



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

FIRST APPEAL NO. 59 OF 2024

APPELLANTS
 (Original applicants on
 R.A.)

- : 1. Mr. Budharam s/o Hariram Chavhan
 Age about : 49 Yrs., Occup. Labour
2. Mrs. Sumitra w/o Budharam Chavhan,
 Age about : 43 Yrs., Occup.:
 Housewife
 Both residing at Chinchfail, Near
 Kanya Kasturba School, Taluka-
 Amravati, District- Amravati
 (Maharashtra) 44601

//VERSUS//

RESPONDENT
 (Original Respondent)
 (On R.A.)

: Union of India,
 through General Manager,
 Central Railway, Mumbai (CST).

Mrs. U.A. Bhattad, Advocate for appellants.

Mrs. Neeraja Chaubey, Advocate for respondent.

CORAM : G. A. SANAP, J.

DATED : 20th MARCH, 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 13/04/2018 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the application for compensation made by

the appellants under Section 16 of the Railway Claims Tribunal Act, 1987 was dismissed.

2. Background facts:-

The appellants are the parents of the deceased. The appellants claim that on 26.04.2015, the deceased boarded Mumbai to Amravati Express at CST Railway Station. The journey ticket was purchased by his cousin brother. It is stated that due to heavy rush of the passengers and sudden jerk to the train deceased fell from moving train on 27.04.2015, between Shirsoli and Jalgaon Railway Station at KM No.414/15-414/17. He sustained injury to his head. He was taken to the Civil Hospital, Jalgaon. From Jalgaon, he was being shifted to Amravati Hospital, but on the way, he died. It is stated that his death was in an untoward incident. He was a *bona fide* passenger. The ticket was lost in the incident.

3. The respondent-Railway has filed a written statement and opposed the claim. It was contended that death was not in an untoward incident. The deceased was negligent while travelling. It was contended that the deceased was not a *bona fide* passenger inasmuch as he was travelling without a journey

ticket.

4. The parties adduced the evidence. Budhram s/o Hariram Chavhan (AW-1) is the father of the deceased. Shri Devram s/o Totaram Tayde (RW-1) is the Deputy Station Superintendent, Jalgaon Railway Station. Learned Member of the Tribunal on consideration of the evidence, found that the evidence, was not sufficient to prove the claim and ultimately dismissed the claim. The appellants are before this Court in appeal.

5. I have heard Mrs. U.A. Bhattad, learned Advocate for the appellants and Mrs Neerja Chaubey, learned Advocate for the respondent. Perused the record and proceedings.

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

i) Whether the deceased was travelling in Amravati Express (Train No.12111) as a *bona fide* passenger with a valid journey ticket?

ii) Whether the deceased died in an untoward incident as defined under Section 123(c) of the Railways Act,

1989?

7. Learned Advocate for the appellants submitted that the dead body was found on the railway premises in an injured condition. Learned Advocate submitted that the deceased had sustained injury to his head. The injury to the head could be possible due to a fall from a moving train. Learned Advocate submitted that the material on record is sufficient to prove that death was in an untoward incident. Learned Advocate further submitted that evidence of the father of the deceased, as well as the statement of his cousin brother recorded by the police, during the course of the inquiry clearly prove that the cousin brother of the deceased had purchased the ticket and boarded the train. Learned Advocate submitted that the cousin brother could not be examined because he died in 2016. Learned Advocate submitted that the spot panchanama was drawn after six to seven hours of the removal of the injured from the spot and therefore, the possibility of loss of ticket has been established. Learned Advocate submitted that at the time of the inquest panchanama, the trouser and shirt pockets were not carefully examined. Learned Advocate submitted that material

on record is sufficient to prove the possibility of loss of ticket. Learned Advocate submitted that the judgment and order passed by the Tribunal cannot be sustained.

8. Learned Advocate for the respondent-railway, in short, supported the judgment and order passed by the Tribunal. Learned Advocate submitted that there is no evidence to prove that death was in an untoward incident. Learned Advocate submitted that the mere presence of the body in an injured condition on the railway premise is not sufficient to conclude that the death was in an untoward incident. Learned Advocate submitted that railway ticket could have been recovered if it was really carried by the deceased.

9. The deceased was found in an injured condition at 7.50 a.m. on 27.04.2015, by the side of the track between Shirsoli and Jalgaon Railway Station, at KM. No.414/15 and 414/17. The deceased had sustained a major injury to his head. The injury to the head could be possible due to a fall from a moving train. The possibility of a run over of deceased as well as dash to the deceased by a moving train at the spot of the incidence is completely ruled out on the basis of evidence on

record. The deceased was a resident of village Chinchfail in District Amravati. The deceased otherwise had no reason to go to the spot of incident. The deceased was coming to Amravati by Amravati Express. This fact has been proved by the evidence of AW-1. During the course of the inquiry, the statement of the cousin brother of the deceased was recorded by the police. It has come on record that the deceased had gone to Mumbai to work with his cousin brother at his mobile repairing shop. AW-1 has stated that the deceased had boarded Amravati Express at CST Railway Station Mumbai for Amravati. The case of a run over or dash to the deceased has been completely ruled out. There was no eye witness to the incident. The injury sustained by the deceased, coupled with the evidence on record, is sufficient to prove that the deceased fell from a moving train at the spot of the incident and died due to injuries sustained by him to his head. The accidental falling of any passenger from moving train carrying passengers is an untoward incident. In this case, the appellants have proved that the deceased died in an untoward incident.

10. The next important question is whether the deceased was a *bona fide* passenger or not. AW-1 the father of the

deceased, has filed the affidavit. He has stated that the deceased had boarded Amravati Express at CST Railway Station, Mumbai, in the presence of his cousin brother. The statement of AW-1 as well as the statement of the cousin brother of the deceased was recorded during the course of inquiry by the police. It is seen on perusal of the statement of AW-1 recorded by the police that he had stated that the cousin brother of the deceased had purchased railway ticket for him and thereafter he boarded the train. This fact was not specifically stated in the affidavit. It appears to be a mistake of the advocate. There was no mistake or fault on the part of the unfortunate father of the deceased. The advocate was expected to take care. Be that as it may, the other evidence on record supports the contention of appellant No.1. The cousin brother expired in 2016. The statement of the cousin brother was recorded by the police. It is part of the record at page A-41. It is not the case of the railway that this statement was either false or fabricated. The statement was recorded by the railway police. In his statement, the cousin brother of the deceased categorically stated that at CST Railway Station Mumbai, he purchased a railway ticket for Rs.210/- for the deceased and in

his presence, the deceased boarded Amravati Express. The father of the deceased has also made such statement before the police. This material is sufficient to establish that the deceased had boarded the train after purchasing a valid journey ticket.

11. The ticket was not found on the spot. It is the case of the appellants that the ticket was lost in the incident. In my view, the evidence on record if appreciated in *juxtaposition* with the other attending circumstances would be sufficient to accept this contention. The deceased was found lying in an injured condition at 7.15 a.m. He was shifted to Jalgaon Civil Hospital. AW-1 was informed by the officials about the incident. He went to Jalgaon. It is undisputed that the father had decided to carry the deceased to Amravati for further treatment. It is undisputed that the deceased succumbed to the injuries on the way to Amravati. The inquest panchanama was drawn on 28.04.2015, at 11.00 a.m. The spot panchanama was drawn on 27.04.2015 at 11.15 a.m. The possibility of loss of a ticket on the spot has to be ruled out on the basis of the panchanama. Perusal of the spot panchanama would show that there is no mention that spot was carefully examined and ticket was not found. The spot was examined after five to six hours of

the incident. The spot was not guarded by the police. The deceased was initially carried to the Civil Hospital, Jalgaon and from Jalgaon he was being carried to Amravati. Therefore, during this period, the possibility of loss of a ticket cannot be ruled out. Perusal of the inquest panchanama would show that the trouser and shirt pockets were not examined at the time of the inquest panchanama. In my view, the circumstances fully corroborate the statement of the appellants. The statement of the cousin brother of the deceased cannot be brushed aside. It was recorded during the course of the inquiry/investigation. In his statement, the cousin brother had provided the necessary details of the purchase of the ticket and the price of the ticket. In my view, therefore, this evidence is sufficient to prove that the deceased was a *bona fide* passenger travelling with a valid journey ticket. Perusal of the judgment and order would show that the learned Member has failed to consider all these aspects and as such, has come to a wrong conclusion. The findings recorded by the learned Member on both points cannot be sustained on the basis of the evidence. The appellants have proved that the deceased died in an untoward incident. They have also proved that he was a *bona fide*

passenger travelling with a valid journey ticket. As such, I answer both points in the affirmative.

12. In this case, the accident had occurred on 26.04.2015. Learned Advocate for the appellants submitted that after issuance of notification dated 22.12.2016 by the Ministry of Railways (Railway Board), the compensation payable under the various entries of Schedule to the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 has been revised with effect from 01.01.2017. In view of the amendment of the schedule, in case of a death claim, the claimants are entitled to get compensation of Rs.8,00,000/-. However, in view of the decision of the Hon'ble Apex Court in the case of *Union of India vs. Radha Yadav* reported at **(2019) 3 SCC 410** in the case of the old claim, the claimants would be entitled to get compensation of Rs.8,00,000/- without interest, if the compensation awarded earlier with interest is less than Rs.8,00,000/-. Learned Advocate for the claimants submitted that the compensation awarded earlier i.e. Rs.4,00,000/- with interest, would not be more than Rs.8,00,000/-. Therefore, in this case, the claimants would be

entitled to get Rs.8,00,000/- without interest.

13. Accordingly, I pass the following order:

14. Appeal is allowed.

15. The order passed by Railways Claims Tribunal, Nagpur Bench, Nagpur dated 13/04/2018 is quashed and set aside.

16. The claim petition filed by the appellants is allowed.

i) The respondent i.e railway is directed to pay compensation of Rs.8,00,000/- (Rs. Eight Lakhs Only) to appellants.

ii) The appellant Nos. 1 and 2 Mr. Budharam s/o Hariram Chavhan and Mrs. Sumitra w/o Budharam Chavhan shall get 50% of amount of compensation each.

iii) The amount of compensation be deposited within four months.

iv) The amount of compensation of Rs.8,00,000 (Rs. Eight Lacs Only) be transferred directly in the bank account of the appellants. The appellants shall provide the

details with regard to their bank accounts to the respondent.

17. The first appeal stands disposed of. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

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