

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

FIRST APPEAL NO.386 OF 2018

1) Smt. Muktabai Sahebrao Pawar
2) Miss Uma Sahebrao Pawar ...Appellants

Versus

1) Union of India
2) Sultan Rekha Pawar ...Respondents

...

Mr. Kunal Bhanage with Mr. Vasim Siddiqui and Mr. Akshay Pawar for
the Appellants.

Mr. T.J. Pandian for Respondent -Union of India.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th NOVEMBER, 2022.

JUDGMENT :-

1. With consent heard finally at the stage of admission.

2. This appeal under Section 23 of the Railway Claims Tribunal Act, 1987 assails the Judgment and Award dated 31/07/2017 whereby the Railway Claims Tribunal, Mumbai Bench, Mumbai dismissed the Claim Application No.OA(II u)/MCC/0310/2012.

3. The Appellants, who are the original Claimants had filed the Claim Application under Section 16(1) r/w. Section 13(1-A) of the Railway Claims Tribunal Act, 1987 and Section 124-A of the Railways

Act, 1989 seeking compensation in view of death of Sahebrao Pawar in an untoward incident. On 24/11/2011 deceased -Sahebrao Pawar was travelling by a local train from Kalyan to Titwala. He accidentally fell down from a running train between Shahad and Ambivali station and expired as a result of injuries sustained in the said untoward incident. The Claimants claim that the deceased was a bonafide passenger and his death was caused in an untoward incident. Hence, they filed a claim application for compensation.

4. The Respondents denied that the deceased was a bonafide passenger on local train from Kalyan to Titwala. The Respondents further stated that the deceased was hit by N-01 local train while crossing the railway track. It is stated that he died as a result of his own negligent act. Hence, the incident is not covered under Section 123(c)(2) of the Railway Act, 1989 and consequently, railway administration is not liable to pay any compensation.

5. The Claims Tribunal framed the issues and upon considering the evidence on record and relying upon the Station Master's report concluded that the deceased was knocked down by a train while he was crossing the railway track. The Tribunal returned a finding that the death was not caused in an untoward incident and

hence dismissed the claim application. Being aggrieved by this judgment, the Appellants-Claimants have filed this appeal.

6. Mr. Kunal Bhanage, learned counsel for the Appellants states that evidence of the Claimants proves that the deceased had left his home to go to Titwala on a valid railway pass, which was recovered from his possession. This fact also proves that the deceased was a bonafide passenger. He further states that the death of the deceased was caused in an untoward incident and as such the Tribunal was not justified in dismissing the claim application solely on the basis of Station Master's report.

7. Mr. T.J. Pandian, learned counsel for the Respondent No.1 states that the deceased stays close to the place where his body was found. He states that the Claimants have admitted that they reside at a distance of about 5 minutes from the spot of the accident. He further submitted that it was suggested to the Claimants that the deceased had died while crossing railway track. Facts and circumstances clearly indicate that the deceased had died while crossing the railway track hence his death was not in an untoward incident.

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

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

10. In the instant case CW1-widow of the deceased has filed her affidavit stating that on 23/11/2011 at 10.00 p.m. the deceased had left the house for Titwala. He had told her that he would return late at night by about 12.30 a.m. She has stated that her husband did not return home and on 25/11/2011 two Home Guards came and told her that her husband had met with an accident. She was taken to the hospital and shown the body of the deceased. She had stated that the deceased had travelled under a valid railway pass and that he accidentally fell from a running train between Ambivali and Shahad Railway station.

11. The statement of the witness that her husband had left the house to go to Titwala has gone unchallenged. Moreover, the inquest panchanama reveals that upon taking personal search one leather

wallet containing railway monthly pass from Titwala to CST was recovered and that the said pass was valid from 23/11/2011 to 22/12/2011. This fact supports the case of the Claimant that the deceased was travelling to Titwala under a valid monthly pass. The dead body of the deceased was found between Shahad and Ambivali station. There is nothing on record to indicate that the deceased, who was a bonafide passenger, had reason to get down at the place where his body was found /or to cross the railway track. The post mortem report indicates that the injuries suffered by the deceased were caused in a railway accident.

12. The aforesaid facts and circumstances amply prove that the deceased was a bonafide passenger and his death was caused in an untoward incident. Under the circumstances, the Tribunal was not justified in discarding the case of the Claimants solely on the basis of the Station Master's Report.

13. For the reasons stated above, the appeal is allowed. The impugned judgment is quashed and set aside. The Claim Application No.OA(II u)/MCC/0310/2012 is allowed. The Claimants are held to be entitled for compensation of Rs.8,00,000/-. The Claimants shall give

details of their bank accounts within a period of two weeks from the date on which this order is uploaded. Respondent No.1 shall deposit the compensation in the account of the Appellants-original Claimants within a period of eight weeks thereafter. The compensation of Rs.8,00,000/- be paid to the appellants/claimants in equal proportion. Since the appellant no.2 is stated to be minor, 50% of the amount of compensation payable to her, shall be invested in Fixed Deposit in a nationalised bank, till such time that she attains majority.

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(SMT. ANUJA PRABHUDESSAI, J.)