

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1844 OF 2012

Fatemabi Rahis Shah and others .. Appellants

Versus

The Union of India through General
Manager .. Respondent

Shri M. M. Bhokarika, Advocate for Appellants.

Shri M. N. Navandar, Advocate for the Respondent.

CORAM : S. V. GANGAPURWALA, J.

DATE : 15TH SEPTEMBER, 2015.

PER COURT :

. The present appellants had filed claim application before the Railways Tribunal seeking compensation on account of death of one Rahis Shah. The said application for compensation is rejected. Aggrieved thereby present appeal.

2. Mr. Bhokarika, the learned counsel for appellants strenuously contends that, the deceased had left the house at 1.30 a.m. in the intervening night of 28th and 29th June, 2010. The learned counsel submits that, the deceased had left the house for boarding a train to Mumbai, however, in the morning at 7.00 O'clock it was reported that his body is found near the Railway track at poll No. 442/14-16 of Bhusawal railway station,

District Jalgaon. The learned counsel submits that, Bhusawal being a junction many trains go to Mumbai, as such only because claimants are not in a position to tell as to which train the deceased had boarded, the same may not go against appellants. The learned counsel submits that, even the fact that ticket was not found, would not be fatal. The learned counsel relies on the judgment of the Division Bench of Kolkata High Court in the case of **Asharani Vs. Union of India** reported in **AIR 2009 Kolkata 205**. The learned counsel submits that, the burden is upon the railways to show that the deceased was traveling without ticket. According to the learned counsel, even the statutory report of the railway supports the case of appellants that the deceased had fallen down from the train. The said aspect has not been considered in its correct perspective. The evidence is led by appellants to show that the deceased had left the house at 1.30 a.m. in the night to go to Mumbai to bring back the ration card which was deposited with Nair Hospital. The said aspect is also not considered by the Tribunal. The learned counsel further submits that, when there are two views possible, then view which would be beneficial to claimant should be adopted considering that it is a beneficial legislation.

3. Mr. Navandar, the learned counsel for the respondent supports the judgment.

4. With the assistance of learned counsel I have gone through the pleadings, evidence on record. I have also perused the judgment delivered by the Tribunal.

5. It is fact that, neither in the spot panchanama, nor in the inquest panchanama ticket was found from the body of the deceased. There is no eye witness to the accident. I would have considered the submissions of Mr. Bhokarikar, the learned counsel for appellants, had there been some iota of evidence that the deceased was traveling to Mumbai by a particular train. Even the claimants are not in a position to show as to by which train the deceased was traveling or the train boarded by the deceased coupled with the ticket. The ticket is also not found with the body of deceased. There is nothing on record to even remotely suggest that the death of the deceased was due to fall from the train so as to bring it within the meaning of untoward accident as is required U/Sec. 124-A of the Railways Act.

6. Neither the police papers, nor the statements made before the Tribunal come to the aid of the claimants. If the fall from the train would have been proved by preponderance, then I would have considered the case of the claimants with regard to the absence of the ticket. However, as the untoward accident itself is not proved by preponderance, nor by any circumstantial evidence, the case of the appellants cannot be considered. The statutory

report is based upon the statements which may not substitute the proof of a particular fact. It has to be proved by preponderance.

7. Considering the above, no case for interference is made out, as such first appeal is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15