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

FIRST APPEAL NO.666 OF 2017

Laxmi Gajanan Sanke and Anr ... Appellants
V/s.
Union of India through the General
Manager, Western Railway, Churchgate,
Mumbai 400 055. ... Respondent

Mr. Vyom Shah for the appellant/Legal Aid Counsel.

Mr. Delilah Fernandes for respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 1, 2023

P.C.:

1. The appellant is challenging the Judgment and Order passed by Railway Claims Tribunal dismissing the claim of the appellants.
2. The facts necessary for adjudication of issues involved in short are as under.

According to Appellant, Sachin Gajanan Sanke was self employed at Jai Raj Caters and was earning Rs.4,500/- (Rupees Four Thousand Five Hundred Only) per month. On 28th February 2010, while he was travelling by local train from Santacruz to Andheri possessing valid second class ticket, due to severe push from the co-passenger he accidentally felling down from the running train and sustained multiple injuries resulting into his

death. Applicant No.1 being mother and Appellant No.2 being sister had filed claim before the Railway Claim Tribunal, Mumbai being dependents.

3. The respondent contested the claim by filing written statement that the alleged incident dated 28th February, 2010 was not untoward incident hence would not fall within the purview of Section 123(c) of the Railway Act, 1989. The deceased was not a bonafide passenger as no ticket was recovered from his person. The applicants had no personal knowledge about the incident.

4. The Tribunal based on the findings in inquest panchnama held that deceased could not have sustained such injury due to falling down from the train and such injuries can be sustained only by on being hit by a train. Aggrieved thereby the claimants have filed present appeal.

5. Learned advocate for the appellant invited my attention to the affidavit filed by the mother of the deceased stating that on 28th February, 2010 the deceased was traveling on valid ticket and accident occurred due to push given by co-passenger. He submitted that, initial burden to prove the facts entitling compensation has been discharged by the claimants by stating necessary facts of affidavit. However, respondent failed to step into witness box with the result onus shifted on respondent had not been not discharged. The conclusion that such incident would not have been the result of failling down from the train is perverse. He, therefore, submitted that the impugned Judgment and Order deserves to be quashed and set aside.

6. *Per contra*, learned advocate for the respondent, submitted that the inquest panchnama states that the hand and leg of deceased was cut and such injuries where possible only when he was knocked down by the train. According to her, such injuries were not possible due to falling down from the train. According to her, Tribunal has rightly relied on inquest panchnama to record the finding that the deceased was not a bonafide passenger with a valid ticket. In support of her submission she placed reliance on the following judgment of Apex Court in **Union of India Vs. Rina Devi**, reported in (2018) ACJ 1441, and the Judgment of High Court of Bombay in Mrs. **Pushpa Rajnath Sharma and Ors Vs. Union of India**, in First Appeal No.526 of 2019 decided on 14th June, 2022, **Meena Devi Jaiprakash Gupta Vs. Union of India**, in First Appeal No.290 of 2021 decided on 8th June, 2022.

7. Having considered the submissions made on behalf of the parties, in my opinion the burden to prove the facts necessary for getting relief of compensation is initially on the claimants. However, once such onus is discharged, it is for the railways to discharge the burden. In the facts of the present case, the mother of deceased has filed affidavit stating on oath in paragraph No.1 and 2

“1. That on 28.02.2010 my son Sachin Gajanan Sanke was traveling from Santacruz to Andheri Railway Station, at about 1655 hrs, when the train was in between Vile Parle and Andheri Railway Station, there was sudden push from other passengers, my son had fallen down from the train accidentally. The fact is based upon information received from the public. He was taken to the Cooper Hospital, Mumbai where in he had died on same day. Copies of

Inquest Panchnama, Statement, Memo of the S.M. and Cause of Death Certificate are attached herewith as marked exhibit A-1 to A-4.

2. That my son was traveling on 2nd class season ticket from Santacruz to Andheri Railway Station, which was lost in the accident.”

8. Statements referred above shows that the mother stated on oath that the deceased was traveling on second class season ticket from Santacruz to Andheri railway station which was lost in the accident. There is no cross-examination conducted by the respondent on the statement in paragraph No.2 with the result statements in paragraph No.2 remains unchallenged.

9. The main reason weighed with the Tribunal denying claim of compensation was the nature of injuries described in inquest panchnama. The Tribunal observed that injuries such on right leg and hand cut right hand from rip cut and injuries over head were possible by falling down from train. In my opinion, such inference is too wide to accept. To discharge the burden that deceased was knocked down by the train, it was necessary for the respondent, to show that the deceased was neither bonafide passenger with valid ticket nor fell down from the train. The respondent has not stepped into witness box nor examined any witness to prove the fact that the deceased was trespasser in the property of railway. In absence of such evidence to show that the respondent was trespasser and was not traveling by train, tribunal could not have recorded such findings based on no evidence.

10. Therefore, in my opinion the claimants have proved that they were dependents on the deceased, the deceased was

travelling on valid ticket and he died in an untoward incident.

11. Learned advocate for the respondent in support of her submissions relied on the Judgment in case of **Union of India Vs. Rina Devi**. The Apex Court has held that mere absence of ticket on the person of deceased would not disentitle the dependent from claiming of compensation.

12. Other judgments relied upon by the respondent are based on peculiar facts and circumstances of the said case. No legal proposition of law has been laid down. Since there are no observation laying down proposition of law made to support the contentions raised by the respondent, the judgment cited are of no help to the respondent.

13. Insofar, as the evidentiary value of inquest panchnama is concerned no absolute proposition of law can be laid down as to whether the such inquest panchnama can be conclusive either disallowing or allowing the claim of compensation. Evidentiary value of such inquest panchnama would differ from facts of each case. In the facts of present case onus shifted on the respondent has not been discharged by stepping into witness box and, therefore, the claimants were entitled to the compensation.

14. Insofar, as the amount of compensation to be paid is concern, the Apex Court in the case of **Union of India Vs. Radha Yadav** reported in (2019) 3 SCC 410 held that the claimant is entitled to the compensation payable on the date of accident with reasonable rate of interest. However, if the amount so calculated is less than prescribed on the date of award, the claimant would be

entitled to higher of the two amounts.

15. In that view of aforesaid reasons, on the date of accident the claimants were entitled to the compensation of Rs.4,00,000/- (Rupees Four Lakh Only), and the interest @ 6% per annum shall meet the ends of justice. Hence, following order :

16. The impugned Judgment and Order passed by Railway Claim Tribunal Mumbai Bench Mumbai dated 20th April, 2016 in Claim Application No: OA (II u)/MCC/0434/2010 is quashed and set aside.

17. The respondent is directed to pay compensation of Rs. 4,00,000/- (Rupees Four Lakh Only) from 28th February, 2010 till the date of its realization. However, it is made clear that in case such amount of compensation including interest exceeds Rs. 8,00,000/- (Rupees Eight Lakh Only), the claimants shall be entitled to the higher figure as explained in paragraph 11 in the case of Radha Yadav (supra).

18. The First Appeal stands disposed of in the above terms.

19. The appellants shall furnish their bank details to the respondent within Four (4) weeks from today.

(AMIT BORKAR, J.)