



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

FIRST APPEAL NO. 208 OF 2024

1) Alaka Wd/o Dnyaneshwar Sutar,
Aged about 36 years, Occ.– Housewife,

2) Umesh S/o Dnyaneshwar Sutar,
Aged about 15 years, Occ.-Education.

(Applicant No.2 through Applicant No.1
Mother, Natural Guardian)

Both R/o. Narimala Juni Panyachi Taki,
Varangaon, Tal. Bhusaval,
District Jalgaon 425305.

.... **APPELLANTS**

// VERSUS //

The Union of India,
Through General Manager,
Central Railway, CSMT Mumbai.

.... **RESPONDENT**

Ms. Sumesha Chaudhari, Advocate for Appellants.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 09th DECEMBER, 2024.

ORAL JUDGMENT.

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

2. This appeal is preferred against the Judgment dated
14.09.2023 passed by the learned Railway Claims Tribunal, Nagpur

Bench, Nagpur in Case No. OA (IIu)/NGP/13/2021, thereby the claim of the applicants/appellants filed under Section 16 of the Railway Claims Tribunal Act, 1987 for grant of compensation was dismissed.

3. Brief facts of the case are as under :

(i) On 17.03.2016, Dnyaneshwar S/o Jagannath Sutar was travelling by Nagpur-Bhusawal Passenger Train No.51286 from Bodwad to Bhusawal. He was travelling with a valid journey ticket of the train. When the train was passing from KM No.456/19-17 near Varangaon Railway Station, due to heavy rush and a sudden jerk, he fell down from the running train and died on the spot. The journey ticket purchased by Dnyaneshwar was lost in that incident therefore, it is not recovered during the spot panchnama. The applicant No.1 is the wife and applicant No.2 is the son of deceased Dnyaneshwar and they were depending on his income therefore, they filed an application for grant of compensation.

(ii) The respondent opposed the claim and denied the material contentions raised in the claim. It is contended that deceased Dnyaneshwar was not a *bona fide* passenger as he was not possession of a valid journey ticket of the train. Furthermore, it is denied that no any untoward incident occurred within the premises

of railway. Therefore, the incident does not fall within the preview of untoward incident as contemplated in Section 123(c) read with Section 124-A of the Railways Act. The statutory authority i.e. Investigating Agency reported that no such untoward incident took place as alleged by the applicants with regard to the passenger train No.51286 which was proceeding from Nagpur to Bhusawal.

4. The learned Railway Tribunal 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 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 Railways Act?*

5. The learned Railway Tribunal held that the valid journey ticket was not found with the deceased Dnyaneshwar. He was not a *bona fide* passenger. It was not an untoward incident which took place within the premises of the railway. The applicants were not dependents on the income of deceased Dnyaneshwar. It is lastly held that the applicants failed to prove all the essential ingredients and requisites for allowing the claim and the claim was rejected.

6. Perused the impugned judgment and record and proceedings.

7. Following points emerged for consideration as follows :

- (i) *Was it proved by the appellants that Dnyaneshwar died as a result of an untoward incident?*
- (ii) *Was it proved by the appellants that Dnyaneshwar was a bona fide passenger and had a valid journey ticket of train?*
- (iii) *Was it proved by the appellants that they were dependent upon the deceased Dnyaneshwar?*
- (iv) *Is the impugned judgment illegal and requires interference?*

8. During the argument, the learned Advocate for the appellants pointed out the DRM Report Exhibit A-1, Spot Panchnama Exhibit A-4 and important documents of investigation i.e. Postmortem Report Exhibit A-7 of deceased Dnyaneshwar etc. She further pointed out that the reasons and findings of the learned Tribunal are neither legal nor correct. The learned Tribunal failed to consider the case of ***Union of India Vs. Rina Devi***, reported in ***AIR 2018 SC 2362***, in which it was held that burden lies upon the respondent to prove that the passenger was travelling without a ticket. She further submitted that non finding of the journey ticket of the train with the deceased Dnyaneshwar is not legal to refuse the

claim for compensation. It is lastly prayed to allow the appeal by setting aside the impugned judgment.

9. The learned Advocate Ms. Neerja Chaubey for the respondent strongly opposed the appeal and submitted that the non finding of the valid journey ticket with the deceased Dnyaneshwar is sufficient to held that he was not a *bona fide* passenger. The learned Railway Tribunal rightly held that applicants failed to prove the requisites for allowing the claim, that deceased Dnyaneshwar was a *bona fide* passenger and that an untoward incident took place within the premises of the railway. She submitted that the reasons and findings of the learned Tribunal are legal and correct and no interference is warranted. It is lastly prayed that the appeal be dismissed.

10. The evidence of applicant No.1 – Alaka (AW-1) is in accordance with the facts stated in the application. Her evidence is useful for inferring that she and her son were dependent on the income of deceased Dnyaneshwar. However, she is not an eye witness of the incident of that accident. No any witnesses such as co-passenger were examined to prove the alleged incident. Generally, the co-passenger are reluctant to provide such evidence. Such cases

must be decided on the principle of preponderance of probability and strict proof is not necessary. The DRM Report Exhibit-A-1 and Spot Panchnama Exhibit A-4 was drawn up and all the relevant documents including Postmortem Report A-7 etc. were collected. No doubt, DRM Report Exhibit A-1 and Spot Panchnama Exhibit A-4 shows that journey ticket of the train was not found with the deceased Dnyaneshwar. However, Postmortem Report Exhibit A-7 clearly shows that cause of death of deceased Dnyaneshwar was due to cardio respiratory arrest and due to crush injuries to the abdomen. The Spot Panchnama Exhibit A-4 corroborates the Postmortem Report Exhibit A-7 that the body of deceased Dnyaneshwar was cut into two pieces in that accident.

11. Admittedly, the incident took place within the premises of railway. The findings of the learned Tribunal indicate that the journey ticket of the train was not found with the deceased Dnyaneshwar, neither in his pocket nor at the spot of incident. As per the law laid down by the Hon'ble Supreme Court in the precedent of ***Rina Devi*** cited supra, burden lies upon the respondent to prove that deceased Dnyaneshwar was travelling without a valid journey ticket of the train. It is not a case of the respondent that, during the journey, a Ticket Checker found that Dnyaneshwar was not having a valid

journey ticket with him. The respondent has failed to discharge the burden to prove that deceased Dnyaneshwar was not in possession of a valid journey ticket of the train. Therefore, this Court must infer that he was travelling with a valid journey ticket and he died in an untoward incident, which took place within the premises of the railway, as per the Spot Panchnama Exhibit A-4 and Postmortem Report Exhibit A-7. Said evidences are not disproved by the respondent. However, learned Tribunal while concluding the judgment and giving findings as to not finding of the journey ticket of the train, erred in holding that applicants failed to prove that deceased Dnyaneshwar was not a *bona fide* passenger, as he was not in possession of a valid journey ticket of the train. The learned Tribunal also erred in holding that no untoward incident took place as alleged by the applicants in their application. The dependency of the applicants that applicant No.1 is wife and applicant No.2 is son of the deceased Dnyaneshwar is proved.

12. Thus, the essential requisites for allowing the claim for compensation are proved. The appellants are therefore entitled for the compensation. Therefore, point Nos.1 to 4 are answered in the “affirmative”. For the reasons discussed above, the argument of learned Advocate Ms. Neerja Chaubey for the respondent is not

acceptable. The impugned judgment deserves to be set aside. The appeal deserves to be allowed. Hence the following order :

- (i) The Appeal is **allowed**.
 - (ii) The impugned Judgment dated 14.09.2023 passed by the learned Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No. OA (Ilu)/NGP/13/2021 is 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 before the learned Railway Tribunal.
 - (iv) The respondent is directed that out of amount of Rs.8,00,000/-, an amount of Rs.4,00,000/- be paid to the appellant No.1 and remaining amount of Rs.4,00,000/- be deposited as 'Fix Deposit' in the name of **appellant No.2 – Umesh S/o Dnyaneshwar Sutar**, in any nationalized Bank for a period of three years.
 - (v) The Record and proceedings be sent back to the Tribunal.
13. The Appeal is disposed of accordingly.

(SANJAY A. DESHMUKH, J.)