

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 19th OF JANUARY, 2023
MISC. APPEAL No. 2165 of 2021**

BETWEEN:-

1. SMT. GENDAKALI W/O LATE SHRI SHAMBHU PRASAD TIWARI R/O GRAM RATWAR THANA RAIPUR KARCHULIAN DISTRICT SIDHI (MADHYA PRADESH)

2. ARUN SHAMBHU PRASAD TIWARI S/O SHAMBHU PRASAD TIWARI R/O GRAM RATWAR THANA RAIPUR KARCHULIAN DISTRICT SIDHI (MADHYA PRADESH)

3. SANTOSH KUMAR S/O LATE SHAMBHU PRASAD TIWARI R/O GRAM RATWAR THANA RAIPUR KARCHULIAN DISTRICT SIDHI (MADHYA PRADESH)

.....APPELLANTS

(BY SHRI ASHOK SHRIVASTAVA - ADVOCATE)

AND

1. UNION OF INDIA THROUGH GENERAL MANAGER, WEST CENTRAL RAILWAY, JABALPUR (MADHYA PRADESH)

2. SMT.PUSHPA MISHRA W/O ARUN MISHRA D/O LATE SHAMBHU PRASAD TIWARI, AGED ABOUT 40 YEARS, R/O D-9 DUTT SOCIETY PALSNA VARLI SURAT

VADODARA (GUJARAT) PIN 394327

.....RESPONDENTS

(SHRI SHYAM KRISHNA MISHRA – ADVOCATE FOR RESPONDENT NO.1)

This appeal coming on for admission this day, the court passed the following:

JUDGMENT

1. This miscellaneous appeal under Section 23 of Railway Claims Tribunal Act, 1987 has been filed against the award dated 24.06.2021 passed by Member, Railway Claims Tribunal, Bhopal in Case No.OA/IIu/BPL/068/2019 by which the claim petition filed by the appellants for grant of compensation has been rejected mainly on the ground that the claim of the appellants is hit by Section 124-A of Railways Act, 1989 and secondly, the deceased was not travelling with a valid ticket.

2. Since the date of the incident and the death of the deceased are not in dispute, therefore, the only questions for consideration are:

(i) whether deceased Shambhu Prasad Tiwari was travelling with a validly issued ticket or not?

(ii) whether the claim is hit by Section 124-A of Railways Act, 1989?

(i) whether the deceased Shambhu Prasad Tiwar was travelling with a validly issued railway ticket?

3. It is the case that when the deceased was trying to deboard a moving train, he slipped on the platform, as a result, both of his legs were badly damaged. Since the deceased was all alone, therefore, his son was informed. A *Roznamcha Sanha*, A/1 was recorded by Sub-

Inspector, R.P.F. outpost Beohari on 26.06.2018. The said *Roznamcha Sanha* reads as under:

रेल्वे सुरक्षा बल

रोजनामचा

मंडल	JBP	Dt. 26/02/2018	लाइन/थाना/चौकी.SIPF/BEHR	
तारीख और समय	इन्द्रराज नम्बर	सार	रिपोर्ट का ब्योरा	हस्ताक्षर
21/40	07	रावानगी एंव वापसी हास्पिटल ब्योहारी	मै प्रधान आर.एन.के.गौतम शिफ्ट 8 to 20.00 Hrs. ड्यूटी पर तैनात था दौराने ड्यूटी समय 20.00 बजे T.NO. 11651 जबलपुर सिंगरौली इन्टरसिटी एक्सप्रेस खड़ी होने वाली थी तभी खड़ी होने से पहले एक व्यक्ति उतरने का प्रयास किया तभी उस व्यक्ति का पैर अन्दर चला गया व लाइन प्लेटफार्म के बीच नीचे चला गया जिससे दोनो पैर बुरी तरह से जख्मी हो गए जिसको रेल्वे डा. को बुलाकर प्राथमिक उपचार किया गया मौके पर s.s. ब्योहारी व प्र.आर. K.K. Sen SiB से रामसेन ही पाण्डेय मौजूद थे बाद 108 एम्बुलेंस बुलाकर सभी के सहयोग से बाहर एम्बुलेंस में चढ़वाया गया मै प्र.आर. एन. के. गौतम व SiB से रामसेनेही पाण्डेय सिविल अस्पताल ले जाकर इमरजेन्सी मे On duty डा. निशान सिंह परिहार द्वारा उपचार किया गया व तुरन्त ही 108 गाड़ी से सहडोल के लिए रेफर कर दिया गया घायल व्यक्ति अपना नाम शम्भू प्रसाद तिवारी s/o श्री अमर प्रसाद तिवारी उम्र 67 वर्ष R/o निवासी रतवार थाना खडुी जिला सीधी म.प्र. जो कि नागपुर से जबलपुर की टिकर नं. UFB 17629349 व जबलपुर से ब्योहारी टिकट नं. ULA52918404 था घायल व्यक्ति के बतानें पर उसके लड़के के मोबाइल नं. 09373114174 पर उसके	

			लडके को सूचना दी गई अभी परिजन नहीं आए थे लडके का नाम संतोष तिवारी है। बाद वापस चौकी आकर खैरियत दर्ज किया व सर्वसंबन्धित को सूचना दिया रिपोर्ट दर्ज है।	
			रोजनामचा सत्यापित	

4. From the aforesaid document, it is clear that the ticket numbers which the deceased was carrying are specifically mentioned. It is also clear from the *Roznamcha Sanha* that the deceased was all alone and his children were informed by mobile. Since the deceased was in a badly injured shape and he was not accompanied by any of his family members, therefore, it was not expected for the injured/deceased to keep the tickets in a safe custody. Furthermore, from the *Roznamcha Sanha*, it is clear that before writing the *Roznamcha Sanha* the injured/deceased was sent to the hospital whereas the *Roznamcha Sanha* must have been written in the police station/outpost. The manner in which the *Roznamcha Sanha* has been written it is clear that at the time of writing the *Roznamcha Sanha*, the Sub-Inspector, R.P.F. was in possession of the tickets which the deceased was carrying with him. Thus, if the claimants could not file the tickets before the Claims Tribunal, then no adverse inference can be drawn against the claimants, even otherwise the respondent has not disputed that the ticket numbers mentioned in the *Roznamcha Sanha* were not issued at all.

5. Thus, this Court is of the considered opinion that by putting the reverse burden of proof on the claimants in the face of the *Roznamcha Sanha* written by Sub-Inspector, R.P.F., the Claims Tribunal has committed a material illegality. The claimants had discharged their

initial burden of proof to show that the deceased was travelling with a validly issued railway ticket.

(ii) Whether the respondent is not liable to pay compensation in view of Section 124-A of Railways Act, 1989

6. It is true that the case of the parties is that the deceased slipped from the train while he was trying to deboard from a moving train. Therefore, the next question for consideration would be as to whether the deceased himself was responsible for the untoward incident or not.

7. The question is no more *desintegra*.

8. The Supreme Court in the case of **Union of India Vs. Rina Devi** reported in **(2019) Vol. 3 SCC Page 572** has held as under:

“25. We are unable to uphold the above view as the concept of “self-inflicted injury” would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on “no fault theory”. We may in this connection refer to the judgment of this Court in *United India Insurance Co. Ltd. v. Sunil Kumar* laying down that plea of negligence of the victim cannot be allowed in claim based on “no fault theory” under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or deboarding a train will be an “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.”

9. The counsel for the appellants could not point out any provision of law to show that any attempt to deboard a moving train is an offence. Therefore, section 124-A of Railways Act, 1989 would not apply in the facts and circumstances of the case. Furthermore, the Supreme Court in the case of **Rina Devi (supra)** has also held that an attempt to deboard a moving train will not fall under proviso to Section 124-A of Railways Act, 1989.

10. Under these circumstances, this Court is of the considered opinion that the Claims Tribunal committed a material illegality by rejecting the claim of the claimants on the ground that the deceased was not travelling in a train with a validly issued railway ticket and his claim is hit by Section 124-A of Railways Act. Accordingly, it is held that the claimants are entitled to seek compensation.

11. So far as to the question of quantum is concerned, the said question has not been considered by the Claims Tribunal. Therefore, instead of deciding the said question by itself, this Court thinks it appropriate to remand the matter back to the Railway Claims Tribunal to decide the question of quantum of compensation.

12. It is made clear that except the quantum of compensation, no other question shall be considered by the Railway Claims Tribunal.

13. Accordingly, the order dated 24.06.2021 passed by Member, Railway Claims Tribunal, Bhopal in Case No.OA/IIu/BPL/068/2019 is hereby set aside. The matter is remanded back to decide the question of quantum of compensation.

14. The parties are directed to appear before the Claims Tribunal on 27th February, 2013. No further notice is required to be issued to any of the parties.

15. The appeal succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
JUDGE

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