



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

FIRST APPEAL NO. 207 OF 2024

APPELLANTS
 (Original applicants on
 R.A.)

- : 1. Muktabai w/o Punjaji Dandage,
 Aged about 43 years, Occu:-
 Housewife
2. Amol s/o Punjaji Dandage,
 Age 22 Yrs. Occu. Labour
3. Arti D/o Punjaji Dandage
 Age-20 Yrs. Occu- Education
4. Vaishnavi D/o Punjaji Dandage
 (Applicant No.4 through applicant
 No.1, Mother, Natural Guardian)
5. Darubai Wd/o Narayan Dandage,
 Age -70 yrs. Occu- Housewife
 All R/o Wadgaon Dighe, Po-
 Mominabad, Sub. Dist. Nandura, Dist.
 Buldhana (M.S.) 443401

//VERSUS//

RESPONDENT
 (Original Respondent on
 R.A.)

: Union of India,
 through General Manager,
 Central Railway, CSMT, Mumbai

Mrs. S.M. Chaudhari, 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 13/09/2023, passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the application made by the appellants for compensation under Section 16 of the Railway Claims Tribunal Act, 1987 was dismissed.

2. Background facts:-

Appellant No.1 is the wife of the deceased. Appellant Nos.2, 3 and 4 are the children of the deceased and appellant No.5 is the mother of the deceased. The appellants claim that on 3.03.2020, the deceased was travelling from Malkapur to Biswa bridge by an unknown train with a valid journey ticket. It is stated that due to a sudden jerk and rush in the general compartment of the train, he fell down at KM No.503/22-24 at Malkapur Railway Line, Dist. Buldhana. He sustained serious injuries to his head. It is stated that he died in an untoward incident.

3. The respondent-Railway, has filed the written

statement and opposed the claim. According to the railway death was not in an untoward incident. The deceased had committed suicide on account of his poor financial condition and disturbed state of mind.

4. Appellant No.1 examined herself as a sole witness in support of the claim. The railway did not examine any witnesses. Learned Members of the Tribunal, on appreciation of the evidence, found that there was no substance in the claim and ultimately dismissed the claim. The appellants have come before this Court in appeal.

5. I have heard Mrs. S.M. Chaudhary, learned Advocate for the appellants and Mrs Neeraja 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 a *bona fide* passenger of the unknown train 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 journey ticket was recovered from the pocket of the deceased at the time of the panchanama. The ticket was valid for the journey from Malkapur to Biswa Bride. Learned Advocate submitted that the injury sustained by the deceased to his head is sufficient to conclude that the deceased fell from a moving train and died. Learned Advocate submitted that there was no evidence adduced by the railway to prove that the deceased committed suicide. Learned Advocate submitted that the possibility of run over as well as dash to the deceased by any train at the spot of the incident has been ruled out. Learned Advocate submitted that the dead body was lying by the side of the track. It is pointed out that there was no report of loco pilot or guard of any train about run over of any person by train at the spot of incident. Learned Advocate submitted that the learned Members of the Tribunal have failed to properly appreciate the evidence and have come to a wrong conclusion.

8. Learned Advocate for the respondent-railway in short supported the judgment and order passed by the Tribunal. Learned Advocate submitted that mere possession of the ticket is not sufficient to draw the inference that death was in an untoward incident. Learned Advocate submitted that the right hand of the deceased was amputated and it is sufficient to conclude that he was run over by an unknown train. Learned Advocate submitted that the statement of the wife of the deceased recorded by police clearly indicates that the deceased was facing financial problems and on account of that he was in a disturbed state of mind. It is submitted that therefore, the possibility of suicide by the deceased at the spot of the incident cannot be ruled out.

9. It is undisputed that the journey ticket was found in the pocket of the deceased at the time of panchanama. The incident occurred on 03.03.2020. The ticket in question was purchased at 7.44 hours. The dead body was found at the spot at 8.30 am. The time of purchase of ticket mentioned in the ticket and the time of the incident brought on record would show that the incident occurred between 7.44 a.m. and 8.30

a.m. The recovery of the ticket is sufficient to conclude that the deceased was a *bona fide* passenger travelling with a valid journey ticket. Learned Members of the Tribunal have committed a mistake in rejecting this evidence and the contention of the appellants.

10. The next important issue is whether the death was in an untoward incident or not? It is the defence of the railway that the deceased had committed suicide. The respondent-railway has not adduced any evidence to prove this fact independently. If the deceased had committed suicide, as stated by the railway, then there would have been multiple injuries on the body of the deceased. Undisputedly, there is no report of loco pilot or guard of any train about the run over of any person at the spot of incident as well as a dash to any person at the spot of incident. The dead body was not found on the track. The dead body was lying by the side of the track. Therefore, the possibility of the run over of the deceased by any train or dash to the deceased by unknown train has been completely ruled out.

11. The deceased had sustained major injuries to his head. There was an amputation of right hand. Merely because of the amputation of the right hand the presumption of run over cannot be drawn. A person falling from a train can come under the wheels if, in the process of falling, his body struck to any part of the train. The injury to the head could be possible due to a fall from a moving train. The deceased was travelling with a valid journey ticket. The deceased had boarded the unknown train at Malkapur Railway Station. The deceased otherwise had no reason to go to the spot of the incident. In this case, therefore, the defence of the railway that the deceased had committed suicide cannot be accepted. The railway ticket recovered from the possession of the deceased is strong evidence to negative this contention of the respondent-railway.

12. Under Section 124-A of the Railway Act, 1989 (for short "Act of 1989) the liability to pay the compensation is regardless of any wrongful act, neglect or default on the part of railway administration. The railway cannot be held liable to pay compensation if the case falls under the proviso to section

124-A of the Act of 1989. The proviso to Section 124-A provides that railway administration would have no liability to pay compensation in case death of the passenger or injury to the passenger was caused due to any of the reasons enumerated in clauses (a) to (e) to proviso to Section 124-A. In the absence of malicious intent or *mens rea* the negligence can neither be held as a criminal act under proviso (c) to Section 124-A. The liability in such a case is a strict liability. It is based on no fault theory. This position has been enunciated in the case of ***Union of India Vs. Rina Devi*** reported at ***AIR 2018 SC 2362***. For the purpose of convenience, it would be proper to reproduce paragraph Number 16.6. It reads thus:-

“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 reported in 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 163-A 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."

13. In this case, the evidence on record is sufficient to show that the deceased had boarded unknown train at Malkapur Railway Station. He fell from a moving train at the spot of the incident. Therefore, in my view, the defence of the railway cannot be accepted. The accidental falling of any passenger from a train carrying passengers is an untoward incident. In my view, therefore, the learned Members of the Tribunal were not right in rejecting the evidence adduced by the appellants. Learned Members have failed to properly appreciate the material available on record in *juxtaposition* with a settled legal position. In this case, on the basis of the evidence, it has been proved that the deceased was a *bona fide* passenger travelling with a valid journey ticket. Similarly, it has been proved that death was in an untoward incident. As such, I conclude that the judgment and order passed by the

Tribunal cannot be sustained. Accordingly, I record my findings on both points in the affirmative. The respondent-railway is liable to pay compensation of Rs.8,00,000/- (Rupees Eight Lacs Only) to the appellants in view of the amended provisions of Scheduled Rule 3 of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 with effect of 01.01.2017. The railway is also liable to pay the interest at the rate of 6% per annum from the date of accident till its realization.

14. Accordingly, I pass the following order:

15. Appeal is allowed.

16. The order passed by Railways Claims Tribunal, Nagpur Bench, Nagpur dated 13/09/2023 is quashed and set aside.

17. 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.

i) Out of the total amount, 50% amount shall be paid to appellant No.1.

ii) 20 % amount shall be paid to the appellant No.5.

iii) 10% amount each shall be paid to the appellant Nos.2 to 4.

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

v) The amount of compensation of Rs.8,00,000 (Rupees 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.

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

(G. A. SANAP, J.)