



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

FIRST APPEAL NO.1675 OF 2019

1. Shri Santosh s/o Pandurang Ther, aged about 67 years, Occ. Agriculturist.
2. Sau. Tara @ Pushpa w/o Santoshrao Ther, aged about 59 years, Occ. Housewife.

Both r/o at post ward no. 3, Shivaji Colony,
Nachangaon, Pulgaon, Tq. Deoli, Dist.
Wardha. (M.S.) 442 302

... APPELLANTS

VERSUS

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

... RESPONDENT

Ms Gayatri R. Diwe, Advocate for the appellants.
Ms Neerja G. Chaubey, Advocate for respondent.

CORAM : PRAVIN S. PATIL, J.

CLOSED ON : 12.09.2025

PRONOUNCED ON : 07.10.2025.

JUDGMENT :

1. Heard the learned Counsel appearing for the parties.
2. By this appeal, the appellant being aggrieved by the judgment and order passed by the Railway Claims Tribunal, Nagpur Bench, Nagpur

(‘the Tribunal’) in Claim Application no. OA(LLU)/NGP0221/2017 decided on 08.07.2019, whereby claim application has been dismissed, has preferred the present appeal.

3. Present Appellants are the father and mother of deceased Nilesh. It is the case of the present appellants that their son was traveling from Pulgaon to Badnera by Balharshah-Wardha Bhusawal Passenger Train No.51198 (UP) by purchasing the valid ticket. However, during the traveling, he met with an accident and succumbed to the grievous head injury.

4. According to the respondents as per the Divisional Railway Manager (DRM) report dated 07.06.2018, enquiry has been conducted and in which it was revealed that victim deceased Nilesh was not having valid railway ticket. It is not established that due to the sudden jerk of the train deceased was fallen down as there is no eye-witnesses for the said incident. Hence, it is stated that Railway is not responsible for the death of Nilesh and accordingly, supported the order passed by the Tribunal.

5. In view of this, the appellants has filed application under Section 16 of the Railway Claims Tribunal Act, 1987 seeking compensation of Rs.8 lakh along with the interest. However, the Tribunal without considering their submission and evidence brought on record, by impugned order dated 08.07.2019 dismissed the claim application of the appellants.

6. In the light of rival submission, I have perused the record and

the documents on which the appellants has relied upon. I also go through the case laws which are relied upon by the parties in the matter.

7. At the outset it will be necessary to see the law laid down by the Hon'ble Supreme Court in the case of ***Union of India vs. Rina Devi AIR 2018 SC 2362***, particularly in paragraphs 16.6 and 17.4, observed thus :

“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. v. Sunil Kumar 2017 (13) SCALE 652 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 :

...

17.4. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending

circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

(emphasis supplied)

8. So also, the judgment of this Court in the case of ***Smt. Suhas wd/o Sanjay Wankhade and ors. vs. Union of India*** 2023(4) ALL MR 470, wherein this Court in paragraph 15 observed as under :

*“15.Now by considering the definition of untoward incident, it is to be seen whether the deceased was travelling by the train, which was carrying the passengers and whether he was holding a valid train ticket. Admittedly, the ticket was not found either with the deceased when he was found in an injured condition nor it was produced subsequently by the relatives or the claimants before the Investigating Authority. So, admittedly no ticket was produced in support of the contention. The Hon’ble Apex Court in **Union of India ..V/s.. Rina Devi (supra)**, has already dealt with this issue and held that merely because the ticket was not found with the deceased is not sufficient to hold that the deceased was not a bona fide passenger. By referring the judgment of Delhi High Court in **Gurcharan Singh ..V/s.. Union of India, reported in (2015) A.C.J. 171**, the Hon’ble Apex Court held that initial onus to prove the death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on Railways if an affidavit of relevant facts is filed by the claimant. Merely, because the ticket was not found with the deceased is not sufficient to negate his claim. There is possibility of misplacing the said ticket during the untoward incident. Considering the same, in the present case also, the injured has sustained the injuries while boarding in the train. The possibility that ticket is misplaced during untoward incident or it is destroyed in the said incident cannot be ruled out. Therefore, the contention of the Railway that deceased was not a*

bona fide passenger is not acceptable merely on the basis of the fact that the ticket was not found with the deceased. Mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. The claimants have adduced the evidence by filing an affidavit of relevant facts, and therefore, burden will then shift on the Railway and the issue can be decided on the fact shown on the attending circumstances. No evidence is adduced by the Railway to show that the deceased was travelling without ticket. Thus, contention of the Railway that the deceased was not a bona fide passenger is without any evidence.”

9. Keeping in mind the above said legal position, I had gone through the record and found that the accident in the present case, admittedly, occurred on 24.05.2017. Gateman Neeraj at about 5.44 hours informed to Deputy Station Master about lying of dead body of one unknown person near Nimbhoara Bodkha up line railway station, Pole no.718/9-11 and 5 feet away from the railway line. In between 6.00 to 7.00 am the same was informed to the Police Station. Accordingly, accidental death report was registered at Railway Police Station, Badnera. While preparing the spot panchanama Rs.60/- was found in the pocket of the deceased however no railway ticket was found from the deceased. Thereafter the spot panchanama and inquest panchanama was done and the body was referred for post-mortem. According to the post-mortem report dated 24.05.2017, the cause of death was shown as ‘due to head injury.’

10. Before the Tribunal Santosh (AW1), father of deceased stated that cousin brother of deceased namely Arvind dropped the deceased in night

time at Pulgaon Railway Station as deceased was willing to meet his elder brother's wife at Amravati via Badnera.

11. Arvind (AW2) stated that on 23.05.2017 at night he has dropped deceased at Pulgaon railway station and by purchasing valid ticket, deceased was boarded in the train to reach at Amravati via Badnera.

12. In support of defence the respondent has relied upon the evidence of RW1 Umesh Omprakash Gohiya who was working as Deputy Station Master. After going through his evidence, it is crystal clear that this witness specifically stated that he received information through gateman Neeraj at about 05.44 hours that one dead body of unknown person was lying by the side of up line. He has further stated that before 05.44 hours the following trains were passed from Talni Railway Station.

1.	Goods train Bajwa BTPN	04.53 hrs.
2.	Goods train MFSG	04.16 hrs.
3.	Super Express 22866 through	03.40 hrs.
4	Super Express 12656 through	03.08 hrs.

13. The RW2 (Prabhash Kumar) working as a Guard of train No.51198 Ballarshah Bhusawal passenger states that he was working as a Guard at train no.51198 UP BallarshahBhusawal Passenger. According to him, train reached to the Talni railway station at mid-night. From his evidence, it is clear that trains were traveled during the night hours and more

particularly, train no.51198 UP Ballarshah-Bhusawal Passenger was also traveled in mid-night hours.

14. Learned Tribunal in absence of any evidence inferred that in view of nearby residence/place of work of deceased from the spot of incident, there is every possibility that deceased being working in adjoining fields which are required to approach by crossing railway line was dashed by unknown train. Therefore, held that death of the deceased is not established due to an accidental fall amounting an untoward incident. Hence, not entitled for compensation.

15. The judicial note can be taken of the fact that no agriculturist in the mid-night, do any labour work in the field. Therefore, there was no reason for the deceased to cross the railway line in the night hours to reach any particular agriculture field for doing his work. Hence the stand taken by the respondent and relied by learned Tribunal to reach to the conclusion that same does not amount to untoward incident is not plausible in the matter.

16. The other contention of the respondent that under Section 124A of the Railway Act, the legal heirs of deceased are not entitle for compensation from railway administration as the present case falls under category of 'self inflicted injury'. However to established the same, no evidence is available on record. From the documents available on record particularly from spot panchanama, it is clear that dead body was found 5

feet away from railway line. The postmortem report clearly states that due to head injury the death was caused. In such circumstances, it is clear that no conclusion can be drawn that it is a case of self inflicted injury.

17. The other issue which falls for consideration is a burden of proof. Appellant discharged the burden by relyin upon the deposition of AW1 and AW2. So also documents available on record established the fact that the dead body of the deceased was found lying near the railway up line. As per the law laid down by the Hon'ble Supreme Court in the case of Reena Devi (supra) mere absence of ticket will not negative the claim that he was a bona fide passenger. Once, the body of the deceased was found in the premises, the railway administration is responsible for the compensation. Respondents did not bring any evidence on record to establish the fact that death was not caused due to accident.

18. The respondent heavily relied upon the DRM report dated 07.06.2018. Perusal of the said report nowhere disputed the spot where the body of the deceased was found. It is also not disputed that certain trains during the night hours were traveled on the same route. The only basis for rejecting the claim of the appellants that the deceased was not having the valid railway ticket. However as stated above and as per the law laid down by the Hon'ble Supreme Court, same cannot be a reason to deny compensation to appellant.

19. In the light of the above, I find that the Tribunal failed to consider all these material aspect while deciding the claim application of the appellant and hence the impugned judgment and order passed by the Tribunal is not sustainable in the eyes of law. Hence, I proceed to pass the following order :

- (a) The First Appeal is allowed.
- (b) The judgment and order passed by the Member, Railway Claims Tribunal, Nagpur Bench, Nagpur on 08.07.2019 in Claim Application is hereby quashed and set aside.
- (c) It is hereby declared that the appellants are entitled for the compensation of Rs.8 lakh along with the 6% interest thereon from the date of filing of claim application before the Tribunal i.e. 25.10.2017 till its realization, in equal proportion.
- (d) The respondents are directed to deposit the amount of compensation to the appellants along with interest within four month from the date of this order either before this Court or at Railway Claims Tribunal and intimate the same to appellant.

20. The appeal stands disposed of accordingly.

(PRAVIN S. PATIL, J.)

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