



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

FIRST APPEAL NO. 1073 OF 2023

APPELLANTS :

(Original Claimants)
On R.A.

1. Smt. Nirmala wd/o Prabhakar Tayde,
Aged about 50 years,
Occ. Housewife,
2. Gangubai d/o Prabhakar Tayde,
Age-27 years, Occ – Nil.
3. Aruna d/o Prabhakar Tayde,
Age – 22 years, Occ – Labour.
4. Prakash S/o Prabhakar Tayde,
Age-19 years, Occ – Student,

Applicant No.1 to 4 R/o At Budha Wada,
Ambedkar Nagar, Village-Savda,
Tah-Raver, Dist – Jalgaon,
(Maharashtra).

VERSUS

RESPONDENT :

(Original Respondent)

Union of India,
Through the General Manager,
Central Railway, Mumbai CST.

Shri R. G. Bagul, Advocate for appellants.
Ms. Neerja Chaubey, Advocate for respondent-sole.

CORAM: ROHIT W. JOSHI, J.
DATED : 10/02/2025.

ORAL JUDGMENT :

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

2. The appellants in the present matter are wife and children of Late Prabhakar Tayde, who died in railway accident on 01/11/2013 while he was trying to board LTT Gorakhpur Express bearing Train

No.12542 at Nashik Road Junction. The appellants had filed case for compensation before the learned Railway Claims Tribunal, Nagpur Bench, Nagpur vide Case No.OA (Ilu)/NGP/2015/0197. The claim petition filed by the appellants came to be rejected by the learned Tribunal vide Judgment and order dated 08/05/2018. The claim is rejected principally on two counts i.e. the deceased cannot be said to be a bonafide passenger since the ticket was not recovered from his person after the accident and he was not supposed to board the train at Nashik Road Station since the said station is not a scheduled halt of the said train.

3. Shri Bagul, learned counsel for the appellants contends that the fact that the deceased has died in railway accident is beyond any dispute. He contends that the learned Tribunal has erred in holding that the deceased was not a bonafide railway passenger only on the ground that the railway ticket was not recovered from his person immediately after the accident during the course of panchnamas being carried out. He states that although Nashik Road Station is not a scheduled halt of LTT Gorakhpur Express, the record of the case clearly establishes that the train had stopped on Platform No.2 at the said station. He places reliance upon the Judgments of this Court in First Appeal No.1075/2019, First Appeal No.297/2013, First Appeal No.216/2022, First Appeal No.68/2021 and the Judgment of the Hon'ble Supreme Court in Civil Appeal No.3799/2023 (Kamukayi and others Vrs. Union of India).

4. Per contra, Ms. Neerja Chaubey, learned counsel for the respondent argues that the deceased was not supposed to board the train at Nashik Road Station since it was not a designated halt. She contends that the accident had occurred on the railway track beside the Railway Platform and as such, possibility of ticket being lost is next to impossibility. Therefore, she contends that the Judgment and order delivered by the learned Tribunal is just and proper and does not warrant any interference.

5. Having heard the respective submissions, the following points arise for my consideration :-

[1] Has the deceased expired in an untoward incident as defined under Section 123 (c) of The Railways Act, 1989 ?

[2] Was the deceased a bonafide railway passenger on the date of his accident ?

[3] Are the appellants entitled to claim compensation on account of demise of the deceased in railway accident ? If yes, to what extent ?

As to Point Nos.[1] and [2] :

It is true that the railway ticket was not found on the person of the deceased while panchnamas were conducted after the accident. It is also true that the train did not have a scheduled halt at Nashik Road Railway Station. However, the fact remains that the deceased tried to board the train and died in the accident while boarding the train.

6. Perusal of the Judgments relied upon by Shri Bagul, learned counsel for appellants clearly indicates that there is presumption in favour of the deceased, who died in the railway accident that he was travelling with a valid railway ticket. The fact that after the demise in railway accident, ticket could not be traced from the person of the deceased is not a much of relevance. The judgments cited above clearly lay down the above legal position. The deceased had boarded the train at Railway Platform. No person can enter Railway Platform without a Railway ticket or Platform ticket. There is a presumption that a person present on Railway Platform has a valid ticket. This presumption is not rebutted by the respondent. The initial burden is discharged by the appellant by filing affidavit.

7. As regards the contention of the learned advocate for the respondent that Nashik Road Station was not a scheduled halt and therefore, the deceased ought not to have boarded the train at Nashik Road Station, I am of the considered opinion that this may not be a valid ground for rejecting the claim. The arguments even if accepted will not bring the case of the respondent within the parameters of the exceptions carved out proviso to Section 124-A of The Railways Act, 1989. The deceased may not be aware that Nashik Road Station is not a scheduled halt for the said train. Even otherwise boarding or attempting to board a train at a non-scheduled halt will not mean that the deceased attempted to commit suicide by boarding such train or had

intention to inflict injury to himself. The contention of the respondent in this regard is therefore, liable to be rejected. It is also well settled law that the defence of contributory negligence is not available to the railways in claim or compensation under Section 124-A of The Railways Act, 1989.

8. In the light of the aforesaid, I am of the considered opinion that the deceased died in an untoward incident while travelling as a bonafide passenger.

As to Points No.[3] :

What should be the apportionment of compensation inter se between the claimants ?

9. In view of the finding, I am of the considered opinion that the appellants are entitled for compensation of Rs.8,00,000/- on account of death of Prabhakar Tayde in railway accident. Since the accident and death has occurred on 01/11/2013 i.e. before the amendment to The Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 which came into effect w.e.f. 01/01/2017, the appellants are not entitled for interest on the said amount.

10. As regards the apportionment of compensation, in my considered opinion, the widow who was fully dependent upon the income of the husband should get an amount of Rs.4,00,000/- whereas the appellant No.4 who was a minor son on the death of his demise,

should get amount of Rs.2,00,000/-. As regards appellant Nos.2 and 3, they are now married and as such, sum of Rs.1,00,000/- each be awarded to them.

11. The appellants are directed to furnish bank account details to the Chief Claimant Officer, CST, Mumbai, as also to the learned advocate appearing for the respondent.

12. The respondent is directed to remit the amount of compensation as aforesaid directly in the bank accounts of appellants within a period of four months from the date of receipt of bank account details.

13. Parties to bear their own costs.

14. The appeal is disposed of.

[ROHIT W. JOSHI, J.]