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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 6th May, 2025**

+ FAO 295/2014

SMT. KANTA DEVI & ORSAppellants

Through: Mr. Ravi Sabharwal, Adv.

versus

UNION OF INDIARespondent

Through: Mr. Krishna Kumar Sharma,
SPC with Mr. Anil Devlal &
Mr. Pradeep Tiwari, Advs.**CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)**

1. Having heard the learned counsels for the parties and on perusal of the record, this Court proceeds to decide the present appeal under Section 23 of the Railway Act, 1989 [**“the Act”**] filed by the appellants thereby assailing the impugned judgment-cum-award dated 22.05.2013 passed by the Railway Claims Tribunal, Principal Bench, Delhi [**“Tribunal”**] whereby the claim for statutory compensation of Rs. 8,00,000/- under Section 16 of the Railway Claims Tribunal Act, 1923 [**“RCT Act”**] on account of death of Rohtash Sadhu was dismissed.

2. In a nutshell, the appellants, who are widow-wife and children of the deceased claimed that on 19.03.2011 the deceased left home at 8.30 a.m. to attend his duties and while returning home, he purchased a ticket from Sarai Rohilla Railway Station to reach Gurgaon i.e. his native place and boarded the Delhi-Rewari Passenger Train at 8.25



p.m. from platform No. 1. It was claimed that the general compartment was heavily crowded and the deceased could only get a standing space near the gate. It was claimed that there was a sudden jerk while the train was moving and due to the thrust from inside the train compartment, the deceased accidentally fell down out of a moving train and was caught between the train and the platform and died instantaneously. It was further claimed that the train ticket of the deceased was lost.

3. Suffice to state that the respondent/Northern Railways contested the petition and denied that the deceased was a *bonafide* passenger and it was denied that he died due to an ‘untoward incident’ on falling down from the train. Learned Tribunal based on the pleadings of the parties framed the following issues:

- “1. Whether this Tribunal has jurisdiction to try the present claim application?
2. Whether the deceased Sh. Rohtash Sadhu S/o late Shri Rattan Lal was a bonafide passenger of Delhi-Rewari passenger train (train number not mentioned) from Sarai Rohilla to Gurgaon as on 19.3.2011?
3. Whether the death of Sh Rohtash Sadhu was caused due to an untoward incident as defined in Section 123 (c) read with Section 124-A of the Railways Act, 1989?
4. Whether the applicants are the sole dependants of the deceased Sh. Rohtash Sadhu and are entitled to get compensation as claimed?
- 5) Relief?”

4. The widow of the deceased came in the witness box and she was examined as AW-1 and she exhibited the documents as Ex.AW-1/1 to AW-1/13. No evidence as produced by the respondent except for filing the DRM Report as Ex.R-1.

5. Suffice to state that the learned Tribunal held that the deceased



if no evidence is adduced either by the applicant or the respondent on that aspect, it is only the applicant, who would stand to lose. Therefore, going by Section 102 of the Indian Evidence Act also, the burden would lie on the applicants to establish that the deceased was a bonafide passenger with a valid ticket.

Section 103 of the Indian Evidence Act lays down that the burden of proof as to any particular fact lies on the person who wishes the Court to believe in the existence unless it is provided by any law that the proof of that fact shall be on any particular person. The applicants wish the Court to believe in the existence of a valid ticket for the deceased for his travel. The Railways Act does not contain any provision shifting the burden on the respondent Railways to prove that the deceased was not a Bonafide passenger and he was not having any ticket or a pass. In the absence of any such statutory provision and going by Section 103 of the Indian Evidence Act, the burden lies on the applicants to establish that the deceased was a bonafide passenger.

Section 106 specifically states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) to Section 106 states, "A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on I him." Based on Section 106 of the Indian Evidence Act coupled with Illustration (b) also, the burden of proving that the deceased was having a ticket for his travel lies on the applicants, who asserted the said fact.

Notwithstanding the above, statutory provisions contained in the Indian Evidence Act relating to the burden of proof, one cannot lose sight of the ground realities and the incapability and impracticability of the legal heirs of the deceased, who is a victim of an untoward incident, to establish that the deceased was a bonafide passenger with a valid ticket in the ; pursuit of their claim for compensation. In giving effect to the benevolent provisions relating to payment of compensation contained in the Railways Act, which is in the nature of a social support and welfare measure, it is true that the rigors of law cannot be permitted to defeat the very objective of the said provisions. It may be that the legal heirs and dependants of the deceased, victim of an untoward incident, may not always be in a position to establish the fact they assert, namely that the deceased was having a valid railway ticket. At the same time, it cannot also be generalized that any victim of an untoward incident or his legal heirs, as the case may be, would be entitled for compensation simply because the body was found lying near the railway tracks. Just as it is not always possible for the legal heirs of the deceased victim to establish that the deceased was



having a valid ticket, it may not be possible for the Railways also to show that the deceased was issued with a ticket especially when the victim was travelling in an unreserved and general compartment, in the absence of any record maintained with regard to the issue of such tickets with reference to the names of the passengers. When such is the situation, and in the light of the attending circumstances, the Tribunal has to make an objective assessment of the material available on record in deciding the question as to whether or not the deceased was a bonafide passenger, in a summary proceeding like the present one and necessarily keeping in view the constraints coming in the way of the applicants in establishing the fact, which they assert.

In the present case, admittedly no ticket was recovered from the person of the deceased though certain other items such as visiting cards and identity cards were recovered. It is to be noted that the incident occurred in the railway premises itself when the train just started off from Platform No. 1. The incident occurred at about 8.30 p.m and immediately thereafter, a report was given by the Station Master to the Railway police at 8.45 p.m. (Ex. AW1/3). After making the necessary entry, DD No. 14-A, the Railway police started investigation almost immediately. It is not though the body of the deceased was found lying unattended for a long time by the side of railway tracks away from the railway station. With the aid of the identity card, the applicants were contacted and Shri Vijay Kumar, one of the sons and 5th applicant identified the dead body of the deceased and he gave a statement, Ex. AW1/9. If really, the deceased had purchased a ticket, it would have certainly been available on the person of the deceased along with other items like the visiting cards and identity cards. It is not the case of the applicants that the deceased was carrying any bag or luggage and he kept the ticket in the said bag and the bag was also lost. According to the applicants, the deceased was returning home from the place of work on completion of duty. It is not their case that the deceased was a regular commuter on a monthly season ticket. Under these circumstances, simply because the deceased is said to have fallen from the train, it cannot be said that he was a bonafide passenger with a valid ticket. That he was a bonafide passenger is a fact to be established based on the evidence in as much as there cannot be any presumption that every person travelling in a train particularly in an unreserved and general compartment holds a valid ticket.

The Learned counsel for the applicants would rely upon a decision of the Division Bench of the Hon'ble High Court of Andhra Pradesh, reported in 2003 ACC 130 (Union" of India Vs Baburao



Koddekar & Ors.), wherein it was held that the burden is on the Railways to prove that the deceased is not a Bonafide passenger with a valid ticket. In fact, in the above case, which was dealing with a batch of appeals arising from the orders of the Tribunal, it was noticed that in all the cases, finding of the Tribunal was that the deceased were bonafide passengers and had valid tickets, which were recovered from their possession or baggage as was evident from the Inquest Report, hi view of the said finding of the Tribunal that all the deceased persons in those cases were having valid journey tickets, the Hon'ble High Court also held that the deceased were bonafide passengers. The above decision, therefore, deals with a case, where tickets were found on the person of the deceased or were recovered during the inquest proceedings, which is not the situation in the present case. The decision cited is, therefore, not applicable to the facts of the present case.

The Learned counsel for the applicants also relied upon a decision of the Hon'ble High Court of Andhra Pradesh, reported in 2010 (4) T.A.C 813 (A.P) in the matter of Union of India Vs V. Santhabai &Ors., wherein, it was held that mere absence of ticket does not by itself lead to a conclusion that deceased was not a bonafide passenger- When parts of body are separated, it would be difficult for a ticket to be intact with the body. In the above case, the deceased boarded the train Hampi Link Express and the destination station was Malkhed Road station. The incident occurred at the place of destination station in the precincts of Malkhed Road railway station when he was about to de-board the train. In the above case also, no ticket was recovered from the person of the deceased. While observing that recovery of a ticket from the person of the ^deceased would certainly prove beyond any doubt that he was a Bonafide passenger, it was further observed that mere absence thereof does not by itself lead to a conclusion to the contrary. While further observing that when parts of body are separated due to fall from train, it will be difficult for a ticket to be intact. It was also held that at the same time, the enquiry as to the bonafide nature of passenger cannot be reduced to an empty formality. It was further held that "In case the ticket is not recovered from the body, the attendant circumstances can certainly be verified. If the passenger has travelled fairly long distance, an inference can certainly be drawn that had he not been a bonafide passenger, he would have been booked by the ticket checking staff. It was also held in the above decision that much would depend on the facts and circumstances of a given case. Noting that the deceased in the above case has travelled all the way from Tandoor to Malkhed Road, which was the place of destination after a long journey, the finding recorded by the Tribunal that he was a



Bonafide passenger was not interfered with.

In the present case, the incident occurred at the start of the journey at Sarai Rohilla railway station on the platform itself. There are no such attending circumstances operating in favour of the applicants to enable the Tribunal to record a finding that the deceased was a bonafide passenger in the absence of the ticket. No doubt mere absence of the ticket by itself does not lead to any conclusion that the victim was not a bonafide passenger and there may be certain situations where the ticket gets lost in the aftermath of the incident. Hence, it would depend upon the facts and circumstances of a given case as observed in the above decision, but no generalization can be made to the effect that every victim of an untoward incident is a bonafide passenger. The fact that dead body was found in the Railway precincts and it was sent for postmortem by the Railway Police does not lead to any inference that the deceased was a bonafide passenger with a valid ticket. Under these circumstances, on the basis of the material available on record, it must be held that the deceased is not shown to be a bonafide passenger with a valid ticket in terms of Section 2 (29) read with Section 124-A of the Railways Act, 1989. Consequently, it follows that the applicants are not entitled to any compensation, as claimed by them. Issue No. 2 is answered accordingly.

Issue Nos. 3 & 4: -

In view of the findings on Issue No. 2 above, it is considered unnecessary to record findings on these two issues.”

7. At the outset, the findings recorded by the learned Tribunal cannot be said to be suffering from any illegality, perversity or incorrect approach adopted on law and facts. Indeed, it appears that the deceased was travelling by the Delhi-Rewari passenger train but the fact of the matter is that the train had just started from the Sarai Rohilla Platform and the deceased fell down at the Platform itself, caught between the train and the platform and met with an instantaneous death.

8. It was not a case where the deceased had to travel for a long distance so as to assume that he must have purchased a valid



railway/journey ticket. If the testimony of AW-1 is believed that the deceased was a daily commuter, he was not holding any Monthly Season Ticket [“MST”]. It is also in evidence that the deceased used to work as a casual labourer for the purposes of loading and unloading at the railway station.

9. Interestingly, the identity card of the deceased was recovered from the spot since the dead body was discovered in almost no time. It is difficult to discern that the railway ticket might have slipped out of his clothes. In other words, no valid railway/journey ticket was found from the body of the deceased. Section 2(29) of the Act is categorical that the passenger would only mean a person travelling with a valid pass or ticket. In the absence of there being found any railway/journey ticket along with the body of the deceased, it is difficult to discern that deceased was a *bonafide* passenger. Although, no criminal negligence can be attributed to the deceased and he indeed died of an ‘untoward incident’, however no liability can be fastened on the respondent.

10. In the aforesaid view of the matter, the present appeal is dismissed.

DHARMESH SHARMA, J.

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