

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

**INTERIM APPLICATION (ST) NO. 7093 OF 2024
IN
FIRST APPEAL NO. 1375 OF 2005**

Smt. Rohini Madhukar Rane

...Applicant

Vs.

Union Of India Thr. The General Manager

...Respondent

IN THE MATTER BETWEEN

Union of India Thr. General Manager
Central Railway Mumbai CST

...Appellant

Vs.

Shri. Madhukar Krishnaji Rane And Anr.

...Respondents

Adv. T.J. Pandian a/w Adv. Gautam Modanlal for the Appellant in First Appeal and Respondent in Interim Application.

Ms. Kavita Anchan i/by Mr. Vishal Dhende for Applicant in Interim Application and for Respondent No.2 in First Appeal.

CORAM : KISHORE C. SANT, J.

DATE : 6th May, 2024

P.C.:-

1. Heard this Appeal arises out of the Judgment and Order passed by the member of Railway Claims Tribunal, Mumbai Bench Mumbai allowing the claim of the claimants/Respondents. The Railway was directed to pay Rs.2,00,000/- to Madhukar Krishnaji Rane i.e. father of the deceased who is reported to be no more and Rs.2,00,000/- to one of the claimants Smt. Rohini Madhukar Rane by Judgment and Order dated 26th April, 2005.

2. The Appellant has challenged the Judgment mainly on the ground that the deceased was not a *bona fide* passenger.

3. Learned Advocate for the Appellant points out from the evidence of the claimant wherein the claimant has given some admission that he did not see the the deceased purchasing a ticket and boarding a train. He submits that from the record nothing is there to show that the deceased was possessing a valid railway ticket. Even in panchanama, there is no mention of a ticket. In the Judgment the Court has observed that the deceased had boarded a local train after purchasing the return ticket bearing no.29081. He thus submit that the finding of *bona fide* passenger is against evidence and record. As it is this the learned Advocate for the claimants/Respondents opposed the appeal justifying the finding of the learned Court. She relied on the Judgment in the case of ***Union of India V/s. Rina Devi, reported in (2019) 3 SCC 572***, Paragraph No.29 which reads as below :

“We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. 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. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

4. Considering the averment it is not expected of the claimant to have witnessed the deceased purchasing the ticket when he was not accompanying the deceased. This Court does not find any perversity in recording a finding as to *bona fide* passenger by the Court. The fact of untoward incident is not denied and challenged. It is seen that the deceased has lost his life and the claimant lost earning member of his family. This Court does not find any reason to interfere with the impugned Judgment and Order.

5. In view of subsequent event only the Order needs to be modified the amount of Rs.4,00,000/- to be paid to Smt. Rohini Madhukar Rane as the Applicant No.1 late Madhukar Krishnaji Rane is no more. This reported that the amount is already deposited in this Court and the same is lying in the office of this Court. The Application is therefore filed for withdrawal of the amount. The office is therefore directed to allow the Respondent No.2 i.e. Smt. Rohini Madhukar Rane to withdraw the entire amount deposited in this Court alongwith interest, if any, without requiring formal application.

6. The appeal stands disposed off.

7. In view of the disposal of the Appeal, pending civil application, if any, also stands disposed off.

(KISHORE C. SANT, J.)