



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.1422 OF 2019

1. Ramesh Laxmanrao Dighade,
Aged about : 53 years,
Occu. Agriculturist
2. Mrs. Sindhu w/o Ramesh Dighade,
Aged about : 43 years,
Occu. Household

Both R/o Injori, Tah. Manora,
Dist. Washim

... **APPELLANTS**

...VERSUS...

Union of India, through the
General Manager, Central Railway
Chatrapati Shivaji Maharaj Terminus,
Fort, Mumbai.

...**RESPONDENT**

Shri. P. D Meghe, Advocate along with Ms Aarti Singh, Advocate for appellants
Shri N.P. Lambat, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 17/07/2023

DATE OF PRONOUNCING THE JUDGMENT : 25/07/2023

JUDGMENT

Heard learned Counsel for the appellants and learned
Counsel for the respondent.

2. The present appeal is filed being aggrieved by the judgment and award dated 10/05/2018, passed by the learned Railway Claims Tribunal in Claim Application No. OA(IIu)/NGP/2015/0028, whereby the Tribunal has dismissed the claim application of the appellants.

3. The Brief facts of the claimants' claim petition is as under :-

Amol Ramesh Dighade is the deceased in the present matter. The deceased was appointed at State Reserve Police Force and joined the same, on 25/07/2014 at S.R.PF., B.T NO.4 Camp, Nagpur and for training he had to go to Daund on 04/08/2014 and for this purpose he had to visit his house to collect necessary clothes and money for which he had purchase a valid ordinary class ticket bearing no. 38982401 dated 01/08/2014 and reached at Sindhi Railway Station at 6.00 a.m. in the morning and boarded in Nagpur – Bhusawal passenger train No. 1386 but as there was rush in the compartment of the train, he sat near the toilet where few passengers hit him and he fell down from the running train and

came under the wheels of the train and as a result his head was separated from his body and he died on the spot.

4. The respondent railway has contested the claim application by filing the written statement, wherein, it is submitted that no such incident causing death of the deceased covered within the meaning of the provision of Section 123(c) R/w section 124-A of the Railway act has taken place as such the claim application is not maintainable as the deceased was not a bonafide passenger of the train and therefore the railway is not liable to make any compensation to the claimants.

5. The Railway Tribunal after considering the facts, circumstances and evidences placed before it, concluded that the death of the deceased Amol was occurred due to suicide as the body of the deceased was cut into pieces. If the deceased would have fell from the train, his body would not have cut into pieces and therefore, it is a case of run over and as such Applicants/claimants are not entitles for compensation and thereby dismissed the claim

application. The aforesaid judgment is the subject matter of challenge in the present appeal.

6. It is the contention of the learned Counsel for the appellant that the learned Tribunal failed to appreciate the deposition of witness of respondent who clearly deposed that as a Deputy Station Superintendent, he received information about the death of the deceased on track and just because nobody reported about any accidental falling down of any passenger from the train does not conclude that deceased was not died in an untoward incident. It is further contended that the learned Tribunal erred in not taking into consideration the provisions of Section 123(c) in the Railway Act, 1989 in which the “untoward incident” was clearly includes the accidental falling of any passenger from a train carrying passengers.

7. The Counsel for the appellants relied on following citations :

1. Union of India Vs. Prabhakaran Vijaya Kumar and others reported in (2008) 9 SCC 527

2. *Union of India Vs. Rina Devi reported in (2019) 3 SCC 572*
3. *Mr. Jayanta Banerjee and others Vs. Smt. Aparna Banerjee in EM.A. No.384/2015 of High Court Calcutta*
4. *Mr. Sadashiv Ramappa Kotiyan Vs. Mr. Vasant N. More in First Appeal No.658/2018 of Principal Bench of this Court*
5. *Smt. Kamlabai Wd/o Mahadeorao Raut Vs. Union of India, in First Appeal No. 1009/2019*
6. *Rekha W/o Pradeep Suryavanshi Vs. Union of India, First Appeal No. 152/2018*

8. It is the contention of the respondent that it is clear from the spot and inquest punchnama that deceased had either committed suicide or committed breach of safety guidelines prescribed by the railway administration while traveling and thus while traveling standing or sitting near the open gate of the compartment fell down from the running train and met with an untoward incident. This fact was rightly appreciated by the learned Railway Tribunal and rightly rejected the claim of the applicants which needs no interference.

9. Learned Counsel for respondent relied on following citations :

1. *Meenadevi Jaiprakash Gupta and others Vs. Union of India, First Appeal No. 290/2021*

2. *Kamrunnissa Vs. Union of India, (2019) 12 SCC 391*

10. I have heard both the parties at length. Perused impugned judgment, record and proceedings and considered citations relied on. The only reason appears to reject the claim of the claimant is that dead body of the deceased found cut into two pieces, head on one part and rest of the body on other part. On the basis of it, the learned Tribunal drawn inference that it is a case of suicide. On perusal of inquest panchanama, it appears that belongings recovered on the person of dead body includes railway passenger ticket of Nagpur to Badnera train dated 01/08/2014 having ticket No. 38982410, so also receipt of police equipment, some cash, one prescription.

11. The learned Tribunal failed to appreciate that recovery

of ticket of the same day on which incident occurred from the dead body at the time of inquest panchanama itself is sufficient to hold that deceased was a bonafide passenger of the train Nagpur – Bhusawal. The documents placed on record by AW -1, Ramesh Laxman Dighade – father of deceased clearly goes to show that deceased Amol came to be appointed as “State Reserve Police Force” (S.R.P.F.). As per appointment letter he was required to undergo training. He has supplied with identity card. As such, there is no doubt that deceased was newly intern in the State Reserve Police Force. He joined on 25/07/2014 at camp S.R.P.F., B.T. No. 4 Nagpur. He has to attend Daund – Pune for further training, so he boarded Nagpur – Bhusawal passenger train in the morning at 4.50 a.m. from Nagpur. As he wants to collect some documents, he has purchased ticket till Badnera, his native place appears to be at Injori. As such adverse inference drawn by the Tribunal is totally erroneous. Whether from the position of body on the railway track, it can be decided that it was a case of suicide without there being any such evidence placed by railway on record. The initial burden is discharged by the claimants that deceased was bonafide passenger

and died in an untoward incident of which no eye witness is examined by either of the parties.

12. Learned Counsel for appellant relied on ***Union of India Vs. Prabhakaran (supra)***, it is held as under:

“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 traveling 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 traveling 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.”

“With the advance of industrialization the Laissez Faire Theory was gradually replaced by the theory of the Welfare State, and in legal parlance there was a corresponding shift from positivism to

sociological jurisprudence. It was realized that there are certain activities in industrial society which though lawful are so fraught with possibility of harm to others that the law has to treat them as allowable only on the term of insuring the public against injury irrespective of who was at fault. The principle of strict liability (also called no fault liability) was thus evolved, which was an exception to the general principle in the law of torts that there is no liability without fault.”

“Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.”

13. In the said judgment, the Hon’ble Apex Court fasten the liability on railway as the provision for compensation in the Railway Act is beneficial piece of legislation, liberal interpretation and not strict interpretation applied. It is held that Section 124–A, place on Railways strict liability or no fault liability in case of railway accident.

14. Learned Counsel also relied on *Union of India Vs. Rina Devi (supra)*, wherein, case of *Kamrunnisa Vs. Union of India (supra)* differentiated on facts.

15. Learned Counsel for respondent Union of India relied on *Kamrunnisa Vs. Union (supra)*, however, in *Rina Devi (supra)*, the Hon'ble Apex Court distinguished the judgment in *Kamrunnisa Vs. Union Of India (supra)* and explained the terms "run over" and "untoward incident". In the matter of *Kamrunnisa Vs. Union (supra)*, there was no ticket purchased or possessed by the deceased. Whereas, in *Rina Devi (supra)*, there was evidence to the effect that the victim was bonafide passenger of the train. In the present matter also the police authorities itself recovered railway ticket on the body of deceased which clearly goes to show that he was bonafide passenger of the said train. It is submission of learned Counsel for respondent that deceased has not availed any leave for going to his native place. However, whether he was proceeded on leave or without leave is not the question to be decided or answered in railway claim compensation. The railway also has not examined any witness to show that deceased has committed suicide, nobody knows how the accident occurred. However, it is certain that deceased boarded at Nagpur in Nagpur-Bhusawal passenger. His native place as referred above is in Washim District for that he

purchased ticket from Nagpur to Badnera. There was no reason for him to board down at Sindi Railway Station and commit suicide. If at all deceased was of mind to commit suicide, he would have committed at Nagpur itself or Badnera after reaching at Badnera. The body was not found on platform but on Km. 789/13-15. In view of this evidence, the learned Tribunal ought to have held that accident was untoward incident.

16. Learned Counsel for appellant also relied on Calcutta High Court *Suchitra Vs. Union of India (supra)*, in support of his contention that “*there may be principle of hypothetical theory as to how the deceased suffered death, but the theory which in consequence with the evidence on record has to be accepted. Court is not concerned with the academic exercise and theoretical possibilities, but with practical relation derived from evidence adduced in particular case during trial.*” Calcutta High Court held that mere presence of body of the deceased inside the railway train in the given set of fact without proof of attending circumstances revealing the intention of the deceased neither would establish a

case of run over nor the case similar to that of theory of commission of suicide.

17. In my considered opinion, finding recorded by the Railway Tribunal while dismissing the claim application believing the death of deceased put a case of suicide is on the face of it is erroneous. Specifically when, valid ticket found in possession of the dead body. Only because the person carrying out inquest panchanama gave their opinion without their being any other reason or substantial evidence that it is a case of suicide. Railway Tribunal ignoring other evidence on record reached to the erroneous finding.

18. Learned Counsel also relied on ***Mr. Sadashiv Ramappa Kotiyan (supra)***, wherein in similar set of facts this Court held that deceased was bonafide passenger at the relevant time and respondent railway has failed to discharge it's burden under Section 123(c)(2) of the Railways Act that it was not an untoward incident.

19. Learned Counsel also relied on judgment in ***First Appeal No. 152/2018***, in support of his contention that railway has not examined any eye witness, once initial burden is discharged by claimant. As such, I am satisfied that order is liable to be quashed and set aside. Claimants are entitled to get the compensation. Hence, I proceed to pass the following order :

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment dated 10/05/2018 in Claim Application No. OA(Ilu)/NGP/2015/0028 passed by the learned Member, Railway Claims Tribunal, Nagpur Bench, Nagpur is hereby quashed and set aside.
- iii) The respondent/Union of India is directed to pay to the appellants the sum of Rs.8,00,000/-(Rupees Eight Lakhs Only).
- iv) The amount of compensation be distributed equally amongst the applicants.

v) The said amount shall be deposited in the account of claimants/appellants after verification of identity within eight weeks.

The appeal stands disposed of accordingly.

(Smt. M.S. Jawalkar, J.)

Jayashree..