

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 1973 OF 2019

1. Sapna wd/o Suresh Dandekar,
Aged about : 33 years,
Occ : Household,
2. Vansh s/o Suresh Dandekar,
Aged about : 11 years, Occ: Nil
(Applicant no.2 is Minor U/g of
Applicant No.1) Both R/o
C/o Harishchandra Zamaji
Mude Chanoda, Post: Hiwara,
Tah: Umred, Dist: Nagpur.
3. Baby wd/o Madhukar Dandekar,
Aged about : 71 years,
Occ: Household, R/o Arvi
Chotti, Tah: Hinganghat,
Dist: Wardha.

...APPELLANTS

VERSUS

Union of India,
Through The General Manager,
Central Railway, Mumbai CST.

...RESPONDENT

Shri B.S. Mandhare, Advocate h/f Shri P.S. Mirache, Advocate
for the appellants.
Shri Nitin Lambat, Advocate for respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 17/02/2022

ORAL JUDGMENT :

With consent heard finally at the stage of admission.

2. This is an appeal under Section 23 of the Railway Claims Tribunal Act, 1987, challenging the Judgment and Order dated 27/04/2016, whereby the Railway Claims Tribunal dismissed the Claim Application filed by the Appellant under Section 124-A of the Railways Act.

3. The brief facts necessary to decide this Appeal are as under:

The Appellants are the dependants of the deceased Suresh Dandekar. The Appellants claimed that Suresh Dandekar had died in an untoward incident in a train journey from Hinganghat to Warora. The Claimants alleged that the deceased was a *bona fide* passenger. The Appellants therefore filed a claim petition claiming statutory compensation under Section 124A of the Railways Act.

4. The Respondent denied that the deceased was a *bona fide* passenger. They further denied that the Respondent had died in an

untoward incident. The respondent therefore denied its liability to pay any compensation.

5. The Tribunal has held that the deceased was not a *bona fide* passenger. The Tribunal also recorded a finding that the Appellants have not proved that the death of the deceased was caused in an untoward incident and accordingly dismissed the petition.

6. Heard Mr. Mandhare, learned Counsel for the Appellants and Mr. Lambat, learned Counsel for the Respondent. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. The short point for consideration is whether the deceased was a *bona fide* passenger and whether his death was caused in an untoward incident.

7. P.W. 1 is the widow of the deceased. She has stated that on 18/03/2012, her husband was travelling from Hinganghat to Warora on a valid train ticket. She claimed that the deceased fell down from the train and died as a result of the injuries sustained in the said incident. She had produced the train ticket dated 18/03/2012 for the journey from Hinganghat to Warora. The Claimants had also relied upon the other police report which indicates that the body of the

deceased- Suresh s/o Madhukar Dandekar was found at KM 831/7-9 at Warora/Manjri Track. The inquest panchanama reveals that there were several injuries on the body of the deceased. The post mortem report also indicates that the death of the deceased was due to head injury caused by railway track accident. Letter dated 20/01/2013 addressed by the Senior Divisional Security Commissioner to the Additional Divisional Railway Manager reveals that in the course of the investigation the statement of Raju Dhatrak was recorded and that he had stated that on 18/03/2012, he along with his friend- the deceased Suresh Dandekar and others left from Hinganghat by passenger train at about 08.40 hrs. to Warora for attending marriage ceremony, which took place at 15:00 hrs. During marriage function, the deceased was present. Later on that day by evening they all left by passenger train from Warora to Hinganghat, but he (the deceased) was not with them. On 19/03/2013 he came to know that, the deceased Suresh Dandekar died in a train accident.

8. The statement of the witness coupled with the train ticket produced by the Appellants indicates that the deceased had travelled to Hinganghat and attended the marriage and that he had met with an accident. The train ticket and the letter dated 20/01/2013, probabalizes the case of the Appellants that the deceased Suresh

Dandekar had been to Hinganghat to attend the wedding and that while he was returning to Warora on a valid train ticket, he had fallen from the train. The Tribunal, therefore, was not justified in holding that the deceased was not a *bona fide* passenger and that the death of the deceased was not an untoward incident.

9. Under the circumstances, the Appeal is allowed, the impugned judgment is set aside. The Respondent is directed to pay to the claimants compensation of Rs.8,00,000/-. The Claimants to give the details of the Bank Account to the Respondent within two weeks. The Respondent to deposit 40% of the compensation in the account of the Claimant No.1 and 10% in the account of Claimant No.3. The Claimant no.2 is a minor. Hence balance 50% of the compensation be invested in the name of Claimant No.2 through her guardian initially for a period of six years with further renewal till the date he attains the age of majority.

10. Appeal stands disposed of in above terms.

JUDGE

Jayashree.....

Signed By: JAYASHREE SHARAD
SHINGNE

Signing Date: 22.02.2022 10:36