

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

FIRST APPEAL NO. 1056 OF 2014

Mrs. Sangeeta w/o.
Shri. Sakham Kadam

.... Appellant

v/s.

Union of India

.... Respondent

Mr. Kunal Bhanage a/w. Vasim Siddiqui for the Appellant
in all FAs.

Mr. T.J. Pandian a/w. Mr. T.C. Subramaniam and
Mr. Dheer Sampat for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 14th NOVEMBER, 2022.

P. C. :-

. The Appellant has challenged the judgment dated 29/01/2014 whereby the Railway Claims Tribunal, Mumbai dismissed the Claim Application No.OA(Ilu)/MCC/2008/021 filed by the aforesaid Appellant.

2. The brief facts necessary to decide this Appeal are as under :-

The Appellant is the widow of Mr. Sakham Vishnu Kadam. The Appellant filed a Claim Application asserting that her husband Mr. Sakham Vishnu Kadam, was a bonafide passenger on a local train and that he expired as a result of the injuries sustained in an untoward

incident and hence, claimed compensation from the Railway Administration.

3. The Respondent-Railway Administration denied that the deceased was a bonafide passenger and that his death was caused in an untoward incident.

4. The Tribunal recorded a finding that the body of the deceased was found along the track and that no valid ticket was found from his personal search. The Tribunal therefore concluded that the deceased was not a bonafide passenger. The Tribunal further held that the death of the deceased was caused while crossing the railway track and that the deceased had not expired in an untoward incident. Based on these findings, the Tribunal dismissed the Claim Application. Being aggrieved by the judgment, the claimant has filed this appeal.

5. Heard Mr. Kunal Bhanage, learned counsel for the Appellant and Mr. Pandian, learned counsel for the Respondent – UoI. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The question for consideration is whether the deceased was a bonafide passenger and his death was caused in an untoward incident. It is to be noted that the Appellant-Sangeeta, the widow of the deceased had filed her affidavit in evidence wherein she has specifically asserted that on 16/05/2007, at 09:30 a.m., her husband had left the residential premises to meet his friend. She has stated that her husband had taken Rs.500/- from her to purchase a ticket and meet other expenses. She has stated that about 04:00 p.m., Thane Police came to her residence and asked her about her husband. She has stated that the police told her that her husband had fallen from the train and he is shifted to Civil Hospital for treatment. When she visited the hospital, she found that her husband was unconscious. He was later treated in Criticare Superspeciality Hospital, Thane. He expired in the hospital on 28/05/2007. She has stated that the body of her husband was taken to the native place for final rites. The cross-examination is concluded in two sentences viz., '*no personal knowledge*', '*cannot say about ticket*'. There is no denial of the statement that the deceased had taken Rs.500/- from the witness to purchase a ticket and for other expenses. The fact that the deceased was a bonafide passenger and was holding a valid ticket to travel from Thane to Bhandup and that the same was lost in accident is not

specifically denied.

7. In *Union of India v/s. Rina Devi (2019) 3 SCC 572*, the Hon'ble Supreme Court has held that mere absence of ticket with such injured or deceased will not negate the claim that he was a bonafide passenger. It is held that the 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.

8. In the instant case, as stated earlier, the claimant had specifically averred in her affidavit that the deceased had taken money from her for the ticket and that he was a bonafide passenger and that the ticket was lost. The claimant had thus discharged the initial burden. The Respondent – Railway had not adduced any evidence to controvert the said statement.

9. In the light of the above facts and circumstances, the Tribunal was not justified in holding that the deceased was not a bonafide passenger. The Respondent – Railway had not adduced any evidence to prove that the death was caused while the deceased was trying to cross the railway track. In fact, this was not even the defence raised by

the Respondent – Railway Administration in the written statement. Hence, the finding recorded by the Tribunal on the issue of untoward incident is totally perverse and cannot be sustained.

10. The impugned judgment is nothing but jumbled words and thoughts. To say the least, the judgment is perverse and cannot be sustained. Hence, the Appeal is allowed. The impugned judgment and order dated 29/01/2014 in Claim Application No.OA(IIu)/MCC/2008/021, is quashed and set-aside. Consequently, the Claim Application is allowed. The Respondent – Railway Administration is directed to pay to the Appellant/claimant compensation of Rs.8,00,000/-. The Appellant/claimant shall furnish the details of the bank account to the Railway authorities within a period of four weeks from the date of uploading of the order. The Railway authorities shall deposit the compensation of Rs.8,00,000/- within a period of six weeks thereafter.

11. Appeal stands disposed of in above terms.

PREETI
H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)