



§~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 176/2017 & CM APPL. 32654/2024**

Date of decision: 13th May, 2025

UMESH PRASAD & ANRAppellants
Through: Mr. Sunil Kumar Verma, Adv.
versus

UNION OF INDIARespondent
Through: Ms. Babita Saini, SPC with Mr.
Vedansh Anand, GP and Mr.
Kapil Dev Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **13.05.2025**

DHARMESH SHARMA, J. (ORAL)

1. The appellants, being the parents of the deceased/Sh. Krishna Raj, who allegedly died in the train accident on 04.12.2013, have preferred the present appeal under Section 23 of the Railway Claims Tribunal Act, 1987 ('**RCT Act**') thereby challenging the impugned judgment cum award dated 25.11.2016 passed by the learned Presiding Officer, Railway Claims Tribunal ('**RCT**') dismissing the claim for statutory compensation under Section 16 of the RCT Act.
2. Having heard the learned counsel for the parties and on perusal of the record, this Court has no hesitation in holding that the present appeal is benefit of any merit.
3. Briefly stated, it was the case of the claimants that their son Sh. Krishna Raj was travelling in Sampurn Kranti Train bearing No.12393 from Rajender Nagar to New Delhi on the strength of a railway/journey ticket no.89178177 UTS No.FO 3 FB4T188 and when at about 10.15 a.m., he reached Akshardham Flyover, he fell



down from the running train and suffered fatal injuries.

4. Hence, they sought compensation, which claim was contested by the respondent/Railways relying on the DRM's report to the fact that no valid railway ticket was recovered from the body of the deceased and a defence was raised to the effect that the deceased was unlawfully crossing the railway line and was probably hit by some unknown train. The learned RCT, based on the pleadings of the parties, frame the following issues:-

- “1. Whether the deceased was travelling by the said train at the time of the incident and was a bonafide passenger of the train?
2. Whether it is an untoward incident and is covered of section 123 (c) of the Railways Act, 1989 and Whether the respondent is entitled to protection under Section 124-A the Railways Act and is not liable to pay compensation?”

5. Both the issues were decided against the appellants/claimants. It would be apposite to reproduce the findings recorded by the learned RCT which read as under:-

“In the claim application the applicants have averred that the deceased was travelling from Rajender Nagar to New Delhi in train No. 12393 Sampooran Kranti. The first applicant in his evidence affidavit has stated that the deceased was returning from Quel junction (should have been Kiul as there is no Junction by name Quel) to New Delhi and in support has placed on record an uncertified copy of the journey ticket. A perusal of ticket No.89178177 would reveal that it is valid for journey from Kiul Jn to New Delhi and the journey commenced on 03.12.2014. Admittedly no ticket was recovered from the person of the deceased. The respondent has placed on record Table No.1A of the Indian Railway Time Table which shows that the train No.12393 Sampooran Kranti does not touch Kiul and starts from Rajender Nagar. Even AW1 in his cross-examination has deposed that on 2.12.14 his deceased son was to go from Kiul Jn to Patna and from Patna he was to go to Delhi. Even otherwise if the deceased had boarded train No.12393 on 2.12.14 which departed from Rajender Nagar at 17.35 hours then he should have reached New Delhi on at 08.35 on 3.12.14 but the information about the body was given to the PCR on 4.12.14 as per DD No.9A dated 4.12.14, Ex.A-1. As per Ex.A-1 the PCR had informed that two men have got cut below



the Akshardham flyover and it is also observed that the applicants are resident of Mayur Vihar which is quite near to the place of occurrence of the incident. Therefore it raises a doubt whether the he could have been a passenger at all. There is no cogent case to enter a finding that the deceased was a passenger as defined under the act. I hold the issue against the applicants.

(i). Consistent with the finding rendered above, it Is even doubtful whether the deceased had fallen from any train. The averment of the applicants in the claim application that the deceased was travelling from Rajender Nagar to New Delhi has been falsified from the deposition of AW-1 that his son was travelling from Kiul Jn to New Delhi in train No. 12393 and in support a ticket has also been proved and from the copy of Table No.1 A of the Indian Railway Time Table the said train does not touch Kiul Jn. The documents annexed with the DRM report were prepared in the ordinary course of duties by the Govt. officials & there is no reason to doubt the genuineness & the veracity of the said documents. Thus it is obvious that there was no ordinary incident of fall from the train but that the deceased met with an accident due to his own carelessness and negligence in some other manner rather than due to fall from the train. In none of the documents placed on record by the applicant the factum of fall from the train could be established. There is an apparent attempt to project the accident as accidental fall from the train. The burden of proof rests entirely upon the applicant to prove the untoward incident, within the meaning of section 123(c) read with section 124-A of the Railways Act. In this connection a reference may be made to a decision of Hon'ble Delhi High Court titled as **Jamirul Nisha and another Vs Union of India, 2009 AO 1393**, wherein it is held in para no. 34 & 35 of the decision as under:

"34. From the perusal of section 123 c (2) & 124 A, it is clear that sine qua non" for claiming compensation, on account of death or injury sustained in a tram accident is that the victim of a train accident, or his dependants as the case may be, must first establish that the victim or the deceased had accidentally fallen from the train."

35. In the instant case, applicants have failed to establish that the deceased had accidentally fallen from the train, therefore, the question of proof by the Railways that the death of the deceased was not the result of the untoward incident does not arise.

(ii) In a recent judgment in the case of Gurucharan Singh & Others Vs. UOI, FAO No.507/2011 delivered on 08.01.2014, the Hon'ble High Court of Delhi has observed as follows:-

'the initial onus in my opinion always lies with the



*appellants/claimants to show that there is a death due to untoward incident of a bona fide passenger. Of course, by filing of the affidavit and depending on the fact a particular case that initial onus can be a light onus which can shift on the Railways, however, it is not the law that even the initial onus of proof which has to be discharged is always on the railways and not on the claimants. I cannot agree to this proposition of law that the Railways have the onus to prove that a deceased was not a bona fide passenger because no such negative onus is placed upon the Railways either under the Railways Act or the Railway Claims Tribunal Act & Rules or as per any judgment of the Supreme Court. No doubt in the facts of the particular case, onus can be easily discharged such as in a case where deceased may have died at place where he could not have otherwise been unless he was travelling in the train and in such circumstances depending on the facts of a particular case it may not be necessary to prove the factum of the deceased having a ticket because ticket as per the type of incident of death can easily be lost in an accident. I at this stage take note of a judgment of learned Single Judge of this Court in the case reported as **Pyar Singh Vs. Union of India 2007(8) AD Deih262** which holds that it is the claimant upon whom the initial onus lies to prove his case.'*

(iii) Had the accidental fall as can be covered under Section 123 (c) been established benefit of doubt regarding the loss of ticket could have been given to the deceased in terms of the various ratio of the Hon'ble Apex Court and other High Courts but in the absence of any proof of the fall, It is not possible to do so.

(iv) Under these circumstances on issue 2 it is held that the applicants have not been able to prove death of the deceased due to injuries sustained were on account of any accidental fall from the train amounting to an untoward incident within the meaning of Section 123 (C) read with Section 124-A of the Railways Act as alleged by the applicant and on issue No.3 it is held that the respondents are entitled to protection under Section 124-A of the Railways Act. The Issues are held against the applicant.”

6. On perusal of the aforesaid reasons, this Court has no hesitation in holding that the findings recorded by the learned RCT do not suffer from any illegality, perversity or incorrect approach of law and facts. The DRM Report dated 05.03.2016 clearly brings out that no railway/journey ticket was found from the Jamatalashi of the person of



the deceased on 04.12.2014.

7. During the initial investigation no evidence was brought fourth so as to bring home that the deceased was travelling by any train. The conclusion of the DRM report was that the deceased probably attempted to unlawfully cross the railway lines and was hit by some unknown train. It was the finding of the DRM that the railway track was a busy one and people used to cross the tracks unauthorisedly on that stretch. Even the final police report by SI Om Prakash dated 13.02.2016 brings out that no railway ticket was recovered from the body of the deceased except one identity card belonging to the deceased. Based on the testimony of eye witnesses and GRP officials including the initial SI Om Prakash from the GRP it was concluded that the deceased died while unauthorisedly crossing the railway lines at the spot.

8. It is but a matter of common sense that if the deceased was having a valid railway/journey ticket, the same should have been found on his person. It is not the case of the claimants/appellants that the deceased was traveling along with some colleagues or friends and that persons were retaining the railway/journey ticket for him. Indeed, an unfortunate young life was lost but at the same time merely because the dead body was found on the railway tracks, the respondent/Railways cannot be held liable.

9. The findings recorded by the learned RCT are, therefore, unassailable. Accordingly, the appeal is dismissed.

DHARMESH SHARMA, J.

MAY 13, 2025

Ch