

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL NO. 735 OF 2010

Smt. Nirmala Pravinchandra Soni

Residing at

Meena Bldg No.1, Room No. 56,

Station Road, J. H. Podar Road,

Bhayander (W), Dist. Thane

... Appellant.

V/s.

Union Of India, Through

General Manager, Western Railway

Having its office at G. M. Building

Churchgate

... Respondent

Mr. Vaneet Khosla for the appellant.

None for the respondent.

CORAM : K. K. TATED, J.

DATED : 05/02/2015.

JUDGMENT:

. Heard learned Counsel for the appellant. None for the respondent, though duly served.

2 This Court by order dated 28.06.2010 issued notice before admission to the respondent indicating that the Court may endeavor to decide the appeal finally at the stage of admission itself.

3 This appeal is preferred by the Appellant original claimant challenging the Judgment and Award dated 21.01.2009 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai in Case No. OA 109 of 2006 holding that the appellant failed to prove her case and hence,

the application under Section 16 of the Railway Claims Tribunal Act was dismissed.

4 The appellant is the mother of the deceased who died on 02.01.2006. It is the case of the appellant that her son Kiran Pravinchandra Soni aged 38 years died on 02.01.2006 in the railway accident. The body of the deceased Kiran was found on railway track at railway K.M. 41/6 between Bhayander and Mira Road stations. From the dead body, the police authority recovered the valid 2nd class return ticket no. 26674. To that effect, they prepared Panchnama dated 02.01.2006, postmortem report also shows that death was caused due to severe respiratory failure due to hemorrhagic shock due to multiple fractures. At that time, he was earning about Rs.8,000/- per month. On the basis of these documents, the appellant filed application under Section 16 of the Railway Claims Tribunal Act for compensation.

5 The appellant being a mother of the deceased filed affidavit of evidence and also entered into the witness box for cross examination. The Railway Authority filed written statement and denied the claim of the appellant. On behalf of opposite Party one Mr. Suresh Kumar Bagri filed affidavit of evidence dated 11.08.2008 and one Mr.

R. H. Shegokar filed affidavit dated 07.10.2008.

6 Considering the evidence on record and documents, the Railway Claim Tribunal dismissed the appellant's claim application on the ground that appellant failed to show that the deceased died because of railway accident. Hence, the present First Appeal.

7 The learned Counsel Mr. Vaneet Khosla appearing on behalf of the appellant submits that the impugned Judgment and Award passed by the Railway Claims Tribunal is against justice, equity and good conscience. He further submits that at the time of accident, the deceased Kiran was traveling with a valid railway return ticket bearing no. 26674 for travel between Bhayander and Kandivali station and back. The railway ticket was recovered at the time of panchnama of the dead body and was handed over to the appellant by the railway police. He submits that at the time of accident, deceased Kiran was a bonafide passenger of the railway. Therefore, the appellant is entitled for compensation.

8 The learned counsel for the appellant submits that on 02.01.2006 after the accident, the railway police informed the

appellant and her relative that the deceased Kiran accidentally fallen down from unknown local train between Bhayandar and Meera Road railway station at railway KM No.41/6 and died on the spot as he sustained severe injuries on the body. He submits that the Tribunal failed and not considered that the return railway ticket bearing no. 26674 recovered from the dead body, itself shows that the deceased Kiran was traveling as bonafide passenger in the local train. The Tribunal has not considered the documents on record i.e. panchnama prepared by the police authority, police report, DRM report and other documents.

9 The learned Counsel for the appellant further submits that the appellant on the basis of oral evidence as well as documentary evidence made out the case for compensation under Section 124(A) of the Railway Act, 1989. He further submits that the Tribunal erred in coming to the conclusion that there was no eye witness in the case to prove that the deceased actually fell down from the train or evidence that he had actually boarded any train. He submits that the Tribunal failed to appreciate that in such type of cases, where the accident takes place in midnight, it is very difficult, rather impossible to get any eye witness. He submits that the Tribunal failed to appreciate that the

affidavit filed by the respondent witness Suresh Kumar Bagri specifically stated in paragraph 2 that he had seen unknown male person aged about 35 years lying at K.M. 41/6 between up and down local track. This itself is sufficient to hold that the deceased Kiran died on account of falling from the train. In support of his contention, the learned Counsel for the appellant relies on Judgment of the Apex Court in the matter of *Jamila & Ors v/s. Union of India, reported in (2010)12 SCC 443*. In this authority, the Apex Court held that authority would be liable to pay compensation unless negligence on the part of the deceased is proved beyond reasonable doubt. He also relies on the judgment of the Apex Court in the matter of *Union of India V/s. Prabhakaran Vijaya Kumar & Ors. reported in 2008 ACJ 1895*. In this authority, the Apex Court held that the words used in a beneficial or welfare statute and capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the persons for whom the Act was enacted should be preferred.

10 The learned Counsel for the appellant further submits that the appellant is entitled to interest on the compensation payable by the respondent. In support of his contention, he relies on judgment of the

Apex Court in the matter of *Thazhathe Purayil Sarabi & Ors. V/s. Union of India & Anr., reported in MANU/SC/1983/2009*. On the basis of these submissions and law declared by the Apex Court, the learned Counsel for the appellant submits that the impugned Judgment and Award passed by the Member, Railway Tribunal, Mumbai Bench, Mumbai in Case no. OA 109 of 2006 be set aside and the appellant's application under Section 16 of the Railway Claims Tribunal be allowed with costs.

11 I heard learned Counsel for the appellant at length. I have gone through the copy of the application filed by the appellant under Section 16 of the Railway Claims Tribunal Act, written statement filed by the respondent, notes of evidence and other important documents from record and proceeding.

12 On the basis of submissions made by the learned Counsel for the appellant and evidence on record, the following issues are framed in the present First Appeal.

ISSUES	ANSWERS
1) Whether the Appellant proved that her son Kiran Pravinchandra Soni died on account of untoward incident on the Railway Track?	Yes
2) Whether the Appellant is entitled for	Yes

compensation with interest?	
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In the present proceeding, the appellant lost her 38 years son Kiran on 02.01.2006. The appellant learnt about the death of her son from the Police Authority. Thereafter, the appellant filed application before the Railway Tribunal. Appellant placed on record a copy of police panchanama dated 02.01.2006, police report dated 02.01.2006, postmortem report dated 02.01.2006 and other relevant documents. The police panchanama shows that they found railway ticket from the body. That ticket shows that same was purchased for traveling from Kandivali to Bhayandar. The body of the deceased found between Bhayendar and Meera Road. This itself shows that the deceased was traveling by local train with valid ticket. Bare reading of panchanama, police report and deposition of the respondent's witnesses shows that there was no dispute that one unknown male person aged about 35 years later identified as son of the Appellant was lying on the railway track. This itself shows that son of appellant died on account of accidental fall from the running train. Considering this fact, it is very difficult to uphold the reasons given by the Railway Tribunal that there was no eye witness in the case to prove that the deceased actually fell down from the train or even that he had boarded any train. If a person wants to travel, then only he would purchase the ticket.

13 The finding given by the Tribunal on issue “whether the deceased met with a untoward incident within meaning of Section 123(c)(ii) of the Railway Act in the negative” is not correct. It should have been in the affirmative. The body of the deceased was found on track itself along with valid ticket. Considering the panchanama dated 02.01.2006, it is crystal clear that the deceased Kiran died due to accidental fall from the running train. The relevant portion of the panchanama reads thus:

“On inspecting the worn clothes, inside the pant pocket one chocolate coloured purse is found, inside it telephone diary, three keys, Railway Ticket Kandivali to Bhayendar such return ticket No. 26674. No money is found. On turning the dead body upside down it was seen that on above side of head 2 inch long wound is seen, at three places 1 inch wound, it is bleeding from nose and mouth. Both hands are twisted within at elbow. Right leg near ankle 2 inch wound, left leg half feet palm is broken and is hanging with flesh. On the knees of both legs scratches are there, on chest and on back railway stones marks and scratch wounds are there. On mouth at places 1 inch wound is seen. On inspecting and seeing deceased private part is intact.

As per the opinion of we panch and the police the dead person has fallen from some railway train, grievously injured on head and has died on the spot. But to ascertain the exact cause of death of the deceased, the dead body for the purpose of postmortem is sent to Hon'ble Medical Officer Primary Health Centre, Bhayendar along with PC 2913/Desai along with its body clothes.”

14 These facts are not considered by the Railway Tribunal at

the time of passing impugned Judgment dated 21.01.2009. The Apex Court in the matter of Prabhakaran Vijaya Kumar (Supra) held that if words used in a beneficial or welfare statute are capable of two constructions, the one which is in consonance with the object of the Act and for the benefit of the persons for whom the Act was enacted should be preferred.

15 Therefore, the findings given by the Tribunal on both the issues in the negative are wrong. They must be answered in the affirmative.

16 Hence, the First Appeal is allowed in the following terms:

a) The Judgment and Award dated 21.01.2009 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai in Case No. OA 109 of 2006, is set aside.

b) This Court declares that the appellant original claimant is entitled for compensation of Rs.4,00,000/- with interest @ 6% per annum from the date of the claim application till realisation.

c) Decree be drawn up accordingly.

(K.K.TATED, J.)