

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

FIRST APPEAL NO. 145 OF 2021

1 KANTABAI, Wd/o. RANGNATH GAIKWAD)
Age 60 years, Occupation : Household,)
Resident of Ilegaon, Taluka Gangakhed,)
District Parbhani)
)
2 RAHUL S/o. RANGNATH GAIKWAD)
Age 25 years, Occupation : Labour)
)
3 BABASAHEB S/o. RANGNATH GAIKWAD)
Age 21 years, Occupation : Labour)
)
All residents of Ashok Nagar, Parli,)
Taluka Parli (Vajjnath) District Beed)...APPELLANTS

Vs.

THE UNION OF INDIA)
Through General Manager, South Central)
Railway, Secunderabad)...RESPONDENT

Mr. Ravindra Bagul, Advocate for the Appellants.

Ms. Neerja Chaubey, Advocate for the Respondent.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 28th SEPTEMBER 2022
PRONOUNCED ON : 2nd JANUARY 2023

JUDGMENT :

1 This is an appeal challenging the judgment dated 5th August

2016, passed by the Railway Claims Tribunal, Nagpur (for short, “the Tribunal”) in Case No.OA (IIu)/NGP/2011/0241, dismissing the claim of the appellants.

2 The brief facts are that Shri. Rangnath Dattarao Gaikwad was found dead on 24th May 2011 near Railway Platform No.1 of Gangakhed Railway Station with his head cut off from the neck region and lying separated from the trunk at a distance of 120 feet, the body cut from his waist, the trunk completely crushed showing the ribs and total abdomen and chest viscera lacerated. It has been claimed by the appellants that the deceased Shri. Rangnath Gaikwad died in an untoward incident on 24th May 2011, while travelling from Parli to Gangakhed by Parli Adilabad Passenger Train and fell down from the running train and sustained serious injuries and succumbed to the said injuries on the spot.

3 It is the case of the appellants-claimants that earlier the deceased had gone to meet his younger son Babasaheb Gaikwad appellant no.3 herein. The appellant no.3, who was in service at Parli had purchased a valid train ticket for the deceased father from Parli to Gangakhed worth Rs.4/- at 4.30 a.m. for Parli Adilabad Passenger Train and boarded the

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deceased on that train from Parli Station. It is stated that when the train reached near Gangakhed Railway Station, the deceased accidentally fell down from the train due to heavy rush in the train and died on the spot. It is submitted that the untoward incident happened due to the sole negligence of the respondent-Railway, and therefore, the respondent-Railway is liable to pay compensation to the appellants-claimants for the said untoward incident as the deceased was a *bona fide* passenger. It is submitted that the respondent-Railway has not produced any evidence or eye witness to prove that the injuries sustained by the deceased was not a result of an untoward incident or that the deceased was not a *bona fide* passenger. The respondent-Railway had opposed the claim of the appellants in the Tribunal by filing a written statement submitting that the incident did not fall under the definition of untoward incident as per Section 123(c)(2) of the Railways Act, 1989 (for short, “the Railways Act”) and that the deceased was not a *bona fide* passenger. The Tribunal considered both these issues and held after examining AW-1 Kantabai, who is the wife of the deceased Rangnath observing that the fact that Rangnath died on account of an untoward incident must be proved by the appellants in order to claim compensation under Section 124-A of the Railways Act, and that as there is no such presumption and held that the

appellants had not been able to prove either by direct or circumstantial evidence that the death on the basis of which compensation was being claimed had taken place after being involved in an untoward incident. The Tribunal also held that the appellants had not been able to prove that the deceased Rangnath was a *bona fide* passenger and that he had fallen down from any train carrying passengers. The Tribunal also went on to hold that mere finding of a dead body or person in injured or dead condition or on by the side of a track does not *ipso facto* prove that the deceased person fell down from a train carrying passengers. It is stated that the burden of proof rests entirely on the appellants-claimants to prove the untoward incident and the same cannot be presumed. On this basis, the Tribunal rejected the claim of the appellants.

4 The appellants are, therefore, before this Court in this first appeal seeking to quash and set aside the said judgment and for an amount of Rs.8,00,000/- alongwith interest as compensation.

5 Shri. R. G. Bagul, learned counsel appearing for the appellants and Ms. Neerja Choubey, learned counsel appearing for the respondent-Railway have very meticulously taken me through the Spot

Panchanama dated 24th May 2011, Inquest Panchanama dated 24th May 2011, the Postmortem Report dated 24th May 2011, the Unpleasant Incident Report dated 8th August 2011, the DRM report dated 10th February 2012 as well as the various statements of the two sons of the deceased, the elder one being Rahul Gaikwad and the younger one being Babasaheb Gaikwad, as well as the wife of the deceased Kantabai Gaikwad, the Deposition Sheet of Kantabai Gaikwad. On Duty Station Master Report dated 9th January 2012, the accounts of the Loco Pilot as well as the Guard of Train No.57553, Parli Adilabad Passenger, the Accidental Death Report dated 24th May 2011, the examination and cross-examination of AW-1 Kantabai, the wife of the deceased. No ticket has been found on the deceased either on any part of his body or from the articles recovered in an around his body, although, there is a statement of the elder son Rahul Gaikwad that he did purchase a ticket for his father before boarding him at Parli Railway Station on 24th May 2011 on Train No.57553 Parli Adilabad Passenger. In the DRM Report dated 10th February 2012 as per the version of the enquiry by the Inspector, Purna on 4th January 2012, it is stated that the younger son Babasaheb has revealed during the enquiry that on 23rd May 2011, his father had come to meet him at Parli in Ashok Nagar and was demanding money from him, but since he did not have his salary, the

next day at 4.30 a.m. he bought a ticket for his father and boarded him on the said train. He has stated that in the morning between 9.30 and 10.00 a.m., his elder brother Rahul called him and asked him to come soon as their father had met with an accident, after which, he quickly reached Gangakhed, when his father's postmortem was going on. Later, they took their father's body and performed the last rites.

6 The DRM Report as well as the inquest panchanama record that near about the deceased there was a book diary and election card on which the name of the deceased was found written, but no journey ticket was found by the GRP

7 It is also recorded on page A-36 that from the versions/accounts of the Loco Pilot as well as the Guard it emerges that there was no jerk of any type nor any alarm chain pulling that had occurred by which some passenger would have come under the running train. It is also stated there on page A-36 that by this, it is proved that there was no jerk of any type in the train. Both of them have stated in their accounts that the train had stopped near the home signal and then came on to platform at a distance of 100 mtrs and there was no possibility of any jerk. Moreover, the train had come at Gangakhed Railway Station at

5.05 a.m., whereas the incident memo indicates a time of 9.00 a.m. and that the incident has happened on the platform. It is stated that in this gap of four hours, there has been no communication/intimation of any such incident. Although, a book diary and an election card were found near the person, however, no journey ticket was found near him.

8 The account of the on Duty Station Master on page A-38 indicates that on 24th May 2011, while he was on duty as Station Master between 8.00 a.m. and 7.00 p.m., during his duty timing at 9.00 a.m. two or three people came to him and informed him that on Parli side Platform No.1 near the name board, there was a dead body of an unknown person aged at 65 years. As per their information he informed the on Duty GRP for further action. Also with respect to the account of the Guard of the said train on page A-39, it is clearly stated that their train left Parli at 4.30 and reached Gangakhed at 5.05 a.m. on 24th November 2011. That, near Gangakhed Railway Station since the home signal was red, the Loco Pilot stopped the train and after two minutes when they got the signal, they took the train ahead. After Gangakhed, their train left at 5.08 a.m. and reached Purna Railway Station at 6.50 a.m. It is also stated there that from Parli to Purna, there was no jerk so that anybody could have fallen down from the

train nor was nor there any alarm chain pulling. Till reaching Purna, there was no information about anybody falling or being injured. Even the Loco Pilot on duty of the said train on page A-40 has confirmed the same.

9 Only the claimant-wife in her statement on page A-41 has stated that she was informed on phone that her husband died in a railway accident by getting cut; on page A-42, the elder son Rahul has stated that he was informed that his father had died in a railway accident and on page A-43, the younger son Babasaheb has stated that he received a call from his brother between 9.30 and 10.00 a.m. on 24th May 2011 that his father had met with an accident.

10 The First Information Report (FIR) at A-47 in column 7 describes the incident stating that on 24th May 2011 at 9.00 hours, over Platform No.1, K.M. No.297/1, the deceased came under the train cut down from neck and body was totally crushed due to which, he died on the spot. Since the exact reason/cause of death was not known, the dead body was shifted to Civil Hospital at Gangakhed for post mortem. A case under Section 174 of the Code of Criminal Procedure (Cr.PC.) was registered. The Accidental Death Report dated 24th May 2011 at A-50

also records the same that the deceased person came under the train and died on the spot. The Spot Panchnama dated 24th May 2011 at A-53 only describes the condition of the deceased's body, but the same states that there was no incriminating article, valuable things, jewellery or money and documents or doubtful thing found with the deceased nor anything was seized from the spot. The Inquest Panchnama dated 24th May 2011 at A-56 states that the head of the deceased was lying at 120 feet from the track of K.M. No.297/1. The body of the deceased was cut from the waist and the flesh from the stomach and the intestine had come out and the flesh and blood stains were seen on the platform and on different places. The dead body of the deceased was totally crushed, the private parts were as it is and the deceased was having white colour hair, moustache and white beard. The head was cut from the neck, the mouth was open and the deceased was blackish wearing a white T-Shirt and a Dhotar, the clothes were also torn. It is stated that a book diary and an election card were found on the deceased, which gave his name as Rangnath Dattrao, aged 66, resident of Ilhegaon, Taluka Gangakhed, District Parbhani. It is also stated that the deceased was cut from the head and separated from the body which was totally crushed and due to heavy bleeding, the deceased had died on the spot. However, in order to find out the real cause of the death, the dead body

has been sent for postmortem.

11 The Postmortem Report dated 24th May 2011 at A-60 records in column 5 that the Police panchanama states that death was due to crush injury due to railway accident, but to know the exact cause of death, the postmortem was held. Further, it is recorded in columns 13, 17, 18, 20, 21 that the head was completely separated from the trunk : both the superior extremities as well as both the lower extremities were separated from the trunk : the head was completely separated; the trunk was completely crushed, the ribs and total abdomen and the chest viscera were lacerated : the head was completely separated from the body : the total body was crushed. Column 20 clearly records that the dead body was crushed due to railway injury (page A-62 of the Record and Proceedings).

12 The examination and cross-examination of AW-1 Kantabai, who is the wife of the deceased at pages 51 and 52 of the paper-book suggests that AW-1 was not an eye witness and got information from her elder son Rahul about incident. That, the body was cut into two pieces. That, the deceased had not committed any criminal act; that her village was just opposite to Gangakhed Railway Station.

13 Shri. Bagul, learned counsel for appellants submits that the deceased was a *bona fide* passenger inasmuch as the respondent-Railway has not been able to dispute the statement of the deceased's elder son Rahul that he had bought a ticket for his father and boarded him on Parli Adilabad Passenger Train. Learned counsel would submit that mere absence of a journey ticket with the injured or deceased should not negative the claim that he was a *bona fide* passenger. Nowhere it has been contended that Shri. Rangnath Gaikwad did not travel by the said train. It is also quite possible that since the body was badly severed/crushed, the ticket could have been misplaced. Shri. Bagul submits that though the initial burden is on the claimants, but that has been discharged by filing of an affidavit and the burden had therefore shifted on the Railways to rebut the same, which the Railways has failed to discharge. He relies upon the decision of the Hon'ble Supreme Court in the case of Union of India vs. Rina Devi¹.

14 Shri. Bagul, learned counsel would further submit that the deceased had died after accidentally falling down from the crowded train and that the untoward incident had happened due to the

1 AIR 2018 SC 2362

negligence of the Railways. Learned counsel draws the attention of this Court to the decision of the Hon'ble Apex Court in the case of **Union of India vs. Prabhakaran Vijaya Kumar**² to submit that until and unless, the five exceptions set out in Section 124-A have been proved by the Railways, the Railways are bound to grant the compensation to the dependent of the passenger, who has been killed as a result of such an untoward incident. He submits that the respondent-Railway has not even suggested that the deceased passenger died due to suicide or an attempted to suicide by him or by self inflicted injury or by his own criminal act or due to any act committed by him in a state of intoxication or insanity or by any natural cause or disease or medical or surgical treatment. Learned counsel also relies upon the following decisions in support of his contentions.

- (i) **Megha w/o Vijay Thakur and Another vs. Union of India**³
- (ii) **Mr.Sadashiv Ramappa Kotiyan vs. Union of India**⁴
- (iii) **SH. Prempal Singh and Another vs. Union of India**⁵

15 On the other hand, Ms. Neerja Chaubey, learned counsel for respondent-Railway relies upon the order of the Tribunal. She would

2 2008 (2) T.A.C. 777 (SC)

3 2020 (5) Mh.L.J. (Bombay High Court)

4 First Appeal No.658 of 2018, decided on 15th March 2021 (Bombay High Court)

5 FAO 211 of 2014, decided on 24th April 2018 (Delhi High Court)

submit that although as per the DRM report as well as inquest panchanama, near about the deceased there was a book diary and an election card, on which the name of the deceased was found written, however, no journey ticket was found by the GRP. She would submit that the statement of younger son Babasaheb has not been proved or substantiated in any manner and cannot be relied upon.

16 Learned counsel also submits that although the body of the deceased with head separated and cut from the waist, the trunk completely crushed and the chest and abdomen area completely lacerated was found lying near Railway Platform No.1 of Gangakhed Railway Station on 24th May 2011, however, there is no evidence to prove that the deceased had fallen down from the train. She would submit that there is no eye witness for the said incident nor any of the evidence suggest that the deceased had an accidental fall from a train carrying passengers. She, therefore, submits that the incident does not fall within the definition of untoward incident as per Section 123(c)(2) of the Railways Act. She would submit that therefore compensation under Section 124-A would not be available to the claimants as no untoward incident has taken place.

17 I have heard learned counsel appearing for the parties at length and I have perused the papers and proceedings of the appeal with their able assistance.

18 In the case of **Union of India vs. Rina Devi (supra)**, the Apex Court in paragraph 17.4 has observed 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 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.”

(emphasis supplied)

19 In the case at hand, Babasaheb, the younger son of the deceased, has in his statement dated 10th June 2011 (A-71 of the Record and Proceedings) clearly stated that on 24th May 2011, he was woken up by his father at 4.00 a.m., and thereafter, they proceeded to Parli Railway station at 4.15 a.m. That, he purchased ticket worth Rs.4/- from Parli to Gangakhed and boarded his father on to the Parli-Adilabad passenger train on platform no.3 and the train proceeded for Tambe

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Gangakhed at 4.30 a.m. Thereafter, he went to his room and slept and at around 10.30 a.m., he received a call from his elder brother Rahul that his father had fallen from the train and died, after which he immediately rushed to Gangakhed and saw his father's body at the railway station, cut into two pieces. Following paragraphs of his statement are usefully quoted as under :

“On 23/05/2011 my father Rangnath Gaikwad came at 3 O’Clock to Parli I have taken half day leave from work took my father at Ashok Nagar, where I reside on rental bases I prepaid meals for us evening we had meals thereafter my father asked me for money but I could not give him money as my employer has not pay me salary. From where I reside Parli my father use to come to Parli to meet me once a twice in a month and whenever he is in need of money. He use to take money from me, but on that day I could not give him money as my salary was not paid my employer. After meals at night my father told me that in the morning by 4.30 a.m. train he will alight at Gangakhed and will go to Illegaon.

On 24/05/2011 I wake up my father at 4 a.m. and we both had been to parli rly. Station 4.15 a.m. I purchase ticket wroth Rs.4/- from Parli to Gangakhed and boarded my father in Parli-Adilabad Passenger train. On platform no.3. The train was proceeded to Gangakhed at 4.30 A.M. I went on room and slept wake up at 9 A.M. had been to work at hotel in front of thermal station.

I received call of my elder brother at 10.30 when I was working he told me that father Rangnath fall down from train and died. In train incident. I immediately rushed to the Gangakhed by Jeep and saw at railway station my father cut down in railway incident and died. I meet by brother and mother and told that I boarded my father in the morning by train.

Thereafter police prepared panchnama and P.M. over the dead body was conducted at rural hospital Gangakhed and dead body was delivered to us for funeral by obtaining dead body receiving receipt from my elder brother by railway police. We came at Illegaon and conducted funeral.”

20 The above affidavit of relevant facts has been filed by the claimant and in my view, the initial burden has been discharged. The burden shifted on the railways then. The aforesaid affidavit of Babasaheb has not been controverted by the Railway authorities. However, in the absence of any contrary evidence brought on record, in my view, the uncontroverted affidavit of Babasaheb is sufficient to demonstrate that the deceased was a bonafide passenger. It is also open to possible that the ticket may have been misplaced in the accident, especially in the manner in which the body of the deceased was crushed and also cut into halves – head separated from the body.

21 With respect to the issue of death of Rangnath Gaikwad being an untoward incident, the main plank of the argument of the Railways is that none of the accounts of the Outstation Master or the Guard or the Loco Pilot of the Train No.57553 Parli-Adilabad passenger train suggests that there was any jerk so that anybody could have fallen down from the train nor that there was any alarm chain pulling nor

that there was any information about anybody falling or being injured till reaching Purna. Thus, in my view, cannot be conclusive evidence to decide that there was no untoward incident leading to the death of Shri. Rangnath Gaikwad. It is not unknown that even without any jerk or alarm chain pulling, that people fall down from the train in our country and get injured thereby or die. Infact, all the police papers, including the FIR, the Accidental Death Report and postmortem report clearly indicate that Shri. Rangnath Gaikwad came under a train and died on the spot due to railway accident. The inquest panchnama also records that the body of the deceased was cut from the waist and the flesh from the stomach and the intestine had come out and the flesh and the blood stains were seen on the platform on different places. If the blood stains and the flesh are seen at different places on the platform, then surely the incident has been on the railway premises. Further, the manner in which the head has been separated from the trunk, the trunk being completely crushed, the ribs and abdomen and the chest viscera lacerated clearly indicate that Shri. Rangnath Gaikwad was injured due to railway accident. The entire body of evidence suggests that the death of Shri. Rangnath Gaikwad was due to a railway accident.

22 Now it has been argued on behalf of the Railways administration that since the body was cut into two halves, it cannot be a case of accidental falling down, but it would be a case of run over. In this regard, the decisions relied upon by the learned counsel for the appellants, become pertinent. In those cases also, the body was cut into two halves but this Court held that, the condition of the body cannot, in any way, be used to deny that the incident was an untoward incident.

23 Paragraph 23 of the decision of this Court in the case of **Megha w/o Vijay Thakur and Another vs. Union of India (supra)** is relevant and is quoted as under :

“23. It cannot be said that the deceased has committed suicide or was ran over by the train. Once it is held that the deceased was travelling in the train and he fell down from the running train, it is untoward incident as defined in Section 123(c) of Railways Act, 1989. In para 6 of the Judgment in the case of SH. Surai Besra (supra), it is observed that it is not unknown that a body may be badly cut up and crushed after falling from the train either on account of the bonafide passenger getting entangled in the steps of the train and thereafter in the wheels or the other equipments of the train in which he was travelling or that the deceased on account of the fall from the train gets hit by the various equipments of the Railways which are adjoining to the tracks such as poles, signals, wires, junction boxes etc. Therefore, in the facts of the present case, in my opinion, the Tribunal was wholly unjustified in giving a finding of death of the deceased on account of being run over simply because

*of the condition of the body of the deceased. In the present case, the Railway Claims Tribunal has wrongly not considered the Written Statement and the Investigation Report submitted by the P.S.I., R.P.F., Butibori. Those documents show that deceased fell down from running train.
(emphasis supplied)*

24 Paragraphs no.15 and 16 of the decision of this Court in the case of **Mr.Sadashiv Ramappa Kotiyan vs. Union of India (supra)** are relevant and are quoted as under :

“15. As already observed, there was no occasion for the Motorman to actually witness the incident as to how it had occurred, meaning thereby, there was no eye witness. Secondly, how can opinion of the Police and the witnesses of inquest panchanama be accepted and relied upon by holding that;

"death may have come to the said deceased as to body cut into two pieces and due excess bleeding due to railway accident".

These observations are not only improper, incorrect but also perverse and are required to be set aside. Rather, the so-called opinion of the Police and Panchas of inquest panchanama does not indicate that, they had, in fact, seen the deceased crossing the track and hit by the local train, resulting into cutting his body into two pieces. This is something ridiculous.

16. In paragraph 13 of the impugned judgment, the Tribunal observed and I quote;

“It is also worth mentioning that when a person falls down from the running train, his/her body will fall away, where as in this case the deceased body - had been cut into two pieces and was laying in the tracks. This circumstantial evidence indicates that deceased was crossing the railway

track and was not run over by a local train".

There was no evidence of an expert before the Tribunal to opine as to under what circumstances a person's body would cut into two pieces and when it would not. The Tribunal should not have rendered its personal opinion while adjudicating the claim under the present Statute. Since the provision for compensation in the Railways Act is a beneficial piece of Legislation, it should receive liberal and wider interpretation and not narrow and technical one. It should advance the object of the Statute."

(emphasis supplied)

25 Paragraph no.7 of the decision of the Delhi High Court in the case of **SH. Prempal Singh and Another vs. Union of India (supra)** is also relevant and is quoted as under :

"7. The reasoning in the impugned order that because the deceased was cut into halves: one part found inside the railway tracks and the other outside, the death could not have been caused due to accidental falling from a moving train, is flawed. The impossibility of a passenger being so crushed after a fall from a moving train has not been conclusively established in law, so as to obviate all such claims for compensation. It is possible that the deceased while standing near the overcrowded passenger compartment door, slipped down while holding on to the door-railing, and frantically tried to recover and re-board the train - with his legs flailing violently, and in the valiant and violent melee his legs or his body could have unfortunately come under the wheels of the train leading to his being consumed in the fatal accident. As long as such possibility exists, the claim cannot be ousted or denied on technical assumptions. There is not a divine camera which could replay the actual manner of the fatality, but all factors lead to the inexorable conclusion that a bonafide passenger died in an untoward train accident. There is also no reason why the deceased would be walking the railway tracks in an odd

place en-route his destination - his home. It is not that he lived near the site of the accident or that he had any regular business anywhere near the place of the accident. Thus the inference that he died while crossing the tracks, is unwarranted and untenable.”

(emphasis supplied)

26 The circumstantial evidence suggests that Shri. Rangnath Gaikwad fell down from a train carrying passengers and was hit/dashed by a running train resulting in the ghastly accident leading to his death. The Apex Court in the case of **Union of India vs. Prabhakaran Vijaya Kumar (supra)**, while considering the definition of ‘untoward incident’ with respect to the expression ‘accidental falling of a passenger from a train carrying passengers’ in Section 123(c) of the Railways Act, has observed that if we attach a restrictive meaning to the said expression, we will be depriving a large number of railway passengers from getting compensation in railway accidents, and therefore, a purposive and not literal interpretation should be given to the said expression. Paragraph 14 of the said decision is usefully quoted as under :

“14 In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by the railway trains since everybody cannot afford

traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger, i.e., a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

(emphasis supplied)

27 Therefore, in my view, Shri. Rangnath Gaikwad's death, as can be seen from the police papers and the postmortem report is an untoward incident, resulting from a railway accident, involving Parli-Adilabad Passenger train. In the facts of this case, therefore, it does not really matter that Shri. Rangnath Gaikwad was hit or run over by a train, as it cannot be denied that the incident was an untoward incident. And even if Shri. Rangnath Gaikwad may have been negligent, as observed by the Apex Court in the case of **Jameela and Others vs. Union of India**⁶, that an act may be negligent or even rash, but it certainly is not a criminal act; negligence of a passenger does not have effect on liability of Railways and the claimants would be entitled to compensation. Therefore, in this case as well, although Shri. Ranganath Gaikwad may have been negligent, however, that cannot affect the compensation that

6 AIR 2010 SC 3705

would be payable to the appellants under Section 124A of the Railways Act.

28 The Railway authorities have not adduced any evidence to demonstrate that the case falls under the exceptions in proviso to Section 124A of the Railways Act. In the circumstances, the appellants would be entitled to compensation under Section 124A of the Railways Act.

29 In the light of the above discussion, I am of the view that the deceased being a bonafide passenger, died in an untoward incident and therefore, the appellants would be entitled to compensation under Section 124A of the Railways Act.

30 In the circumstances, the impugned judgment dated 5th August 2016, passed by the Railway Claims Tribunal, Nagpur in Case No.OA (Iiu)/NGP/2011/0241 deserves to be set aside and is hereby set aside.

31 The appellants would be entitled to a claim of Rs.8,00,000/- (Rupees Eight Lakhs Only) as compensation in accordance with the prevailing law.

32 The Railways are directed to pay the appellants in equal proportion a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) to be deposited in their respective savings bank account, subject to verification of their identity and bank details within a period of six weeks.

33 The appeal is allowed in above terms. No costs.

(ABHAY AHUJA, J.)