

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

FIRST APPEAL NO. 1443 OF 2016

Shantidevi Ramsharan Kevat	 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 14/01/2015 whereby the Railway Claims Tribunal, Mumbai dismissed the Claim Application No.OA(IIu)/MCC/2011/0125 filed by the aforesaid Appellant.

2. The Appellant is the mother of the deceased – Ganesh Kevat who allegedly fell down from a local train near Wadala Railway Station and died as a result of the injuries sustained in the said accident. The Appellant claimed that the deceased was a bonafide passenger and that his death was caused in an untoward incident. The Appellant therefore filed a Claim Application seeking compensation from the Respondent –

Railway Administration.

3. The Respondents denied that the deceased was a bonafide passenger. The Respondents claimed that the deceased was traveling in careless, rash and negligent manner and that he died due to his own negligence.

4. The Tribunal has held that the Appellant has failed to prove that the deceased has fallen from the train. The Tribunal has further observed that the Appellant has not given the details of the train ticket and has therefore concluded that the deceased was not a bonafide passenger and consequently dismissed the Claim Petition. Being aggrieved by this order, the Appellant has filed this Appeal under section 23 of the Railways Act.

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. 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, the Appellant had filed her affidavit-in-evidence wherein she has stated that on 21/12/2010, her son was traveling from Kurla to Wadala by a local train under a valid second class train ticket. She has stated that her son accidentally fell down from the train and sustained serious injuries. She has stated that her son was a bonafide passenger and that he had expired due to the injuries sustained in an untoward incident. The evidence of this witness has gone unchallenged and hence, there is no reason to disbelieve her evidence. The Respondents have not denied that the deceased was traveling by a train. They have taken a defence that the accident was caused due to his own negligence.

9. In *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'.

10. In the light of the ratio laid down by the Hon'ble Supreme Court, the findings that the death was not caused in an untoward incident cannot be sustained. The impugned judgment is not based on the evidence on record. To say the least, the judgment is perverse and cannot be sustained.

11. Hence, the Appeal is allowed. The impugned judgment and order dated 14/01/2015 in Claim Application No.OA(IIu)/MCC/2011/0125, 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.

12. Appeal stands disposed of in above terms.

PREETI
H
JAYANI

(SMT. ANUJA PRABHUDESSAI, J.)

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