



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

FIRST APPEAL NO. 45 OF 2024

APPELLANTS :

- 1] Dipali W/o Datta Vallamwad,
Aged 33 years, Occu. Household,
- 2] Vyankatesh S/o Datta Vallamwad,
Age 14 years, Occu. : Education
- 3] Shrawani D/o Datta Vallamwad,
Aged 10 years, Occu. Education

Nos.2 and 3 are minors, N/g of applicant no.1

- 4] Laxmi W/o Pandharinath Vallamwad,
Aged 46 years, Occu. Household,
- 5] Pandharinath S/o Vishwanath Vallamwad,
Aged 71 years, Occu. Nil

R/o Nandkheda, Tah. Parbhani,
Dist. Parbhani – 431 402.

VERSUS

RESPONDENT : Union of India,
through General Manager,
South Central Zonal Railway,
Secunderabad

Mr. D. S. Lambat, Advocate for the appellants
Mrs. S. N. Deshpande, Advocate for the respondent.

CORAM : G. A. SANAP, J.
DATED : MARCH 12, 2024.

ORAL JUDGMENT

1. In this appeal, filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as “the Act of 1987” for short), challenge is to the judgment and order dated 21.10.2022 passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur, whereby the claim filed by the appellants-claimants under Section 16 of the Act of 1987 for compensation was dismissed.

2. BACKGROUND FACTS :-

The appellant no.1 is the wife of deceased Datta Vallamwad. Appellant nos.2 and 3 are the children of the deceased and appellant nos.4 and 5 are the parents of the deceased. The appellants claim that on 25.08.2016, the deceased was travelling from Nanded to Parbhani by an unknown train after purchasing a valid journey ticket. They state that the deceased fell from a moving train at kilometre no. 294/5-6 in Khanapur Shivar near Pingli Railway Station. He sustained severe injuries and died on the spot. The death was in an untoward incident. He was a *bona fide* passenger.

3. The respondent-Railway filed written statement and opposed the claim. According to the Railway, the deceased committed suicide on the

railway track. It was contended that the Loco Pilot of train no. 57540 Parali-Akola Passenger saw the deceased coming on the track and sleeping in front of the train. He tried to save the deceased by blowing horn, but the deceased did not leave the track. The train was in speed and therefore, could not be stopped. The deceased was not a *bona fide* passenger. The death was not in an untoward incident.

4. The parties adduced evidence before the Tribunal. The appellants examined two witnesses. AW1 Dipali is the wife of the deceased. AW2 Pandharinath is the brother of the deceased. The railway has examined one witness Sheshnath Kushwaha as RW1. He is Loco Pilot of Train No. 57540 Parali-Akola Passenger. Learned Member of the Tribunal, on consideration of the evidence, found that the death was not in an untoward incident and therefore, dismissed the claim. Being aggrieved by the judgment, the appellants have come before this Court in First Appeal.

5. I have heard Mr. D. S. Lambat, learned advocate for the appellants and Mrs. S. N. Deshpande, learned advocate for the respondent. Perused the record and proceedings.

6. In the facts and circumstances, following points fall for my determination :-

- i] *Whether the deceased was a bona fide passenger travelling by the train in question with valid journey ticket ?*
- ii] *Whether the deceased died in an untoward incident within the meaning of Section 123 of the Railways Act, 1989 ?*

7. Mr. Lambat, learned advocate for the appellants submitted that the journey ticket was found and as such the contention of the railway that the deceased was not a *bona fide* passenger travelling by an unknown train from Nanded to Parbhani, cannot be accepted. Learned advocate submitted that the evidence of RW1, the Loco Pilot, cannot be believed. Learned advocate submitted that the deceased had no reason to get down at the spot of the incident when he was travelling from Nanded to Parbhani with a valid journey ticket. Learned advocate submitted that the possibility of the deceased falling from a moving train on the track and then run over by the train in question, cannot be ruled out. Learned advocate submitted that learned Member of the Tribunal has failed to properly appreciate the evidence.

8. Learned advocate for the respondent-Railway, in short, supported the judgment and order passed by the Tribunal. Learned advocate submitted that direct evidence of RW1 as to the nature of the incident has been fully corroborated by contemporaneous documentary evidence. Learned advocate submitted that the evidence of RW1 is sufficient to conclude that the

deceased committed suicide by sleeping on railway track after seeing Parali-Akola passenger train.

9. As far as journey ticket is concerned, the journey ticket purchased on 25.08.2016 at 7.27 a.m., was found in the valet of the deceased. The valet was recovered from the spot. The incident in question occurred at about 15.12 hours. Mere possession of ticket for journey by an unknown train, may not be of any use, if it is proved that the person has committed suicide by jumping on the track or sleeping on the track. There is no evidence to show that immediately before this train, any train from Nanded to Parbhani passed through the spot. Therefore, the submission made by learned advocate for the appellants that the deceased, while travelling by the opposite train might have fallen on the track and run over by another train, cannot be accepted. I do not see any reason to discard and disbelieve the evidence of the Loco Pilot of train No. 57540 Parali-Akola passenger. In his evidence he has placed on record the first hand account of the incident. He has stated that at KM no. 294/5-6 between Parbhani and Pingli Railway Station, he saw one unknown person all of a sudden coming on the track and sleeping in front of the train. He immediately blew the horn and applied emergency brake to stop the train. He has stated that by the time the train was stopped, the deceased was run over by his train. He has stated that he conveyed this information to the Guard of the

train on walkie-talkie. The Guard of the train, on reaching the next railway station i.e. Pingli Railway Station, gave memo to the on duty Station Master. He has produced on record the relevant page of Loco Pilot Rough Journal/Note book. Perusal of the same would show that an entry of this incident was made in this journal. Exhibit R-2 is the contemporaneous document, whereby an entry was made by the Station Master in his diary. This entry at Exh.R-2 corroborates the evidence of the Loco Pilot (RW1).

10. The suicide by a person with a valid journey ticket could not be said to be the death in an untoward incident. If the case falls under the first part of Section 124-A of the Railways Act, 1989 (hereinafter referred to as “the Act of 1989”), the railway is liable to pay compensation,. If the case falls under any of the clauses to the Proviso to Section 124-A, then the Railway is not liable to pay compensation. The Railway is not liable to pay compensation if the death or injury is due to suicide or attempted suicide . The evidence of the Loco Pilot (RW1) is sufficient to conclude that it was a suicide. Therefore, even if it is held that the journey ticket was found with the deceased, it cannot be said that the death was in an untoward incident. The direct evidence of RW1 is sufficient to accept the defence of the Railway and negative the contention of the appellants. As such, I do not see any substance in the appeal. Learned Member of the Tribunal has not committed any mistake or error. In

view of the above, I record my finding on point no.1 in the affirmative and on point no.2 in the negative.

11. The appeal, therefore, deserves to be dismissed. It is accordingly dismissed. No order as to costs.

(G. A. SANAP, J.)

Diwale