

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

FIRST APPEAL NO. 846 OF 2004

Hemendra Kantilal Shah And Anr. ... Appellants (Org. Applicants /
Claimants)

Vs.

Union Of India ... Respondent (Org Respondent)

Adv. Chintan Shah, for the Appellants.

None for the Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 29th APRIL, 2024

PC:-

1. The appeal is of the year 2004, none appears since long for the Respondent, inspite of service.

2. The Appellants/Claimants who are parents of deceased Vivek Hemendra Shah who died in railway accident on 08.04.1999, while traveling from Goregaon to Kandivali in a local train. The Appellants filed Claim Application before the Railway Claims Tribunal. The learned member of the Railway Claims Tribunal by its Judgment and Order dated 15.11.2002, dismissed the Claim Application only on the ground that in the present case the incident cannot be said to be 'untoward incident' as defined under Section 123(c) of the Railways Act, 1989. The other issues are answered in favour of the present Appellants. The Appellants/Original

Claimants are thus before this Court.

3. Facts in short are the deceased was student of engineering college. On 08.04.1999, he was traveling in a local train from Goregaon to Kandivali in the local train. He purchased a ticket of Second Class bearing Ticket No. G. 011120. At the time of incident he was 18 years of age.

4. In support of the claim the Appellants filed on record the Inquest Panchanama, Post-Mortem Report and Affidavit of Appellant No. 1. The Respondent though filed written statement has not laid any evidence. The learned Tribunal below recorded a finding that the deceased was a bonafide passenger it is further held that the Applicant are only dependents on the deceased. Only issue decided against. The appellant is as to whether the deceased died as a result of untoward incident. This issue is answered in negative and consequently the Application came to be rejected.

5. The learned Advocate for the Appellant has vehemently argued that the reasoning of the learned member is contrary to law. There is evidence on record clearly indicating that the deceased was traveling in a local train and because of a push in the rush he felled down from the local. The Court has wrongly held that this does not amount to untoward incident. The Appellant took this Court through the observations of the Court on issue No. 2 wherein the Court has observed that knocking down of passenger is not covered by definition of untoward incident as defined in Section 123(c) of the Railways Act, 1989. He further invited attention

where the Court itself has observed that there is no evidence from the side of Respondent. The learned Advocate relied on the Judgment in the First Appeal No. 597 of 2017, of this Court. This Court by relying on the Judgment in the case of *Jameela & Ors Vs. Union of India, AIR 2010 SC 3705*, held that knocking down from the train also fails under the definition of untoward incident.

6. In the present case, this Court finds that there is evidence to show that the deceased was holding a valid ticket which fact is not disputed even in the written statement. Considering the above position this Court finds that the Trial Court has committed an error in holding that the present case is not a case of untoward incident. This court is convinced that the incident certainly is an untoward incident under Section 123(c). A case is made out that the impugned Judgment and Order deserves to be quashed and set aside by allowing the Claim Application.

7. At the relevant time the compensation to be paid was Rs. 4,00,000/- (Four Lakhs Only) in case of death of passenger. The Court is therefore allows the Appeal and awards the compensation as per the Act. Hence the following Order.

ORDER

- a. The impugned Judgment and Order dated 15.11.2002, in the Case No. O. A. No. 99000116 of 2003, is quashed and set-aside.

- b.** The First Appeal stands allowed. The respondent to pay an amount of Rs. 4,00,000/- (Four Lakhs) to the Appellants/Original Claimants with interest @ 6% p.a. from the date of filing of the Application till realisation before the Trial Court.
- c.** The amount be paid within 3 months from receipt of this Order, if no amount is paid within 3 months the amount shall carry interest @ 12% after 3 months.
- d.** The First Appeal stands disposed of. No Order as to costs.
- e.** Pending Applications, if any, stands disposed of.

(KISHORE C. SANT, J.)