

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

FIRST APPEAL NO. 657 OF 2016

Bharat Namdeo Dabhane and anr.	 Appellants
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 Appellants have challenged the judgment dated 12/08/2015 whereby the Railway Claims Tribunal, Mumbai dismissed the Claim Application No.OA(IIU)/MCC/2010/0544 filed by the aforesaid Appellants.

2. The Appellants who are the parents of the deceased- Navnath Bharat Dubhane had filed a Claim Application alleging that their son was a bonafide passenger and died due to injuries sustained in an untoward incident.

3. The Respondent denied that the deceased was a bonafide passenger. The Respondent claim that the deceased had sustained

injuries while crossing the railway track.

4. The Tribunal disbelieved the evidence of the Appellants that the deceased was traveling by a local train to go to Kamshet. The Tribunal held that the journey ticket was not recovered from the body of the deceased. Hence, the Tribunal concluded that the deceased was a trespasser and not a bonafide passenger. The Tribunal has further observed that the Appellants have failed to prove that the death of the deceased was caused in an untoward incident. Based on these findings, the Tribunal dismissed the Claim Application.

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 No.1 had filed his affidavit in evidence wherein he has stated that on 14/04/2010, his son was traveling from Lonavala to Pimpri by a local train under a valid second class railway ticket. He has stated that he fell down from the running train between Malavdi and Kamshet Railway Station and expired as a result of the injuries sustained in the said accident. The evidence of this witness that the deceased was a bonafide passenger and that he had fallen from the train has gone unchallenged. The Respondents have not adduced any evidence to prove that the deceased was hit by an unknown train while crossing the track. Under the circumstances, the findings of the Tribunal that the deceased was not a bonafide passenger and that his death was not caused in an untoward incident, cannot be sustained.

9. Hence, the Appeal is allowed. The impugned judgment and order

dated 12/08/2015 in Claim Application No..OA(IIU)/MCC/2010/0544 is quashed and set-aside. Consequently, the Claim Application is allowed. The Respondent – Railway Administration is directed to pay to the Appellants/claimants compensation of Rs.8,00,000/- in equal proportion. The Appellants/claimants 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.

10. Appeal stands disposed of in above terms.

PREETI
H JAYANI

(SMT. ANUJA PRABHUDESSAI, J.)

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