



2025:DHC:3675



\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 09th May, 2025**

+ FAO 127/2017

RAM BABU & ORSAppellants

Through: Mr. Anshuman Bal, Adv.

versus

UNION OF INDIARespondent

Through: Mr. Atul Krishna, Sr. Panel
Counsel.

Mr. Krishan, Adv. for
Revisionist.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. Having heard the learned counsels for the parties and upon perusal of the record, this Court proceeds to decide the present appeal preferred by the appellants, being the widower and minor children of the deceased Harbati, filed under Section 23 of the Railways Claims Tribunal Act, 1987 [**'RCT Act'**], assailing the judgment-cum-award dated 19.05.2016 passed by the learned Presiding Officer, learned Railway Claims Tribunal [**'RCT'**], Delhi, whereby their claim for the statutory amount of compensation of Rs. 4,00,000/- on account of the death of Smt. Harbati, the wife and mother of the appellants, in a



railway accident on 15.06.2013, was dismissed.

2. In a nutshell, the case of the claimants was that the deceased, Smt. Harbati, was travelling from Ajhai to Banchari Railway Station in an EMU train on 15.06.2013; and that her journey ticket had been purchased by her husband from Ajhai Railway Station. It was claimed that due to heavy rush in the train, when it reached KM No. 1456/23-25 between Solaka Railway Station and Hodal, Haryana, Smt. Harbati, who was standing near the gate, fell out from the moving train owing to a sudden jerk and the overcrowded conditions, and sustained fatal injuries. It was further stated that the incident was reported to the police and was registered at GRP, Palwal, Haryana, *vide* DD No. 4 dated 15.06.2013, and the post-mortem of the deceased was conducted at District Hospital, Palwal, Haryana.

3. The respondent/railways contested the claim petition and in their written statement it was claimed that the deceased was neither a *bona-fide* passenger nor she was a victim of an untoward incident as defined under **Section 123(c) read with Section 124A of the Railways Act¹**.

¹ 123 [(c) "untoward incident" means—

(1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(ii) the making of a violent attack or the commission of robbery or dacoity; or

(iii) the indulging in rioting, shoot-out or arson,

by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or

(2) the accidental falling of any passenger from a train carrying passengers.]

124A. Compensation on account of untoward incidents.—When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall,



4. The defence of the respondent/Railways was that the deceased did not sustain injuries as a result of a fall from the train or due to crush injuries; rather, her body was found amputated in three parts, indicating that she was apparently run over by an unknown train while allegedly crossing the railway tracks illegally.

5. During the course of the enquiry, the appellant/husband of the deceased entered the witness box and was examined as AW-1.

6. Suffice it to state that the learned Tribunal found that no railway/journey ticket was recovered from the body of the deceased. Although it appeared that she died due to injuries sustained in a train accident, the Tribunal concluded that the incident occurred as a result of her attempting to cross the railway tracks unauthorisedly.

7. At this stage, it would be apposite to reproduce the findings recorded by the learned RCT while dismissing the claim petition, which read as under:-

“7. Both these issues are interrelated so they are being considered together. The case of the applicants is that in the morning on 15.6.2013 the deceased Harbati was going from Ajhai

notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

(a) suicide or attempted suicide by him;

(b) self-inflicted injury;

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purpose of this section, “passenger” includes—

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.]



to Banchari railway station in an EMU train and the husband of the deceased purchased the ticket from Ajhai railway station to Banchari and the deceased boarded the train in his presence. It has been claimed that there was heavy rush in the train and when the train reached at KM No. 1456/23-25 between Solaka railway station and Modal, Haryana the deceased Harbati who was standing near the gate fell down from the train due to heavy rush and sudden jerk of the train, received fatal injuries and the matter was reported to the police who registered the same in GRP, Palwal, Haryana vide DD No.4, dated 15.06.2013 and the post mortem on the body of the deceased was conducted in Distt. Hospital, Palwal, Haryana vide post mortem NO.PMR/05/PWL/146/2013 and that the deceased was having a valid ticket but the same was lost at the time of the accident. The applicant relied on the memo issued by Station Master, Palwal, Ex.A-1 wherein it is recorded that – as reported by Gate Man Mr. Pritam Singh of 556 Gali one dead body of lady lying main line between HDL-SHLK Section. In the Death Report Ex.A-2 it is recorded as “Train accident”. The applicants placed on record the Fard Jamatalashi, Ex.A-3 wherein it is recorded to the effect that jamatalshi was conducted on the body of the unknown lady and apart from brass bangles artificial, one number Pajeb were recovered. In his statement, Ex.A-4, Budhram E/ASI has stated that he is posted under GRP Palwal as E/ASI and during his duty on 15.6.13 he accompanied the ASI to Km No. 1456/23-25 where a dead body was lying and jamatalashi of the unknown woman was conducted and many people of the village saw the dead body but it could not identified and it appeared that the woman had after falling from the train. Lakhan, Gang Man in his statement, Ex.A- 5 has also stated on the same lines. However none of them was a witness to fall but just given a suggestion that deceased seems to have fallen from train. In the post mortem report, Ex.A-6 which is for an unknown female it has been recorded by the MO that "*in my opinion, the cause of death in this case is shock and haemorrhage due to ante mortem crush injuries to the body parts and compound fractures in the body, which is sufficient to cause death under ordinary course of nature. The possibility of such injuries in an accident cannot be ruled out including railway accidents*". The statement of the first applicant, Ex.A-7 was recorded wherein he has stated that on 15.6.13 his wife deceased Harbati wanted to go to her mother's house and so he purchased a ticket from Ajhai station and got her to board the shuttle and returned to his house and in the afternoon of 15.6.13 he enquired from his brother-in-law (SALA) Rambir whether his deceased wife Harbati had reached there or not and his brother in law told him that she had not reached her village Banchari so he



went to Banchari to search for his wife but could not find anything and on 16.6.13 he saw news in Danik Jagran newspaper about the body of a lady and after reading the newspaper he along with his brother-in-law Rambir and other persons from the village reached Civil Hospital, Palwal and there he identified the dead body as that of his wife Harbati and that he has seen the body closely and it appeared the death of his wife Harbati occurred due to fall from the train. The applicants have also placed on record the statement of Rambir a cousin of deceased as Ex.A-8, reiterating the same facts. The first applicant Ram Babu filed his evidence by way of affidavit and he was examined as AW-1. In his cross-examination he has deposed that his wife went on 15.6.2013 in the morning at 6 O'clock and he came to know about the incident on the next day and he got the information about his wife from the newspaper Danik Bhaskar.

8. Ld. Counsel for the respondent controverted all the facts of the claim application & submitted that the deceased was not a bonafide passenger and was not a victim of any untoward incident as defined under Section 123 (c) read with Section 124A of the Railways Act, 1989 and that the post mortem report and the Inquest report annexed with the claim application show that the injuries sustained by the deceased are not only crush ones but there is amputation of body in three parts which were scattered on the tracks and the deceased was run over by some unknown train while crossing the tacks illegally. No evidence, however has been placed on record by the respondent, even the mandatory DRM report is not produced, hence to that extent adverse inference has to be drawn against the respondent.

9. From the documents on record it is abundantly clear that no ticket was recovered from the person of the deceased whereas as per Fard "jamatalashi, Ex.A-3 brass bangles and pajebis were recovered obviously these were things which she was wearing. There are a lot of contradictions in the deposition of the first applicant Ram Babu. In his cross-examination he has deposed that his wife had gone on 15th in the morning at 6 O'clock and that he had not seen his wife boarding any train or falling from any train but subsequently he has gone on to depose that he had seen his wife boarding the train. In the petition or affidavit there is no mention of ticket. For the first time only in the deposition of AW-1 it has been claimed that he had purchased a ticket for Rs.7/- for his deceased wife and that he had lodged a complaint regarding the loss of the ticket in the Thana at Palwal but he has gone on to depose and admit that he does not have any such complaint which he had lodged in the Thana at Palwal. A perusal of the memo, Ex.A-1 reveals that it is recorded therein that as reported by Gate



Man Mr. Pritam Singh one dead body of a lady lying on main line between HDL- SHKL. Further in the Death Report, Ex.A-2 there is no mention of fall from the train it is only mentioned as "Due to Train" and as per the Naksha of the spot of incident the body was found in three parts. Even in the Post Mortem report dated 16/6/2013, Ex.A-6 which is for an unknown person, it is recorded as "due to train" as per police papers and under Injuries - (1) Both upper limbs are separated out from the body and from the raw area massive bleeding was present some foreign body particles and some part of soft and hard tissue were missing. Muscle tissue was badly cultured. (2) Both lower limbs are crushed and separated out below knee. Some foreign body particles present at the raw areas and Compound # of left side of skull with herniation of brain matter was present.... Another point which is observed that the claim application was filed on 17.1.2014 and that date of incident is 15.6.2013 i.e the claim application was filed after 7 months of the occurrence of the incident and in the amended memo of parties applicant no.4 Durgesh the daughter of the deceased is shown to be an year old i.e. to say that at the time of the incident she must have been hardly a few months old and it is highly unlikely that a woman would leave her few months old child at home and go to her mother's house. The first applicant Ram Babu in his statement, Ex.A-7 has stated that he had purchased the ticket and had got his wife to board the train the morning on 15.6.13 and in the afternoon he had enquired from his brother-in-law Rajbir as to whether she had reached Banchari or not and when he found that she had not reached her mother's house then he searched for her but could not find her and it was only on 16.6.13 that he came to know about her death from the photograph of the body of lady in the newspaper Dainik Jagran. It Is observed that in none of the documents placed on record by the applicant the factum of fall from the train could be established. In the present case non filing of the journey ticket could be set aside had the applicants been able to prove that the deceased had fallen from the train. There is an apparent attempt to project the accident as accidental fall from the train."

8. Learned counsel for the appellants, however, submits that in view of the categorical testimony of AW-1 that he had purchased a journey ticket for his wife to travel to Banchari Railway Station in Haryana near District Palwal, it was erroneous to dismiss the claim merely on the ground that no railway/journey ticket was recovered



from the person of the deceased. It is contended that the absence of a railway/journey ticket on the body cannot be conclusive, as the ticket may have been lost during the course of the accident. As observed by the learned Tribunal, AW-1 initially deposed that he had purchased a railway ticket for his wife, but in the same breath, he admitted that he had not seen her board the train. In fact, it was only during his deposition for the first time that he mentioned having purchased a ticket worth Rs. 7/- for his wife. The testimony of AW-1 does not appear to be truthful and cannot be relied upon.

9. It is also pertinent to note that in the Death Report (Ex. A-2), the cause of death was stated to be due to a train accident. However, there is no other evidence on the record to substantiate that the deceased had actually boarded a train and subsequently fell out of it. On the contrary, the post-mortem report (Ex. A-6) reveals that both upper and lower limbs of the deceased were crushed and separated from the body, effectively leaving it in three parts. These injuries are consistent with a case of the deceased having been run over by a train, leading to complete amputation and fragmentation of the body.

10. Thus, it is not possible to accept the plea that the deceased could have sustained such grievous injuries by falling from a bogie/coach of a train. The Supreme Court in *Union of India v. Rina Devi*², had an occasion to observe that the mere presence of a dead body on railway tracks or premises, cannot by itself, be conclusive proof to establish that injured/deceased was a *bona-fide* passenger.

11. Since the primary burden of proving the aforesaid fundamental

² (2019) 3SCC 572

