

RAJASTHAN HIGH COURT

BhagwaniGiri

Vs.

Union of India

D.B. Special Appeal (Civil) No. 83 of 2002
(Shiv Kumar Sharma & Rajendra Prasad Vyas, JJ.)

14.09.2004

JUDGMENT

Shiv Kumar Sharma, J.

1. The matter has been heard finally with the consent of learned counsel for parties.
2. Instant Special Appeal impugns the order dated January 29, 2002 of learned Single Judge whereby the order dated June 1, 2001 of the Railway Claims Tribunal, Jaipur was affirmed and the claim application of the appellant was disallowed.
3. In the claim application the appellant pleaded that her unmarried son BalendraGiri while coming from Mumbai to Delhi by train No. 9019 on July 26, 1998 fell down from the general compartment between stations Ravada Road and Alniya and died on the spot. After the message about the incident was reported to police inquest report was drawn and the post mortem on the dead body was performed. The appellant filed claim application for awarding the compensation before the Railway Claims Tribunal, Bench *Jaipur*.
4. Undeniably the affidavit of the appellant was not controverted by the Railway Administration despite many opportunities granted to it. The Tribunal however dismissed the claim application. Order of Tribunal was assailed by the appellant by filing Civil Misc. Appeal in the High Court, which was dismissed as indicated above.
5. Learned Single Judge in the impugned order observed that the appellant could not establish the fact that her son BalendraGiri was a *bona fide* passenger at the time of incident. Merely by filing the affidavit the burden could not have been discharged. We find ourselves unable to agree with this finding. The Division Bench of Madhya Pradesh High Court in *Raj Kumar v. Union of India*, ¹ indicated that the burden to

prove that the deceased was a ticketless passenger and was not a *bona fide* passenger is on the Railway Administration. In the instant case since the burden was not discharged by the Railway Administration, the impugned orders deserve to be set aside.

6. In so far submission of learned counsel for the respondent in regard to maintainability of the special appeal is concerned we find it devoid of merit. Learned Single Judge decided the Misc. Appeal of the appellant by invoking Articles 226 and 227 both and in view of the ratio indicated in *AnandiLal v. State of Rajasthan*,² this special appeal is maintainable.

7. For these reasons, we allow the instant appeal and set aside the impugned orders and remit the case to Railway Claims Tribunal, *Jaipur* with the direction to decide the claim application afresh after providing the opportunity of hearing to the parties. The parties are directed to appear before the Railway Claims Tribunal, *Bench Jaipur* on September 30, 2004. There shall be no order as to costs.

Appeal allowed.

Cases Referred.

1. 1993 ACJ 84
2. 1996(2) WLC (Raj.) 36