

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

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.565 OF 2021

1. Smt. Shobha w/o Deepak Thakre,
Aged about 38 years, Occ. Household
2. Preeti d/o Deepak Thakre
Aged about 21 years, Occ. Study
3. Nikita @ Geeta d/o Deepak Thakre
Aged about 14 years, Occ. Study
4. Vaishnavi d/o Deepak Thakre
Aged about 12 years, Occ. Study
(Applicant No.2 to 4 being minor are
u/g of their mother applicant no.1).
All r/o Post Panchgaon, Tah. Umred,
Dist. Nagpur.

5. Nattuji s/o Rajeramaji Thakre,
Aged about 70 years, Occ. Nil
6. Smt. Subhadra w/o Nattuji Thakre,
Aged about 60 years, Occ. Nil
Both r/o Ward No.4, Jwal Ghuikhed,
Tah. Chandur Railway, Dist. Amravati
(M.S.) - 441124.

... Appellants

Vs.

Union of India,
Through the General Manager,
Central Railway, CST Mumbai.

... Respondent

Mr.Ravindra G. Bagul, Advocate for the Appellants.
Ms.Neerja G. Chaubey, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.
RESERVED ON : 20th OCTOBER, 2022.
PRONOUNCED ON : 2nd JANUARY, 2023.

JUDGMENT :-

1. Being aggrieved by the judgment passed by the Railway Claims Tribunal, Nagpur in Claim Application No.OA(IIu)/NGP/185/2017 dated 14th June, 2019, dismissing the claim of the dependents of one Deepak Nattuji Thakre, the said dependents have preferred this appeal under section 23 of the Railway Claims Tribunal Act, 1989.

2. The claim of the appellants is that on 24th February, 2014, the deceased viz. Deepak Nattuji Thakre was travelling from Chandur Railway Station to Junnardeo via Nagpur by boarding Train No.59395 i.e. Beitul-Chhindwara passenger train by purchasing a valid railway ticket. It is submitted that when the train reached railway station Hirdhagarh, the said Deepak Nattuji Thakre alighted for some work and while boarding in the said train, when the train started suddenly due to which the hand of the deceased slipped from the handle of the door and the deceased fell down from the running train at kilometer No.832/3-4 at the Hirdhagarh railway station and died in the Chhindwara hospital on 26th February, 2014 during the course of treatment. It is the case of the claimants that the said incident is an untoward incident and the respondent-railways is liable to pay compensation alongwith interest under section 124-A of the Railways Act, 1989 from the date of the accident as at the time of the incident the deceased was a bonafide passenger of the said train.

3. The railways has resisted that claim on the ground that there was no valid ticket found on the body of the deceased nor was any authority to travel found on him and also that the incident was not an untoward incident. It is submitted that from the evidence and deposition of the pointsman and the RPF Constable that the one person was trying to board a moving train and he slipped and fell down. On going near to the place of incident and inquiring from the other passengers, it emerged that the said person while trying to board the running train, his hand slipped from the handle of the door and therefore, he fell down. It is submitted that the deceased trying to catch a running train despite warning slipped from the handle of the door and fell down, which indicates that the said incident was due to his own negligence and during the course of treatment he died in the government hospital at Chhindwara. It is therefore, submitted that the death occurred due to the person's own actions and the said person is himself responsible for the same.

4. The Tribunal after taking into consideration the facts and the evidence on record held that deceased was not possessing any ticket and was therefore, not a bonafide passenger and that the pointsman had witnessed him coming hurriedly running from outside and trying to board the running train under the influence of liquor (as evidence by the MLC report), the case could not be considered for paying compensation to the claimants and rejected the claim of the appellants.

5. It is the case of the appellants that on 25th February, 2014, the deceased was travelling by Beitul Chhindwara Passenger Train No.59395 from Chandur railway station to Junnardeo with a valid journey ticket alleged to have been purchased by the deceased from the Chandur railway station. Mr.Bagul, learned counsel for the appellants would contend that the deceased was travelling with a valid journey ticket in his possession which was purchased by the deceased from Chandur railway station. Learned counsel submits that PW 1 viz. the wife of the deceased has deposed to the factum of the purchase of the ticket by the deceased in her evidence affidavit. Learned counsel would submit that in this view of the matter, the burden would shift on the respondent-railways to rebut the statement made in the affidavit by adducing evidence to prove that the deceased was not a bonafide passenger. On this issue Ms.Chaubey, learned counsel for the respondent-railways would submit relying upon the Inquest proceedings namely the crime details from being A-5 of the Record and Proceedings the Naksha panchnama being A-6 of the Record and Proceedings that nothing about the journey ticket has been mentioned in both the documents meaning thereby the journey tickets have not been recovered from the spot or from the person of the deceased by the Investigating Officer. She submits that the personal search of the deceased was conducted in the presence of the police head constable. Therefore, the factum of non-recovery of the railway ticket in itself goes to prove that the deceased was not having any

journey ticket in his possession otherwise the same would have been recovered. To this Mr.Bagul, learned counsel for the appellants would submit that the journey ticket could have been misplaced as the deceased was travelling alone and may have happened while shifting him to the hospital after he was injured.

6. It is argued that the deceased was injured when he fell down and was taken to one hospital and then shifted to another hospital and probably during this time the ticket was lost as also no railway authority has registered any case against him for ticketless travel from Chandur to Hirdhagarh.

7. With respect to the issue of untoward incident, Mr.Bagul, learned counsel for the appellants would contend that the deceased had left the residence for Mahadeo darshan from Ghuikhed and to later take a train from Chandur railway station as there was no rail connectivity at Ghuikhed. He would submit that the deceased had to travel from Junnardeo railway station and was travelling by train No.59395 and fell down at Hirdhagarh at kilometer No.832/3-4 while boarding the train. Learned counsel would submit that the deceased died while taking treatment in Chhindwara hospital. He relies upon the document A-2 of the Record and Proceedings issued by Dr.Narendra, Medical Officer of Chhindwara, where it has been stated that the deceased had fallen down from the train. Learned counsel would submit that all the police documents also suggest that the deceased died due to falling down from the

train. Learned counsel would submit that the deceased has travelled all the way from Chandur railway station and got down at Hirdhagarh and while re-boarding the train he fell down from the running train and therefore, as per paragraph No.16.6 of the decision in the case of **Union of India Vs. Rina Devi**¹, the claim in such a case is permissible.

8. On the issue of untoward incident, Ms. Chaubey, learned counsel for the respondent-railways relying upon the evidence of RW 1 Shri Yogesh Kahar working as pointsman at Hirdhagarh railway station on 25th February, 2014 would submit that the said pointsman and his colleague Rajeshkumar and RPF Gajraj Choure who were present on the platform of Hirdhagarh railway station at the time of passing of the said train, noticed one outsider unknown person running and entering the platform hurriedly and was trying to board the said train, when RW 1 shouted and warned him not to board the running train, but he did not listen and while trying to board the running train, he fell down near the starting signal at the Junnardeo end which is outside the platform. She would submit that AW 1 the wife of the deceased is not an eye-witness to the said incident nor the appellants have examined any eye-witness to establish the circumstances in which the death of Deepak Thakre occurred. She would submit that the statements of the family members of the deceased were recorded by the police authorities which are only hear-say as none of them was travelling

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alongwith the deceased.

9. With respect to the contention of the appellants that the scheduled stoppage of train No.59395 at Hirdhagarh station is only one minute and in actuality it stops for two minutes, it is submitted that it is very unlikely that the passenger would get down from the train and move away such that he has to re-board the moving train while coming running from outside the platform. She would submit that it only an assumption by the appellants that the deceased may have de-boarded the train; in fact she submits that the respondent's evidence is such that he has not seen the deceased de-boarding the train.

10. Learned counsel for the railways also refers to the MLC document to submit that when the deceased was brought to the Community Health Centre at Junnardeo he was having an alcoholic breath from the mouth which is indicative of the fact that the deceased had consumed liquor when he was trying to board the moving train. That no alcohol was detected during the Post Mortem is because he was taken from the Primary Community Health Care Centre from Junnardeo on 25th February, 2014 and was later shifted to Chhindwara hospital where he died on 26th February, 2014 and that there was sufficient time gap when the alcohol breath was noticed at Community Health Centre and when the deceased died on the next day and therefore, there was no alcohol detected in the post mortem report.

11. Learned counsel for the respondent-railways would therefore submit that on all these three counts firstly of not having a valid ticket, and secondly of the incident not being an untoward incident as defined under the Railways Act and even assuming that the deceased was a bonafide passenger and the incident was an untoward incident, in view of the intoxicated state of the deceased at the time of the incident, the same would fall within the exceptions of section 124A thereby disentitling the claim for compensation by the dependents. She would therefore submit that the appeal be dismissed.

12. I have heard Mr.Ravindra G. Bagul, learned Counsel for the appellants and Ms.Neerja G. Chaubey, learned Counsel for the Respondent at length and with their able assistance I have perused the papers and proceedings in the matter.

13. At the outset, it would be appropriate to set out the relevant provisions of the Railways Act, 1989 as well as settled law in this regard.

“(i) Section 2(29) Passenger means a person travelling with a valid pass or ticket.

(ii) Section 123(c)(2)

“untoward incident” means-

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section 3 of the Terrorist and Disruptive Activities

(Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity ; or

(iii) the indulging in rioting, shoot-out or arson,

by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) The accidental falling of any passenger from a train carrying passengers.

124A. Compensation on account of untoward incident.—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 dependent 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.]

(iii) Paragraph 17.4 of the decision in the case of **Union of India Vs. Rina Devi**² is also quoted as under :-

“17.4 We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which 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 bonafide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and 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.”

(Emphasis supplied)

14. Let us now come to the issue whether Mr. Deepak Thakre, the deceased was holding a valid journey ticket to travel by the said train No. 59395 to travel from Chandur to Junnardeo. As quoted above the word “Passenger” has been defined under section 2(29) of Act, “as a person travelling with the valid pass or a ticket”. Further, for the purposes of claiming compensation under section 124A of the Railways Act, the explanation (ii) contained therein includes a railway servant on duty as well as a person who has purchased a valid ticket for travelling by train carrying passengers on any date or a valid platform ticket and becomes a victim of an untoward incident. During the course of the inquest proceedings, personal search of the deceased was conducted by the police officials. The crime details form at A5 and the Naksha panchanama at A6 reveal nothing about the journey ticket nor has anything been mentioned about the ticket in both these documents. No journey ticket has been recovered from the spot or from the person of the deceased by the Investigating Officer. Therefore, it is quite clear that no journey ticket or railway ticket or the platform ticket as mentioned in the definition 2(29) of the Railways Act or as mentioned in explanation (ii) of section 124A of the Railways Act has been recovered from the

deceased. It has been contended on behalf of the appellants that the wife of the deceased viz. AW 1 has deposed the factum of the purchase of the tickets in her evidence affidavit. It has been argued therefore that once the the factum of the purchase of the ticket by the deceased has been submitted in an affidavit filed by the appellants, then the burden lies heavily on the railways to prove that the deceased was not a bonafide passenger. This is on the basis of reliance in paragraph No.17.4 of the decision in the case of **Union of India Vs. Rina Devi** (supra). Paragraph No.17.4 of the decision in the case of **Union of India Vs. Rina Devi** (supra) clearly holds that the mere absence of ticket with an injured or deceased will not negative the claim that he was a bonafide passenger. The decision however further goes on to say that the 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. At this stage it would be pertinent to refer to the evidence on affidavit by PW 1, the wife of the deceased at A-331 of the record and proceedings; no where in the entire affidavit it is mentioned that the ticket was purchased by the deceased or that someone else purchased the ticket for him nor is the wife a witness to the same. In fact she candidly admits in her affidavit that she did not know by which route her husband had gone but on 26th of February, 2014 she received a phone call from the police station at Chhindwara that her husband had fallen down at Hirdhagarh while boarding the train from Chhindwara passenger train and that she did not know that he

had fallen down from the train as she was not accompanying him at the time of incident although she mentions the shifting of her husband from Hirdhagarh to Junnardeo hospital and from Junnardeo to Chhindwara hospital for treatment and that in all this process the journey ticket of her husband was lost.

15. Paragraphs 2, 3, 4 and 5 of the said affidavit are usefully quoted as under:-

“2. That, on 24/02/2014, my deceased husband has started for Mahadeo Yatra from Ghuikhed, Police Station Talegaon, Tah. Chandur Railway, Dist. Amravati. As there is no railway station at Ghuikhed, so my husband started his journey from Chandur Railway station for Mahadeo Yatra. There are various routes by which my husband can have gone to Mahadeo Yatra. I do not know by which route my husband has gone but, on 26/02/2014, I have received a phone call from the Police Station Chhindwara that my husband has fallen down at Hirdhagarh, Dist. Junnardeo while boarding/travelling from Beitul Chhindwara Passenger Train. I do not know how he has fallen down from the train as I was not accompanied with him at the time of incidence. My husband has fallen down from train no. 59395 and fall down at Hirdhagarh at Km. No.932/3-4 while boarding the train. He was given first aid at same station but as there was no medical facility he was shifted to primary health care, Junnardeo Dist. Chhindwara with the help of Guard of the train 59395 and other passengers. The M.L.C. was done at Junnardeo and further injured (my deceased husband) was referred to Chhindwara where he died during the treatment on 26/02/2014 at 10.00 a.m. My husband was alive till he was taken to primary health care and was shifted to Chhindwara. The Medical Officer of Chhindwara, Dr. Narendra Harse declared my husband dead on 26/02/2014 and further the memo/information was given to Thana Prabhai Police Station Chhindwara. The police has registered the Marg. No.0/14 on 26/02/2014 and further investigation was done by police authorities Chhindwara. In all this process of shifting my husband from medical treatment here and there the railway journey ticket of my husband was lost. The

Police Officers informed about the accident to Gram Patil Ghuikhed who further informed our family about the incidence. On receiving the call I requested my brother-in-law Sandeep s/o Nattuji Thakre to go to Chhindwara and inquired about the happening of the incidence. There my brother-in-law identified the body of my husband and the body was given in possession of my brother in law after post mortem, he took the body to our native place and our family has performed the last rituals of my deceased husband. The Police Authorities Chhindwara has recorded our statements in Chhindwara Police Station, after the death of my husband after that, our statements were not recorded by any of the police authorities.

3. At first Police Authorities has given me only the pm report I being the lay man could not understand the legalities of the documents till my brother guided me that the Railway gives compensation in the accidental falling of the passengers after that we contacted our counsel who gave direction to collect all the documents form the relevant authorities. After that I was given all the police documents, but still the medical documents were not given, therefore, I have moved an application under RTI for getting all the relevant documents form the various authorities, I have demanded all the documents, through my counsel from the various authorities, I was forwarded my last document one counsel's address on 16/03/2016, after that I have forwarded all the documents to my counsel. My counsel also guided me that my father-in-law and mother-in-law are the relevant and necessary parties to the claim therefore, I requested them number of times to visit the counsel's office but, they have not turned till the counsel has issued letter dated 17/12/2016 to them regarding the filing of the claim. After that they attended the counsel's office and after handing over all the relevant documents finally they signed the petition. Due to the marriage of my daughter (Applicant No.2) on 28/02/2017, we were busy in the marriage arrangements therefore, we could not sign and file the petition after her marriage we have filed the claim petition on 14/06/2017 alongwith the delay application which was accepted by this Hon'ble Tribunal.

4. I have filed certified copies of all the relevant documents alongwith this claim petition, today I am presenting original of our ration card, death certificate, voter ID, Adhar Card and pass book to prove my claim. I am giving this evidence and executing this evidence on affidavit for myself and for all the applicants/claimants.

5. As my husband was a bonafide passenger and was travelling the journey on the day of incidence and fell down at Hirdhagarh railway station at Km. No. 932/3-4, due to heavy rush in the train. I do not know how my husband fall down from the train but he has gone for Mahadeo Yatra from Chandur Railway. I pray this Hon'ble Tribunal to grant me compensation of Rs.8,00,000/- alongwith the interest from the date of incident."

16. As can be seen from the aforesaid, the affidavit filed by PW 1 is not an affidavit of the relevant facts. The affidavit only records the incidents that took place post mortem of her husband and what she has learnt after the death of her husband. Admittedly she is not an eye-witness nor she has received any information from any eye-witness of the purchase of the ticket or of any other details except the fact that her husband had proceeded for Mahadeo Yatra. This fact in my view would not be sufficient to determine or rather this fact cannot determine whether he was holding a valid ticket or not or that he was a bonafide passenger of the said train.

17. Therefore in my view the deceased was not holding a valid ticket or a pass nor he had purchased the valid ticket for travelling by a train carrying passengers on any date nor he had any platform ticket although he may have become a victim of a railway accident.

18. Although, in view of the above finding that the deceased was not a

bonafide passenger, it may not be necessary to consider the other arguments advanced on behalf of the parties particularly whether or not the accident is an untoward incident or whether the same falls within the exceptions, however for the sake of completeness, let us consider whether the incident resulting in the death of Deepak Nattuji Thakre was an untoward incident or not.

19. Section 123(c)(2) provides that an untoward incident means the accidental falling of any passenger from a train carrying passengers. It has already been held that Shri Deepak Nattuji Thakre was not a passenger as defined in the Railways Act and therefore, the incident cannot be said to be an untoward incident under section 123(c)(2) of the Railways Act.

20. From the DRM report as well as affidavit of Mr.Yogesh Kahar working as pointsman at Hirdhagarh railway station, it emerges that Shri Deepak Thakre was running and entering the platform at Hirdhagarh railway station hurriedly and thereafter, he was trying to board the said running train No.59395 and this despite the warning by the pointsman but he did not listen and while trying to board the train and to get hold of the handle of the door of the running train he slipped and fell down. Thereafter primary health care at Hirdhagarh was given to the injured Deepak Thakre where the MLC report detected alcohol in his breath and thereafter he was referred to the railway hospital in Junnardeo whereafter some treatment he was further referred to the hospital in

Chhindwara where during the course of treatment the injured Deepak Thakre died.

21. Although from the facts and the evidence on record it appears that the deceased appears to be negligent, however, it cannot be said that the deceased may have had the intention to self inflict, or commit suicide, however, it would be relevant to consider exception (d) in the proviso to section 124A which refers to any act committed by the deceased in a state of intoxication. The railways have referred to the MLC document to submit that when the deceased was brought to the Community Health Centre at Junnardeo, he was having an alcoholic breath from his mouth which is indicative of the fact the deceased had consumed liquor when he was trying to board the running train. The appellants have tried to counter this by submitting that no alcohol was detected during the post mortem and that therefore, the case cannot be treated to be an exception to section 124A of the Railways Act. I have perused the MLC document which has been part of the record and proceedings at A-173 and also which has been referred to in many other documents in the record and proceedings and hold that in view of the alcoholic breath detected during his breath analyzer examination at the Community Health Centre on 25th February, 2014, when he was under treatment there, Deepak Thakre attempted to board the said train in an intoxicated state. The injured Deepak Thakre was taken to the Community Health Centre at Junnardeo on 25th February, 2014 where he was under

treatment and later on he was shifted to Chhindwara hospital and died around 10.00 a.m. on 26th February, 2014. There is definitely a sufficient time gap as pleaded by the Railways between the time when the alcohol breath was noticed at the Community Health Centre at Junnardeo and the death of Deepak Thakre on the next day. I therefore agree with the submissions made by the railway authorities that it is not surprising therefore that no alcohol was detected during the post mortem or recorded in the post mortem report.

22. The evidence of the MLC report indicating that the injured Deepak Thakre had an alcoholic breath is from a government hospital at Junnardeo and is good evidence to be relied upon, which has neither been denied or disputed except to say that there was no such finding in the post mortem report and which has already been explained above. The MLC report at page A-173 of the record and proceedings which suggests that the deceased when brought to the Community Health Centre at Junnardeo was having an alcoholic breath indicative of the fact that the deceased was in an intoxicated state while boarding the train is clearly an evidence which cannot be ignored. The said piece of evidence has been signed by the officer on duty and has also not been denied or controverted by the appellant herein. The tribunal, in my view, is therefore correct in holding that the case of the appellants would fall under exception (d) to section 124A of the Railways Act. Therefore, the finding and the order of the Tribunal in denying the compensation under proviso (d) to section 124A of the

Railways Act cannot be interfered with.

23. Therefore, on all counts, this Appeal must fail. No interference is called for in the decision of the Tribunal. There being no perversity or error apparent in the findings of the Tribunal, the appeal is dismissed. Parties to bear their own costs.

(ABHAY AHUJA, J.)