



HMK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1668 OF 2016

1. Dhondu Sakharam Tambe

2. Rupali Dhondu Tambe

R/a. Om Sai Co-op. Housing Society Ltd.,
Room No.321, Indira Nagar,
Behind Wipshana School, Meghwadi,
Jogeshwari (E), Mumbai – 400 060.

....Appellants

Versus

The Union Of India,
Represented By The General Manager,
Western Railway, Churchgate, Mumbai

....Respondent

Mr. Balasaheb Deshmukh i/by Mr. Deepak T. Ajagekar for the Appellants.

T. J. Pandian a/w. Mr. Gautam Modanwal a/w. Ms. Noorjahan Khan for the Respondent.

CORAM	: JITENDRA JAIN, J.
RESERVED ON	: 18 th NOVEMBER, 2025
PRONOUNCED ON	: 21 st NOVEMBER, 2025

JUDGMENT :

1. This appeal challenges an order of the Railway Claims Tribunal dated 29th January, 2016 whereby the application made by the appellants/applicants seeking compensation from the respondent on account of death of their son Jaideep Tambe was dismissed on the ground that the deceased was not a bonafide passenger and also there is no record of the “untoward incident” having occurred as per the records of the officials of the respondent. The relevant Act under which the claim was made is The

Railways Act, 1989, and the Railway Claims Tribunal Act, 1987.

2. The issues which arises in this Appeal are :-

- (a) Whether the appellants/applicants have proved that Jaideep Tambe died on account of an “untoward incident” so as to be eligible for compensation ?
- (b) Whether the deceased was a bonafide passenger ?

3. I have heard learned counsel for the appellants and the respondent and have perused the documents brought to my notice by the counsel.

4. The deceased was a 17 year old boy who in the night of 05th September, 2008 was travelling by local train from Jogeshwari Station to Lower Parel Station for taking darshan of Lord Ganesh at Lalbaug during Ganesh Festival. He was accompanied by some of his friends and between Elphinstone Railway Station and Lower Parel Railway Station, the deceased fell down due to rush in the train. His friends alighted at Lower Parel Station and instead of informing the station officials about the incident, rushed to the accident spot and took the deceased to K.E.M. Hospital at Parel for treatment. But before he could be treated, he was declared dead on arrival by doctors at K.E.M. Hospital.

5. The first issue which requires consideration is the non-reporting of the incident by the friends of the deceased to the nearest railway station officials. The deceased and his friends were in the age group of 17-18 years and the deceased having fallen from the train, it is possible that the friends were shocked and frightened and, therefore, instead of informing the station officials, rushed back to the spot of the incident and took him to the K.E.M. hospital, because first priority in such cases is to save the injured person. In such cases, therefore, it is important to consider other materials

and circumstance to ascertain whether any such incident has actually happened.

6. The above incident has been recorded in the inquest panchnama dated 06th September, 2008. This is the first available opportunity which indicates that the incident has actually happened and the note of the said incident was made in the inquest panchnama. Similarly, one Mr. Vivek Tukral, friend of the deceased who arrived at the K.E.M. Hospital in early hours of 06th September, 2008 narrated this incident to the police officials and doctor present at the K.E.M. hospital. This also is a circumstantial evidence, which was recorded immediately after the incident to indicate that the incident had happened. The postmortem report also states the cause of death as head injury, which is most likely to happen when a person falls from train and more particularly from a moving train. This postmortem report was prepared by K.E.M. hospital, which was the hospital where the deceased was taken by his friends. The incident has also been recorded in the investigation report, which was prepared by IPF/ Headquarter/BCT and which is at page 28 of the paper-book.

7. In the report of Inspector of Railway Police, Dadar, it is mentioned that the Government Railway Police (GRP) had recorded statement of Vivek Tukral at K.E.M. Hospital about the incident. The incident was also reported to Mumbai Central Police Station who arranged the police from Dadar to go to K.E.M. Hospital.

8. There is also a report at page 43 (translated copy at page 45), which is issued by the police authorities, wherein this incident has been recorded. Examination-in-chief of Mr. Umesh Sanas friend and accompanist was filed, wherein he has confirmed this incident and in the cross-examination there is no material which compels me to take a view that the incident has not

happened. In the cross examination, no question has been asked to Umesh Sanas as to why the incident was not reported to the Station Master or how they transported the injured to the hospital. Therefore, today, the respondent cannot argue and challenge the incident on these grounds.

9. Admittedly, the incident was not reported by the friends to the officials of the railway station for the apparent reasons stated above, and therefore there was no Station Master's Report recording the said incident. However, the circumstantial evidences which are referred above clearly indicates that the incident had happened and at the first available instance, same was narrated to various authorities at the hospital, and same has been noted in the letters and reports of these authorities.

10. The circumstantial documentary evidence and the examination and the evidence led by the appellants, show that the incident had happened. However, the only fault of the friends of the deceased was that they did not inform the station officials, though they had informed the police authorities at the KEM hospital about the incident, and further the incident has been recorded in the inquest panchnama and also by the railway police of Mumbai Central. Therefore, looking at the overall circumstances, it cannot be said that there was no "untoward incident", which resulted in the death of the deceased on account of fall from a moving train.

11. It is important to note that the Railways Act, 1989 is a beneficial legislation. Even in criminal matters, circumstantial evidence is taken into consideration for deciding whether the offence was committed or not. If that be so, then the present legislation being a beneficial legislation, certainly circumstantial evidence can be considered for deciding whether an "untoward incident" occurred or not, moreso when there is no indication that the present application is fraud.

12. It is also import to note that while adjudicating the criminal matters, dying declaration plays a very important role since, it is based on a principle that a person at the last stage of his life would always speak the truth. Similarly, in the present circumstances when the accident happened, the statements made at the first available instance before the state authorities should be accepted as an important piece of evidence for adjudicating the occurrence of an “untoward incident”.

13. The issue of whether an incident that is not reported to the Station Master can be fatal to the claim came up for consideration before the Hon’ble Punjab and Haryana High Court in the decision of ***Har Prashad Nanda vs. UOI***, ¹. The High Court rejected this very contention and observed that in such a situation, the primary concern is to save the injured at that point of time and not to go to the authorities to lodge the incident as such, at that point of time. In my view, these observations support the plea of the present appellants/applicants. Similar contention raised by the respondent came to be rejected by this Court in the case of Shri Basir Khan vs. UOI, First Appeal No. 779 of 2018, dated 08th January, 2025. It is also important that in such cases, the police and other authorities at K.E.M. hospital should have guided the appellants to report the incident to the Station Master.

14. Loss to parents on death of young son is unimaginable and cannot be arrived at in monetary terms and when such a tragic and untoward incident happens when son is on his way to take darshan of Lord Ganesha, normally parents would not take opportunity of such incident to make a claim under the Railways Act, 1989 and litigate for decades for paltry sum. This factor too should be considered in absence of any suspicious circumstances to decide whether claim is genuine.

¹ *FAO 1779 of 2014 dated 3 July 2018*

15. Therefore, by considering the circumstantial evidences and there being no reason to suspect any foul play and taking the support of the decision of the Hon'ble Punjab & Haryana High Court, the reason for rejecting the claim is quashed and set aside.

16. Insofar as whether the deceased was a bonafide passenger or not, Mr. Vivek Tukral (friend), who was accompanying him, has given a statement on 06th September, 2008 itself that each one of them had purchased a railway ticket to go to Lalbaug for darshan of Lord Ganesh. What was stated by Mr. Vivek Tukral on the date of incident has been reiterated in the year 2014 by Mr. Umesh Sanas whose evidence was led before the Tribunal. In the cross-examination of Mr. Umesh Sanas, the same has not been proved to be false. Therefore, by applying the ratio of the Hon'ble Supreme Court in the case of *Union of India vs. Rina Devi*,² it should be concluded that the condition of a bonafide passenger is also satisfied in the instant case. The Hon'ble Karnataka High Court in the case of *Hussain Bee vs. UOI*,³ has approved this course of action of leading evidence of the friend accompanying the deceased to prove the purchase of a ticket. Asking to produce physical ticket in 2014 of an incident which happened in 2008, and that too when the same was not asked in cross-examination, cannot be permitted in appeal.

17. In view of above, the impugned order dated 29th January, 2016 is quashed and set aside and the appellants are entitled to the claim made in the original application of Rs.4 lakhs along with 6% interest from the date of the accident till the date of payment. However, if the aggregate amount is more than Rs.8 lakhs, then the appellants/applicants would be entitled to Rs.8 lakhs only. The amount should be paid to the appellants/applicants by transfer to their bank account within eight weeks of the appellants/

² (2019) 3 SCC 572

³ 2025 SCC Online Kar 2799

applicants furnishing bank details along with a copy of the present order to the respondents.

18. For all the above reasons, Appeal is allowed in above terms.

[JITENDRA JAIN, J.]