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

FIRST APPEAL NO.259 OF 2020

Appellant : Smt. Munnibai wd/o Munnalal Chaube,
(Original Claimant) Age about 54 years, Occ. Household,
R/o Nehru Ward, Dewhadi, Tah. Tumsar,
Dist. Bhandara (M.S.)

-- Versus --

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

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Shri R.G. Bagul, Advocate for the Appellant.
Shri R.G. Agrawal, Advocate for the Respondent.
=====

CORAM : **SMT. ANUJA PRABHUDESSAI, J.**
DATE : **20th JANUARY, 2021.**

ORAL JUDGMENT :-

The appellant herein has challenged the judgment and award, dated 17/01/2017, whereby the Railway Claims Tribunal (hereinafter referred to as "the Tribunal" for short) has dismissed the Claim Application No. OA(Ilu)/NGP/2013/0340.

02] The appellant is the mother of Vikki Munnalal Chaube, who died in a train accident on 12/12/2012. It was the case of the appellant that on the relevant date, her son Vikki was travelling from Nagpur to

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Tumsar Road by Train No.12101 LTT - Howrah-Janeshwari Express. It is alleged that said Vikki fell down from a running train at Mundikota Railway Station. He was taken to KTS Hospital, where he was declared dead. The appellant filed an application under Section 23 of the Railway Claims Tribunal Act, for compensation on account of death of her son in “untoward incident”.

03] The claim was contested by the respondent on the ground that no such “untoward incident” had occurred resulting in the death of the son of the appellant within the meaning of Section 123(c) read with Section 124A of the Railways Act. The respondent further claimed that the deceased was not a *bona fide* passenger.

04] The Tribunal framed the issues and upon considering the evidence on record held that the appellant is the dependent of the deceased within the meaning of Section 123(b) of the Railways Act. The Tribunal also recorded a finding that the death of deceased had occurred in an “untoward incident”. The Tribunal further observed that the deceased was having a journey Ticket No.R94100073 from Nagpur to Tumsar Road on 12/12/2012. The Tribunal, however, dismissed the claim mainly on the ground that the said ticket was not a valid journey ticket for Train No.12101 LTT Howrah-Janeshwari Express.

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05] Assailing the said judgment, learned Counsel for the appellant has contended that the Tribunal was required to consider, whether deceased Vikki had lost his life as a result of “untoward incident” and whether the Railway Administration had proved and established exception or exceptions available under Section 124A of the Railways Act. He contends that the Tribunal was not justified in dismissing the petition only because the deceased had boarded a wrong train. He has relied upon the decision of Union of India vs. Rina Devi (AIR 2018 SC 2362) and Union of India vs. Anuradha & another (2014 ACJ 856) to contend that the Railway Administration cannot be absolved of its liability, merely on a plea of negligence of victim as contributing factor.

06] Per contra, learned Counsel for the respondent submits that the deceased had no valid ticket for travelling by Train No.12101 LTT Howrah-Janeshwari Express. He contends that the deceased cannot be considered to be a *bona fide* passenger and, hence, the Railway Administration is not liable to pay compensation to the appellant.

07] I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. Before advertng to the facts of the case, it would be relevant to refer to the decision of Rina Devi (supra), wherein the Apex Court has observed

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that death 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 of Section 124A merely on the plea of negligence of the victim as a contributing factor.

08] In the case of *Anuradha (supra)*, learned Single Judge of this Court (Coram : A.P. Bhangale, J.) on similar facts, has held that the Railway trains are used as convenient and affordable means of conveyance by any commoner in our country. If a passenger unguided by railway security personnel, ticket checkers or in absence of the regular announcements mistakenly boards a wrong train halting on the platform, may on realizing his mistake fall off the train due to panicky situation or otherwise accidentally, the railway administration cannot feign ignorance about the untoward incident in such case in order to shirk away from its strict liability to compensate monetarily for the untoward fatal accidents.

09] In the present case, the victim Vikki had admittedly purchased a train ticket for travel from Nagpur to Tumsar Road. It is in evidence that he had boarded a wrong train. He cannot be branded as an unauthorized passenger merely because he had mistakenly boarded a wrong train. The death of the said passenger was due to the injuries sustained in accidental fall from a running train.

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Accordingly, the death was an “untoward incident” and was not covered by proviso to Section 124-A of the Railways Act. The Tribunal was, therefore, not justified in rejecting the claim solely on the ground that the victim had boarded a wrong train. The appellant having discharged the initial burden of proving that Vikki was a *bona fide* passenger and that his death was an “untoward incident”, the respondent cannot be absolved of their liability of paying the compensation to the dependents of the deceased. For the reasons stated above, the impugned judgment cannot be sustained. Hence, the following order :

ORDER

- i. The appeal is allowed.
- ii. The impugned judgment, dated 17/01/2017 in Claim Application No. OA(IIu)/NGP/2013/0340 is quashed and set aside.
- iii. The respondent-Union of India is directed to pay to the appellant a sum of Rs.8,00,000/-.
- iv. The said amount shall be deposited in the account of the claimant-appellant after verifying the identity within a period of three months.
- v. The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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