



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

FIRST APPEAL NO. 841 OF 2023

Union of India
 Through the General Manager,
 South East Central Railway,
 Bilaspur

} .. Appellant

Versus

1. Radhika Kalihari wd/o Govind
 Narayan Kalihari
 age : 45 years, Occ : Housewife
 2. Roshni Kalihari d/o Govind Kalihari
 age : 24 years, Occ : Student
 3. Jyoti Kalihari d/o Govind Kalihari
 age : 23 years, Occ : Student
 4. Vicky Kalihari s/o Govind Kalihari
 age 19 years, Occ : Student
 All R/o Village Kumhalori,
 Post-Koba, Tahsil Dondilohara, Koba
 Khoba, Durg, Chhattisgarh – 491226
- Presently R/o Cant area,
 Quarter no.74, Kamptee,
 District Nagpur 441001

} .. Respondents

 Ms. Ashwini Athalye, Advocate for appellant.
 Mr. R.G.Bagul, Advocate for respondents.

CORAM : ABHAY J. MANTRI, J.

DATED : JULY 25, 2025

ORAL JUDGMENT

Heard. **Admit.** By consent of the learned counsel appearing
 for the parties, the appeal is taken up for final hearing forthwith.

(2) The original respondent being aggrieved by the judgment and order dated 24/04/2023, passed by learned Member (Technical) and Member (Judicial) of the Railway Claims Tribunal, Bench Nagpur (hereinafter referred to as the '**Tribunal**') in claim Application No.OA(Ilu)/NGP/58/2020 (*Radhika Kalihari vs. Union of India*), whereby the application was allowed and the respondent Railways was directed to pay compensation of Rs. 8 Lakh along with interest @ 6.00% p.a. to the original applicants/respondents herein, has preferred this appeal.

(3) The case of the respondents is that on 27/05/2019, the deceased Govind was travelling from Kamptee to Ambala Cantt. to take his daughter, and therefore, the deceased obtained the casual leave from the department. The son of the deceased, namely, Vicky, was having a reservation ticket for the train bearing No.18237. As the deceased had suddenly planned to go to Ambala Cantt., he could not get a confirmed ticket; therefore, he had purchased a general class ticket in front of his son at Kamptee Station.

(4) The deceased boarded a general coach; however, due to the heavy rush in the general coach, the passengers pushed him, and he fell from the moving train at Kamptee Station and died on the spot. Some passengers in the **B1** coach shouted that one man wearing a white shirt had fallen from the train. His son immediately called out to

the deceased, but his mobile was not reachable. Then he called on another mobile number, which an officer answered, so he asked the officer to verify the information he had received. After confirming the facts, he informed him that his father had fallen from the train and sustained severe injuries. So, he alighted at Nagpur Railway Station, went to Kamptee, and apprised his family about the incident. Due to the death of the deceased, the applicants suffered a lot, and thus, being his legal heirs, they have filed the claim application to get compensation.

(5) The original respondent/appellant herein has filed a Written Statement and denied the contents of the application in toto. It is categorically denied that the deceased had purchased a railway journey ticket for his journey from Kamptee to Ambala Cantt. It is denied that any passenger fell from the train on 27/05/2019. The deceased was not a bona fide passenger of the train bearing No.18237 Chhattisgarh Express. It is further denied that due to the heavy rush in the general coach, the deceased was pushed by the other passengers, and he accidentally fell from the moving train at Kamptee Railway Station. However, it is averred that they have conducted the investigation, it was found that the deceased died due to his negligence and fault, and therefore, the railways cannot be held responsible. The deceased had suffered self-inflicted injury, which is not covered under

Section 124-A of the Indian Railways Act, 1989 (hereinafter referred to as the '**Act**'); as such, the Railways is not liable to pay compensation, hence urged for dismissal of the application.

(6) Considering the rival pleadings of the parties, the learned Tribunal has framed issues pursuant to the same, both parties have led their respective evidence, produced and proved the documents. After considering the material and evidence, the learned Tribunal allowed the application; being aggrieved by the same, the appellant/Railways has preferred this appeal.

(7) Heard learned counsel Ms. Ashwini Athalye, appearing for the appellant and learned counsel Mr. Bagul, appearing for the respondents. Perused the impugned judgment, original record and proceedings, as well as the judgments relied upon by the learned counsel for the respective parties. The following points arise for determination.

(i) Whether the respondents/claimants proved that on 27/05/2019, the deceased was travelling as a bona fide passenger in train No.18237 ?

(ii) Whether any interference is required in the impugned judgment and order in the appellate jurisdiction ?

As to point No. (i) :-

(8) Learned counsel for the appellant has vehemently contended that the appellant has discharged the burden that lies on it by adducing cogent and reliable evidence by examining the RW-1 Umesh Kumar, who deposed that on the day of the incident, the deceased had not purchased the ticket from Kamptee Railway Station. Accordingly, they produced and proved the system-generated extract of the statement of unreserved ticket sale check list dated 27/05/2019 of the Kamptee Railway Station. The statement was neither challenged nor denied during his cross-examination, and therefore, the appellant has proved that on the day of the incident, the deceased did not have a valid train journey ticket. However, the learned Tribunal has not considered the evidence of RW-1 Umesh Kumar in its proper perspective and erred in allowing the application; therefore, on that ground alone, the impugned judgment is liable to be set aside. During the course of the argument, learned counsel has taken me to the evidence of the RW-1 and documents on record.

(a) She further propounded that the learned Tribunal has relied on the judgment in ***Union of India vs. Balak Ram Joshi and others, 2012 SCC OnLine All 4246*** and erred in holding that in view of the finding in the said judgment it has to be presumed that deceased was travelling as a bonafide passenger and answered the said question

in the affirmative. In fact, the deceased did not have a valid ticket, and the appellant proved this fact by examining its witness in that regard; however, the learned Tribunal ignored the evidence and erred in holding that the deceased was a bona fide passenger. She further canvassed that the facts in the case of **Balak Ram** (supra) were distinct from the case at hand, as in the said case, no evidence was adduced by the Railways, and therefore, the observations made in the said case do not apply to the case at hand.

(b) On the contrary, the mandate laid down in the case of **Union of India vs. Rina Devi, (2019) 3 SCC 572** applies to the case at hand. She has drawn my attention to para 29 of the said judgment and submitted that in view of the law laid down in the said decision, Railways has discharged the burden lies on them, therefore, it cannot be said that the deceased was a bona fide passenger of the train, hence, she urged for setting aside the impugned judgment and urged for allowing the appeal.

(9) Learned counsel for the original applicants/respondents vehemently contended that the learned Tribunal, after considering the evidence on record and observations made in **Balak Ram** (supra), has rightly held that the deceased was a bona fide passenger; therefore, no interference is required in it in the appellate jurisdiction. He further

argued that if the ticket was not recovered from the dead body of the deceased, the surrounding circumstances should be verified. Further it is not uncommon that if the passenger does not have time enough to purchase a journey ticket before the train leaves, he may choose to board a train in contemplation of buying ticket from the TTE, if necessary, by paying fine also, therefore, he submitted that it cannot be said that deceased was not a bona fide passenger of the train. To buttress his submission, he has relied upon the following judgments:-

- (i) ***The Union of India vs. Mangalabai w/o. Manohar Darunde and others (First Appeal No. 297/2019 decided on 04/12/2013)*** (pointed out para 5).
- (ii) ***Dilip s/o Madhukar Ogle and others vs. Union of India (First Appeal no.145/2010 decided on 20/06/2017)*** (drew my attention to paras 11, 14 and 18).
- (iii) ***Union of India vs. V. Santhabai and others 2010 (4) T.A.C. 813 (A.P.)*** (pointed out para 6 thereof).
- (iv) ***S.Vijayalakshmi and others vs. Union of India reported in I(2019) ACC 177 (Mad.)*** (relied on para 19, 20, 21 and 24).

(a) Relying upon above judgments, learned counsel for respondents submitted that since the usual presumption is that a passenger boarding a train holds a valid ticket, therefore, if the deceased had travelled as a ticketless traveller, one would normally expect the Railway Authorities to have detected such ticketless traveller, but the Railways did not adduce any evidence in that regard. Railways have machinery that can check or detect any unauthorised

passenger who does not possess a valid ticket or travels without permission from the Railway administration; however, the Railways have not adduced any evidence in that regard. On the contrary, there is a presumption under Section 114 (g) of the Indian Evidence Act, 1872 that the person travelling in the train possessed a valid ticket. Lastly, he submitted that the mere fact that the journey ticket was not recovered from the dead body, under such circumstances, it cannot be said that the Railway Administration is absolved from the liability to make the payment of compensation, which was statutorily required to be paid; hence, he urged for dismissing the appeal.

(10) Having heard learned counsel for both parties, perusal of the impugned judgment and record, a short but crucial question that arises before me: whether at the time of journey, the deceased had a valid ticket or not, and whether the Railways have discharged the burden that lies on them or not ?

(11) No doubt, in various judgments, it is observed that there is a presumption that the person who is travelling in the train had a valid ticket unless and until the Railways have discharged the same by adducing evidence. It is categorical case of the respondents/claimants that on the day of incident the deceased had purchased general class ticket for Chhattisgarh Express in front of his son Vicky at Kamptee

Railway Station for the journey from Kamptee to Ambala Cantt. and AW-1 Radhika wd/o Govind Kalihari deposed the same in her testimony, however, the respondents failed to examine respondent No.4 Vicky son of deceased, who was travelling along with the deceased by the said train. If it is the case of the respondents that son was accompanying with the deceased and deceased had purchased the ticket in his presence, then it would be incumbent on the respondents to examine the son Vicky in support of their case to prove that on the day of incident, the deceased had purchased the ticket for the journey from Kamptee to Ambala Cantt. when appellant specifically denied that he had bought the ticket at Kamptee Station. However, the respondents failed to examine the said eyewitness, who was the best witness available to prove the above-stated facts, which itself leads to drawing an adverse inference against the respondents. During the cross-examination, AW-1 Radhika deposed that she did not personally witness the deceased purchasing the railway ticket or the occurrence of the incident.

(12) On the contrary, the respondents have examined its *Chief Booking Supervisor*, Kamptee Booking Office, who categorically deposed that he has produced a system-generated extract of the statement of unreserved ticket sale check list dated 27/05/2019 of the Kamptee Railway Station on record. Therefore, he deposed that no

railway ticket of general class or unreserved class was issued for the journey from Kamptee to Ambala Cantt. on 27/05/2019. However, during his cross-examination, his testimony was neither denied nor challenged by the respondents; therefore, there is no reason to disbelieve his testimony. During cross-examination, only suggestions were put to him that on the day of the incident, he was not working at Kamptee Railway Station at the Booking Counter, or the Police did not record his statement. He has also produced and proved the system-generated extract of the statement of unreserved ticket sale checklist dated 27/05/2019 of the Kamptee Railway Station (page A-56).

(13) In **Rina Devi** (supra), the Hon'ble Apex Court has categorically held that

*" The initial onus always lies with the claimants to show that there is a death due to an untoward incident of a bona fide passenger. Of course, by filing the affidavit and depending on the facts of a particular case, that initial onus can be a light onus which can shift on the Railways; however, it is not the law that even the initial onus of proof, which has to be discharged, is always on the Railways and not on the claimants. **It is not the proposition of law that the Railways have the onus to prove that a deceased was not a bona fide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court.***

The best evidence rule, which governs the

production of evidence in courts, requires that the best evidence of which the case in its nature is susceptible should always be produced. Section 114(g) of the Indian Evidence Act, 1872 enables the Court to draw an adverse presumption against a person who can make available to the court, but obstructs the availability of such evidence.

It was also held that mere presence of a body on the Railway premises will not be conclusive to hold that the injured or deceased was a bona fide passenger for whom a claim for compensation could be maintained.

(Emphasis supplied)

(14) In view of the mandate of the Hon'ble Supreme Court, the initial onus is on the claimants to prove their case that the deceased was holding a valid journey ticket; however, the claimants failed to examine the son of the deceased, who was accompanied by the deceased in support of their case. As per their case, in his presence, the deceased had purchased the journey ticket. As observed in the case of ***Rina Devi*** (supra), non-examination of the son of the deceased, who was the best witness available to prove the said facts/controversy, leads to drawing an adverse inference under Section 114(g) of the Indian Evidence Act, 1872. On the contrary, the Railways had adduced the best evidence of the Chief Booking Supervisor, who categorically deposed that no general or unreserved ticket was sold on the day of the incident at Kamptee Station for the journey from Kamptee to Ambala Cantt. and that testimony remains unchallenged, unshaken, and uncontradicted.

(15) Thus, on careful scrutiny of the evidence on record, it is evident that the claimants/respondents had failed to examine eye witnesses or the best available evidence in support of their claim. On the contrary, the appellant Railways have adduced the evidence, which remained unchallenged and unshattered; there is no reason to disbelieve his testimony on the said point.

(16) Alternatively, the learned counsel for respondents argued that it is not uncommon that if the passenger does not have enough time to purchase a journey ticket before the train leaves, he may choose to board a train in consultation with TTE for buying the ticket, if necessary, by paying fine also, therefore, he submitted that it is not required to purchase a ticket before boarding the train, in such an eventuality, it cannot be said that deceased was not a bona fide passenger of the train. However, I do not find substance in the said contention, as the respondents/claimants do not claim that the deceased boarded the train without purchasing a ticket. Due to the shortage of time, he directly boarded the train intending to buy a ticket from the TTE. On the contrary, the claimants contended that in the presence of the son of the deceased, namely, Vicky, the deceased had purchased the general class ticket, which was denied by the appellant Railways by adducing cogent evidence before the Tribunal. Thus, it is apparent that the claimants did not come to the Court with clean

hands. Therefore, I do not find substance in the contention that the deceased would have purchased a ticket from TTE for the train.

(17) In ***UOI vs. Mangalabai*** (supra), ***S.Vijayalakshmi vs. UOI*** (supra), **and *Santhabai vs. UOI*** (supra), the facts were that claimants therein deposed that the deceased had purchased the ticket; on the contrary, the Railways did not lead any evidence in support of their defence, and therefore, the Court in the said matter held that the deceased was a bona fide passenger in the train. However, in the case at hand, the facts are different from the above-cited judgments; therefore, the observations made in the said judgments are hardly of any assistance to the claimants/respondents in support of their claim.

(18) In ***Dilip Ogale*** (supra), the claimants therein have examined two witnesses, who categorically deposed that they had seen the deceased while the deceased was purchasing the ticket and boarding the train. However, in the case at hand, no eyewitness was examined by the claimants, though available. No doubt, Railways Act is a beneficial and welfare Act and its object and intent is to provide compensation to the persons suffered in the accident, however, in the case in hand, the claimants had not come to the Court with clean hands, nor they adduced the best available evidence of the eye witness Vicky son of the deceased. On the contrary, the Railways have

examined the witness and proved that on the day of the incident, no ticket was purchased from general or unreserved tickets for the journey from Kamptee to Ambala Cantt. Therefore, in my view, the observation made in **Dilip Ogale** (supra) is also not helpful to the claimants in support of their case.

(19) On perusal of the impugned judgment and order, it is pertinent to note that the learned Judge, while dealing with this issue, i.e. "whether the deceased was a bona fide passenger of the train on the relevant day with a valid journey ticket," did not consider or discuss anything about the evidence adduced by the Railways. He has also not discussed much more as to how the deceased was a bona fide passenger and erred in relying on the decision in **Balak Ram** (supra), and held that the deceased was a bona fide passenger. However, the facts in the case of **Balak Ram** (supra) are different from the case at hand. In the said case, no evidence was adduced by the Railways, though they have enough mechanisms and manpower to catch passengers without a ticket. However, in the case in hand, the appellant Railways have adduced evidence and proved that on the day of incident, no ticket was sold at Kamptee Station of general and unreserved ticket for the journey from Kamptee to Ambala Cantt, therefore, the observations made in the **Balak Ram** (supra) does not apply to the facts of the case in hand. However, the learned Tribunal

has erred in relying on the same and passed the order without considering the cogent evidence available on record. Therefore, based on the said incorrect precision of the evidence, the said findings cannot be sustained in the eyes of the law, and the same is liable to be set aside in the appeal.

(20) Even assuming that the deceased was travelling in the train, however, claimants had not come to the Court with clean hands stating the real facts of the case, but they have suppressed the real facts from the Court, so also not adduced best available evidence of the eye witness, therefore, in my view the person who does not come to the Court with clean hands is not entitled to get relief. If the deceased had not purchased the ticket, he would have said the same, intending to buy a ticket from the TTE, and he boarded the train. On the contrary, the claimants come to the Court with a specific case that the deceased had purchased a ticket in the presence of his son, Vicky, and failed to examine him.

(21) Thus, it is apparent that the deceased was not a bona fide passenger and therefore, it cannot be said that the deceased would fall within the meaning of Section 123 (c)(2) read with Section 124-A and Section 2(29) of the Indian Railways Act, 1989. Besides, while considering the claim of the claimants under this Act, the Tribunal or

Court is not expected to take a technical approach while determining the claim of the claimants, overlooking the object of this Act as a beneficial statute and welfare legislation with the intent to provide compensation to the persons suffering in the said untoward incident. However, the evidence on record indicates that claimants had not come to the Court with clean hands and therefore, in my view, they are not entitled to get compensation in the case at hand.

(22) Thus, considering the above discussion, and evidence on record, it is evident that the applicants/respondents failed to prove that deceased was a bona fide passenger in the train on the relevant day and while travelling in the said train due to the push of the other passengers fell from the train and succumbed to the injuries. Hence, I answer this point in the negative.

As to Point No.(ii) :-

(23) As discussed above, I have already held that the appellant Railways proved that the deceased was not a bona fide passenger and due to the jerk of the crowd, he fell from the train, wherein he succumbed to the injuries. It also appears that the Tribunal while considering the evidence on record has erred in discarding the evidence of the appellant/Railways and given undue importance to the

evidence of AW-1 Radhika, who was not the eye witness, nor knowing about the incident or purchase of the ticket by the deceased and, therefore, the finding arrived at by the Tribunal based on the hearsay evidence is contrary to the cogent evidence of the appellant Railways on record, hence the said finding cannot be sustained in the eyes of law and is liable to be set aside in the appeal. As such, in my view, the judgment and order passed by the Tribunal are unjust and improper and, therefore, interference is required in it in the appellate jurisdiction.

(24) As I have discussed above, I have held that the claimants/respondents failed to prove that the deceased was travelling in the train as a bona fide passenger. Similarly, the learned Tribunal had erred in ignoring the evidence adduced by the Railways and, without so doing, also erred in holding that the deceased was a bona fide passenger relying on the judgment in the case of **Balak Ram** (supra). The facts of the said case were different from the case at hand; therefore, the findings recorded by the Tribunal cannot be sustained in the eyes of the law, and the same is liable to be set aside in the appeal. Therefore, interference is required in the impugned judgment and order in the appellate jurisdiction. Hence, I answer point No.(ii) in the affirmative.

(25) As such, the appeal is allowed. The impugned judgment and order dated 24/04/2023, passed by learned Member (Technical) and Member (Judicial) of the Railway Claims Tribunal, Bench Nagpur in claim Application No.OA(Ilu)/NGP/58/2020 is hereby quashed and set aside. The original application stands dismissed.

(26) The appellant has deposited the amount of compensation in this Court on 01/03/2024, and the same is lying in the Court; the same be returned to the appellant/Railways, along with accrued interest thereon. Pending application, if any, stands disposed of. No order as to costs.

[ABHAY J. MANTRI, J.]

KOLHE