



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

FIRST APPEAL NO.106 OF 2020

APPLICANT : Sulochana w/o Keshav Khobragade,
 (Original applicant on RA) Aged 68 years, Occupation: Nil,
 R/o Waifad Road, Near Matoshri
 Vrudhashram, Sindi (Meghe),
 Wardha, Tah. And District Wardha

//VERSUS//

RESPONDENT : Union of India,
 (Original respondent on RA) through its General Manager,
 Central Railway, C.S.T. Mumbai

Mr. N.Y. Lade, Advocate for appellant.

Mrs. A.S. Athalye, Advocate a/w Ms. A.A. Agrawal, Adv. for respondent.

CORAM : G. A. SANAP, J.

DATED : 31st JANUARY, 2024

ORAL JUDGMENT

1. 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 08/08/2018 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellant/claimant under Section 16 of the Act of 1987 was dismissed.

2. Background facts:-

The appellant-claimant is the mother of the deceased. The appellant claims that on 07/10/2015 the deceased, after purchasing a railway ticket at Wardha Railway Station, went to Pulgaon. The deceased was travelling by Nagpur-Bhusawal Passenger train No.51286. There was a heavy rush of the passengers. Near the spot of the incident, due to the sudden rush of the passenger and jerk, the deceased lost his balance and fell from the running train. The journey ticket was lost in the accident. According to her, the death of the deceased was in an untoward incident.

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

4. The parties adduced the evidence in support of their rival contentions. Learned Member of the Tribunal, on consideration of the evidence, found that there was no substance in the claim and as such, the claim was dismissed. Being aggrieved by the judgment and order, the appellant is before this Court.

5. I have heard Mr. N.Y. Lade, learned Advocate for the appellant and Mrs. A.S. Athaley, learned Advocate along with Ms A.A. Agrawal, 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 travelling as a *bona fide* passenger with a valid journey ticket?
- ii) Whether the deceased died in an untoward incident as understood by Section 123 clause (c)(2) of the Railways Act, 1989?

7. Undisputedly, the journey ticket was not found from the person of the deceased or from the spot of the incident. The appellant has stated in her affidavit that the deceased had purchased a railway ticket at Wardha Railway Station and was travelling with the said ticket. The appellant was not an eye witness to the purchase of the ticket by the deceased. Similarly, the appellant had not seen the deceased boarding any train at Wardha Railway Station. At the time of the spot panchanama, one mobile phone of the Samsung company and the amount of Rs.10/- was found in the personal search of the deceased. The ticket was not

found. The evidence of the appellant on affidavit is not sufficient to establish that the deceased had purchased the journey ticket and boarded the train for the journey. The evidence is not sufficient to discharge the initial burden cast on the appellant. The appellant has not proved that the deceased was a *bona fide* passenger travelling with a journey ticket in any train at the time of the incident. Learned Member of the Tribunal has properly appreciated the material on record and has recorded a finding that the deceased was not a *bona fide* passenger.

8. The next important point is as to whether the death was in an untoward incident? The dead body was found beside the track. It was noticed by the loco pilot of Nagpur-Bhusawal Passenger Train No.51286. The loco pilot had informed the guard about the same. The guard of the train had conveyed this information to the Station Master. A case is sought to be made out that the deceased was not travelling in a Nagpur-Bhusawal Passenger Train. As far as, the loco pilot is concerned, there was no independent intimation or report by the loco pilot to the Station Master. The intimation was given by the guard of the train. The loco pilot of any train did not report the run over of any person at the spot of the incident. The spot of the incident is not at

Railway Station. The dead body was lying beside the DN track in between Wardha-Dahegaon Railway Station. The deceased was not residing in the vicinity of the spot. The deceased was a resident of Sindi (Meghe). The dead body was lying on the track. The deceased otherwise had no reason to go to the spot. This fact would be sufficient to make the case of the appellant probable that the deceased while travelling by a train fell from the train and died due to injuries sustained by him. On the basis of the material, it can be concluded that the death was due to fall of the deceased from a train and not due to run over by any train. As such, the death was in an untoward incident.

9. Even though the death was in an untoward incident, the deceased was not holding the journey ticket. He travelled in a train without a journey ticket. He was, therefore, not a *bona fide* passenger. In case of a death or injury to an unauthorized passenger, the railway is not responsible to pay the compensation. As such, I record my findings on point No.1 in the negative and on point No.2 in the affirmative. As such, I conclude that there is no substance in the appeal. Accordingly, the appeal deserves to be dismissed.

10. Accordingly, the First Appeal stands dismissed and disposed of. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

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