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

FIRST APPEAL NO. 1317 OF 2019

**SHRI. DADARAO DASHRATH SALVE
AND ANR**

....APPELLANTS

V/s.

**UNION OF INDIA, THR.
GENERAL MANAGER**

.....RESPONDENTS

Mr. Vasant N. More for the appellants
Mr. T. J. Pandian a/w Mr. T. C. Subramanian a/w Mr. Dheer Sampat
for Respondents

**CORAM : NITIN W. SAMBRE, J.
DATE: AUGUST 18, 2021.**

P.C.:

1] Appellant's unmarried son Ajay died in a railway accident on 26/01/2012 having suffered serious injuries after he was knocked down by train at Shivaji Nagar Railway Station.

2] In claim petition, claimants filed an affidavit thereby discharging their initial burden establishing that the accident has occurred in the premises of railway authorities and pursuant to the claim under Section 124A of the Railways Act, respondent railway is

liable for payment of compensation.

3] Tribunal negated the claim by a cryptic order without being sensitive to the very scheme of Section 124A of the Railways Act and also the fact of discharge of burden by the appellant by placing on record as contemplated in the Judgment of the Apex Court in the matter of **Union of India Vs. Rina Devi [2018 ACJ 1441]** and Judgment delivered by this Court in the matter of **Rekha Dilip Sapkale Vs. Union of India [2021(3) ABR 327]**. These judgments can be eventually relied on so as to infer that claimant has established their case for grant of compensation particularly on the basis of following piece of evidence;

(a) The fact that accident having been occurred in the railway premises can be inferred from the documents which are produced.

(b) Report of Police Hawaldar Mr. S. D. Sonawane speaks of deceased Ajay dying due to getting knocked by the train.

(c) Railway Police Protection Force inquiry report also speaks of death caused due to ran over by train.

4] Tribunal was completely insensitive to the aforesaid evidence and in most technical and insensitive manner, proceeded to reject the claim without having regard to the law laid down in aforesaid two Judgments which is equally binding on this court so also Tribunal.

5] The fact that once the appellant has discharged his burden by placing on record an affidavit of examination-in-chief, the burden shifts on respondent-railway authorities to demonstrate that claim can be rejected as accident could fit into an exception to Section 124A of the Railways Act which respondent has failed to.

6] Though learned counsel for respondent has tried to impress upon this Court about absence of eye witness to the incident in question and also railway ticket, however, aforesaid two judgments have clearly dealt with such eventuality and liability of respondents to honour the claim for compensation.

7] Merely because there was absence of eye witness or the travel ticket was not found on the body or from the scene of the accident, does not, ifso facto gives a lever to Railway Tribunal to negate the claim. Rather, Tribunal should have been sensitive to the law as has been laid down by the Apex Court and this Court in the aforesaid two judgments.

8] As such, Judgment impugned dated 21/11/2014 passed by Railways Claims Tribunal in OA (Ilu)/MCC/2012/0514 is hereby quashed and set aside. It is hereby declared that the claimants are entitled for award of compensation.

9] Claim for award of compensation (only quantum) be decided forthwith by the Tribunal having regard to the aforesaid findings recorded by this Court.

10] Parties hereto agree that they shall appear before the Claims Tribunal with the copy of this Judgment on 06/09/2021. Tribunal

shall make every endeavour to award the claim within 12 weeks thereafter, as the claim is in relation to an accident that has occurred almost 12 years back and claimant/appellants are denied their legitimate right.

11] Appeal stands allowed in the above terms.

[NITIN W. SAMBRE, J.]