



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

FIRST APPEAL NO. 341 OF 2024

- 1) Smt. Seema Wd/o Santosh Ambadare,
Aged about 32 years, Occ.-Household,
 - 2) Ku. Chaitali D/o Santosh Ambadare,
Aged about 12 years, Occ.-Nil,
 - 3) Master Samrth S/o Santosh Ambadare,
Aged about 06 years, Occ.-Nil,
- (Appellant Nos.2 and 3 being minor
through their mother i.e. appellant No.1)

All R/o. Ward No.2, Near Ramdevbaba
Mandir, Bhagatsing Chowk,
Dhamangaon Railway,
Tah. Dhamangaon,
Dist. Amravati (Mah.) – 444709.

.... **APPELLANTS**

// **VERSUS** //

Union of India,
Through the General Manager,
Central Railway, CST Mumbai.

.... **RESPONDENT**

Mr. R. G. Bagul, Advocate holding for Mr. R. M. Tiwari, Advocate
for Appellants.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.
DATE : 10th SEPTEMBER, 2024.

ORAL JUDGMENT.

1. **Admit.** Heard finally with consent of the learned
Advocates for the parties.

2. This appeal is preferred against the Judgment and order dated 14.09.2023 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (IIu)/NGP/105/2019, whereby the claim of the applicants/appellants for the grant of compensation was dismissed.

3. Brief facts of the applicants' case are as under :

(i) On 14.09.2018, Santosh S/o Devidas Ambadare was travelling with his friend Rameshwar Ramraoji Shendre by Amravati-Jabalpur Express from Amravati to Dhamangaon with a valid journey ticket No. UFC 22822281. There was heavy rush in the said train, due to which Santosh was standing near the door of the said train. When the said train was approaching the Dhamangaon railway station, due to a sudden jerk of the train, Santosh fell down at KM No.707/04-06, sustained serious injuries and died on the spot. The applicant No.1 is wife, applicant No.2 is daughter and applicant No.3 is the son of deceased Santosh. The applicants contended that they are dependent upon the income of deceased Santosh, therefore, they prayed for the grant of compensation.

(ii) The respondent by filing written-statement, denied the claim and contended that no such untoward incident occurred within the railway premises as alleged by the applicants. It is further

contended that the deceased Santosh had committed suicide by lying on the track, as a result he was dash and run over him. Thus, no untoward incident took place. He was not a *bona fide* passenger. It is further contended that alleged incident was caused by the criminal act of the deceased Santosh and such acts disentitle the applicants from claiming any compensation for a self inflicted injury, as he committed suicide. The respondent lastly prayed for the dismissal of the applicants' claim.

4. The learned Railway Tribunal cast the following issues :

- (1) *Whether Applicants are the dependents of the deceased with the meaning of Section 123 (b) of the Railway Act?*
- (2) *Whether deceased was a bona fide passenger of the train on the relevant day, with valid journey ticket?*
- (3) *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)(2) of Railway Act?*

5. The learned Railway Tribunal held that the alleged untoward incident was not proved by the applicants. The deceased Santosh committed suicide. The deceased Santosh was not a *bona fide* passenger therefore, the claim of the applicants was dismissed.

6. Perused the record and proceedings. The following points emerged for consideration :

- (i) *Was it proved by the appellants that in an untoward incident Santosh died and he was a bona fide passenger with having valid journey ticket?*
- (ii) *Was it proved by the appellants that they are dependent on the Santosh?*
- (iii) *Is the impugned judgment illegal and require interference?*

7. The learned Advocate for the appellants pointed out that one of the friend of Santosh, in his statement, stated that on 14.09.2018 he and the deceased purchased tickets at Amravati railway station and were travelled by Jabalpur Express train. When the said train was 2 KM away from Dhamangaon railway station, deceased Santosh was standing near the door of the compartment and due to a jerk, he fell down from the train. After reaching the train at Dhamangaon railway station, he had called his relatives by phone and informed them about the incident. He further pointed out the documentary evidence particularly DMR report, spot panchnama and inquest panchanama, which indicates that the incident took place within the premises of railway. However, the learned Railway Tribunal disbelieved the evidence adduced by the applicants and dismissed the claim. He further submitted that reasons and findings of the learned Railway Tribunal are neither legal nor correct. It is

therefore, prayed that the appeal be allowed by setting aside the impugned judgment.

8. The learned Advocate Ms. Neerja Chaubey for the respondent strongly opposed the appeal and submitted that deceased, Santosh was not a *bona fide* passenger and no untoward incident took place. It was contended that he had committed suicide by lying on the railway track. It is further contended that alleged incident was caused by the criminal act of the deceased Santosh. The appellants are not entitled for any compensation for such self inflicted injury due to his own criminal act. The judgment of the learned Tribunal is legal and correct and no interference is warranted. It is lastly prayed that the appeal be dismissed.

9. To prove their case, the applicants adduced evidence by filing an Affidavit-in-chief of applicant Smt. Seema Ambadare AW-1. She reiterated the contentions stated in her application for compensation. The applicants are relying upon the documents i.e. DMR Report Exhibit A-1, journey ticket Exhibit A-2, Marg Summery Exhibit A-3, Spot panchnama Exhibit A-4, Inquest panchnama Exhibit A-5, Statement of Rameshwar Ramraoji Shendra, friend of deceased Santosh Exhibit A-6 and Aadhar Cards of applicants vide Exhibit A-7 to A-9.

10. To disprove the evidence of applicants, the respondent examined Mahendra Aasaram Meshram (RW-1), Dy. Station Manager at Dhamangaon Railway Station. He deposed that on 14.09.2018 he was on duty from 16.00 to 24.00 hours. At about 20.05 hours, the Loco-pilot of a Goods train LAE informed him via walkie-talkie that dead body of an unknown person is lying on the Railway track at KM No.707/04-06. Upon receiving the information, he issued a written memo to City Police Dhamangaon, GRP Badnera and RPF Pulgaon for further course of action. He further deposed that Express Train No. 12159 arrived at Dhamangaon Railway Station at 18.53 hrs. and departed at 18.55 hrs. and subsequently two goods trains namely CD/BCN at about 19.14 hrs. and PS/EMPTY at about 19.30 hours, passed through, but none of the loco-pilot, guard or any passengers informed an accidental falling down of any passenger from their train or laying the dead body of anybody on the track.

11. The respondent railway also examined Shri Shashi Bhushan Kumar S/o Bhishvanath Prasad, Manager/Guard (Mail Express), Central Railway, Division Nagpur as RW-2. He deposed that on 14.09.2018, he was working as a Guard of Passenger Train No. 12159 Amravati Jabalpur Mail Express travelling from Amravati to Jabalpur. He further deposed that during his duty hours, no untoward incident

of accidental fall down of any passenger was noticed or reported to him by Loco-pilot, Station Master or any passengers of the train. There was no jerk and rush to the train.

12. Perused the record and proceedings. The DMR report, Spot panchnama, Inquest panchnama corroborates the evidence of the appellants that untoward incident was occurred within railway premises. The valid railway ticket was also found with the deceased Santosh, which shows that he was a *bonafide* passenger. This is a natural evidence. The reasons given by the Railway Tribunal are not legal, sound and correct. The statement of Rameshwar Shendra, friend of deceased Santosh, also corroborates the claim of the appellants. The evidence collected by the Investigating Officer in the natural course of investigation. To corroborates the case of appellant, even evidence of eye witness is not necessary. There is also no evidence to suggest that the deceased Santosh committed suicide on the railway track.

13. The evidence of witnesses particularly an Affidavit-in-chief of applicant Smt. Seema Ambadare A.W.-1 - wife of deceased Santosh is helpful in proving the appellants dependency on deceased Santosh.

14. 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 was 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***.

15. Considering this aspect, there is no reasons to disbelieve the evidence of spot panchnama etc., which shows that the incident took place within the premises of railway. The evidence of AW-1 is properly corroborated with the documentary evidence as discussed above. The learned Railway Tribunal failed to consider all these aspects in its proper perspective and wrongly held that the applicants failed to prove untoward incident and that Santosh was not a *bona fide* passenger. The reasons and findings of the learned Tribunal is not sustainable in the eyes of the law. There is no factual as well as legal reason to deny the compensation to the appellant. Therefore, the fact that deceased Santosh was a *bona fide* passenger and that an untoward incident occurred as has been asserted is proved. Therefore, point Nos.1 to 3 are answered in the 'affirmative'.

16. The appeal deserves to be allowed and the impugned judgment deserved to be set aside. For the reasons discussed above,

the argument of learned Advocate for the respondent is not acceptable. Hence, the following order :

- (i) The Appeal is **allowed**.
 - (ii) The Judgment and order dated 14.09.2023 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/105/2019, is quashed and set aside.
 - (iii) The respondent is directed to pay compensation of **Rs.8,00,000/-** (Rs. Eight Lakhs only) to the appellants along with **6% interest** thereon from the date of incident.
 - (iv) Out of amount of Rs.8,00,000/-, Rs.5,00,000/- to be paid to the appellant No.1 and amount of Rs.1,50,000/- each be deposited in the name of the appellant Nos.2 and 3 in any Nationalize Bank as '**Fix Deposit**', for three years.
 - (v) The compensation amount be deposited within four months before the Railway Tribunal.
 - (vi) The Record and proceedings be sent back to the Railway Tribunal.
17. The Appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)