants were depending upon the

income of deceased Dipak. She is not an eye witness of the incident. No other witness such as co-passenger, has been examined to prove the alleged incident. Generally, the co-passenger are reluctant to give such evidence. Such cases are to be decided on the basis of principle of preponderance of probability and strict proof is not necessary. The DRM Report Exhibit A-2, Inquest Exhibit A-6 and Spot Panchnama Exhibit A-5 were drawn up and all the relevant documents were collected, including Postmortem Report A-7 etc. There is no doubt that the Spot Panchnama Exhibit A-5 shows that journey ticket of the train was found with the deceased Dipak. The Postmortem Report Exhibit A-7 indicates that cause of death of deceased Dipak was due to head injuries by Railway accident. The Spot Panchnama Exhibit A-5 corroborates the Postmortem Report Exhibit A-7 that deceased Dipak died in that accident.

11. Admittedly, the incident took place within the premises of railway. The findings of the learned Tribunal are that deceased died due to self inflicted injuries. However, the negligence of any person who sustained injuries or death within the premises of railway having valid ticket cannot be considered, even if he/she was negligent, which was held by the Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd., Vs. Sunil Kumar***, reported in **2017 (13)**

SCALE 652. Therefore, this Court must infer that deceased Dipak was travelling with the valid journey ticket and he was a *bona fide* passenger. He died in that untoward incident which took place within the premises of the railway as per the Spot Panchnama Exhibit A-5 and Postmortem Report Exhibit A-7. Said evidence has not been not disproved by the respondent. However, the learned Tribunal while concluding the judgment and giving its findings, erred in holding that applicants failed to prove that deceased Dipak was not a *bona fide* passenger. It also erred in holding that no untoward incident took place, as alleged by the applicants in their application. The dependency of the applicants is that applicant No.1 is wife, applicant Nos.2 and 3 are daughter and son and applicant No.4 is mother of deceased Dipak is proved.

12. Thus, a requisites for allowing the claim for compensation have been proved by the applicants. The appellants are therefore entitled for the compensation. Therefore, point Nos.1 to 4 are answered in the “affirmative”. For the reasons discussed above, the argument of learned Advocate Ms. Neerja Chaubey for the respondent is not acceptable. The impugned judgment deserves to be set aside. The appeal deserves to be allowed. Hence the following order :

- (i) The Appeal is **allowed**.
 - (ii) The impugned Judgment dated 12.05.2023 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/205/2019 is set aside and the application is allowed.
 - (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) to the appellants along with 9% interest thereon from the date of accident within four months from the date of uploading of this judgment before the learned Railway Tribunal.
 - (iv) The respondent is directed that out of amount of Rs.8,00,000/-, an amount of Rs.3,00,000/- be paid to the appellant No.1 – **Suwarna W/o. Dipak Ghatage** and an amount of Rs.1,00,000/- be paid to the appellant No.4 – **Dhanwanti W/o. Sahebrao Ghatage** and remaining amount of Rs.4,00,000/- be deposited equally as “Fix Deposit” in the name of appellant No.2 – **Vaishnavi D/o. Dipak Ghatage** and appellant No.3 – **Onkar S/o. Dipak Ghatage**, in any nationalized Bank, for a period of three years.
 - (v) The Record and proceedings be sent back to the Tribunal.
13. The Appeal is disposed of accordingly.

(SANJAY A. DESHMUKH, J.)