

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.428 OF 2021**

1. Aprna Vitthal Kharade	)	
Aged about 59 years,	)	
Occupation – Housewife	)	
 2. Atish Vitthal Kharade	)	
Aged about 30 years,	)	
Occupation – Nil	)	
 3. Apeksha Vitthal Kharade	)	
Aged 27 Years, Occupation -Nil	)	
R/at: Kandale, Tal. Alibaug,	)	
Dist-Raigad, Maharashtra.	)	Appellants

Versus

Union of India	)	
Through the General Manager	)	
Central Railway,	)	
C.S.T.Station Building,	)	
Mumbai – 400 001.	)	Respondent

Mr. Vasant N.More along with Mr. Deepak S. Kulkarni, Advocate for the Appellants.
Mr. T. J. Pandian along with Mr. Dheer Sampat, Advocate for the Respondent.

CORAM : S. G. DIGE, J.

DATE : 23rd DECEMBER, 2022.

Judgement :

1. This appeal is preferred by the appellants/ original applicants against the judgment and order of the Railway Claims Tribunal, Mumbai (for short “the Tribunal”), whereby the Tribunal has dismissed the claim petition of the appellants.

2. Brief facts of the case are as under :

On 3rd October, 2018, the deceased - Vithal Harishchandra Kharade was travelling from Veer to Pen railway station by Madgaon-Diva KR6 UP Train. When the train reached near Pen Railway station, he was forcefully pushed by other passenger and he accidentally fell down from the said train and sustained serious injuries and died subsequently. The appellants (for short “the applicants”) had filed claim petition under Section 124 of the Railways Act before the Railway Claims Tribunal, Mumbai for getting compensation contending that the deceased was a *bona fide* passenger, the railway ticket of the deceased got lost in the incident of accident and his death was caused in an untoward incident.

The respondent filed written statement and denied that the deceased was a bona fide passenger and his death was caused in an untoward incident. The respondent claims that the deceased had come under the train while he was crossing the track.

The Tribunal upon considering the evidence adduced by the applicants, held that the deceased was not holding a valid train ticket and was not a *bona fide* passenger. The Tribunal further held that the deceased was knocked down by the train while crossing the track. Therefore, the Tribunal dismissed the application. Against the said judgment and order, this appeal.

3. Learned counsel for the applicants submits that the Tribunal failed to consider that that the deceased was *bona fide* passenger in the said train. The deceased had received a forceful push from the other passengers and accidentally fell down from the Madgaon-Diva KR6 UP running train. The Tribunal has not considered the statement of the RPF, Pen who informed the Station Manager on walkie-talkie that a person had fallen down from the said train and got injured. This evidence goes to show that the deceased had fallen down from the running train but it was not considered by the Tribunal. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the respondents that the deceased was not a *bona fide* passenger. He was knocked down by the running train. Postmortem report of deceased shows that his both legs and one hand were cut. It shows that the said injuries were not caused due to falling from the train. Moreover, no train ticket was found in the search of the deceased. The deceased was a trespasser. In DRM's report, it is mentioned that while trespassing and crossing, railway track the deceased was knocked down by the train. The order passed by the Tribunal is legal and valid.

5. I have heard both learned counsel, perused the Judgment and order passed by the Tribunal. The issues involved in this appeal are whether the deceased was a *bona fide* passenger and his death was caused in an untoward incident.

6. Admittedly, the body of the deceased was found near the railway track. The Tribunal, while dismissing the application, has observed that as per the TBRO dairy and DRP report of SM/Pen two unknown persons gave information that at about 19.55 hours, one unknown person was knocked down by train. The applicants

failed to prove that the deceased was a *bona fide* passenger. No such burden has been discharged by the applicants. I am unable to understand the observation of the Tribunal on the ground that the Tribunal has not considered the statement of the RPF/Pen stating that on 3rd October 2008 the motor man of Madgaon-Diva KR6 UP Train informed the Station Manager on walkie-talkie that a person had fallen down from the said train and got injured. In the statement, the porter also stated that Madgaon-Diva KR6 UP Train stopped at the railway station. It was understood that one unknown man had fallen down from the train. These two statements are mentioned in the impugned judgment. It is significant to note that for the first time, the incident was informed to the Station Manager by the RPF person, he has stated that one person had fallen down from the train and the statement of the porter supports it, but conveniently the Tribunal has not considered these statements. Whereas, the Tribunal has relied on the statements given by two unknown persons, that is, illogical. The statements of RPF/Pen and Porter, proves that the deceased had fallen from the train.

7. It is the case of the applicants that due to heavy crowd in the railway bogie and jostling with other passengers, the deceased

fell from the running train and in that situation, the deceased lost his valid ticket. It has come in the evidence of Smt. Aprna Vitthal Kharade, who is the wife of the deceased that on 3rd October 2018, the deceased had gone to Mahad to attend the death rites of his paternal uncle. From the evidence of this witness, it appears that the deceased had gone for some family function at Mahad and while returning, he fell down from the train. He was not a resident of Pen, so no question of crossing railway track arises. The deceased was a *bona fide* passenger and his death was caused in an untoward incident. The Tribunal is not justified in rejecting the claim petition. The impugned judgment and order cannot be sustained. Hence, I pass the following order :

- (a) The appeal is allowed.
- (b) The impugned judgment and award dated 8th April, 2021 passed by the Railway Claims Tribunal, Mumbai is quashed and set-aside.
- (c) It is held that the appellants are entitled for compensation of Rs.8,00,000/- to be paid to the applicant/appellant Nos.1 , 2 and 3 in equal proportion.

(d) The appellants 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 appellants within a period of eight weeks thereafter.

The appeal stands disposed of in above terms.

8. All pending civil/interim application stands disposed of.

(S. G. DIGE, J.)