

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

FIRST APPEAL NO.637 OF 2018

Mrs. Amarika W/o. Babulal Bind and
Ors.

...Appellants

Versus

Union of India

...Respondent

...

Mr. Vasant N. More for the Appellants.

Mr. T.J. Pandian with Mr. T.C. Subramanian for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th NOVEMBER, 2022.

P. C. :-

1. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987 against Judgment and Award dated 31/05/2017 passed by the Railway Claims Tribunal, Mumbai Bench in Claim Petition No.OA(IIu)/MCC/0976/2012 filed under Section 16(1) r/w (1-A) of the Railway Claims Tribunal Act, 1987 and Section 124-A of the Railways Act, 1989.

2. Brief facts necessary to decide the appeal are as under:-

The Appellants being the widow and the parents of the deceased - Babulal Bind filed the Claim Application on assertion that on 31/10/2010 the deceased was travelling from Kurla to Mankhurd on a

valid train ticket. It is stated that he fell off from the running train and expired as a result of the injuries sustained in the said accident. The Claimants stated that the deceased was a bonafide passenger and that his death was caused in an untoward incident and hence claimed compensation from railway administration.

3. The Respondents -Railway Administration denied that the deceased was a bonafide passenger. The Respondents further claimed that the deceased was hit by an unknown train while he was crossing the railway track between Govandi and Mankhurd. The Respondents thus claimed that the death of Babulal Bind was not in an untoward incident therefore denied its liability to pay any compensation.

4. The Tribunal framed the issues and after considering the evidence adduced by the parties and relying mainly on the Station Master's Memo dated 31/10/2010 recorded a finding that the deceased was knocked down by an unknown train while he was crossing the railway track and held that his death was not in an untoward incident. The Tribunal also rendered a finding that the deceased was not a bonafide passenger. Based on these findings the Tribunal dismissed the Claim. Being aggrieved by this order, the Appellants -original

Claimants have preferred this appeal.

5. Heard Mr. More, learned counsel for the Appellants-Claimants and Mr. T.J. Pandian, learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The short point falling for consideration is whether the Claimants have proved that the deceased was a bonafide passenger and his death was caused in an untoward incident.

7. The records reveal that body of the deceased was found in a bush near railway line between Govandi and Mankhurd. The post mortem report reveals that the deceased had suffered following injuries apart from other simple injuries and abrasions :-

- 1) E/o CLW 5x2 cm on forehead, muscle deep. Reddish.
- 2) E/o CLW 8x2 cm on left of above injury, muscle deep. Reddish.
- 3) E/o CLW 3x3 cm on hypogastric region. Muscle deep. Reddish.
- 4) F/o Fracture of both knee joint closed.
- 5) E/o. Abrasion 5x4 cm on left calf region.

The doctor has opined that death of the deceased was due to head injury with polytrauma (unnatural).

8. AW1-Amarika Babulal Bind has filed her affidavit-in-evidence wherein she has stated that on 31/10/2010 her husband was travelling from Kurla to Mankhurd by a local train. She has stated that he had purchased a second class train ticket and that due to heavy rush he accidentally fell off the train between Govandi and Mankhurd. She has stated that her husband was a bonafide passenger but his ticket was lost in an untoward incident. Whereas Avinash Rajan, the witness examined by the Respondent has stated that he was informed by a motorman that an unknown person was knocked down by an unknown local train,

9. It is pertinent to note that AW1 had not witnessed the actual accident, nevertheless, the fact that the deceased was travelling from Kurla to Mankhurd by a local train was within her knowledge. Moreover, her statement that the deceased was travelling from Kurla to Mankhurd has not been denied. It was not even suggested to this witness that the deceased was not a bonafide passenger. Hence, there is no reason to discard or disbelieve statement of this witness on the basis of the report of the Motorman. Furthermore, the nature of injuries sustained by the deceased are suggestive of accidental fall from the running train.

10. In the case of *Union of India vs. Rina Devi, ACJ, 2018, 1441* the Hon'ble Supreme Court has observed that

“Mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bonafide 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 bonafide 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 will from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

11. It is pertinent to note that Section 124 A is a beneficial piece of legislation inserted with an avowed object of awarding compensation to the injured or the dependents of the deceased in case of injury or death in an untoward incident. Having regard to the object of beneficial legislation, it should receive liberal interpretation and whenever two views or constructions are possible, the one which

advances the object of the statute and serves its purpose, should be preferred. Considering the facts and circumstances of the case and keeping in mind the object of the Act, the Tribunal was not justified in taking a pedantic view and depriving the family of the deceased of the benefits of the beneficial legislation.

12. Under the circumstances and in view of discussion supra, the appeal is allowed. The impugned Judgment and Award is quashed and set aside. Consequently, the Claim Petition No.OA(IIu)/MCC/0976/2012 is allowed. The Respondent is directed to pay to the Claimants compensation of Rs.8,00,000/-. Out of which 50% to be apportioned in favour of Claimant No.1-widow and 25% each to the Claimant Nos.2 and 3. The Claimants shall furnish to the Railway Authority the bank account details within a period of two weeks from the date on which the order is uploaded. The Respondent shall deposit the compensation in the individual accounts of the Claimants in equal proportion within a period of eight weeks.

13. Pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)