

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

FIRST APPEAL NO. 581 OF 2016

Sheela wd/o. Dipak Kadam
and ors.

.... Appellants

v/s.

Union of India

.... Respondent

Mr. Kunal Bhanage a/w. Vasim Siddiqui for the Appellants
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 13/02/2015 whereby the Railway Claims Tribunal, Mumbai dismissed the Claim Application No.OA(IIu)/MCC/2011/0533 filed by the aforesaid Appellant.

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

The Appellant No.1 is the widow and the Appellant Nos.2 to 7 are the minor children of the deceased Dipak Walmik Kadam. The Appellants had filed a Claim Application asserting that on 18/05/2011, the deceased Dipak who was a bonafide passenger, had met with an accident and expired as a result of the injuries sustained in an

untoward incident. She therefore filed the Claim Application seeking compensation from the Railway Administration.

3. The Respondent did not specifically deny that the deceased was a bonafide passenger but claimed that *the deceased was traveling in careless, rash and negligent manner without taking adequate precaution and as a result of which the deceased injured due to his own act and sustained injuries which proved fatal.*

4. The Tribunal held that the death was not caused in an untoward incident. It is difficult to decipher the reasons recorded by the Tribunal for answering the said issue in negative. The Tribunal has held that the issue of the deceased being a bonafide passenger is not relevant since the Appellants have not established that the deceased had fallen down from the train. The judgment is totally cryptic and makes a pathetic reading.

5. Be that as it may, the evidence of the Appellant No.1- Sheela, the widow of the deceased reveals that on 18/05/2011, her husband had gone to Kalyan for work. He did not return till midnight. On 19/05/2011, the colleague of her husband came to her residence and told her that her husband had met with a railway accident between

Kalyan and Vitthalwadi railway station. She has stated that she was told by the police that her husband had fallen down from the train and expired as a result of the injuries sustained in the said accident. She has stated that the deceased husband used to commute daily in a local train under a valid railway pass. She has stated that pass was misplaced in the said accident. The statement that the deceased was holding a railway pass has not been controverted. The only question in the cross-examination is that '*wife – witness said she can't say whether fallen or run over. No recovery*'. The evidence of this witness which has virtually gone unchallenged proves that the deceased was a bonafide passenger. The injuries mentioned in the inquest panchanama are compatible with the railway accident.

6. 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.

7. In the instant case, as stated earlier, the witness has specifically deposed that her husband used to commute daily by a local train and that he was holding a valid pass. This statement has gone unchallenged. The Railway Claims Tribunal has therefore erred in holding that the deceased was not a bonafide passenger. Furthermore, the Respondent had not disputed that the deceased had fallen down from the train. The only defence was that he had fallen due to his own negligence.

8. In the case of *Rina Devi* (supra), the Hon'ble Supreme Court has held that the concept of 'self inflicted injury' would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on 'no fault theory'. Thus, the Tribunal has erred in holding that the death was not caused in an untoward incident.

9. 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 13/02/2015 in Claim Application

No.OA(IIu)/MCC/2011/0533, is quashed and set-aside. Consequently, the Claim Application is allowed. The Respondent – Railway Administration is directed to pay to the Appellants/claimants compensation of Rs.8,00,000/-, out of which, 50% of the amount be paid to Appellant No.1-widow and the balance 50% be apportioned equally between Appellant Nos.2 to 7, i.e, the children of the deceased. Since the Appellant Nos.5 to 7 are minors, the amount which shall be deposited in their account, shall be invested in Fixed Deposit in a nationalised bank, till such time that they attain majority. The Appellants/claimants 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.

10. Appeal stands disposed of in above terms.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

Digitally signed
by PREETI H
JAYANI
Date: 2023.02.06
14:12:46 +0530