

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.57 OF 2023

1. Dhaneshwar Rajak S/o Gula Rajak
Age 48 years, Occu. Labour
2. Lila Devi W/o Dhaneshwar Rajak
Age 49 years, Occu. Housewife,
Both R/o Manday Tola, Saram Paschimi,
Saram Gomia, Dist. Bokaro (Jharkhand)
-829111

... **APPELLANTS**

...**VERSUS**...

Union of India,
Through its General Manager,
South Central Railway,
Secunderabad

...**RESPONDENT**

Shri R.G. Bagul, Advocate for the appellant
Ms Neerja Choubey, Advocate for the respondent

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

DATE OF RESERVING THE JUDGMENT : 09/06/2023

DATE OF PRONOUNCING THE JUDGMENT : 12/06/2023

JUDGMENT

Heard.

2. Being aggrieved by the judgment passed by Railway
Claims Tribunal, Member (Judicial) and Member (Technical)

Nagpur Bench, Nagpur in Claim Application No. OA (Iiu)/NGP/125/2019 dated 02/03/2018 dismissing the claim of the appellants for Rs.8,00,000/- along with interest from the date of accident, the applicant preferred this Appeal.

3. The facts of the claimants case is as under : -

The original appellants have filed the Claim application on account of death of their son namely Dilip Dhaneshwar Rajak in untoward incident occurred on 21/07/2018. It is stated that on 20/07/2018 deceased along with his friend namely Jaykishan Singh was travelling from Bokaro to Secunderabad by boarding in the train No. 07008 (Darbhango to Secunderabad) Express train by purchasing valid railway ticket. When the train was passing from Makodi railway station suddenly there was smoke and fire was started coming in the bogie. It is submitted that the passengers were shouting for help and some had pulled the alarm chain. After stopping the train passengers were alighted from the bogie and for saving their life they came on the railway track at KM No.174/33-31 up line in between Sirpur to Makodi railway station. Suddenly one train No. 16317 Himsagar express came there on the track and

hit the deceased who was standing on track for saving his life and in this accident he died on the spot. The accident is occurred due to negligence on the part of respondent railway therefore, claimants i.e parents of the deceased filed a claim petition before Railway Tribunal for the said untoward incident and claimed that the respondent railway is liable to pay the compensation of Rs.8,00,000/- along with interest from the date of accident as at the time of incident the deceased was the bonafied passenger of the train. The respondent railway had filed his reply and resisted the claim of the appellant by filling written statement by merely stating that it is not untoward incident and the deceased was not bonafide passenger of the train. After considering the matter before it the learned Tribunal held that the deceased was not bonafide passenger at the time of incident and dismissed the claim application of the appellant/claimant. The aforesaid judgment is the subject matter of challenge in the present Appeal.

4. It is the contention of the Appellant that the learned Tribunal erred in not considering the evidence of father of the deceased and Accidental Death Report in which it is specifically

stated that the deceased had meet with railway accident and died on the spot. It is further submitted that the Tribunal further erred in not considering the evidence of co-passenger namely Jaikishan Singh who has specifically stated that the deceased was having the valid journey ticket and they both were travelling by Train no. 07008, Darbhanga-Secunderabad Express.

5. *The Counsel for the Appellant relied on following citation :*

1. *Rakesh Saini and others Vs. Union of India and another, AIR 2004 Delhi, 107*

2. *Kamukayi and others Vs. Union of India and others, in Civil Appeal No. 3799/2023, Supreme Court of India*

3. *Union of India Vs. Prabhakaran and others, (2008) 9 SCC 527*

4. *Union of India Vs. Rina Devi, (2019) 3 SCC 572*

6. It is contended by the learned Counsel for the respondent that nothing was recovered in the personal search of the deceased and the factum of non-recovery of the railway ticket, in

itself, goes to prove that deceased was not a bonafide passenger and this fact is rightly appreciated by the Railway Tribunal and passed an appropriate order, therefore, interference is not required.

7. I have heard both the parties at length. Heard learned Counsel for the appellant and learned Counsel for Union of India.

8. My attention is drawn to the deposition of Loco Pilot of train No.16317, by which train, deceased suffered injury and died on the spot. Wherein, he deposed that on 21/07/2018, between Sirpur to Makudi stations at KM No.174/33-31, up line, train No. 07008, down express stopped due to hot excel and the passengers were get down and standing on the track. “That I continuously blowing the horn and all the passengers moved out from the up tract. That only one person did not move out from the up track and was standing on the track and run over by my train.”

9. In cross he has admitted that there is no railway station at KM No. 174/33-31. He also admitted that when his train was passing from the said KM, many passengers standing on the track. It

is pointed out that though guard of Darbhanga-Secunderabad express was examined by the railway, he deposed that he cannot say that incident occurred because de-boarding of passengers, as a result of break binding. He has not seen the incident nor attended the spot, therefore, the testimony of this witness is hardly of any use.

10. It needs to be noted here that the applicant examined one Jaikishan Singh, who is co-passenger along with deceased. He deposed that he along with his friend deceased Dilip Rajak were travelling from Bokaro to Secunderabad by purchasing valid railway ticket, by boarding in the general bogie of the train No. 07008, Darbhanga to Secunderabad express train. Both were going to attend job at Secunderabad. When the train was passing from Makudi railway station, suddenly there was smoke and fire in the bogie, therefore, people were shouting and some passengers pulled the chain. After stopping the train, deceased immediately alighted from the train at 174/33-31 KM. Suddenly, train No. 16317, came there and gave dash to the deceased and he died on the spot. He further deposed that as train started he could not alight from the

train but at next station at Kagajnagar railway station, he alighted from the train and after enquiry, he came to know that his friend was cut by the train. In cross, he specifically deposed that deceased purchased two valid tickets for himself and for the witness. He admitted that deceased was died due to dash and cut off by the train No. 16317, Himsagar express. He specifically denied that they were travelling without ticket. From this evidence and also from the investigation report, it is clear that the train by which deceased was travelling was stopped at same spot of down line due to hot excel and the passengers were got down and standing on up line track.

11. The Loco Pilot of Train No. 16317 Express gave his statement during investigation. He further stated that he has given horn continuously and all the passengers run away from the up line track, only one person remained on the track and run over at the above KM.

12. The learned Tribunal held that the deceased was not bonafide passenger of the train on the relevant day and he was not in possession of any valid ticket. It is also held by the learned

Tribunal that death of deceased had not occurred as a result of an untoward incident as alleged in the claim application, within the meaning of Section 124-A r/w Section 123(c)(2) of the Railway Act. It is held that initial burden to prove that the deceased was bonafide passenger is not discharged by the applicant.

13. Learned Counsel for the appellant relied on *Rakesh Saini (supra)*, in this matter passengers were hit by running train when they were boarding another train. There was no platform at the railway station for boarding the train moving towards Ambala side. All the passengers standing on the platform on the right side of the train have to cross the railway track meant for incoming train from Ambala side and after crossing the side track, the passengers can board the train going towards Ambala side. There was no over bridge or subway. On the day of incident there was total failure of electricity. In such circumstances, passengers were hit by running train. It was held that negligence on the part of railway in not providing proper platform as well as over bridge. No evidence to show any contributory negligence on the part of deceased and therefore, Delhi High Court awarded compensation.

14. The learned Counsel for the appellant vehemently argued that in the present matter also due to negligence on the part of railway, the passengers were required to get down from the bogie, as there was hot excel and smoke in the bogie. The deceased might not have get the time to remove himself from track to board his train. Admittedly, there was some chaos due to hot excel.

15. Learned Counsel also relied on recent judgment of Hon'ble Apex Court in *Civil Appeal No. 3799/2023, dated 16/05/2023*, wherein, the Hon'ble Apex Court held that *"considering the material brought on record in our view, the initial burden that the deceased passenger was having valid ticket has been discharged, shifting onus on the Railway Administration to disprove the said fact."* In the said matter, the applicant, son of deceased deposed that he purchased ticket for travel from Lalapettai to Karurand handed it over to the deceased. Nothing has been placed before the Claims Tribunal or brought on record during the course of hearing that the Railway Administration has discharged the burden of not having the valid railway ticket with the deceased passenger except to say that during recovery, ticket

was not found.

16. In the abovesaid matter the Hon'ble Apex Court relied on judgment in *Rina Devi (supra)*. Considering the circumstances under which the accident took place, it cannot be said that there is any negligence on the part of deceased. If there would not have been any incident of hot excel and smoke in the bogie, the passengers could not have required to board down from the train in the middle of journey, where there was no any platform. As deceased was dashed by the running train, the possibility of ticket has been lost, cannot be ruled out.

17. By examining friend of deceased, the initial burden was discharged by the claimant that they were bonafide passengers of the train. It would be beneficial to refer the judgment in *Prabhakaran (supra)*, wherein, it is held as under:

“11. No doubt, it is possible that two interpretations can be given to the expression ‘accidental falling of a passenger from a train carrying passengers’, the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to do

so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion, the latter of the above – mentioned two interpretations, i.e, the one which advances the object of the statute and serves its purpose should be preferred.”

18. In *Rina Devi (supra)*, the Hon’ble Apex Court held in paragraph No. 16.1, 17.4 as under ;

“16.1. From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Section 124A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an ‘untoward incident’. Only exeptions are those provided under proviso to Section 124A. In Prabhakaran Vijay Kumar(supra) it was held held that section 124A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela(Supra).”

“17.4 We thus hold that the 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 the 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 the 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.”

19. Learned Counsel for respondent vehemently argued that it is not the case that deceased fall down from the train Secunderabad Express but accident took place when he was standing on the track. However, if Section 124-A is perused there is no condition, as such that the person who fall down from the train in which he was travelling, only can claim compensation, the wording used is “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 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 liable to pay compensation to such accident as may be prescribed. There shall be exception to Section

124-A, where Railway Authorities are not liable to pay if injury is occurred due to suicide or attempted suicide, self-inflicted injury, his own criminal act, any act committed by him in a state of intoxication or insanity, any natural cause or disease or medical or surgical treatment.” The Railway is totally failed to establish that the incident is covered by the exception to Section 124-A. There is no case of suicide nor self-inflicted injury or criminal act for which intention is required to commit such act, nor it is claimed that he was under intoxication. As such, the respondent Union of India cannot claim that it was not untoward incident. It is strict liability of the Railway to compensate for such untoward incident.

20. As such, admittedly, deceased was travelling from Bokaro to Secunderabad in a train on the day of incident wherein due to hot excel there was fire and smoke and passengers required to board down from the train. Initial burden is discharged by examining the co-passengers of the deceased that they were holding valid ticket. As I said earlier the ticket may have lost during the accident, as he was dashed by running train. As such, the order passed by learned Tribunal is liable to be set aside.

21. In view of the above law position Section 124-A based on strict liability or no fault liability in case of railway accident and if case comes within the purview of Section 124-A, it is wholly irrelevant as to who was at fault. Accordingly, I proceed to pass the following order:

ORDER

1. The appeal is allowed.
2. Judgment dated 02/09/2022, passed by the Railway Claims Tribunal, Member (Technical) RCT/ Mumbai at Nagpur Bench, Nagpur in Claim Application No. OA(Ilu)/NGP/125/2019, is hereby quashed and set aside.
3. The respondent/Union of India is directed to pay Rs.8,00,000/- to the claimants/appellants within a period of three months along with 6% interest from the date of filing of application till its realization. After deposit of amount, it shall be distributed equally in favour of claimants.

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

Jayashree..

