

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

FIRST APPEAL NO. 1072 OF 2019

1. Smt. Meerabai wd/o. Arjun Gawande,
Aged about 65 yrs, Occ. Household,
2. Sudhir s/o. Arjun Gawande,
Age about 37 years, Occ. labour,
3. Sanjay s/o. Arjun Gawande,
Aged about 35 years, occ. Labour,
4. Pravin s/o. Arjun Gawande,
Aged about 33 years, occ. Labour,

R/o. Ramgaon, Post Palso Badhe,
Tq. & District Akola (Maharashtra)

..... Appellants

.....Vs.....

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

..... Respondent

Shri R. G. Bagul, Advocate for the appellants
Shri N. P. Lambat, Advocate for the respondent

CORAM : M. G. GIRATKAR, J.

DATED : 14/02/2020

ORAL JUDGMENT

This appeal is against the judgment of the Railway Claims Tribunal, Nagpur (for short the "Tribunal") in Case No. OA(IIu)NGP/2013/0331.

2. The facts of the present appeal can be summarized as under:

Deceased- Arjun Hiribhau Gawande purchased two Railway Tickets at Akola Railway Station to go to Murtizapur. One ticket was from Akola to Murtizapur and other ticket from Akola to Shegaon. When he was alighting the train at Railway Station Badnera, he fell down accidentally and died.

Legal heirs of the deceased filed claim petition before the Tribunal. The Tribunal rejected the claim on the ground that deceased purchased tickets from Akola to Murtizapur and Akola to Shegaon. Those tickets were of general train, but deceased boarded in a Kurla - Bhubaneshwar Express. Said train was not having any stoppage at Badnera and/or at Murtizapur. Therefore, deceased alighted at Railway Station Badnera where there was no any stoppage. He died due to his own negligence. Therefore, Railway is not liable to pay any compensation. Hence, the present appeal.

3. Heard Shri Bagul learned Advocate for the appellants. He has pointed out following judgments:

1. *Union of India Vs. Prabhakaran Vijaya Kumar & Others, 2008(5) ALL MR 917,*
2. *Jameela & Ors. Vs. Union of India 2010 AIR (SC)*

3705.

3. **Union of India Vs. Rina Devi 2018 AIR (SC) 2362,**
4. **Union of India Vs. Anuradha and another 2014 ACJ**

856

4. Learned Advocate Shri Lambat for the respondent has submitted that deceased was knowing that there was no any stoppage at Badnera and/or at Murtizapur. He intentionally purchased two tickets so that he may alight at Murtizapur or at Badnera. There was no any stoppage at Badnera even though deceased alighted at Badnera and, therefore, it was not untoward incident as defined under Section 123(c) of the Railways Act, 1989 (For short the "Act"). Learned Advocate has submitted that Railway has discharged its burden as per exceptions carved out under proviso (a) to (e) of Section 124A of the Act, and, therefore, railway is not liable to pay any compensation.

5. There is no dispute that deceased had purchased tickets at Railway Station, Akola and he boarded in a wrong train i.e. Kurla - Bhubaneshwar Express. There is no dispute that deceased died when he was alighting from running train at Badnera.

6. The Hon'ble Apex Court in the case of **Jameela & Ors. Vs. Union of India** reported in **2010 AIR (SC) 3705,** has held that:

“When deceased died while alighting the train due to his own negligence, it is not a criminal act and, therefore, Railway cannot deny it liability.”

7. The Hon’ble Apex Court in the case of **Union of India Vs. Prabhakaran Vijaya Kumar & Others** reported in **2008(5) ALL MR 917**, has held that:

“Section 124A of the Railways Act, 1989 casts strict liability on the Railway even the deceased died due to his own fault. Then also, Railway is liable to pay amount of compensation.”

8. In the case of **Union of India Vs. Rina Devi** reported in **2018 AIR (SC) 2362**, the Hon’ble Apex Court has held that:

“Death or injury in course of boarding or de-boarding train will be “untoward incident”. Victim will be entitled to compensation and will not fall under proviso to Section 124A merely on plea of negligence of victim as contributing factor.”

9. In the case of **Union of India Vs. Anuradha and another** reported in **2014 ACJ 856**, this Court has held that:

“Even the deceased boarded in a wrong train having a valid journey ticket and died while alighting the train that does not mean that he was not a bona fide passenger and on that ground claim cannot be rejected.”

In view of the cited judgment, findings recorded by the

Tribunal that deceased boarded in a wrong train and died due to his own fault/negligence is not sustainable.

10. In that view of the matter, following order is passed:

- (i) Appeal is **allowed**.
- (ii) Impugned judgment is hereby quashed and set aside.
- (iii) The respondent-Railway is directed to pay amount of compensation of Rs.8,00,000/- (Rupees Eight Lakh only) to the appellants within a period of twelve weeks.
- (iv) Amount of compensation be paid to the appellants in equal shares.

Accordingly, appeal is disposed of with no order as to costs.

JUDGE

SMGate