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MA-4847-2019

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 28th OF MARCH, 2025MISC. APPEAL No. 4847 of 2019*SMT. BINDU PAL AND OTHERS**Versus**UNION OF INDIA THROUGH WESTERN RAILWAY*

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Appearance:

Shri Rishi Tiwari - advocate for the petitioner.

Shri Manish Kumar Sankhala, learned counsel for the respondent

[R-1].
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Heard on : 27.02.2025

Pronounced on : 28.03.2025
.....

JUDGMENT

This appeal has been filed by the claimants under Section 23 of Railway Claims Tribunal Act 1987 (in short 'The Act, 1987') against the order of the Railway Claims Tribunal, Bhopal dated 06.12.2018 and judgment dated 14.01.2019 passed by Member Technical Railway Claims Tribunal (hereinafter referred to as 'the Tribunal'), Bhopal rejecting the claim petition on the ground that deceased Arun Pal was not a bona-fide passenger and Railway has no obligation to pay compensation u/S.124-A. of Railways Act, 1989.

2. The appellants had filed the claim petition under Section 16 of



Railway Claims Tribunal Act bearing claim application No.O.A-llu/BPL/2016/0118 seeking compensation on account of death of Arun Pal who happens to be husband of appellant no.1 and father of appellant nos.2 &3 with a plea that on 01.06.2014 Arun Pal was traveling from Mhow to Ratlam by Train holding a valid ticket and he accidentally fell down due to the train being heavily crowded and owing to a sudden jerk, at 44 Kms L.P.L.C between 31 & 31X. As a result he suffered grievous injuries and died on the spot. It is also alleged that the ticket was also lost in the incident.

3. On 31.08.2018, while deciding the claim application there was a difference of opinion between the two members of the tribunal, wherein one Member (Judicial) has passed an order in favour of the applicants, whereas the other Member (Technical) dismissed the claim application. Therefore, the matter was referred to the Chairman, Railway Claims Tribunal, Principal Bench, Delhi and the Chairman according to Section 21 of 'The Act, 1987' nominated Shri Sanjiv Dutt Sharma, Member Judicial, RCT, GZB, At Bhopal Bench for hearing the case as 3rd Member. The Third member of the Tribunal affirmed the judgment passed by Member Technical and dismissed the application of the appellants on 06.12.2018 holding that the husband of the appellant no.1 was not a bonafide passenger and the injuries sustained by the deceased was not a result of fall from the train rather it was a case of run-over. Thereafter vide order dated 14.01.2019, learned Member Technical Dr. Dinesh Kumar Tripathi finally dismissed the claim



application on the basis of judgment passed by the Third Member, vide judgment dated 14.01.2019. Therefore, being aggrieved by the aforesaid impugned orders the present appeal is preferred.

4. Learned counsel for the appellants submitted that the appellants have preferred the present appeal challenging the judgment dated 06.12.2018 passed by the Third Member of Railway Claims Tribunal, whereby the third member dismissed the claim application. It is further submitted that vide order dated 31.08.218 the Member (Technical) of the Tribunal had held that the injuries sustained by the deceased was not due to incident of fall from the train rather it is a case of "run-over". The term "run-over by train" does not necessarily mean that the deceased did not fall from the train. The word "run-over" can also be interpreted as "fell down and run-over". It was held that the deceased was not a bonafide passenger as he was travelling without valid ticket and hence rejected the claim. Whereas the Member (Judicial) of the tribunal in contrary to the observations made by Member (Technical), held in para no.8 that at the time of preparation of naksha panchnama that there was no chance of recovery of ticket because the body parts were scattered and when a person falls from the running train the situation would be horrifying and when the parts of the body are separated it would be difficult for a ticket to be intact within the body.

5. Counsel further submitted that it was also observed by Member (Judicial) that it is not a case of "run over" and no loco pilot was also examined by the respondents to prove that the deceased had been run



over by some train. The incidents of accidental fall come within the ambit of definition of "untoward incident" prescribed under Section 123 of The Railway Act, 1989 and therefore, held the deceased to be a bonafide passenger, as the appellants were fully dependent of the deceased and due to his unfortunate death they are entitled for compensation under Section 124-A of the Railways Act, 1989, hence, awarded a compensation of Rs.8.00 Lakhs (Rs.4.00 lakhs to appellant no.1 and Rs.2.00 lakhs each to appellant nos.2 &3). Since there was difference of opinion between the two Members, the case was referred to Hon'ble Chairman, Railway Claims Tribunal, Principal Bench, Delhi and the 3rd Member after going through the case minutely has passed an order affirming the judgment passed by Member Technical and rejected the claim application.

6. In view of the aforesaid, counsel submitted that when the body parts of the deceased lie scattered, then there are mere chances of recovery of ticket. Mere absence of ticket with the deceased will not negative the claim that he was a bonafide passenger. Learned counsel for the appellant relied upon the judgment of Hon'ble Supreme Court passed in the case of *Union of India vs. Rina Devi* reported as (2019) 3 SCC 572 and *Kamukayi and Ors. vs. Union of India and Ors.* reported as 2023 SCC Online SC 642, in support of his contentions and submitted that the initial onus to prove deceased to be a bonafide passenger will always 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 and circumstances of the case. Counsel also contended that since the appellants are financially dependent of the deceased and after death of her husband appellant no.1 and her children are facing hardships in their life. Appellant no.1 being a widow lady and there is no one else to take care of her & her children in the family, therefore, the impugned orders be set aside and appellants be awarded with compensation.

7. Learned counsel for the respondent opposed the prayer by submitting that since no ticket was recovered from the deceased, he was not a bonafide passenger. Also there are contradictory in the statement of brother of the deceased Sh. Anil Pal and appellant no.1/wife of the deceased with regard to journey undertaken by the deceased, which creates doubt with regard to the alleged journey and incident. The DRM investigation is conducted in legal manner and on the basis of all witnesses, civil police investigation report the deceased has travelled without valid ticket in a careless manner. Mere presence of a body in railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained. The alleged incident falls within the definition of "self inflicted injuries" and does not fall under the expression of untoward incident. Hence the respondent is not responsible in any way to award compensation. However, during the course of arguments looking to the financial status of the appellants learned counsel agreed that the claimants could be compensated with as per the opinion of Member



Judicial.

8. Having heard the rival submissions, I have gone through the record.

9. Counsel for the appellant relied upon the judgment of Hon'ble Supreme Court passed in the case of *Union of India vs. Rina Devi* reported as *(2019) 3 SCC 572* wherein after considering the various prepositions it has been held that:

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.

10. Further reliance has been placed on the judgment of Hon'ble Apex Court in the case of *Kamukayi and Ors. vs. Union of India and Ors.* reported as *2023 SCC Online SC 642*, wherein while deciding whether the deceased was a bonafide passenger, Hon'ble Apex Court has held as under:

18.Considering the material brought on record, in our view, the initial burden that the deceased passenger was having a valid ticket has been discharged shifting onus on the Railway Administration to disprove the said fact. Nothing has been placed before 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. In absence of any cogent



evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed.

11. It is not a fact of dispute that there was two difference of opinion between while deciding the claim application and hence the matter was referred to the Chairman, Railways Claim Tribunal, Delhi, and the Chairman nominated another Member Judicial, RCT, GZB Bench for hearing the case as 3rd Member on 22.11.2018 and the 3rd Member affirmed the stand taken by Member Technical, RCT Bhopal and dismissed the claim of the appellant, and the same was taken on record along with order dated 31.08.2018. In cases of difference of opinion arises between the members, as per Section 21 of the Railway Claims Tribunal Act 1987 if the Members of a Bench differ in opinion on any point, the matter can be referred for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority. There is no specific provision in the Act that in the event of difference of opinion, the matter has to be referred only to a Judicial Member. Therefore, the contention of the learned Counsel for the appellant fails. However, looking to the facts and circumstances of the case, this Court is of the view that when the body parts of the deceased was found scattered in the railway track, it is not possible that railway ticket can be gathered from that body. In such horrifying situation where the body parts are scattered it would be very difficult for the concerned persons to search the ticket from the body. It cannot be imagined that the persons



gathering the body parts of the deceased would be thinking about the claim petition. So far as the arguments regarding self inflicting injuries is concerned in view of the facts available on record it cannot be assumed that the deceased has received self inflicting injuries.

12. Considering the material brought on record, in view of this Court, the initial burden that the deceased passenger was having a valid ticket has been discharged shifting onus on the Railway Administration to disprove the said fact. Nothing has been placed before 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. In absence of any cogent evidence, notwithstanding anything contained in any other law, the Railway Administration shall be liable to pay compensation as prescribed.

13. Accordingly and as per above discussion this appeal is allowed and the impugned judgments dated 31.08.2018, 06.12.2018 and also order dated 14.01.2019 are hereby set aside. Consequently, claim application is allowed. The appellants are held entitled for compensation as held by the Member Judicial i.e. appellant No.1 Smt. Bindu Pal shall get a compensaion of Rs.4,00,000/-, appellant no.2 Master Tushal Pal and appellant no.3 - Tejaswi Pal are entitled to the tune of Rs.200,000/- each total amounting to Rs. 8,00,000/- along with interest @ 7% p.a. from the date of filing the claim application till its realisation. The



amount of compensation be satisfied by the respondents within a period of eight weeks from the date of receipt of certified copy of this order.

No order as to costs.

14. Office is directed to send a copy of this order to concerned Railway Claims Tribunal for necessary information and compliance.

(PREM NARAYAN SINGH)
JUDGE

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