

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

FIRST APPEAL NO. 1622 OF 2016

Smt. Pushpa Devji Boricha	 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 29/02/2016 whereby the Railway Claims Tribunal, Mumbai dismissed the Claim Application No.OA(IIU)/MCC/2009/0532 filed by the aforesaid Appellant.

2. The Appellant, the mother of the deceased-Mr. Kanti Devji Boricha had filed a Claim Application asserting that her son who was a bonafide passenger, had expired as a result of the injuries sustained in an untoward incident.

3. The Respondent contested the Application on the ground that the deceased was knocked down by an unknown local train while he was

trying to cross the railway track in negligent and callous manner. The Respondent denied that the deceased was a bonafide passenger and that his death was caused in an untoward incident.

4. The Tribunal observed that the no train ticket was recovered from the body of the deceased. The Tribunal held that the preliminary inquiry conducted by the Railway authorities reveals that the deceased was knocked down by an unknown train while crossing the railway track. The Tribunal held that the deceased was not a bonafide passenger and that death was not caused in an untoward incident. Based on these observations, the Tribunal dismissed the Claim Application. Being aggrieved by the said order, the Appellant – original 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.

7. The mother of the deceased had filed her affidavit in evidence wherein she has specifically stated that on 23/04/2009, she and her son were traveling from Govandi to Matunga by a local train under a valid second class ticket. She has stated that her son accidentally fell down from the running train and that he sustained injuries and expired on the spot. She has stated that the ticket was lost in the course of an untoward incident. The statement of this witness that she was traveling with the deceased by the same train has gone unchallenged. Her statement that they were traveling under a valid train ticket and that the said ticket was lost in the said accident, is also not controverted.

8. 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.

9. In the instant case, the evidence of the Appellant proves that the deceased was a bonafide passenger and that he fell down from the

running train. The Respondent had not adduced any evidence to prove that the death of the deceased was caused while he was trying to cross the railway track. The findings of the Tribunal are therefore not based on the evidence on record and hence, the same cannot be sustained.

10. The impugned judgment is not based on the evidence on record. To say the least, the judgment is perverse and cannot be sustained. Hence, the Appeal is allowed. The impugned judgment and order dated 29/02/2016 in Claim Application No.OA(IIU)/MCC/2009/0532, 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.

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JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)