
(2019) 07 BOM CK 0145
In the Bombay High Court
Case No : First Appeal No. 262 Of 2019

Shivlal And Anr

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Railways Act, 1989 — Section 123(c), 124A

Citation : (2019) 07 BOM CK 0145

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : R.G. Bagul, Zahid Shekhani, R.G. Agrawal

Final Decision : Allowed

Judgement

M.G. Giratkar, J

1. Heard learned counsel appearing for the parties.
2. Admit.
3. This is an appeal against the judgment of the Railway Claims Tribunal, Nagpur dated 30th10th2017. Parents of deceased Arun filed claim application before the Tribunal on account of death of Arun in an untoward incident alleged to have occurred on 1st12th2014. On 30th11th2014, deceased was travelling from Jabalpur to Hinganghat by train by purchasing a valid journey ticket, but due to heavy rush, the deceased was standing near the door of the compartment and due to sudden jerk and push by passengers, he fell down from the running train near Patiltola Shet Shivar Up Railway Line Pole No. 1042/21 to 1042/19 near Tiroda on 1st12th2014 and died on the spot. Reference is also made regarding loss of journey ticket, bag etc.

4. Respondent " Railway has contested the claim by filing written statement. By way of preliminary objection, it was objected that no such accident

causing death of deceased within the meaning of the provision of Section 123(c) read with Section 124A of the Railways Act has taken place and as

such, the claim application is not maintainable. It is further submitted that deceased was not a bona fide passenger of any train. While denying all the

averments in claim application either being wrong or for want of knowledge, it is submitted that the applicants are not entitled to any compensation,

hence claim is liable to be dismissed.

5. The applicant/appellant no. 1 was examined as AW1 and proved the documents at A1 to A8. Respondent examined Upendra Kumar

Rampraveshsingh as RW1 and proved the documents at R1 to R2. After hearing both the sides, the Railway Claims Tribunal rejected the claim

application on the ground that deceased was not having valid ticket and, therefore, he was not bona fide passenger.

6. Heard learned counsel Shri Bagul for the appellants. He has submitted that there is no dispute about the incident of death. Only dispute is about the

ticket. Learned counsel has pointed out postmortem report, Exhibit No. 4.

7. Heard learned counsel Shri Zahid Shekhani holding for Shri R. G. Agrawal, learned counsel for the respondent. He has supported the impugned

judgment.

8. Perusal of spot panchanama, Exhibit A3 shows that deceased fell down from running train because of the jerk of train. Therefore, it is clear that

deceased died due to jerk of the train. The claim was rejected only on the ground that deceased was not having any railway ticket.

9. Learned counsel Shri Bagul has pointed out decision in the case of Union of India Vs. Rina Devi [AIR 2018 SC 2362.]Their Lordships have held

that "death or injury in course of boarding or deboarding train will be 'untoward incident'. Victim will be entitled to compensation and will not fall

under proviso to S. 124 A merely on plea of negligence of victim as contributing factor. "

Mere absence of ticket with such injured or deceased does not negate the claim that he was bona fide passenger."

10. Learned counsel Shri Bagul in support of his submissions has further pointed out decision of Punjab and Haryana High Court in FAO No. 3960 of

2011 dated 20th 2018 in the case of Suman Sharma Vs. Union of Indian.

11. From the perusal of impugned award, it is clear that the claim was rejected because the deceased was not having any valid ticket. The Apex

Court in the case of Union of India Vs. Rina Devi (supra) has observed that mere absence of ticket with such injured or deceased does not negate the

claim of claimant. Hence, following order is passed.

ORDER

(i) The appeal is allowed.

(ii) Impugned judgment is hereby quashed and set aside.

(iii) The application for grant of statutory compensation is allowed. The respondent is directed to pay statutory compensation of Rs. 8,00,000/

(Rupees Eight Lacs Only) in equal share to both the appellants.

(iv) Three months time is granted to the respondent to deposit the amount of compensation before this Court.