



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

MISC. CIVIL APPLICATION (REVIEW) No.579 OF 2024
IN
FIRST APPEAL No.147 OF 2017

(Pushpa wd/o. Gautam Kamble and another Vs. Union of India, through the General
Manager, South Central Railway, Secunderabad)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R.G. Bagul, Advocate for appellants.
Ms. Neerja Chaubey, Advocate for respondent.

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : **23rd JULY, 2024.**

1. Heard learned Advocate for both sides.
2. This Court by the judgment dated 16th August, 2017 passed in First Appeal No.147/2017 rejected the claim of the applicants and appeal was dismissed by holding that Gautam, who died in railway accident is not covered because of his own negligence.
3. Learned Advocate for the appellants pointed out the judgment of **Union of India Vs. Rina Devi**, reported in **AIR 2018 SC 2362** particularly para No.16.4 which reads as under :

“16.4. In Pushpa (supra) a hawker died in the course of boarding a train. It was held that he was not entitled to compensation as it was a case of ‘self inflicted injury’. The relevant observations are :

“Such an attempt by a hawker has been viewed by the trial Court as something amounting to criminal negligence on his part and

also an effort to inflict injuries to himself. The trial Court reasoned that if the deceased had to sell his goods by boarding a train, he should have ensured to do so only when it was quite safe for him to get on to the train or otherwise he could have avoided catching the train and waited for another train to come. It also hinted that there was absolutely no compulsion or hurry for the deceased in the present case to make an attempt to somehow or the other board the train while it was gathering speed.”

16.5. *In Shyam Narayan (2017 AAC 1833 (Del.)) (supra), same view was taken which is as follows :*

“6(ii) I cannot agree with the arguments urged on behalf of the appellants/applicants in the facts of the present case because there is a difference between an untoward incident and an act of criminal negligence. Whereas negligence will not disentitle grant of compensation under the Railways Act, however, once the negligence becomes a criminal negligence and self-inflicted injury then compensation cannot be granted. This is specifically provided in the first proviso to Section 124-A of the Railways Act which provides that compensation will not be payable in case the death takes place on account of suicide or attempted suicide, self inflicted injury, bona fide passenger's own criminal act or an act committed by the deceased in the state of intoxication or insanity.”

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. Versus Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A 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.

*Re: (iii) Burden of Proof
When Body Found on Railway
Premises – Definition of Passenger .”*

4. Learned Advocate for the appellants, therefore, submitted that the review application deserves to be allowed in the interest of justice by setting aside the judgment of this Court passed on 16th August, 2017 in First Appeal No.147/2017.

5. Learned Advocate for the respondent has strongly objected the application.

6. Considering the ratio laid down by the Apex Court in the case of *Union of India Vs. Rina Devi* (supra) claim of the applicants deserves to be allowed and it is held that Gautam, who died in the railway accident in an untoward accident and his negligence cannot be

considered as a contributory negligence to reject the claim of his dependents applicants wife and son. There is patent illegality on the part of this Court while delivering the said judgment and not allowing the appeal. The appeal deserves to be allowed. The said judgment deserves to be set aside.

7. Thus, the review application deserves to be allowed by setting aside the impugned judgment of the Railway Claims Tribunal and also the judgment of this Court challenged under caption of review. Hence, following order :

8. Review application is allowed. The Judgment of this Court in First Appeal No.147/2017 dated 16.8.2017 is set aside and the said appeal is allowed.

9. The impugned judgment and order dated 8.12.2015 passed by the Railway Claims Tribunal, Nagpur in OA(IIu)/NGP/2012/0298 is set aside and the application for compensation is allowed.

10. The applicants are entitled for compensation of Rs.8,00,000/- (Rupees Eight Lakhs only).

11. The applicant No.1 is directed to supply bank details to the respondent. The respondent is directed to pay entire amount of compensation to the applicant No.1 by NEFT or RTGS mode in her bank account of any nationalized bank.

12. The applicant No.1 is directed to deposit Rs.2,00,000/- in fixed deposit in any nationalized Bank for seven years and submit copy of receipt before the Railway Claims Tribunal, Nagpur within eight days after receiving of the said amount of compensation. The bank may pay

its three monthly interest to her if she demands.

13. The respondent is directed to pay amount of Rs.8,00,000/- within four months from the date of uploading of this judgment.

14. If the said amount is not paid within four months, then interest at the rate of 6% p.a. be paid to the applicant No.1 from the date of application.

(SANJAY A. DESHMUKH, J.)

Wadode