

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

FIRST APPEAL NO.1298 OF 2024

APPELLANTS : 1) Pratibha wd/o Prabhakar Pawar
(Pardeshi)
Aged 38 years, Occu. ? Nill

2) Monica D/o Prabhakar Pawar
Major Occu. Nil (Major)

3) Gopinath s/o Prabhakar Pawar,
Aged Major Occu. Student (Major)

4) Sonali D/o Prabhakar Pawar
Age Major Occp. Student (Major)
(Applicant No. 2 to 4 now major)
All R/o- 1232, Juna Post Office, Paldhi
Budruk, Tal.-Dharangaon,
District- Jalgaon (Maharashtra)

..VERSUS..

RESPONDENTS : Union of India,
(Ori. Respondents)
(On R. A.) Through The General Manager
Western Railway, Churchgate Mumbai.

Mr. R.G. Bagul, Advocate for Appellants.
Ms Neerja Choubey, standing counsel for the respondent/Union of India

CORAM : **ROHIT W. JOSHI, J.**

DATED : **29th JANUARY, 2025.**

ORAL JUDGMENT

1. The present appeal is filed under Section 23 of the
Railway Claims Tribunal Act, 1987, challenging the judgment

and order dated 05.04.2018 passed by the Railway Claims Tribunal Nagpur Bench, Nagpur in Claim Application No.OA (llu)/NGP/2015/0147, whereby the claim of the appellants for compensation on the account of death of one Prabhakar Pawar, husband of the appellant No.1 and father of the appellant Nos.2 to 4, came to be dismissed. The said Prabhakar Pawar is herein after referred to as “deceased”.

2. The case before the learned Tribunal is that on 16.03.2013, when the deceased was travelling from Jalgaon to Dharangaon in Bhusawal-Surat Passenger Train No.59014, he fell down from the train near Paldhi Railway Station and suffered serious injuries. He was taken to civil hospital at Jalgaon where he died during the course of treatment. Both his legs got amputated due to the accident. The appellants claim that the deceased has fallen down from the train due to a jerk or due to heavy rush jostling of passengers. The claim application was filed after prescribed period of limitation. The Tribunal had condoned the delay vide order dated 29.04.2015 and taken the claim application for adjudication on merits.

3. The respondent appeared before the Tribunal in the matter and opposed the claim by filing written statement dated 11.08.2015. The respondent claimed that the deceased was not travelling by the said train and therefore, the appellants were not entitled to claim compensation on the account of his death. Shelter was taken under section 124-A of the Railways Act, 1989 (herein after referred to as “the Act”) to contend that the injury suffered by the deceased was self-inflicted injury and therefore, the accident cannot be said to be an ‘untoward incident’ within the meaning of Section 123(c) of the Act and therefore, the appellants were not entitled to claim the compensation.

4. The appellant No.1/widow of the deceased entered into the witness box. She was cross-examined by the respondent. She has admitted in her cross examination that she was not travelling along with the deceased and therefore, she has not seen the incident. She denied that the deceased did not purchase any journey ticket for his travel. She also denied the suggestion that the deceased was standing on the foot-board of

the coach and fell down due to his negligence. The respondent has not examined any witness.

5. After the accident occurred on 16.03.2013, the investigation report was issued by the respondent, wherein it is stated that the deceased had fallen down while alighting from running train. There is another report dated 12.03.2015 on record, which mentions the same reason as cause of the accident. The said report also records that one second class railway travelling ticket No.70889293 dated 16.03.2013 was found on the person of the deceased. Perusal of the accident death case recorded under Section 174 of the Code of Criminal Procedure (CrPC) also demonstrates that the cause of the accident was alighting from running train.

6. After hearing the learned counsel for the respective parties, the learned Tribunal was pleased to reject the claim vide impugned judgment and order dated 05.04.2018. The learned Tribunal has referred to accidental death report which states that the deceased met with an accident while alighting from running train. The Tribunal has disbelieved that the deceased

was a bonafide passenger and recorded that the ticket appeared to have been planted during the course of Panchnama. This finding is recorded on the basis of the observation that there appears no reason for the deceased to travel from Jalgaon to Bhusawal on the said date. The learned Tribunal has also held that the burden of proving the death in 'untoward incident' was upon the appellants, which they had failed to discharge.

7. The learned counsel for the appellants contends that the findings recorded by the learned Tribunal are contrary to the record and also perverse. He further submits that the learned Tribunal has misinterpreted the provisions of Section 123 and 124-A of the Act. He therefore, argues that the impugned judgment is neither sustainable in the facts of the case nor in law. He prays that the appeal be allowed and compensation of Rs.8 Lakhs be awarded to the appellants.

8. Per contra, the learned standing counsel for respondent/Union of India contends that the learned Tribunal has given cogent and convincing reasons for rejecting the claim. She further contends that the appellants have failed to

discharge initial burden of proving that the deceased had died in 'untoward incident' within the meaning of Section 123(c) of the Act and therefore, the claim was rightly rejected.

9. In view of the above, following points arise for consideration in the present appeal :

- (i) *Has the deceased died in a railway accident while travelling in a train as a bona fide passenger?*
- (ii) *Has the deceased died due to self inflicted injury ?*
- (iii) *Are the appellants entitled to receive compensation on account of death of the deceased ? If yes, what should be the quantum of compensation ?*

10. Having heard the respective submissions as aforesaid and having gone through the record with able assistance of the learned counsel, the undisputed situation that emerges from the record is that the deceased had suffered injury in the accident on 16.03.2013. He was taken to civil hospital at Jalgaon for treatment, where he was declared dead. The first statement with respect to his death is in the ADR No.13 of 2013 recorded under Section 174 of the CrPC, wherein it is stated that the

deceased met with an accident while alighting from running train and both his legs were amputated in the accident, ultimately resulted into his demise. The post mortem report also confirms that both legs of the deceased were amputated and the cause of the death is hemorrhage and shock due to amputation of both knees. The investigation papers prepared by the office of the respondent also confirm that the deceased had met with an accident while alighting from running train, which ultimately was the cause of his demise.

11. The appellant No.1 has recorded her deposition in the matter. She was cross-examined by the respondent. A positive suggestion is given to the witness during her cross examination that the deceased was standing on the foot-board of the coach and fell down from the coach due to his own negligence. This suggestion given in the cross examination clearly indicates that the respondent has admitted that the deceased was travelling by the said train. It is well settled that a positive suggestion given to the witness, in her/his cross examination, is the case which is sought to be set up by the

party conducting cross examination. The fact that the deceased was travelling in the train is, thus, not disputed and rather admitted. It is sought to be contended that the deceased died due to his own negligence and therefore, his dependents i.e. the appellants were not entitled to claim the compensation. As stated above, the respondent has not examined any witness.

12. The finding recorded by the learned Tribunal that the deceased had no reason to travel in the train on the date of the accident and that ticket found on his person was appeared to be planted at the time of Panchnama is not in accordance with the case set up by the respondent. The finding is contrary to the reports of the respondent. The evidence on record is not considered at all while recording the said finding. The said finding is therefore, absolutely perverse. Apart from this, the finding that the ticket was planted subsequently and that there was no occasion for the deceased to travel in the train on the said date is not based on any material on record and is merely a conjecture. Such finding, which is a conjecture and also contrary to the case set up by the respondent and the

documents relating to the cause of accident prepared by the respondent, is completely unsustainable. The judgment and order passed on such finding cannot be sustainable and is liable to be quashed.

13. The sole witness examined by the appellants is the appellant No.1, who is the widow of the deceased. She has not witnessed the accident. The respondent has not examined any witness. Therefore, there is no direct evidence throwing light on the manner in which the incident had occurred. In this regard, I may refer to Section 124-A of the Act, which provides that when in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration, dependents of a passenger who has died in such untoward accident shall be entitled to claim compensation.

14. The term 'untoward incident' is defined under Section 123(c) of the Act. The accidental falling of any passenger from a train carrying passengers is included within the definition of term 'untoward incident'. The deceased has

certainly fallen from a train carrying passengers, which resulted into his demise. The issue that arises for consideration as to whether the case of the respondent is covered under any of the clauses under the proviso to Section 124-A of the Act, which prescribes that the compensation shall not be payable, if the passenger dies on account of contingency specified in the said proviso.

15. The learned standing counsel for the respondent contends that the present case falls under clause (b) of the proviso of Section 124-A of the Act i.e. 'self-inflicted injury'. The learned standing counsel submits that the deceased was alighting from running train and as such, the injury that he has suffered is 'self-inflicted injury'. She therefore, contends that the appeal should be dismissed in view of the said provision.

16. I am unable to accept the said contention canvassed by the learned standing counsel for the respondent in view of the judgment of the Hon'ble Supreme Court in the case of *Union of India Vs. Rina Devi*, reported in AIR 2018 SC 2362. While dealing with the said provision, the Hon'ble Supreme

Court has held that the defence of self-inflicted injury will be available to Railway only, if it is proved that the deceased had intention to inflict injury to himself and mere negligence on the part of the deceased would not mean that the injury suffered is a self-inflicted injury. The Hon'ble Supreme Court has categorically held that the death or injury caused in the course of boarding or deboarding a train will be untoward incident, entitling insurer or dependents of the deceased to claim compensation under Section 124-A of the Act.

17. In view of the aforesaid, authoritative pronouncement of the Hon'ble Supreme Court, the contention canvassed by the learned standing counsel for the respondent is liable to be rejected.

18. The Respondent has placed strong reliance upon the judgment of this Court in First Appeal No.347/2022 (Ganesh s/o Waman Waghmare and anr. vs. Union of India) delivered on 09.11.2022. The deceased in the said case was not found to be a bona fide passenger since ticket was not recovered from dead body during the course of investigation. The Police report,

etc., also revealed that the deceased was not travelling in the train. The claim was rejected since there was no material to suggest that the deceased was travelling in the train. On the contrary, material on record indicated that he met with the accident while he was crossing the railway track. In the present case the fact that the deceased was travelling in the train cannot be doubted. He was found to be travelling with a valid ticket. Therefore, the aforesaid judgment does not assist the respondent, in any manner.

19. In view of aforesaid reasons, the appeal deserves to be partly allowed. As such, I pass the following order:

- (i) The appeal is partly **allowed**.
- (ii) The judgment and order dated 05.04.2018 passed by the Railway Claims Tribunal, Nagpur in Claim Application No.OA (llu)/NGP/2015/0147, is quashed and set aside.
- (iii) The case No. OA (llu)/NGP/2015/0147, is hereby partly allowed.
- (iv) The respondent is directed to pay the compensation of Rs.8 Lakhs without any interest to

the claimants i.e. Rs.2 Lakhs each to the appellant Nos.1 to 4.

(v) The claimants are directed to furnish their back account details to the respondent within a period of 15 days from today, if not already furnished.

(vi) The respondent is directed to remit the amount of compensation of Rs.2 Lakhs each in the bank accounts of the appellant Nos.1 to 4 within a period of four months from today.

(vii) Parties to bear their own costs.

(ROHIT W. JOSHI, J.)