



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

FIRST APPEAL NO. 110 OF 2012

APPELLANT : Dayaram S/o. Premchand
 Chandravanshi, Aged about 55 years,
 Occ. Labourer, R/o. Kanhan Pipariya,
 Tah. & Dist. Seoni (M.P.).

//VERSUS//

RESPONDENT : Union of India, through the General
 Manager, South East Central Railway,
 Bilaspur (C.G.).

Mr. S. Raisuddin, Advocate for the Appellant.
 Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.
DATED : 17th JANUARY, 2024.

ORAL JUDGMENT

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 26th September, 2011, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellant came to be dismissed.

02] **BACKGROUND FACTS:**

The appellant-claimant is the husband of the deceased Dularibai. On 28th January, 2010, Dularibai purchased a Second

Class Ordinary Ticket bearing No.67053829 for herself and two other adult persons to go to Nagpur from Bhoma. She boarded the 7 CN Chindwara to Nagpur Passenger Train at Bhoma Railway Station on 28th January, 2010. It is stated that the deceased fell down from the running train near Nagpur Railway Station on 29th January, 2010 and died due to the injuries sustained by her. According to the appellant, the death was in an untoward incident. The deceased was a *bona fide* passenger. The appellant, therefore, claimed the compensation.

03] The respondent-Railway filed the written statement and opposed the claim. The Railway has not disputed the journey by the deceased from Bhoma to Nagpur with a valid journey ticket. The Railway contended that the death was not in an untoward incident and, therefore, the Railway was not liable to pay the compensation. It was contended that the incident occurred due to the negligence of the deceased and, therefore, the appellant would not be entitled to get the compensation.

04] The parties adduced the evidence. The learned Member of the Tribunal, on consideration of the evidence, found that the death was not in an untoward incident and ultimately dismissed

the claim. Being aggrieved by this judgment and order, the appellant has come before this Court in appeal.

05] I have heard Mr. S. Raisuddin, learned advocate for the appellant and Ms. Neerja Chaubey, learned advocate for the respondent-Railway. Perused the record and proceedings.

06] The following points fall for my determination:

(a) Whether the deceased died in an untoward incident as understood by Section 123(c)(2) of the Railways Act (for short, “the Act of 1989”)?

(b) Whether the deceased was a *bona fide* passenger travelling with a valid journey ticket at the time of the incident?

07] The learned advocate for the appellant submitted that the learned Member of the Tribunal has committed an error in recording a finding that the death was not in an untoward incident. The learned advocate submitted that the journey by the deceased from Bhoma to Nagpur with a valid journey ticket has been admitted. The learned advocate submitted that there is ample evidence to establish that the deceased fell from the moving train

due to a jerk to the train and died due to the injuries sustained in the incident. The learned advocate, in order to substantiate his submission that the defence of negligence or contributory negligence in the facts and circumstances would not be available to the respondent-Railway, has placed heavy reliance on the decision in the case of *Union of India Vs. Rina Devi [AIR 2018 SC 2362]*. The learned advocate submitted that the case of the appellant would be covered by the first part of Section 124A of the Act of 1989 and, therefore, the respondent-Railway would be liable to pay the compensation.

08] The learned advocate for the respondent-Railway submitted that one co-passenger has not been examined to establish that the deceased fell from the running train due to a jerk and died. The learned advocate submitted that the deceased, with the co-passenger, might have come near the door of the train as the Nagpur Railway Station was approaching, and due to her negligence, she might have fallen from the running train. The learned advocate submitted that the learned Member of the Tribunal has properly appreciated the evidence on record and has come to a just and

proper conclusion.

09] It is undisputed that the railway ticket was found from the person of the deceased at the time of the panchanama. It is undisputed that, along with the deceased, a co-passenger had also fallen from the running train and died in the hospital during the course of treatment. The learned Member of the Tribunal has recorded a finding that the deceased was a *bona fide* passenger. This finding has not been challenged by the Railway by filing a separate appeal. In view of this, the only question that needs to be addressed is whether the death of the deceased was in an untoward incident as understood by Section 123(c)(2) of the Act of 1989. There is ample evidence on record to show that, at some distance from Nagpur Railway Station Platform, the deceased fell from the moving train. It is the case of the appellant that the deceased, with the remaining two co-passengers, had to de-board at Nagpur Railway Station, and, therefore, they were preparing to get down. It is contended that due to a sudden jerk to the train, the deceased lost her balance and fell down from the moving train. It is the defence of the Railway that the deceased was careless and negligent and, therefore, she might have

fallen from the train. It is the contention of the Railway that the injuries sustained due to the negligence of the deceased would be self-inflicted injuries, covered by the proviso to Section 124A of the Act of 1989.

10] In my view, this issue can be addressed on the basis of the law laid down by the Hon'ble Apex Court in the case of *Rina Devi* (supra). Paragraph 16.6 would be relevant for the purpose of addressing the issue. It is reproduced below:

“16.6. We are unable to uphold the above view as the concept of ‘self inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar [AIR 2017 SC 5710] laying down that plea of negligence of the victim cannot be allowed in claim based on ‘no fault theory’ under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an ‘untoward incident’ entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor.”

11] The Hon'ble Apex Court has held that in such a claim, the principle of contributory negligence cannot be invoked, inasmuch as the liability is based on 'no fault theory'. It is held that the plea of negligence of the victim cannot be allowed in a claim based on 'no fault theory'. It is further held that the death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A of the Act of 1989 merely on the plea of negligence of the victim as a contributing factor. In my view, for the purpose of self-inflicted injury, intention would be required. Mere negligence would not be construed as an intention to cause self-inflicted injury. In this case, the Railway has not come before the Court with the case that the deceased was run over by any train while crossing the railway line or dashed by any train while crossing the railway line. Undisputedly, the deceased was travelling from Bhoma to Nagpur by the train in question. The incident occurred at some distance away from the Nagpur Railway Station Platform. The deceased was accompanied by two co-passengers. One of the co-passengers also died due to a fall in the said incident.

12] In the facts and circumstances, I am of the view that the death of the deceased was in an untoward incident as understood by Section 123(c)(2) of the Act of 1989. The death of the deceased would not be covered by any of the clauses of the proviso to Section 124A of the Act of 1989. In view of this position, I am of the view that the learned Member of the Tribunal was not right in rejecting the claim. Accordingly, I record my findings on the above points in the affirmative. The impugned judgment and order deserves to be set aside.

13] The learned advocate for the appellant submits that in view of the law laid down in the case of *Union of India Vs. Radha Yadav [(2019) 3 SCC 410]*, the appellant would be entitled to get the compensation of Rs.8,00,000/- (rupees eight lakhs only) without interest. The 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 the death claim, the claimant is entitled to a compensation of Rs.8,00,000/-. In view of the decision in the case of *Radha Yadav* (supra), appellant is entitled to a compensation of Rs.8,00,000/- (rupees eight lakhs only) without

interest.

14] Accordingly, the first appeal is **allowed**.

- i. The judgment and order dated 26th September, 2011, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/2010/0251 is set aside. The claim petition is allowed.
- ii. The respondent-Railway shall pay the compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the appellant within four months from the date of uploading of this judgment. If the amount is not deposited within four months from the date of uploading of this judgment, then the respondent-Railway shall pay interest @ 6% per annum from the date of this judgment till its realization.
- iii. The amount of compensation be deposited directly in the bank account of the appellant. The appellant is directed to provide his bank account details to the respondent-Railway.

15] The first appeal stands disposed of in the aforesaid terms.

No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

Vijay