



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

FIRST APPEAL NO. 983 OF 2022

1) Smt. Savita Wd/o. Vijayprakash Bisen,
 Age-33 years, Occup. Housewife,

2) Ku. Gunjan D/o. Vijayprakash Bisen,
 Age-12 years, Occup. Student,

3) Ku. Sandhya D/o. Vijayprakash Bisen,
 Age-13 years, Occup. Student,

4) Shri Bilharilal S/o. Dashrath Bisen,
 Age-67 years, Occup. Labour,

5) Smt. Dhananbai Wd/o. Biharilal Bisen,
 Age-65 years, Occup. Housewife,

All R/o. Village: Atri, Ward No. 18, Tahsil-
 Agasi Katangi, District: Balaghat, State – M.P.
 Pin Code-481445

... Appellants
 (Original Claimants)

.. Versus ..

The Union of India,
 Through The General Manager,
 South East Central Railway,
 Bilaspur (C.G.)

...Respondent
 (Original Respondent)

Ms. H.S. Dhande, Advocate and Ms. A.P. Murrey, Advocate for appellants.
 Ms. Neerja G. Chaubey, Advocate for respondent sole.

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

DATE OF RESERVING THE JUDGMENT : 28th JULY, 2023
DATE OF PRONOUNCING THE JUDGMENT : 31st JULY, 2023

JUDGMENT:-

Being aggrieved by the judgment and order dated 24/12/2021 passed by learned Member (Technical), Railway Claims Tribunal, Bench at Nagpur (for short, "Claims Tribunal") in Claim Application No. AO (IIu)/NGP/155/2019, the present appeal is preferred by the original claimants.

2) The facts in brief as stated by the claimants are as under:-

That the deceased Vijayprakash S/o. Biharilal Bisen had purchased the Second Class Railway Ticket bearing No. AXA11200705 of Super Fast Train on 04/02/2019 for journey from Gondia to Durg and while performing journey by Train, he was fallen down at Mouza-Dhanoli, 10 Km., South 'Bag' river under Railway bridge, District - Gondia due to sudden jerk and jolt to the train on 04/02/2019 and sustained grievous injuries and died on the spot. The Ticket was recovered from the body of deceased person. He was having severe head injury. The Post Mortem Examination (P.M.E.) Report also supports the contentions of the claimants as well as Marge Report, Inquest Panchanama and Spot Panchanama also support this fact. The

incident occurred on 04/02/2019. The applicant/claimant no. 1 examined herself and placed on record the documents, whereas the respondent - Railway placed on record the Written Statement. It is contentions of the appellants that the evidence of the appellants has not been properly evaluated by the learned Claims Tribunal and came to wrong conclusion without counter evidence on behalf of the respondent Railway and dismissed the Claim Application.

3) Learned counsel for the appellants relied on following citations/authorities:-

- 1) ***Union of India V/s. Rina Devi [2018 DGLS (SC) 472]***
- 2) ***Union of India V/s. Prabhakaran Vijay Kumar and ors. [(2008) 9 SCC 527].***
- 3) ***Smt. Meerabai Gawande and ors. V/s. Union of India [Judgment of this Court in First Appeal No. 1072 of 2019, D/d on 14/02/2020]***
- 4) ***Union of India V/s. Anuradha W/o. Narendra Deshmukh [2013 (6) MhLJ 242]***
- 5) ***Smt. Munnibai Wd/o. Munnalal Chaube V/s. Union of India [Judgment of this Court in First Appeal No. 259 of 2020, D/d on 20/01/2021]***
- 6) ***Raj Kumari Devi & Ors. V/s. Union of India [2014 SCC OnLine Del 206]***

4) Learned counsel for the respondent - Railway vehemently opposed the appeal and submitted that, it is the specific pleadings of relatives of deceased that the deceased boarded Jan Shatabdi Express, however, there is no General Class Bogie and it is a fully A.C. Train.

5) I have heard both the parties, considered the Record & Proceedings and the judgment passed by learned Claims Tribunal as well as citations relied on by the appellants.

6) The learned Claims Tribunal, after considering the Crime Detail Form, Spot Panchanama and Inquest Panchanama, observed that these documents show that the Railway Ticket bearing No. AXA 11200705 dated 04/02/2019 recovered from the cloth of the deceased. My attention was drawn by the learned counsel for the appellants that, the Railway Ticket was duly verified by the Railway Authority and the report to that effect is placed on record. The another reason appears to be given for rejection by the learned Claims Tribunal is that, the deceased was having Ticket of Super Fast Train and it was valid for three hours. It is held that the Jan Shatabdi Express is fully reserved Train and was scheduled to depart from Gondia Railway Station

at 18.50 hours. The time of purchase of Ticket is appearing as 14.40 hours. As per contentions of the respondent - Railway, Ticket of Express Train is valid for three hours. As such, the deceased boarded wrong Train and was not a bonafide passenger. I have seen the Ticket. It is not mentioned anywhere in the Ticket that, it is not valid for Jan Shatabdi Express. It is not disputed that, the Jan Shatabdi Express is also Super Fast Train. The Jan Shatabdi Express was late by 3.50 hours. Therefore, it cannot be said that he boarded a Train after three hours specifically when Train itself was late.

7) Learned counsel for the appellants relied on ***Union of India V/s. Rina Devi*** (supra) in support of her contention, wherein, in para 16.6, the Hon'ble Apex Court held as under:-

*“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.”

8) It is further observed in para 17.1 as under:-

*“17.1 Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a ‘passenger’. In *Raj Kumari* (supra) referring to the scheme of Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the railway administration to prove that passenger was not a bonafide passenger. The Railway Administration has special knowledge whether ticket was issued or not. 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, Delhi High Court in *Gurcharan Singh* (supra) held that initial onus to prove 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. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost.”*

9) As such, onus is on the Railway that the passenger was not a bonafide passenger. Once the initial burden is

discharged, the Ticket found from dead body clearly reveals that the deceased was a bonafide passenger.

10) In my opinion, the contention of the learned counsel for the respondent is totally misconceived. The initial onus in my opinion always lies with the appellants/claimants to show that there is a death due to untoward incident of a bona fide passenger. However, once it is discharged even by filing affidavit, it is the Railway to establish that the deceased was not a bonafide passenger.

11) Learned counsel for the appellants also relied on ***Union of India V/s. Prabhakaran Vijay Kumar and ors.*** (supra) in support of her contention, wherein, in para 12, the Hon'ble Apex Court held as under:-

“12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation.”

12) As such, in view of this judgment, there is no need to refer the judgments of Delhi High Court or of this Court as

those are based on the judgment passed by the Hon'ble Apex Court.

13) In my considered opinion, the Railway Claims Tribunal totally erred and misinterpreted the provisions of law. There was no negligence on the part of deceased and even if, there was negligence, it cannot be termed as self inflicted injury. Moreover, the deceased was a bonafide passenger and he sustained injuries due to fall from the Train. In the documents, it is clearly mentioned that, the death is occurred due to fall from Train. The injury suffered by him also goes to show that, there is head injury which is caused for death. As such, claimants are entitled for compensation in respect of death of Vijayprakash S/o. Biharilal Bisen. Accordingly, I proceed to pass the following order:-

ORDER

- (1) The appeal is allowed.
- (2) The judgment and order dated 24/12/2021 passed by learned Member (Technical), Railway Claims Tribunal, Bench at Nagpur in Claim Application No. AO (Iiu)/NGP/155/2019, is hereby quashed and set aside.

(3) The claimants are entitled for the compensation amount of Rs. 8,00,000/- along with interest @ 6% per annum from the date of filing of Claim Application till its realization

(4) The respondent - Railway to deposit the compensation amount along with accrued interest, within a period of three months, with learned Railway Claims Tribunal.

(5) After deposit of amount of claim in learned Railway Claims Tribunal, the claimants shall entitle to withdraw the same in proportion 30:20:20:15:15 respectively. The amount in the shares of minors be kept in Nationalized Bank till they attained age of majority.

The appeal stands disposed of.

[SMT. M.S. JAWALKAR, J.]