



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

FIRST APPEAL NO.876 OF 2024

APPELLANTS

(Original Applicant on RA)

1. Savita Wd/o. Dinkar Kene, Age – 51 Yrs. Occu-
House wife
2. Chandrakant S/o. Dinkar Kene, Age – 35 Yrs.
Occu – Labour
3. Pushpa D/o. Dinkar Kene, Age – 31 Yrs. Occu
– Education
4. Pooja D/o. Dinkar Kene, Age – 27 Yrs. Occu –
Education
5. Sonaji S/o. Sampat Kene, Age – 83 Yrs. Occu –
Labour
6. Dvarakabai W/o. Sonaji Kene, Age – 80 Yrs.
Occu- House wife
Applicant No.1 to 6 R/o. – Ward No.22,
Deshpande Galli, Near Radha Krushna Mandir,
Tal- Malkapur, Dist-Bhuldhana, (M.S.). 443101

...VERSUS...

RESPONDENT

**(Original Respondent on
RA)**

: Union of India, Through General Manager,
Central Railway, CST, Mumbai

Ms. Sumesha Chaudhari, Advocate for Appellant.
Ms. Neerja Chaubey, Advocate for Respondent.

CORAM : PRAVIN S. PATIL, J.

DATE : 14/08/2026

ORAL JUDGMENT :

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1. Heard finally with the consent of Ms. Chaudhari, learned counsel for the appellant and Ms. Chaubey, learned advocate for the respondent.

2. In the present appeal, the appellants are challenging the judgment dated 19.02.2024 passed by the Railway Claims Tribunal (Member Technical), Nagpur Bench, Nagpur in Claim Application No.OA(IIu)/NGP/72/2019, whereby, the claim application filed by the appellants came to be dismissed.

3. Perusal of the impugned judgment delivered by the learned Tribunal indicates that the claim application was dismissed mainly on two grounds: (i) that the deceased was not a bonafide passenger and (ii) There was no any eye witness to the untoward incident. As such, on the basis of these two grounds, the entire claim application filed by the appellants came to be dismissed.

4. The appellants who approached before this Court has pointed out from the documents and the DRM Report, which was a part and parcel of the proceedings before the learned Tribunal that the deceased was working as a “Homeguard” in Malkapur Unit. During the month of October, 2018 (i.e. Navratri period), he was given posting at Jalamb.

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5. Accordingly, the deceased used to attend his duties at Jalamb by traveling from Malkapur to Jalamb. This fact is clear from the statement of his son namely Chandrakant Dinkar Kene (A-80). It is the case of the present appellants before the learned Tribunal that on 11.10.2018, the deceased Dinkar Kene, after purchasing the journey ticket for Train No.12140 Sevagram Express, which was scheduled at 02:16 a.m. in the morning, was present at Jalamb Railway Station. The stop of the Sevagram Express at Jalamb Railway Station was of 02:12 a.m. to 02:16 a.m. i.e. for four minutes only. At the time of boarding of the train, he met with an accident and in that accident, he succumbed to injuries. Thereafter the train, immediately departed from the Jalamb Railway Station and within two minutes of departure of the train, the trackman (petrolling man) namely Anilkumar Mandal, got knowledge about the incident and immediately informed about the same to the higher authorities of the Railway Station. On the basis of these submissions, the appellants claimed compensation before the learned Tribunal.

6. As per the settled principles of law, the claimants to discharge their burden has to file an affidavit to state the relevant facts of the accident, to establish there case for compensation. Accordingly,

the widow of the deceased i.e. appellant No.1 entered into the witness box and stated the abovementioned facts. She was cross-examined by the respondent before the learned Tribunal. On behalf of the respondent, the trackman (petrolling man) namely Anilkumar Mandal was examined. On the basis of evidence available before the learned Tribunal and the DRM Report submitted by the respondent, the learned Tribunal has decided the claim petition and dismissed the same.

7. Learned Tribunal mainly dismissed the application on the ground that the appellants have failed to point out that the deceased was a bonafide passenger of the train in which he has attempted to board. The present appellants in this regard has pointed out from DRM Report, that deceased was traveling daily from Jalamb to Malkapur, during his posting as a Homeguard in Navratri Period. Therefore, the tickets of earlier dates available with appellants, were produced before the Railway Authorities. However, unfortunately, the railway ticket pertaining to the day on which the accident was caused was not available with appellants, therefore, the same was not produced.

8. The submission of the respondent before the learned Tribunal was that at the time of inspection of the body of the deceased, the relevant things such as aadhar card, ATM card, Pan card, one wallet

and Rs.50/- cash were found with the deceased. However, only the journey ticket was not found with him and therefore, he was not a bonafide passenger of the train.

9. It will be necessary to consider the judgment delivered by the Hon'ble Supreme Court in the case of *Union of India Vs. Prabhakaran* reported in *2008 (9) Supreme Court Cases 527* wherein the Hon'ble Supreme Court has observed in para Nos.14 and 15, which are reproduced as follows :-

"14. In our opinion, if we adopt a restrictive meaning to the expression "accidental falling of a passenger from a train carrying passengers" in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression "accidental falling of a passenger from a train carrying passengers" includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression.

15. Section 2(29) of the Railways Act defines "passenger" to mean a person travelling with a valid pass or ticket. Section 123(c) of the Railways Act defines "untoward incident" to include the accidental falling of any passenger from a train carrying passengers. Section 124-A of the Railways Act with which we are concerned states:

"124-A. Compensation on account of untoward incidents. 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 such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the Railway Administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the Railway Administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act committed by him in a state of intoxication or insanity;*
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation. For the purposes of this section, 'passenger' includes

- (i) a railway servant on duty; and*
- (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."*

10. The Hon'ble Supreme Court has specifically held that the term "passenger", the term "accident" and "falling of a passenger from a train carrying passengers" cannot be given a restrictive meaning. Both the terms are required to have a purposive interpretation and while

considering the same, the claim petitions required to be decided by the Authorities.

11. In the present case, it is established on the record by the claimants that he was posted as Homeguard at Jalamb for the purpose of Bandobast. Therefore, he was required to travel from Jalamb to Malkapur during the period of his posting. For earlier days, railway ticket was produced and same was recorded in DRM Report. Merely, on the day of accident, the ticket was not found with him, cannot be a reason to deny the entire claim of the appellants, for the compensation, more particularly, in view of the law laid down by the Hon'ble Supreme Court in the case of *Prabhakaran (supra)*.

12. The another aspect on which the application has been dismissed is that there was no eye witness to the alleged accident in this regard. It would be pertinent to note that the alleged incident took place at 02:16 a.m. on 11.10.2018. The trackman (petrolling man) of the Railway Department noticed the accident at 02:18 a.m. i.e. immediately after the departure of train. Therefore, this fact is itself sufficient to demonstrate that the accident was caused because of the Sevagram Express which was passing from the Jalamb Railway Station, at the relevant time.

13. It is clear from Train Signal Register (TSR) that it is only the Sevagram Express which reached at Jalamb Railway Station on 11.10.2018 at 02:12 a.m. and departed on 02:16 a.m.. There was no other train reached during that period when the body of the deceased was found on the Railway Station. Hence, in my opinion, learned Tribunal has committed an error in holding that only because there was no eye witness to this incident, the appellants are not entitled for the compensation.

14. In the present appeal, after filing of affidavit by appellants on record, respondent failed to bring any contrary evidence on record, more particularly, to bring the case in any exception of Section 124A of the Railways Act, 1989. Hence, considering the evidence available on record, I am satisfied that death was caused to the deceased in an untoward accident and therefore, appellants are entitled for compensation.

15. In view of aforesaid reasons, I found that the findings recorded by the learned Tribunal are not correct and therefore, the impugned judgment and award passed by the learned Tribunal deserves to be quashed and set-aside. Hence, I pass the following Order :-

ORDER

- (i) The First Appeal No.876 of 2024 is **allowed**.
- (ii) The impugned judgment and award dated 19.02.2024 passed by the Railway Claims Tribunal (Member Technical), Nagpur Bench, Nagpur, in Claim Application No.OA(Ilu)/NGP/72/2019 is hereby quashed and set-aside.
- (iii) It is made clear that the appellants are entitled for compensation of **Rs.8,00,000/- (Rupees Eight Lakhs Only)** along with an interest at the rate of 7% per annum from the date of filing of the application, till its actual realization.
- (iv) The respondent is directed to deposit the entire amount of compensation within a period of three months from today. Out of Rs.8,00,000/-, 35% shall be given to the appellant No.1-Savita Dinkar Kene and remaining amount be distributed in equal shares amongst the appellant Nos.2 to 6 directly by depositing the compensation amount into their respective savings bank accounts.

16. Appeal stands **disposed of**. No order as to costs.

(PRAVIN S. PATIL, J.)

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