



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

FIRST APPEAL NO.1230 OF 2024

Smt. Pushpabai Wd/o Sitaram Dongare
Aged about 62 years, Occ: Housewife,
R/o Mendaki, Tah. Warashiwani,
Dist. Balaghat (M.P.)

...APPELLANT

(Orig. Claimant
On R.A.)

...V E R S U S...

Union of India,
Through General Manager,
South East Central Railway,
Bilaspur (C.G.)

...RESPONDENT

(Orig. respondent)
On R.A.

Shi A.P. Murrey, Advocate for Appellant.
Ms A.S. Athalye, Advocate for respondent.

CORAM :- M.W. CHANDWANI, J.

DATE :- 08/04/2025

ORAL JUDGMENT:

1. The appeal challenges the judgment and award dated 08.07.2016 passed by the Member, Railway Claims Tribunal, Nagpur Bench, Nagpur (for short, "the Tribunal") in Case No.OA(llu)/NGP/2013/0074 thereby rejecting the claim of the appellant filed under Section 124-A of the Railways Act, 1989.

The facts which are necessary to dispose of this appeal are as under:

2. On 18.01.2013, *bonafide* passenger deceased Vijendra Sitaram Dongare was travelling from Raipur to Gondia in Azad

Hind Express Train No.12130. When the train reached near Pangoli river at railway bridge near km no.997/17-19, the deceased fell down and sustained injuries on his head and body and thereafter scummed to the injuries on the spot. The appellant, the mother of the deceased filed claim petition under Section 124-A of the Railways Act, 1989. The Tribunal rejected the claim of the appellant on the ground that the accident occurred because the deceased leaned out from the door of the train. The Tribunal further held that this is criminal negligence on the part of the deceased and therefore, it is outside the ambit of the expression “untoward incident”.

3. Having heard the learned counsels for the respective parties, having gone through the impugned award and the documents available on record, it transpires that deceased Vijendra Dongare died due to injuries suffered on his head as a result of falling down from Azad Hind Express Train No.12130 on 18.01.2013. The enquiry report reveals that the deceased leaned out of the train whereby, he sustained injuries and fell down from the running train into the river. The Tribunal opined that the deliberate act of leaning out and hanging out on the door of the running train is criminal negligence and therefore, the incident is

not covered under the definition of ‘untoward incident’. The issue has been dealt with by the Supreme Court in the famous case ***Union of India Vs. Rina Devi***¹ wherein in para 16.5 and 16.6 it has been held as under:

“16.5 In Shyam Narayan (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.

¹ AIR 2018 SC 2362

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."

4. In view of the above said law enunciated by the Supreme Court in the case of *Rina Devi* (supra), it cannot be said that this is a criminal act committed by a bonafide passenger. At the most, it can be said it is a negligent act on the part of the deceased but the fact remains that the same will not help the Railways because the compensation under Section 124-A is based on 'No Fault Liability' theory. In that scenario, even if the victim died due to his negligent act in view of the theory of No Fault Liability, plea of negligence of the victim as a contributory factor cannot be considered. This aspect has not been considered by the Tribunal and erroneously dismissed the claim petition filed by the appellant.

5. This takes me to the submission of the learned counsel for the respondent that since the claim has been filed before the amendment to Railway Accidents and Untoward Incidents

(Compensation) Rules, 1990, the appellant will not be entitled to the enhanced compensation of Rs.8,00,000/- which has been made applicable from 01.01.2017. Evidently, the accident occurred in the year 2013 and the claim petition was filed in the year 2013; whereas, the Rules have been amended in the year 2017 during the pendency of the appeal. Pendency of appeal is continuation of the proceedings and the Railways Act, 1989 being a beneficial legislation, and therefore, the objection will not sustain.

6. Reference can be made to the case of *Rina Devi* (supra) in para 15.3 it has been held as under:

“15.3. Learned amicus has referred to judgments of this Court in Raman Iron Foundry (supra) and Kesoram Industries (supra) to submit that quantum of compensation applicable is to be as on the award of the Tribunal as the amount due is only on that day and not earlier. In Kesoram Industries (supra), the question was when for purposes of calculating ‘net wealth’ under the Wealth Tax Act, 1957 provision for payment of tax could be treated as ‘debt owed’ within the meaning of Section 2(m) of the said Act. This Court held that ‘debt’ was obligation to pay. The sum payable on a contingency, however, does not become ‘debt’ until the said contingency happens. The liability to pay tax arises on such tax being quantified. But when the rate of tax is

ascertainable, the amount can be treated as debt for the year for which the tax is due for purposes of valuation during the accounting year in question. There is no conflict in the ratio of this judgment with the principle propounded in Thazhathe Purayil Sarabi (supra) that in the present context right to compensation arises on the date of the accident. In Raman Iron Foundry (supra), the question was whether a claim for unliquidated damages does not give rise to 'a debt' till the liability is determined. It was held that no debt arises from a claim for unliquidated damages until the liability is adjudicated. Even from this judgment it is not possible to hold that the liability for compensation, in the present context, arises only on determination thereof and not on the date of accident. Since it has been held that interest is required to be paid, the premise on which Rathi Menon (supra) is based has changed. We are of the view that law in the present context should be taken to be that the liability will accrue on the date of the accident and the amount applicable as on that date will be the amount recoverable but the claimant will get interest from the date of accident till the payment at such rate as may be considered just and fair from time to time. In this context, rate of interest applicable in motor accident claim cases can be held to be reasonable and fair. Once concept of interest has been introduced, principles of Workmen Compensation Act can certainly be applied and judgment of 4-Judge Bench in Pratap Narain Singh Deo (supra) will fully apply. Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of

beneficial legislation. Present legislation is certainly a piece of beneficent legislation. [Prabhakaran Vijaya Kumar (supra) Para 12]”

7. Learned counsel for the respondent at this stage again agitated that the appeal has been filed after passing of four years of the impugned award. In wake of the findings of *Rina Devi* (supra), the benefit of amended legislation shall not be extended to those who did file the appeal within time.

8. To my mind, the said observations were made by Their Lordships to curb the flood of petitions which have already attained finality by awarding an amount of Rs.4,00,000/- as per the pre-amended Rules. Here is not a case that the learned Tribunal has awarded the amount of compensation as per pre-amended Rules. Rather, the claim petition of the appellant met with the fate of dismissal and to claim the amount entitled under the Rules. The first appeal though, has been filed beyond the period of limitation and after getting delay condoned, but certainly, it is not filed to take the benefit of enhanced compensation. Fortunately for the appellant, this appeal is being disposed of after amendment to the Rules enhancing the compensation amount. Therefore, I do not see any hurdle to grant

enhanced compensation to the appellant more particularly, when the ratio laid down by the Supreme Court in the case of *Rina Devi* (supra) was to grant higher of the two amounts i.e. the amount of compensation at Rs.8,00,000/- or the amount of compensation at Rs.4,00,000/- under pre-amended Rules plus interest till date. Needless to mention that due to delay in filing the appeal, the appellant will not be entitled to the interest on the delayed period. A statement is made across the bar by the learned counsel for the appellant that the amount of Rs.8,00,000/- will be higher than the interest plus compensation of Rs.4,00,000/- after reducing the period of delay in calculating the interest.

9. To conclude, the order passed by the learned Tribunal does not sustain and is required to be set aside by allowing the appeal. Accordingly, the impugned judgment and award dated 08.07.2016 passed by the Member, Railway Claims Tribunal, Nagpur Bench, Nagpur in Case No.OA(llu)/NGP/2013/0074 is quashed and set aside. The respondent shall be liable to pay Rs.8,00,000/- (Rs. Eight lakh only) to the appellant towards compensation on account of death of deceased Vijendra S/o Sitaram Dongare.

10. The respondent is directed to deposit the compensation of Rs.8,00,000/- (Rs. Eight lakh only) in this Court within eight weeks from today.

11. Upon deposit, the appellant is permitted to withdraw the same.

With this, the appeal stands disposed of.

JUDGE

Wagh