

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

FIRST APPEAL NO. 1232 OF 2014

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1. Corinna Valentina D'souza,
Age 33 years, Widow of the deceased.
2. Pearl Valentina D'Souza,
Age 2 years, Daughter of the deceased.
3. Francis Xavier D'Souza,
Age 56 years, Father of the deceased.
4. Annnie Francis D'Souza,
Mother of the deceased.

....Appellants

Versus

Union Of India,
Through The General Manager,
Western Railway

....Respondent

Mr. Avadhut Bidaye a/w. Mr. Aditya Kode i/by Bidaye & Associates for the Appellants.

Mr. Rajesh G. Singh, Senior Advocate for the Respondent.

**CORAM : JITENDRA JAIN, J.
DATED : 18th MARCH 2026**

JUDGMENT :

1. This appeal is filed by the original applicants, challenging the order passed by the Railway Claims Tribunal dated 28th February, 2014 whereby, the application for compensation on account of death of Mr. Valentine D'Souza to be rejected on the ground that various records prove that it is a runover case and the incident occurred due to trespassing i.e. knocked down by unknown train and, therefore, it is not an "untoward incident".

2. Insofar as the finding with respect to “bonafide passenger” is concerned, same is in favour of the appellant and has not been challenged. Insofar as the finding on dependency is concerned, the reasoning is in favour of the appellant and has not been challenged. However, in concluding paragraph, there appears to be a typo error, wherein, it is stated that the relationship has not been established, though in the previous paragraph, the reasoning is in favour of the appellant. The said typo error is now directed to be corrected and the relationship is also proved and established.

3. The deceased was staying at Naigaon and was employed at Dadar in a Watch Showroom, Rolex Company. It is the case of the appellant that the deceased was travelling from Naigaon to Dadar for his job when they received a call that the deceased has met with an accident. The first class season ticket was found on search and the head was cut from the body. It was on this backdrop that the application came to be filed before the Tribunal, which was rejected and, therefore, the present appeal is filed.

4. I have heard learned counsel for the appellant and the learned council for the respondent.

5. The only issue which arises for my consideration is whether, it is a case of “untoward incident” or it is a case of “trespassing”. The wife of the deceased stepped into the witness box and led the evidence, wherein, in the examination-in-chief, she has set out the routine and also that on 18th March, 2011, the deceased in the afternoon left the residence for his work and reached Naigaon Railway Station to board the local train for Dadar. In the cross-examination same has not been rebutted or found to be incorrect.

6. Admittedly, there is no eyewitness to the deceased boarding the train. In my view, there cannot be any evidence of boarding a train unless the deceased was accompanied by a co-passenger or by CCTV footage. In this case, none of the two exists. Therefore, to call upon the applicants to prove that the deceased was boarding the train would be imposing impossible onerous burden. This has to be examined in the context of the affidavit of the wife, which has been set out by me earlier. Therefore, the contention that there is no proof of boarding the train cannot be accepted.

7. The incident happened between Naigaon and Bhayander Railway Station. There is no eyewitness to the incident, which shows that the deceased was crossing the railway track and was a trespasser. In the absence of any eyewitness the contention of trespassing, cannot be accepted.

8. Insofar as the submission of the head being separated from the body is concerned, it is possible that the deceased may have fallen and the body must have been cut into pieces by coming under the wheels of the same train or by a train coming from the other side after the deceased fell down. In such a case, when there is no evidence to show how the deceased died and there is no eyewitness to show that the deceased was crossing the railway track, while construing the social welfare legislation and considering the background of the deceased, the claim of the incident not being “untoward incident” or it being “a trespasser” has to be rejected.

9. The Station Master's Report, which is the first document prepared after the incident states reasons “not known”. The Station Master's Report has not stated in this report that the deceased died because of trespassing. In the inquest panchnama, the panchas have stated that they do not know true reason how the person died, though they have stated that railway

dashed and the person died. These panchas were not the eyewitness to the incident and they themselves are not sure about the cause of death.

10. The father of the deceased in his statement on the date of incident to the police station has recorded the routine of his son. This statement available at the first instance should be considered in favor of the appellant for deciding this issue.

11. The Post-Mortem Report and the advance death certificate would only show the nature of injury and cause of death, but not whether the deceased died because of trespassing or crossing the railway track. Railways have not led any evidence to prove that the deceased was a trespasser or was crossing the railway track before being hit by the unknown train. It is also important to note that if the deceased was hit by a moving train, then the Motormen or the Guard would have informed the Station Master of the next station about somebody being knocked down by his train. This is not the fact in the present case.

12. The investigation report is prepared on 17th January, 2012 which is after almost after 09 to 10 months of the incident. This report is prepared on the basis of the documents which are referred to herein above and which were prepared on the date of the incident. The said report admits that the Station Master has not mentioned any cause of incident, but the police report mentions the deceased was knocked down by the unknown train. I have already observed that the police report and the inquest panchnama is not based on eyewitness of the incident and, therefore, to come to a conclusion that the deceased died on account of trespassing cannot be accepted.

13. In view of above, the finding of the Tribunal that the death occurred

not on account of “untoward incident”, but on account of “trespassing” is reversed and the appeal is allowed to the extent challenged herein with a modification on issue no. 3 as stated above.

14. The appellant to make an application to the respondent for grant of compensation of Rs. 4,00,000/- with 6% interest per annum from the date of accident till the date of payment subject to cap of Rs. 8,00,000/-. The bank details of the appellant to be furnished to the respondent and the respondent to remit the amount within 12 weeks from the date of the appellant making application.

15. Appeal is disposed of in above terms.

[JITENDRA JAIN, J.]