



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 508 OF 2016

1. Mr. Balaji P. Kapale, aged 47 Years
2. Nirmala Balaji Kapale, aged 42 years
Residing at, Chinar Banglow, Plot No. 154/A,
Yashwant Nagar, Talegaon, Dhabade,
Taluka Maval, District – Pune - 410507

...Appellants

Versus

Union of India through the General Manager
Central Railway, CST, Mumbai – 400 001

...Respondent

SNEHA
NITIN
CHAVAN

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Mr. Kuldip Singh for the Appellants.

Mr. T.J. Pandian a/w Ms. Prajakta Joshi, Mr. Gautam Modanwal and Ms.
Noorjahan Khan for Respondent/ UOI.

CORAM : M.M. SATHAYE, J.
DATE : 31st JULY, 2025

JUDGMENT :

1. This appeal is filed under Section 23 of the Railways Claims Tribunal Act, 1987 challenging the Judgment and Order dated 13.10.2014 passed in Claim Application No. OA(IIu)/MCC/2012/0087 by Railway Claims Tribunal, Mumbai Bench, Mumbai. By the said impugned order the claim is rejected and dismissed.

2. Few facts necessary for disposal of this Appeal are as under. The Appellants are parents of the deceased Nikhil Balaji Kapale, who fell down from local train carrying passenger between Talegaon and Chinchwad railway station on 03.11.2007. It is the case of the Appellants that deceased Nikhil was travelling with IInd class season

ticket and fell down from running train at Ravet bridge between Dehu Road and Akurdi railway station, due to sudden push by other passengers. It is contended that his body remained undetected in the tall grass and bushes and was ultimately found on 10.11.2007.

3. The Respondent/railway contested the application by denying all allegations. It is contended that the deceased was travelling in careless, rash and negligent manner without taking adequate precaution, as a result of which he sustained injuries which proved fatal. The incident of fall during travel is denied. It is further denied that due to tall grass around the tracks, the body remained undetected till it was found.

4. The Appellant No.1 has filed affidavit. Copies of police report, inquest panchnama, ration card, bank passbook, SM Memo are also filed.

5. The Tribunal has held that the body of the deceased was found after 7 days and complete details of ticket have not been given. It is held that this is not the case of fall from train because body was lying 35 feet away from the track and it was found lying near Ravet bridge. It is held that recovery of 'railways pass' with the deceased does not mean that travel has taken place necessarily. It is held that filing of missing complaint does not prove that the deceased fell down from train. The Tribunal held that since the travel itself is not proved, the issue of bonafide passenger is irrelevant.

6. Learned Counsel Mr. Singh appearing for the Appellants submitted that the evidence on record is considered in perverse manner.

He submitted that because of the topography at the relevant place, it is possible that body rolled down or dragged by animals and therefore, was found at distance of 35 feet. It is submitted that Railway pass has been found in the wallet of the deceased. It is submitted that the aspect of the fault or deceased being negligent, is irrelevant for the purpose of present claim. He relied on following Judgments:

- (i) Union of India v/s Prabhakaran Vijay Kumar & Ors.
- (ii) Jameela and Ors. v/s. Union of India (Civil Appeal No. 1184 of 2003 dated 27.08.2010)
- (iii) Mohamadi and Ors v/s. Union of India (2011 ACJ 2356)
- (iv) Union of India v/s Rina Devi (2019)3 SCC 572
- (v) Union of India v/s. Kalpanaben Pravin Patil (FA No. 278 of 2005 dated 04.02.2010, Gujarat High Court)
- (vi) N. Buchilingam and Ors. v/s. Union of India (CMA No. 2286/1999 dated 20.09.2004 Andhra Pradesh High Court)

7. Learned Counsel for the Respondent Mr. Pandian on the other hand submitted that the argument about topography of the spot as well as possibility of animals dragging the body of the deceased is being advanced for the first time in this Court and was not argued before the Tribunal. He submitted that by the very nature of claim and dispute, it has to be considered on case to case basis. He submitted that it is unlikely that the deceased fell down from train considering fact that his body was found 35 feet away from the railway track. He submitted that the deceased was travelling negligently and was responsible himself for the injury and death.

8. Following points arise for my consideration :

- (1) Whether the applicants are the dependents of the

deceased within the meaning of Section 123 (b) of the Railways Act, 1989? **Yes**

(2) Whether the deceased was a bonafide passenger of the train in question, on the relevant day? **Yes.**

(3) Whether the death of the deceased had occurred as a result of an untoward incident, as alleged in the claim application? **Yes.**

(4) What amount of compensation is payable to Appellants? **As per final order.**

REASONS

9. Before proceeding to decide this appeal on merits. it is necessary to consider the recent judgment of **Union of India Vs. Rina Devi - (2019) 3 SCC 572** wherein, the Hon'ble Supreme Court has considered various earlier judgments of the Supreme Court and High Courts as well as conflicting views thereunder and has culled out conclusions resolving the issues in following manner :

“18. xxx Wherever it is found that the revised amount of applicable compensation as on the date of award of the Tribunal is less than the prescribed amount of compensation as on the date of accident with interest, higher of the two amounts ought to be awarded on the principle of beneficial legislation. Present legislation is certainly a piece of beneficent legislation.”

“20. From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and 124-A 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 exceptions are those provided under proviso to Section 124-A. In Prabhakaran Vijaya Kumar it was held that Section 124-A 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”

“25. xxx Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be n “untoward incident” entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.”

“29. 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 bona fide 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 bona fide 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.”

“30. As already observed, though this Court in Thazhathe Purayil Sarabi held that rate of interest has to be @ 6% from the date of application till the date of the award and 9% thereafter and 9% rate of interest was awarded from the date of application in Mohamadi, rate of interest has to be reasonable rate on a par with accident claim

cases. We are of the view that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises up to the date of payment, without any difference in the stages. Legal position in this regard is on a par with the cases of accident claims under the Motor Vehicles Act, 1988. Conflicting views stand resolved in this manner."

[Emphasis supplied]

10. I have carefully considered the submissions and perused the record with the assistance of learned Counsel for the parties.

About Point No.1

11. Under discussion of Issue No.3, the Tribunal has held that relationship of Appellants with deceased is established. Hence, this point is answered as Yes.

About Point Nos. 2

12. Appellant No.1 has filed affidavit dated 22.01.2014. No cross examination is shown to the Court by learned counsel for the Respondent. It is stated in the affidavit as follows:

"1. That on 03.11.2007 my son Nikhil Balaji Kapale was travelling from Talegaon to Chinchwad Railway Station, at about 13.00 hrs, when the train was at Ravet Pul Railway Station. Because of sudden push from other passengers, my son had fellen down from the train accidentally. This fact is based upon information received from public. His body remained undetected near the tracks it was found on 10.11.2007.

2. That my son was traveling on 2nd class season ticket from Talegaon to Pimpri Railway station, which was

recovered by the police at the time of the panchanama and is recorded in the panchanama xxx”

13. Perusal of missing complaint dated 05.11.2007 produced on record shows that on 03.11.2007, the deceased left the house at about 12.30 pm for work at Chinchwad, however did not return home. After taking search with relatives and neighbours, when the deceased was not found, the Appellants filed missing complaint on 05.11.2007.

14. The copy of the inquest panchanma dated 10.11.2007 produced on record, reveals that when clothes of the dead-body were searched, a Nokia phone was found in the right pocket of the pant and one black-colour money wallet was found in the rear pocket and on opening the same, a railway pass from Talegaon to Pimpri in the name of deceased was found which was valid till 28.11.2007.

15. It is surprising to note that despite mentioning recovery of railway pass while discussing Issue No.1, it is observed by the Tribunal while discussing Issue No.2 that railway pass was not found.

16. The Appellants even before knowing the death of the deceased, stated in the missing complaint dated 5.11.2007 that the deceased had left home (at Talegaon) for attending work to Chinchwad. The season pass found on the body of deceased was from Talegaon to Pimpri (near Chinchwad) which is in line with the case that deceased was traveling for work between Talegaon and Chinchwad. Railway pass-season ticket is found on body of the deceased. Therefore, there is sufficient material to hold that deceased was a bonafide passenger. Therefore, point No.2 is answered as Yes.

About Point No.3.

17. There is nothing on record to doubt the case of the Applicants as emerging from the affidavit and missing complaint. Perusal of station master (SM) memo of Akurdi Station indicates report of dead body near Ravet Bridge. Fact that deceased was carrying season-ticket / pass lends support to the case that he was travelling in a train. The 'start' and 'destination' on season ticket matches with his place of residence (Talegaon) seen on ration card and place of work (Chinchwad near Pimpri). It is recorded in the inquest panchanama that as per the panchas and the police, the death is caused because of deceased falling from running train and getting seriously injured.

11. The aspect of the deceased's body being found 35 feet away from the track in itself will not be sufficient to reject the claim as there is nothing else on record to explain how the deceased's body was found near Ravet bridge. Therefore there is sufficient material to hold that death of the deceased had occurred as a result of an 'untoward incident' within the meaning of section 123(c)(2) r/w 124A of the Railways Act, 1989.

12. The argument about the deceased himself being negligent is rejected in view of law discussed above. The liability is strict and in the nature of no-fault liability, as explained by the Hon'ble Supreme Court in para 20 of **Rina Devi (supra)**.

About Point No.4

13. Considering both the dates, of accident (03.11.2007) and of award (13.10.2014), the Railway Accidents and Untoward Incidents

(Compensation) Rules 1990, as they existed prior to 01.01.2017 would apply and compensation for Rs.4 lakh for the death would be payable. Following paragraph 30 of the judgment of **Rina Devi (supra)**, interest is payable from date of accident. Considering that legal position is held on par with claims under Motor Vehicles Act, 1988, interest @9% (Rs. 36,000/- per year and Rs. 3,000/- per month) appears to be just and proper. In that case, interest component comes to Rs.6,39,000/- (for 17 years and 9 months) as on today. Therefore total compensation would be Rs. 4,00,000/- + Rs. 6,39,000/- = Rs. 10,39,000/- as on today.

14. Accordingly I pass following order :

(A) The Appeal is allowed and impugned judgment and award is set aside.

(B) The Appellants are entitled to receive **and** Respondent / Railway is directed to pay to the Appellants, a sum of Rs. 10,39,000/- **as on today including interest**. This amount be paid within a period of 6 weeks from today. In case of default, this amount shall carry interest @9% p.a. after 6 weeks till the date of realization.

(M.M. SATHAYE, J.)