



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

FIRST APPEAL NO. 795 OF 2019

- 1) Smt. Vijaya Balkrushna Kakde,
Aged about 61 years, Occ.– Household,
- 2) Abhijeet Balkrushna Kakde,
Aged about 26 years, Occ.-Nil.
Both R/o. “Shivneri”, Shastri Nagar,
Muttelayout, Buldana.

.... **APPELLANTS**

// VERSUS //

Union of India,
Through its General Manager,
Central Railway, C.S.T. Mumbai.

.... **RESPONDENT**

Mr. A. P. Chaware, Advocate for Appellants.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 30.07.2024.

DATE OF PRONOUNCING THE JUDGMENT : 23.09.2024.

JUDGMENT.

1. This appeal is preferred against the impugned Judgment dated 18.07.2018 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/39/2017, thereby claim of the applicants/appellants for grant of compensation was dismissed.

2. Brief facts of the case are as under :

(i) On 24.04.2016, husband of applicant No.1 and father of applicant No.2 namely Balkrushna S/o Bhagwantrao Kakde was travelling in Howrah-Porbandar Express train No.12906 from Malkapur to Shegaon with journey ticket bearing No.AF63351804. Due to the jerk of train, Balkrushna fell down from the running train at KM No. 494/15-17 near Malkapur railway station. He died on the spot. Both the applicants are depends upon the deceased Balkrushna therefore, they filed application for compensation.

(ii) The respondent strongly opposed the said application and submitted that no such untoward incident took place as per the provision of Section 123(c) read with Section 124-A of the Railways Act. The application of the applicants is not maintainable. The deceased Balkrushna was not *bona fide* passenger of any train. Therefore, applicants are not entitled for compensation as they are not dependents. It is lastly prayed to dismiss the claim of the applicants.

(iii) The learned trial Court 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 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) of Railways Act?*
- (3) *Whether the deceased was a bonafide passenger of the train on the relevant day, with valid journey ticket?*

3. The learned Railway Tribunal held that deceased was not involved in an untoward incident as defined in Section 123(c)(2) of the Railways Act and rejected the claim of the applicants/appellants.

4. The learned Advocate for the appellants pointed out the grounds of objections of this appeal along with evidence on record. He submitted that it is admitted fact that accident took place in the railway premises and therefore, Memo of Deputy Station Superintendent, Malkapur Exhibit A-1, Registration of Accidental Death Exhibit A-2, an Inquest panchnama Exhibit A-4 was drawn up. Spot panchnama Exhibit A-3 was also drawn up. It is accidental death. He further pointed out that Affidavit of applicant No.1 – wife of the deceased Balkrushna Exhibit AW-1 at page A-98 and her cross-examination at page A-121. He also pointed out Postmortem Report Exhibit A-6 of deceased Balkrushna and submitted that it was untoward incident occurred at the railway premises.

5. The learned Advocate for the appellants further submitted that railway ticket is found with the deceased Balkrushna therefore, it is also proved that the deceased Balkrushna was a *bona fide* passenger. The reasons and findings of the learned Tribunal regarding cause of death are not legal and correct, it was untoward incident occurred on the railway premises itself. He prayed to allow the appeal and quash and set aside the impugned judgment.

6. The learned Advocate Ms. Neerja Chaubey for respondent submitted that there is no evidence of eye-witness to prove the alleged incident which took place in the railway premises. It was not untoward incident, which is requisite as per law. Wife of the deceased Balkrushna – appellant No.1 was not having knowledge of incident. Further, no any co-passenger or loco-pilot were examined to prove the untoward incident. Learned Advocate for the respondent pointed out an affidavit of examination-in-chief i.e. evidence of RW-1 Ajay Kumar Gupta, Deputy Station Superintendent, Malkapur Railway Station. He deposed that on 24.04.2016 at about 21.06 hours, when he was on duty, after passing of the train No.12906, one unknown person came to his office and informed him that one person is runover by a train. Therefore, he sent Pointsman to the spot of accident and accordingly he had issued a written memo of accident to

GRP, Malkapur. He further deposed that no untoward incident of accidental fell down of any passenger was noticed or reported to him either by Guard and Loco Pilot of any train or by any other person. Learned Advocate for the respondent further pointed out an affidavit of evidence of RW-2 Dilip Bhagwat Mavle, Guard of Howrah-Porbandar Express train No.12906. He deposed that on 24.04.2016 he was working as a Guard of Howrah-Porbandar Express train No.12906 from Nagpur to Bhusawal. He further deposed that no untoward incident of accidental fell down of any passenger was noticed or reported to him either by Loco Pilot, Station Master or by any other person. There was no jerk or rush in the said train.

7. Learned Advocate for the respondent lastly submitted that mere findings of ticket of the deceased Balkrushna with him is not sufficient to hold that it was untoward incident. Considering the evidence of RW-1 and RW-2, she lastly prayed to dismiss the appeal.

8. Following points emerged for consideration which are answered with reasons and findings as under :

(i) Was it proved by the appellants that in untoward incident, Balkrushna was died?

- (ii) *Was it proved by the appellants that Balkrushna was bonafide passenger with having valid journey ticket?*
- (iii) *Are the appellants dependents on the income of the deceased Balkrushna?*
- (iv) *Is the impugned judgment illegal, incorrect and requires interference?*

9. Perused the impugned judgment and evidences. The wife of deceased Balkrushna, who was not accompanying along with him at the time of incident. Therefore her evidence is of formal nature. The co-passenger is not examined. However, from the Memo issued by Deputy Station Manager, Inquest Panchnama and Spot Panchnama reveals that the dead-body of the Balkrushna was found on the railway track. Inquest Panchnama at Exhibit A-4 as well as Memo of Deputy Station Superintendent, Malkapur Exhibit A-1 corroborated the appellants' case that dead body of deceased Balkrushna was found in railway premises. Postmortem report at page No. A-6 along with Death Certificate at Exhibit A-10 shows that cause of death is cardio respiratory arrest due to hypovolumic shock due to ploytrauma. The said evidence is natural and probable. Therefore, it can be safely held that said incident was untoward incident. It is well settled that such cases are to be decided on preponderance of probability and strict proof is not necessary.

10. The requirement for getting compensation as per Section 124-A of the Railways Act are that, there must be untoward incident occurred due to the wrongful act or neglect or default on the part of railway administration for claiming compensation. Further requirement is that passenger must be valid passenger having ticket of the train to travel by it. A ticket of deceased Balkrushna was found with him, which is natural and probable evidence, it can be safely relied upon. The Railway Tribunal erred on relying upon the evidence of Shri Ajay Kumar Gupta, Deputy Station Superintendent, Malkapur Railway Station and Shri Dilip Bhagwat Mavle, Guard of Howrah-Porbandar Express train No.12906, the evidence of the applicant AW-1 is not disproved by it. This shows that evidence was not appreciated properly by the Tribunal.

11. The negligence of any person who sustained injuries or death in the premises of railway having valid ticket cannot be considered even if he/she was negligent, which is 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*.

12. Learned Railway Tribunal failed to consider all these factual and legal aspects in its proper perspective that untoward

incident took place and it was a death due to the railway accident. The examination of independent witness like co-passenger is not practicable and probable in such cases as the peoples are not interested to come before Court or Tribunal for giving evidence. Thus, the reasons and findings of the learned Tribunal are not legal and correct. It caused injustice to the appellants. The appellants have established their claim as appellant No.1 being wife and appellant No.2 son of deceased Balkrushna and they are dependent on him. Therefore they are entitled for compensation as prayed by them.

13. For the reasons discussed above, the argument of learned Advocate for the respondent is not acceptable that Balkrushna was not a *bona fide* passenger etc. The impugned Judgment thereby deserves to be quashed and set aside. The appeal deserves to be allowed. Therefore, points Nos.1 to 4 are answered accordingly. Hence, the following order :

- (i) The Appeal is **allowed**.
- (ii) The impugned Judgment and order dated 18.07.2018 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/39/2017 is quashed and 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 within four months from the date of uploading of this judgment.
- (iv) The Record and proceedings be sent back to the Railway Tribunal.

(SANJAY A. DESHMUKH, J.)