



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

FIRST APPEAL NO. 18 OF 2020

APPELLANTS

- : 1. Kamarunisa Wd/o. Kalandar Shaikh,
Aged 48 years, Occupation –
Household.
2. Sultan S/o. Kalandar Shaikh, Aged 16
years, Occupation – Education.
3. Shabana D/o. Kalandar Shaikh, Aged
15 years, Occupation – Education.
4. Salman S/o. Kalandar Shaikh, Aged 14
years, Occupation - Education.

(Applicant Nos.2 to 4 through
applicant No.1 mother the natural
guardian)

All Resident of – Pimpalkhuta, Post-
Chinchfalli, Tah. & Distt. Chandrapur
– 441224.

//VERSUS//

RESPONDENT

: Union of India, through its General
Manager, Central Railway, Mumbai
CSMT – 400001.

Mr. R.G. Bagul, Advocate for the Appellants.

Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.

DATED : 5th JANUARY, 2024.

ORAL JUDGMENT

In this appeal, filed pursuant to Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as “the Act of 1987”), seeks to challenge the judgment and order passed on 31st July, 2019 by the Railway Claims Tribunal, Nagpur Bench, Nagpur. The aforementioned verdict dismissed the claim application submitted by the appellants under Section 16 of the Act of 1987.

02] BACKGROUND FACTS :-

The deceased was the spouse of appellant No.1 and the progenitor of appellant Nos.2 to 4. The appellants assert that the deceased embarked on a private venture to Amravati, travelling via a City Bus. Subsequently, he went to Murtizapur where he procured a railway ticket for a voyage from Murtizapur to Akola on 25th April, 2016. He boarded the Vidarbha Express Train. It is alleged that due to overcrowding and an abrupt jolt to the train, he fell from the moving train en route to Akola and succumbed to his injuries on the spot. The death was attributed to an untoward incident. The deceased was a *bona fide* passenger.

03] The respondent-Railway has submitted a written statement refuting the claim. They contend that the deceased did

not possess a valid journey ticket, was not a legitimate passenger, and that the death was not a result of an untoward incident but rather a self-inflicted injury.

04] Evidence was adduced by both parties. Upon examination of the evidence, learned Member of the Tribunal concluded that the claim lacked merit and consequently dismissed it. Aggrieved by this judgment and order of the Tribunal, the appellants have sought redress from this Court in appeal.

05] I have heard Mr. R.G. Bagul, learned advocate for the appellants and Ms. Neerja Chaubey, learned advocate for the respondent-Railway. I have scrutinized the record and proceedings.

06] The following points are to be adjudicated upon :-

- 1) Whether the deceased died due to fall from running train and as such the death was in an untoward incident?
- 2) Whether the deceased was a *bona fide* passenger having a valid journey ticket?

07] Learned advocate for the appellants argued that AW-1, the spouse of the deceased, has testified that the deceased died due to falling from a moving train. Learned advocate further contended that the evidence substantiates the claim that the journey ticket was

lost in the incident. Learned advocate pointed out that the evidence presented by the appellants sufficiently discharges the burden of proof cast upon them. Learned advocate argued that the affidavit submitted by appellant No.1 adequately establishes that the deceased was a *bona fide* passenger. Learned advocate further contended that the deceased's body was found adjacent to the railway track between Mana and Murtizapur Railway Station. Learned advocate argued that the evidence on record sufficiently demonstrates that the deceased, while travelling on the train, fell from the moving train due to overcrowding and a sudden jolt, and died instantly. Learned advocate further contended that the Railway has not raised the defence of the deceased being run over by any train. Learned advocate further argued that the Railway's defence that the death was a result of a self-inflicted injury is untenable. Learned advocate submitted that, therefore, the judgment and order passed by the Tribunal cannot be upheld.

08] Learned advocate for the respondent-Railway argued that during the spot panchanama, a bus ticket for a journey to Amravati was discovered in the deceased's trouser pocket. Learned advocate pointed out that if the deceased had indeed purchased a railway ticket, it would have been found in his possession. Learned

advocate further contended that the Investigating Officer conducted a thorough examination of the scene, but no ticket was found. Therefore, learned advocate argued that the deceased was not a *bona fide* passenger and on this ground alone, the claim for compensation should be rejected. Learned advocate further argued that mere discovery of the deceased's body by the side of the railway track does not automatically imply that the death was in an untoward incident. Learned advocate submitted that learned Member of the Tribunal was correct in dismissing the claim.

09] I have meticulously examined the record and proceedings. Upon examination of the record pertaining to the deceased's death in an untoward incident, I am convinced that learned Member of the Tribunal was incorrect in this regard. The deceased's body was discovered by the side of the railway track. It can be seen that the appellants in the claim application initially stated that the deceased had purchased railway ticket at Murtizapur and was travelling from Murtizapur to Akola. It appears that after filing the application, the appellants realized that the incident had occurred between Mana and Murtizapur Railway Station. Mana Railway Station is located before Murtizapur Railway Station and is not situated between Murtizapur and Akola. Consequently, an

application was made to amend the claim application. It is observed that the application for amendment was rejected. Even if it is assumed for argument's sake that this was an error, in my opinion, it would not alter the factual scenario.

10] The deceased's body was found by the side of the railway track. The spot of the incident is not in close proximity to the railway station. The spot is situated between Mana and Murtizapur Railway Station. The appellants claim that the deceased fell from the Vidarbha Express and died instantly. The spot panchanama is part of the record. The facts discovered at the spot have been documented in the spot panchanama. The post-mortem report is on record. The cause of death is attributed to the injuries sustained in the accident. The deceased did not sustain any significant injury to his hands or legs. The injury was to his head. It is also not the contention of the Railway that it was a case of being run over. Even if such a contention has been raised, the material on record would not have substantiated such a contention. The material on record clearly indicates that the deceased, while travelling on a train, fell from the moving train and died instantly. Therefore, the finding of the Tribunal that the death was not in an untoward incident cannot be upheld. It is further relevant to note that the defence of

contributory negligence is not available to the Railway as the liability is based on 'no fault theory'. This position has been established by the Hon'ble Supreme Court in the case of ***Union of India Vs. Rina Devi [AIR 2018 SC 2362]***.

11] In the light of the facts and circumstances, I am unequivocally convinced that the death was due to fall from a moving train. The death was, therefore, in an untoward incident, as defined by Section 123(2)(c) of the Railways Act, 1989. According to the appellants, the deceased had purchased a ticket for journey from Murtizapur to Akola. It is their contention that the ticket was lost in the unfortunate incident. The question arises is whether mere assertion of appellant No.1 would be sufficient to accept this factual contention. As far as this issue is concerned, the Hon'ble Supreme Court in the case of ***Rina Devi*** (supra) has crystallized the legal position in paragraph 17.4. Paragraph 17.4 is extracted below:

"17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. 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 on the facts shown or the attending circumstances. This will have to be dealt

with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

12] It is held that the mere presence of a body on the Railway premises will not definitively establish that the injured or deceased was a *bona fide* passenger for which a claim for compensation could be upheld. It is further held that mere absence of a ticket with such injured or deceased will not invalidate the claim that he was a *bona fide* passenger. The Hon’ble Supreme Court has held that the initial onus will rest on the claimant and can be discharged by submitting an affidavit of the pertinent facts. The question that needs to be addressed in this case is whether the evidence on record is sufficient to discharge the initial onus placed on the appellants.

13] Unquestionably, appellant No.1 was not accompanying the deceased. She has also not declared in her affidavit that she had witnessed the deceased boarding the specific train after procuring a valid journey ticket. The appellants have not presented any other independent evidence to substantiate this fact. A statement has been made in the affidavit that the deceased was travelling from Murtizapur to Akola by procuring a railway ticket at Murtizapur Railway Station. The deceased’s body was discovered between

Mana and Murtizapur Railway Station. In my view, therefore, the very crux of her evidence is negated. The deceased had not boarded the train at Murtizapur Railway Station. In my view, this flawed statement of appellant No.1 would have to be properly evaluated in the context of the contents of the panchanama. A bus ticket was discovered in the trouser pocket of the deceased at the time of the spot panchanama. The railway ticket was not found. The spot, as can be seen from the contents of the panchanama, was meticulously examined and no article, including the ticket, was discovered at the spot. The bus ticket discovered was for a journey to Amravati. It is noteworthy that if the deceased had procured the railway ticket, then the said ticket should have been discovered on the person of the deceased. Therefore, mere discovery of the body on the railway premises will not definitively establish that he was a *bona fide* passenger. In her cross-examination, appellant No.1 has admitted that the deceased was not mentally sound.

14] In the light of the evidence on record, it is not possible to accept the contention of the appellants that the deceased was a *bona fide* passenger travelling with a valid journey ticket. Learned Member of the Tribunal has properly evaluated the available evidence on record and has rightly rejected the contention of the

appellants on this ground. I do not see any reason to interfere with this finding of fact. The appellants have failed to discharge the initial onus on this aspect. Therefore, though the death was in an untoward incident, due to lack of proof that the deceased was a *bona fide* passenger, the claim cannot be granted. As such, I record my finding to point No.1 in the affirmative and I record my finding to point No.2 in the negative.

15] In the light of the above, I do not discern any substance in the appeal. The appeal is, accordingly, **dismissed**.

(G. A. SANAP, J.)

Vijay