



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

FIRST APPEAL NO. 370 OF 2020

APPELLANTS : 1. Ashok S/o. Sheshrao Sawarkar, Aged about 46 years, Occ. Labour.
 2. Shila W/o. Ashok Sawarkar, Aged about 43 years, Occ. Household.

R/o. Near Dr. Gonnade Hospital,
 Pandhari Ward, Pandhurna, Dist-
 Chindwada (M.P.).

//VERSUS//

RESPONDENT : Union of India, through General Manager, Central Railway, Mumbai, C.S.T., Mumbai.

Mr. K.P. Mirache, Advocate for the Appellants.
 Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : G. A. SANAP, J.
DATED : 11th 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 9th September, 2019, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants came to be dismissed.

02] BACKGROUND FACTS:

The appellants are the parents of the deceased Sachin Sawarkar. The appellants claim that on 14th November, 2017, the deceased, while travelling in a railway train from Nagpur to Pandhurna with a valid journey ticket fell from the running train and died due to the injuries sustained by him. The death was in an untoward incident. He was a *bona fide* passenger, inasmuch as the journey ticket was recovered from the trouser pocket of the deceased at the time of the inquest panchanama.

03] The respondent-Railway filed the written statement and opposed the claim. It is contended that the deceased was not a *bona fide* passenger. The death was not in an untoward incident.

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, therefore, dismissed the claim. Being aggrieved by this judgment and order of the Tribunal, the appellants have come before this Court in appeal.

05] I have heard Mr. K.P. Mirache, learned advocate for the appellants 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 Act of 1989?

(b) Whether the deceased was a *bona fide* passenger travelling in the train with a valid journey ticket?

07] The learned advocate for the appellants submitted that the learned Member of the Tribunal has accepted the case of the appellants that the deceased was a *bona fide* passenger travelling with a valid journey ticket. The learned advocate submitted that the evidenced adduced by the appellants is sufficient to prove that the deceased died due to a fall from the moving train and, therefore, the death was in an untoward incident. The learned advocate submitted that the learned Member of the Tribunal has not properly appreciated the facts, circumstances, and evidence on record. The learned advocate submitted that the possibility of the deceased being

run over by any train has been completely ruled out. The learned advocate submitted that the respondent-Railway has not adduced any evidence to make its defence probable that the death was not due to a fall from the moving train but it was due to run over of the deceased by any train. The learned advocate submitted that, therefore, the finding on this point recorded by the Tribunal cannot be sustained.

08] The learned advocate for the respondent-Railway has supported the judgment and order passed by the learned Member of the Tribunal. The learned advocate submitted that the material relied upon by the learned Member of the Tribunal to record an inferential finding against the appellants is part of record. The learned advocate submitted that there was no eye witness to the incident. There was no report of ACP about accidental falling of any passenger from a train, either by the guard of any train or by the Loco Pilot of any train.

09] In order to appreciate the rival submissions advanced by the learned advocates for the parties, I have gone through the record and proceedings. Undisputedly, the Tribunal has recorded a finding

that the deceased was a *bona fide* passenger, inasmuch as he was travelling with a valid journey ticket. The journey ticket was found in the trouser pocket of the deceased at the time of the inquest panchanama.

10] The only question that needs to be addressed is whether the deceased died due to a fall from the moving train, and as such, whether the death was in an untoward incident. The material on record is not sufficient even to infer that the deceased was run over by any train. The body of the deceased was not cut into pieces. The possibility of the deceased being run over by any train or being dashed by any train while crossing the railway track has been completely ruled out on the basis of the available material. The dead body of the deceased was found lying between Km. No.981/40-42 between Up and Down Tracks, quite some distance away from Katol Railway Station. The deceased had sustained a major injury to his head. The injuries sustained by the deceased could be possible due to a fall from a train. The body of the deceased, except for these injuries, was intact. If the deceased was run over by a train while crossing the track, then his body would have been cut into pieces. If

the deceased was dashed by any train at high speed, then he would have been thrown away by the side of the track, and in that situation, he would have sustained multiple fractures. The injuries sustained by the deceased, and more particularly recorded in Column No.17 of the post-mortem report indicate that the case in question was not of run over. It indicates that it was a case of a fall from a train. The defence of negligence or contributory negligence is not available to the Railway in such a case. The liability in such a case is based on 'strict' or 'no fault theory'. As long as the case is covered by the first part of Section 124A of the Act of 1989, the Railway is liable to pay the compensation. The Railway cannot be held liable to pay the compensation if the case is covered by any of the clauses of the proviso to Section 124A of the Act of 1989.

11] The evidence on record is sufficient to prove that the deceased while travelling from Nagpur to Pandhurna fell from the moving train and died due to the injuries sustained in the incident. The death in this case has been proved to be in an untoward incident. The learned Member of the Tribunal was, therefore, not right in rejecting the claim. Accordingly, I record my findings on the

above points in the affirmative.

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

- i. The judgment and order dated 9th September, 2019, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/153/2018 is set aside. The claim petition is allowed.
- ii. The appellants are entitled to get compensation of Rs.8,00,000 (Rupees Eight Lakhs Only) with interest @ 6% per annum from the date of the accident till its realization.
- iii. The respondent/Railway shall pay the compensation of Rs.8,00,000/- (Rupees Eight Lakhs Only) with interest @ 6% per annum from the date of accident till its realization to the appellants within four months from the date of uploading of this judgment.
- iv. The amount of compensation be deposited directly in the bank accounts of the appellants. The appellants are

directed to provide their bank account details to the respondent-Railway.

- v. Out of total compensation, appellant Nos.1 and 2 shall be entitled to get 50% share each.

13] 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