

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.66 OF 2016

Arun Balkrishana Pandit and Anr. Appellants
V/s.
Union of India,
Through the General Manager,
Central Railways, Mumbai. Respondent

Mr. Dormaan J. Dalal, I/by Mr. Sugandh B. Deshmukh, for the Appellants.

Mr. T.J. Pandian for the Respondent-Railway Authority.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD OCTOBER, 2018.

P.C. :

1. Heard Mr. Dalal, learned counsel for the Appellants, and Mr. Pandian, learned counsel for the Respondent-Railway Authority.

2. This Appeal takes an exception to the 'Judgment and Order' dated 8th July 2015 passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai, thereby dismissing the Application No.O.A.{Ilu} MCC/2012/1410.

3. The said Claim Application has been preferred by the Appellants

herein, who are the parents of the deceased Ambarish, under Section 16(1), r/w. Section 13(1-A) of the Railway Claims Tribunal Act, 1987, and Section 124-A of the Railways Act, 1989, seeking compensation to the tune of Rs.4,00,000/- from the Respondent-Railway Authority on account of death of their son Ambarish in an untoward incident, which has occurred on 11th October 2012.

4. The Tribunal has framed three issues for its determination, which read as follows :-

- (i) *Whether the Applicants prove that they are dependents of the deceased within the meaning of Section 123(b) of the Railways Act ?*
- (ii) *Whether the Applicants prove that the death of the deceased was a bonafide passenger in the train in question on the relevant day ?*
- (iii) *Whether the Applicants prove that the death of the deceased had occurred as a result of an untoward incident, as alleged in the Claim Application ?*

5. The Tribunal has answered Issue Nos.1 and 3 in the affirmative; however, as regards Issue No.2, the Tribunal has held that, the Appellants have failed to prove that deceased Ambarish was a bonafide passenger in the train in question at the time of accident and, therefore, dismissed their Claim Petition.

6. While challenging this finding of the Tribunal, learned counsel for the Appellants has drawn attention of this Court to the evidence of the Applicants, which shows that deceased Ambarish was travelling from Thane to Shahad, holding valid second class Season Ticket bearing No.77401825 and Identity Card bearing No.17230 Ex-Kalyan to Mumbai C.S.T. It was valid for the period from 26th September 2012 to 25th December 2012. The Applicants had also produced on record the original Monthly Season Ticket and Identity Card. The Tribunal, however, held that, neither this Monthly Season Ticket and Identity Card, nor any ticket for the extended travel of the deceased beyond Kalyan has been recovered from the body of the deceased, when the Inquest Panchnama was prepared. In view thereof, it was held that, in the absence of recovery of such extension ticket or the recovery of Monthly Season Ticket and Identity Card from the body of the deceased, it is not proved that he was a bonafide passenger at the time of accident.

7. To challenge this finding, learned counsel for the Appellants has relied upon the Judgment of the Hon'ble Apex Court in the case of *Union of India Vs. Rina Devi, 2018 SCC OnLine SC 507*, wherein, after considering various other previous judgments and the legal position, the Hon'ble Apex Court has, in paragraph No.29 of its Judgment, was pleased to hold as follows :-

“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 the facts found. The legal position in this regard will stand explained accordingly.”

8. In view thereof, it follows that, mere absence of ticket with the injured or the deceased, will not negative the claim that he was a bonafide passenger. Here in the case, the Appellants have discharged the initial burden lying upon them by examining Appellant No.1 on oath, who has filed his affidavit-of-examination-in-chief and in paragraph No.9 thereof, he has stated that, on the date of the accident, at about 11:00 a.m., deceased had left the house, informing him that he was going to Thane and Shahad in connection with the contract, which he was likely to get as a part of his business. In paragraph No.10, he has stated that, on that day, deceased was having second class Railway Season Ticket (Pass) No.77401825 between C.S.T.M. and Kalyan and it was expiring on 25th October 2012. In paragraph No.11, he has further stated that, at

12:30 p.m. on that day, deceased informed the Appellants from Thane that, he has taken extension ticket for Shahad Railway Station, as he is going to Shahad from Thane and his Season Ticket was upto Kalyan. Thereafter, in paragraph No.12, he has stated about receiving the information of the accidental death of his son as he fell from the running train near Electric Loco Shed.

9. Appellant No.1 was hardly cross-examined in respect of these material particulars. His cross-examination is absolutely cryptic; not even a single suggestion is put up to Appellant No.1 that, deceased was not having such Monthly Season Ticket or extension ticket and he was not travelling from Thane to Shahad.

10. In view thereof, in the light of the Judgment of the Hon'ble Apex Court in the case of *Union of India Vs. Rina Devi (Supra)*, it has to be held that, the Appellants have discharged their initial burden. However, after the burden was shifted on the Respondent-Railway Authority, it has neither cross-examined Appellant No.1 properly, nor led its own evidence on record. In such situation, mere absence of railway ticket with the body of the deceased cannot negative the claim of the Appellants. The finding recorded by the Tribunal on this issue, therefore, needs to be corrected and reversed, holding that the deceased Ambarish was a bonafide passenger at the time of the accident.

11. This brings me to the amount of compensation, to which Appellants are entitled. Admittedly, the accident had taken place much prior to the Amendment Act came into effect from 1st January 2017. As per the Amendment Act, the compensation for the death is enhanced from Rs.4,00,000/- to Rs.8,00,000/-. However, on this aspect also, in the Judgment of the Hon'ble Apex Court in the case of *Union of India Vs. Rina Devi (Supra)*, it has been held in paragraph No.19 as follows :-

*“Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards, which have already become final and where limitation for challenging such awards has expired, this order will not by itself be a ground for condonation of delay. Seeming conflict in *Rathi Menon Vs. Union of India*, (2001) 3 SCC 714, and *Kalandi Charan Sahoo Vs. General Manager, South-East Central Railway, Bilaspur*, [Civil Appeal No.5608 of 2017; decided on 25th April 2017], stands explained accordingly. The 4-Judge Bench judgment in *Pratap Narain Singh Deo Vs. Srinivas Sabata*, (1976) 1 SCC 289, holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial*

legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

12. Here in the case, it has to be held that, the Appellants are entitled for the higher amount, which is Rs.8,00,000/-, as the amount of Rs.4,00,000/-, with interest thereon, will not be more than Rs.8,00,000/-. Therefore, it is held that, the Appellants are entitled to the compensation of Rs.8,00,000/-. Accordingly, the Appeal is allowed.

13. In consequence, the impugned 'Judgment and Order' passed by the Railway Claims Tribunal, Mumbai Bench, Mumbai, is set aside. The Claim Petition filed by the Appellants is allowed. Respondent-Railway Authority is directed to pay the compensation of Rs.8,00,000/- to the Appellants within a period of two months from today.

14. There is no order as to costs.

15. Appeal stands disposed off in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]