

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

FIRST APPEAL NO. 698 OF 2018

Mr. Balu Motiram Dongare and ors.

.... Appellants

v/s.

Union of India

.... Respondent

Mr. Vasant More for the Appellants.

Mr. T.J. Pandian for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 20th AUGUST, 2022.

P. C. :-

. This is an Appeal under section 23 of the Railway Claims Tribunal Act, 1987 assailing the judgment dated 30/11/2017 whereby the Railway Claims Tribunal has dismissed the Application filed by the Appellants for compensation under section 124 of the Railways Act, 1989.

2. The Appellants who are the children of the deceased – Motiram Dongre (hereinafter referred to as ‘the claimants’) had filed an Application for compensation under section 124A of the Railways Act, 1989. It was the case of the Claimants that on 22/01/2012, their father Motiram Dongre had boarded Hussain Sagar Express (Train no.12701) at CST station to proceed to Solapur. The Claimants had

alleged that the deceased had travelled in second class compartment under a valid ticket. It was alleged that the deceased fell down from the train at Kurduwadi station. He sustained injuries and was taken to the hospital and upon examination, the Doctor declared him dead. The claimants sought statutory compensation under section 124 of the Railways Act contending that the deceased was a bonafide passenger and that his death was caused in an untoward incident.

3. Respondent denied that the deceased was bonafide passenger and that his death was caused in an untoward incident. The Respondent claimed that the deceased had come under Train No.12701 Down Express while he was crossing the track at Kurduwadi.

4. The Tribunal, upon considering the evidence adduced by the claimants held that the deceased was not holding a valid train ticket and was not a bonafide passenger. The Tribunal relied upon the DRM's Report and held that the deceased had come under the train while crossing the track. The Tribunal therefore concluded that the death of the deceased was not caused in an untoward incident and hence, dismissed the Application. Being aggrieved by this judgment, the Claimants have filed this Appeal.

5. Mr. Vasant More, learned counsel for the claimants submits that the statement of AW1 – Sanjay Dongare that the deceased had boarded the Train No.12701 at CST to go to Solapur has not been denied. He further submits that the inquest panchanama also records that the deceased had fallen from the running train. Learned counsel for the claimants submits that the claimants have discharged the burden by filing the affidavit of AW1 and that the Respondents have not rebutted the said evidence. He therefore contends that the Claims Tribunal has grossly erred in holding that the deceased was not a bonafide passenger and/or that his death was not caused in an untoward incident. He has relied upon the decision of the Apex Court in ***Union of India v/s. Rina Devi (2019) 3 SCC 572*** and the decision of the learned Single Judge of this Court in ***Balram Sudakaji Sakpal and another v/s. Union of India 2021 (6) Mh.L.J. 374.***

6. Per contra, Mr. T.J. Pandian, learned counsel for the Respondent submits that AW1 had not witnessed the accident and that his evidence does not support the case of the Claimants. He submits that the inquest panchanama indicates that no train ticket was found on the person of the deceased. Learned counsel for the Respondent further submits that the DRM's Report clearly indicates that the deceased had

expired while trying to cross the railway track. He also submits that the body of the deceased was found at Kurduwadi which falsifies the contention of the claimants that he was traveling to Solapur. He submits that the claimants have failed to prove that the deceased was a bonafide passenger and that the death was caused in an untoward incident and hence, they are not entitled for compensation under section 124 of the Railways Act.

7. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. It is not in dispute that the body of the deceased was found lying along the railway track at Kurduwadi. He had sustained injuries and he was taken to the hospital and was declared dead. The question which falls for consideration is whether the deceased was a bonafide passenger in Train No.12701 and whether his death was caused in an untoward incident.

9. At the outset, it may be mentioned that the Hon'ble Supreme Court in *Rina Devi* (supra) has held 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 maintainable. The Hon'ble Supreme Court has further held that 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 basis of facts found or the attending circumstances.

10. In the instant case, the Claimant No.2 – Sanjay Dongare has filed his affidavit in evidence. He had asserted that on 22/01/2012, his father, the deceased – Motiram Dongare boarded the Train No.12701 at CST station to go to Solapur. He has deposed that his father was holding a valid train ticket. Though this witness was cross-examined, his statement that the deceased was traveling from CST to Solapur by Train No.12701 and that he was holding a valid train ticket has gone unchallenged. The Claimants having discharged the initial burden, the onus was on the Respondent to controvert the said evidence. In the absence of rebuttal evidence, there is no reason to disbelieve the statement of this witness that the deceased was a bonafide passenger.

11. It is pertinent to note that the body of the deceased – Motiram Dongre was found along the railway track at about 04:15 a.m. at Kurduwadi, which is a station between Dhond and Solapur. The deceased was not a resident of Kurduwadi and there was no reason for him to be at Kurduwadi station at such unearthly hours. It is also relevant to note that as per the Railway Train Time Schedule, Train No.12701 by which the deceased was purportedly traveling, reaches Kurduwadi, at 04:15 a.m. These circumstances support the contention of AW1 that the deceased was traveling from CST to Solapur by Train No.12701.

12. The deceased – Motiram Dongre was to travel to Solapur and there was no reason for him to deboard the train at Kurduwadi. The fact that his body was found by the side of the railway tracks at Kurduwadi, where he could not have been unless traveling by a train, also leads to an inference that he had fallen from the train and falsifies the defence that the deceased was hit by a train while he was trying to cross the railway track at Kurduwadi.

13. Under the circumstances, the evidence on record proves that the deceased was a bonafide passenger and that his death was caused in an untoward incident. Hence, the Claims Tribunal was not justified in

rejecting the Claim Petition. The impugned order cannot be sustained.

Hence, the following order :-

(a) The Appeal is allowed.

(b) The impugned judgment and award dated 30/11/2017 passed by the Railway Claims Tribunal, Mumbai is quashed and set-aside.

(c) It is held that the Appellants/Claimants are entitled for compensation of Rs.8,00,000/- to be paid to the Claimant Nos.1 and 2 in equal proportion.

(d) The Claimants to give the details of their individual bank accounts to the Respondent – Railway Administration within a period of two weeks.

(e) The Respondent to deposit the amount in the bank account of the Claimants within a period of eight weeks thereafter.

14. The Appeal stands disposed of in above terms.

PREETI
H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)