



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

FIRST APPEAL NO. 839 OF 2024

1. Bebi wd/o. Shakil Pinjari,
Aged about 50 yrs, Occ. Household,
2. Yasmin d/o. Shakil Pinjari,
Aged about 21 yrs, Occ. Education
3. Karishma d/o. Shakil Pinjari,
Aged about 20 yrs, Occ. Education.

All R/o. In the house of Ramkishan,
New Plot, Tambepura, Amalner
Tq. Amalner Distt. Jalgaon. (M.S.)
Pin Code 425 401

.....APPELLANTS

VERSUS

1. The Union of India,
Through General Manager,
Western Railway, Church Gate
Mumbai.

.....RESPONDENT

Mr. R. G. Bagul, Advocate for the Appellants
Ms. Neerja Chaubey, Advocate for the Respondent

CORAM : ROHIT W. JOSHI, J.
RESERVED ON : 20TH FEBRUARY, 2025
PRONOUNCED ON : 13TH MARCH, 2025

JUDGMENT :-

1. The present appeal is preferred under Section 23 of the Railway Claims Tribunal Act, 1989, challenging the judgment and order dated 20.12.2023 passed by the learned

Railway Claims Tribunal, Nagpur, bench Nagpur in claim application bearing case No.OA(IIu)/NGP/28/2022. The appellants are widow and daughters of one Shakil, son of Ahmad Pinjari, who died in a train accident on 25.02.2019. It is the case of the appellants that the deceased was traveling from Amalner to Paldhi by train No.59075, i.e. Surat-Bhusawal passenger by purchasing a railway ticket. He was standing at the door of the bogie and due to heavy rush and a jerk, he lost his balance and fell from the train on line no.1 at railway station Takarkheda near KM No.263/06 to 263/08. They filed the above case seeking compensation on account of death of the said Shakil as aforesaid.

2. The respondent / railway opposed the claim contending that the deceased was not a bonafide railway passenger and also having regard to the nature of injuries, it was not possible that such injuries can be suffered by falling from a train. The learned Tribunal has accepted the defence of the respondent and has accordingly dismissed the claim petition. The learned Tribunal has held that the material on record was insufficient to arrive at a conclusion that the

deceased had fallen down from the train. Thus, holding that the appellants had failed to prove that deceased fell from a running train in an untoward incident, the claim came to be rejected.

3. Mr. Bagul, learned Advocate for the appellant contends that immediately, after the accident when dead body of the deceased was found, several documents were found on his person including railway ticket. He points out from the report of untoward incident provided by Loco-Pilot / Driver of train no.69179, that a body was cut in two parts, was lying on platform no.1. It is recorded in the said report that train no.59075 had passed from line no.1, a little while before the dead body was traced. The Loco-Pilot / Driver of the other train had sent message about the untoward incident on 25.02.2019 at 18:25 hours. Mr. Bagul, learned Advocate contends that initial burden was discharged since a valid railway ticket was recovered from the dead body of the deceased and his dead body was found on the railway track.

4. As against this Ms. Neerja Chaubey, the learned Advocate for respondent strongly opposed the appeal. She

contended that body of a person who falls from a running train, normally is not cut into two halves as has happened in the case at hand. She refers to the argument of the counsel for respondent before the learned Tribunal to contend that, having regard to nature of injuries, the deceased was certainly hit by running train while he was crossing the railway track.

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

a. Whether the deceased Shakkeel Pinjari died in an untoward incident within the meaning of Section 123 (c) of the Railways Act, 1989?

6. It is undisputed that dead body of the deceased was found at the railway track. The body was cut in two parts. The incident was reported by Loco Pilot / Driver of another train. It is also not in dispute that during the panchnama, a railway ticket was found on the person of the deceased along with his Aadhaar Card and other documents. Having regard to these facts, it has to be said that the initial burden is successfully discharged by the appellants.

7. Learned counsel for the appellant submits that, having regard to the nature of injuries, i.e. body being cut into two parts, it must be held that the deceased met with an accident while he was crossing the railway line and not by falling from the train. In my considered opinion, if a person is hit by a running train while crossing the railway line, due to the impact, the body will normally be thrown away at some distance. It is however, difficult to say with certainty about the nature of injuries that a person may suffer on falling from a running train. The learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the matter of *Kamarunnissa Vs. Union of India, AIR 2017 SCC 1436*, she argues that in the said case, also the body of deceased was cut in two parts and having regard to the nature of injuries, the Hon'ble Supreme Court has held that it was not possible to accept that such injuries could have been suffered while deceased was trying to board the train. There are two distinguishing features in the present case and reported judgment, i) in the case before the Hon'ble Supreme Court, railway ticket was not found on the person of the deceased

and in the present case, during the panchnama, a valid railway ticket is found on the person of the deceased; ii) the contention in the case before the Hon'ble Supreme Court was that the deceased had suffered injury while attempting to board the train which is not situation in the present case, in the present case, the deceased had boarded the train at Amalner for traveling to Paldhi and he met with the accident while he was traveling in the train. With respect, having regard to the distinguishing features in the facts of the said case and present matter, it is not be proper to dismiss the claim of the appellants in the light of the said judgment.

8. It will also be pertinent to mention here that the wife of the deceased has filed affidavit stating that the deceased had boarded the train for traveling to Paldhi from Amalner and the ticket is also recovered during time of panchnama. The initial burden is thus discharged by the appellants. Once this initial burden is discharged, the burden will shift on the railways to establish that the deceased did not die in an untoward railway accident within the meaning of Section 123(c). In this regard, reliance can be safely placed

on the judgment of the Hon'ble Supreme Court in the matter of *Union of India Vs. Rina Devi, AIR 2018 SCC 2362*.

9. Perusal of the judgment by the learned Tribunal demonstrates that the principle laid down in the matter of *Union of India Vs. Rina Devi* has not been properly followed. The learned Tribunal should have examined as to whether initial burden is discharged by the appellants or not. However, perusal of the judgment by the learned Tribunal indicates that, the learned Tribunal was under impression that the entire burden of proving that the deceased had died in an untoward railway incident was on the appellants. The observations by the learned Tribunal are in the teeth of law laid down by the Hon'ble Supreme Court in the matter of Rina Devi. That apart the theory of the respondent that the deceased was hit by running train while he was crossing the railway tracks also does not appear to be probable. In view of the fact that half of the body of the deceased was between the railway tracks and other half was lying outside the railway track and the body was not thrown away, which is quite possible when a person is hit by running train.

10. Having regard to totality of circumstances, in my considered opinion, the appellants have discharged the initial burden and the railways has failed to discharge the burden to avoid liability for payment of compensation. In the circumstances, I am inclined to allow the appeal by holding that the appellants are entitled to receive compensation on account of death of deceased Shakeel Pinjari in railway accident. Hence, I pass the following order:

ORDER

- a. The judgment and order dated 20.12.2023 passed by the learned Railway Claims Tribunal, Nagpur, bench Nagpur in case no. No.OA(IIu)/NGP/28/2022 is quashed and set aside.
- b. First Appeal No. 839 of 2024 filed by the appellants is **allowed**.
- c. Respondent is directed to pay compensation of **Rs.8,00,000/-** (Eight lakhs only) alongwith interest @ 6% per annum from 25.02.2019 i.e. date of accident till the date of realisation of entire amount to the appellants.

d. The compensation of Rs.8,00,000/- will be paid to the appellants as under;

1. Appellant no.1 Bebi wd/o. Shakil Pinjari –
Rs.5,00,000/- alongwith interest.
2. Appellant No.2 Yasmin d/o. Shakil Pinjari –
1,50,000/- alongwith interest.
3. Appellant No.3 Karishma d/o. Shakil Pinjari –
1,50,000/- alongwith interest.

e. Parties to bear their own cost.

(ROHIT W. JOSHI, J.)