

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

FIRST APPEAL NO. 707 OF 2016

Smt. Parvin Banu Mohd. Haider Appellant
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 28/07/2015 whereby the Railway Claims Tribunal, Mumbai dismissed the Claim Application No.OA(IIU)/MCC/2012/0170 filed by the aforesaid Appellant.

2. The Appellant is the mother of the deceased - Kamran Husain Mohd. Haider. The Appellant filed a Claim Application alleging that her son was traveling by a local train from Jogeshwari to Govandi under a valid second class train ticket no.47703. He accidentally fell down from the train and died due to 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 accident. The

Appellant, therefore, claimed compensation from the Railway Administration.

3. The Respondent denied that the deceased was a bonafide passenger and that his death was caused in an untoward incident. The Respondent claimed that the deceased was hit by an unknown train while trying to cross the railway track and that his death was caused due to his own negligence.

4. The Tribunal discarded the train ticket produced by the Appellant on the ground that the same was not recovered by the police. The Tribunal further held that non recovery of valid ticket by the police proves that the deceased was not a bonafide passenger. Relying upon the inquest panchanama, the Tribunal has inferred that the death of the deceased was caused while crossing the railway track. The Tribunal has therefore concluded that the death of the deceased was not caused in an untoward incident and hence, dismissed the Petition.

5. The question for consideration is whether the deceased was a bonafide passenger and his death was caused in an untoward incident.

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, the evidence of the Appellant- Parvin Banu indicates that at the time of the incident, she was at her native place in Uttar Pradesh. She did not have any personal knowledge about the accident. Nevertheless, the Appellant had examined AW2-Firoz Hussain, the brother of the deceased. He has deposed that the deceased -Kamran is his younger brother and used to stay with him at Govandi. He used to do embroidery work as a source of his livelihood. On 02/11/2004, the deceased-Kamran had gone from Govandi to Jogeshwari and was to return to Govandi after completing his work. He has deposed that at about 23:20 hours, he received a phone call from an unknown person that his brother was injured in a train accident near Chembur Railway station and was taken to Sion Hospital. He immediately rushed to the hospital and the police present in the hospital informed him that his brother had sustained injuries in a train

accident and that the doctor had declared him dead. He has stated that he had recovered one train ticket from the pant pocket of the deceased. The said train ticket was produced in evidence. The Tribunal has discarded the train ticket solely on the ground that the same was not recovered by the police. It is pertinent to note that the statement of this witness that he had found train ticket in pant pocket of the deceased was not denied. Furthermore, Respondent had not disputed genuineness of the said ticket. The Respondent had not adduced any evidence to prove that the ticket was fake or that it did not pertain to the train journey from Jogeshwari to Govandi. In the absence of such evidence, the Tribunal was not justified in discarding the train ticket and concluding that the deceased was not a bonafide passenger. There is absolutely no evidence on record to prove that the deceased was hit by an unknown train while crossing the railway track. Hence, the finding in this regard is not based on evidence on record and cannot be sustained.

8. Under the circumstances, the Appeal is allowed. The impugned judgment and order dated 28/07/2015 in Claim Application No.OA(IIU)/MCC/2012/0170, 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.

9. Appeal stands disposed of in above terms.

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JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)