

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

**FIRST APPEAL NO. 1110 OF 2018**

Mr. Vijaypratap Kalika Baksha Singh  
and ors.

.... Appellants

v/s.

Union of India

.... Respondent

Mr. Vasant N. More for the Appellants.  
Ms. D. Frenandes for the Respondent.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.**

**DATED : 12<sup>th</sup> SEPTEMBER, 2022.**

**P. C. :-**

. At the outset, learned counsel for the Appellants states that the Appellant No.2 expired during the pendency of the Appeal and that the legal representatives are already on record. Necessary entry be made against the name of Appellant No.2. Cause title be amended.

2. The Appellant Nos.1, 3 and 4, the claimants before the Railway Claims Tribunal, have filed this Appeal under section 23 of the Railway Claims Tribunal Act, 1987 challenging the judgment and award dated 31/01/2018 in Claim Application No.OA(IIu)/MCC/0588/2012. The Appellant No.1 is the father and the Appellant Nos.3 and 4 are the sisters of the deceased- Pankajkumar Vijaypratap Singh. It was the case

of the Appellants that on 25/10/2011, the deceased Pankajkumar was travelling from Mahim to Andheri by local train under valid railway season ticket. He fell down from the running train in between Vileparle and Andheri station. He sustained serious injuries and died on the spot. The Appellants claimed that the deceased was a bonafide passenger and that his death was caused in an untoward incident. The Appellants being dependents, filed application for compensation from the Respondent on account of the death of Pankajkumar in an untoward incident.

3. The Respondent denied that the deceased was a bonafide passenger and further denied that his death was caused in an untoward incident. The Respondent claimed that the deceased was knocked down while crossing the railway track and hence, it is not liable to pay any compensation.

4. The Claims Tribunal framed the issues and upon considering the evidence adduced by the Appellants, held that the deceased was a bonafide passenger. Relying upon the opinion recorded in the inquest panchanama, the Tribunal held that the deceased was knocked down by an unknown train while crossing the railway tracks. The Tribunal

has further held that the nature of the injuries sustained by the deceased could not have been caused due to fall from the train and rather are compatible with the defence that the deceased was knocked down by an unknown train while trying to cross the railway track. The Tribunal thus concluded that the death of the deceased – Pankaj was not caused in an untoward incident and hence, dismissed the Claim Application. Being aggrieved by this judgment and award, the Appellants have filed this Appeal.

5. Mr. Vasant More, learned counsel for the Appellants submits that the Tribunal has erred in relying upon the opinion of the police and panchas witnesses to inquest panchanama to conclude that the deceased was knocked down by a train while crossing the railway track. He submits that the evidence adduced by the Appellants proves that the deceased was proceeding to Andheri and there was no reason for the deceased to be at the place where his body was found. He submits that the Respondents had not adduced any evidence to prove that the deceased was knocked down by an unknown train. He further submits that in the absence of expert evidence, the Tribunal could not have concluded that the injuries sustained by the deceased could not have been caused due to fall from the running train.

6. Per contra, Ms. Fernandes, learned counsel for the Respondent submits that the deceased was not a bonafide passenger. She contends that the evidence of AW2, the uncle of the deceased reveals that he is residing at Vileparle and as such, the contention of the Appellants that the deceased was travelling from Mahim to Andheri cannot be believed. She further submits that the Appellants have not examined any independent witness and that the nature of the injuries sustained by the deceased, which are noted down in the inquest panchanama as well as post mortem report, probabilizes the defence that the deceased was knocked down by an unknown train while he was crossing the railway track.

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

8. The evidence on record reveals that on 25/10/2011, the dead body of the deceased – Pankajkumar was found between Vileparle and Andheri station. He had sustained the following injuries :-

*a) Crush injury to occipito parietal region, compound # of vault and base of skull. Scalp crushed, lacerated, margins – irregular, reddish brain matter oozed out ;*

- b) *Lt. Eye crushed xot in situ exposing the orbital cavity ;*
- c) *Crush injury to left wrist with partial amputation of left hand from wrist with compound # of left wrist joint , margins – irregular reddish ;*
- d) *Closed # with dislocation of Lt. ankle joint with swelling + ;*
- e) *Scalp lacerated, contused, margins – irregular reddish ;*
- f) *compound # of vault and base of skull ;*
- g) *Meninges – contused, lacerated –  
Brain – contused, lacerated, brain matter oozed out ;*

9. It is the case of the Appellants that on the relevant date, the deceased was travelling from Mahim to Andheri under a valid train ticket. Apart from the oral evidence of AW1 – Vijay, the DRM's report also states that while taking personal search of the body, railway ticket bearing no.29895465 was recovered from the possession of the deceased. The Appellants had discharged the initial burden of proof that the deceased was holding a valid train ticket and was a bonafide passenger. The Respondent has not examined any witness and not adduced any evidence to rebut this evidence. It is to be noted that relying upon this report as well as the evidence of AW1 – Vijay, AW2 – Santosh Kumar, the Railway Claims Tribunal has held that the deceased

was a bonafide passenger. The Respondent has not challenged these findings. In the absence of challenge to these findings and particularly in the absence of any evidence to the contrary, the Respondents cannot be heard to say that the deceased was not a bonafide passenger.

10. The next question for consideration is whether the incident in question was an untoward incident. The evidence on record reveals that the deceased was travelling from Mahim to Andheri by a local train. His body was found between Vileparle and Andheri station which was before the destination station. There was no reason for the deceased be at a place where his body was found particularly when the evidence on record clearly indicates that he was travelling to Andheri. Moreover, the Respondents have not examined any witness and has not proved that the deceased was knocked down by an unknown local train while he was trying to cross railway track. The Tribunal has relied upon the opinion of the police and pancha witnesses as recorded in the inquest panchanama to conclude that the death was not in an untoward incident. The pancha witnesses or the police officer who had conducted the inquest panchanama had not witnessed the incident. It is to be noted that the inquest panchanama drawn under section 174 of Cr.P.C. is not substantive evidence. The purpose of the inquest is only

to find out the probable cause of death, describing injuries as may be found on the body of the deceased. The object is to ascertain whether a person died under suspicious circumstances and met with an unnatural death and if so what is the probable cause. In the instant case, the inquest panchanama records the nature of injuries found on the body of the deceased. These injuries could at the most indicate that the death of the deceased was caused due to the injuries sustained in a train accident. The inquest panchanama cannot be relied upon to conclude that the injuries were caused either due to fall from the train or that he was knocked down by the train. Thus, the conclusion drawn by the Tribunal on the basis of inquest panchanama is manifestly erroneous.

11. Considering the above facts and circumstances, the findings of the Tribunal that the death of the deceased – Pankajkumar is not caused due to untoward incident, cannot be sustained. Hence, the Appeal is allowed. The impugned judgment and award dated 31/01/2018 is quashed and set-aside. Consequently, the Claim Application is allowed. The Respondent – Railway Administration is directed to pay to the Appellants compensation of Rs.8,00,000/- within a period of six weeks. The Appellants/claimants are directed to furnish

to the Respondent the details of their bank accounts. 50% compensation be deposited in the account of Appellant No.1 and 25% each be deposited in the account of Appellant Nos.3 and 4.

12. Appeal stands disposed of in above terms.

**PREETI  
H JAYANI**

**(SMT. ANUJA PRABHUDESSAI, J.)**

Digitally signed by  
PREETI H JAYANI  
Date: 2022.09.20  
14:08:03 +0530