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

% **Judgment reserved on: 27 March 2025**
**Judgment pronounced on: 17 April 2025**

\+ FAO 40/2021

SMT. RAKESH .....Appellant

Through: Mr. Rajan Sood, Ms. Ashima Sood and Ms. Megha Sood, Advs.

versus

UNION OF INDIA .....Respondent

Through: Mr. Akshay Amritanshu, Sr. Panel Counsel with Ms. Drishti Saraf and Ms. Pragya Upadhyay, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**J U D G M E N T**

1. The appellant has preferred this appeal under Section 23 of the Railway Claims Tribunal Act, 1987 [“**RCT Act”**] to set aside/quash the impugned order dated 13.02.2020 passed by the Railway Claims Tribunal, Principal Bench, Delhi [“**RCT**”] whereby the claim petition of the appellant/claimant, under Section 16 of the RCT Act, seeking compensation for the grievous injuries sustained by her in an alleged untoward incident, was dismissed.

2. Briefly stated, it was the case of the claimant/appellant that Smt. Rakesh was travelling from Rohtak to Vivekanandpuri Halt (Sarai Rohilla) on 02.01.2018 in Ashram Express. The appellant had

purchased a valid journey ticket for Rs. 40/- covering travel for two passengers. She had kept the said ticket in her small purse.

3. Upon arrival of the train at Vivekanandpuri Halt (Sarai Rohilla), the appellant and her son approached the gate of the train compartment in order to deboard. While in the process of alighting from the moving train, the appellant accidentally fell down, resulting in grievous injuries. Owing to the impact of the fall, both of her legs had to be amputated, and she also suffered a fracture in her right hand, along with multiple other injuries over her body.

4. It is stated that during the incident, the appellant lost her purse containing the train ticket. She was thereafter immediately moved to Rao Tula Ram Hospital for medical treatment. Subsequently, on 21.08.2018, the appellant filed a claim application before the learned RCT under the provisions of the Railways Act, seeking compensation for the injuries sustained in the said incident. The claim was contested by the respondent/Railways, which filed a Written Statement but did not adduce any oral evidence in support of its case. The respondent relied solely on the Divisional Railway Manager's [**"DRM"**] report.

5. In support of her claim, the appellant examined herself as AW-1. Despite the evidence adduced by the appellant, the learned RCT, *vide* order dated 13.02.2020, dismissed the claim petition. The learned RCT held that the injuries suffered by the appellant did not qualify as being caused by an "untoward incident" as defined under Section 123(c) of the Railways Act, 1989 ["**the Act**"], and hence were not compensable

under Section 124A of the Act.

6. Aggrieved by the dismissal of her claim, the appellant has preferred the present appeal, *inter alia*, on the grounds that the learned RCT failed to appreciate the evidence on record and erroneously concluded that the incident did not fall within the ambit of an untoward incident as contemplated under the Act.

7. Based on the pleadings, learned RCT framed the following issues: -

> "1. Whether the injured was a passenger within the definition of the Railways Act 1989?
> 2. Whether the attempt to get down from the train at a place where there was no stop constitutes a self-inflicted injury as contended by the respondent?
> 3. What is the nature of injuries, if any, sustained by the applicant?
> 4. To what amount of compensation, if any, is the applicant entitled?
> 5. What relief, if any?"

8. As per the DRM Report the injured received the self-inflicted injuries and was injured due to his own negligent act. It is further submitted that admittedly injured was trying to get down at Halt from the running train which is a criminal offence and as there was no accidental fall from the train hence railway is not responsible for the alleged accident. The respondent is protected under the proviso to Section 124-A of the Act as the injured received the self-inflicted injuries due to his own negligent act.

9. The learned RCT decided issues no. 1 and 2 against the appellant/claimant. Hence, this appeal.

## ANALYSIS & DECISION

10. I have heard the learned counsel for the parties and have perused the record including the digitized Trial Court Record.

11. First things first, it would be expedient to reproduce the findings recorded by the learned RCT on issues no. 1 and 2 which read as under:-

> "4. This claim application is filed by Smt. Rakesh it is submitted that on 02.01.2018 Smt. Rakesh was travelling from Rohtak to Vivekanandpuri halt. It is submitted that she was holding valid ticket from Rohtak to Vivekanandpuri halt (Sarai Rohilla) it was submitted that Smt. Rakesh was to travel from Sarai Rohilla to Udaipur and she was having a reserve ticket to travel from Sarai when the incident happened while alighting from the train at Vivekanandpuri halt (Sarai Rohilla). Respondent submitted that as per statement of the injured person she tried to alight from the train when it was in a moving condition and therefore the incident is covered under exception of section 124 (A). Besides this the respondent submitted that no journey ticket was produced by the applicant. As per pleading she was travelling along with her son and ticket was kept in a small money purse which is lost in the incident. Learned counsel for the respondent pointed out that the detail of the incident mentioned in original claim application in column no. 11 of the claim application, applicant has stated that nothing has lost. And then presumption that the ticket might be lost in the incident cannot be drawn in this case. It was also pleaded by the respondent counsel that reserved ticket was produced how only relevant ticket could he lost, he argued that one ticket was produced how it can be presumed that other ticket was lost in the incident. She was present before the Bench was examined as applicant evidence, in her statement given before the Bench she has stated that ticket was kept in her pocket and her son was not accompanying her. She has also stated that my son was to visit somewhere else and therefore he purchased the ticket and kept with me. Learned counsel for the respondent drawn attention of the Court, to statement recorded by GRP on the date of incident i.e. 02.01.2018 in which she has stated that "when train reached Vivekanandpuri halt (Sarai Rohilla) while detraining the train it has started and she fell down and due to this her both legs were damaged someone telephoned 100 no. and then PCR van took

her to Hindu Rao Hospital where she was admitted thereafter she was referred to Safdarjang Hospital and she was undergoing treatment there. She has also stated that from Sarai Rohilla she along with her son was to travel up to Udaipur by Chetak express. She has handed over the ticket from Sarai Rohilla to Udaipur which was of Rs. 780. This ticket pertains to herself and her son Kuldeep." In the same statement she has stated that she was having local ticket which was kept in her purse which is lost during the treatment. Statement of Kuldeep is also recorded he has stated that he alighting by the train first and when his mother was alighting the train started slowly and his mother got injured. There is a controversy in between the statement recorded on the vary date of incident and during investigation proceedings as well as statement given by her before Bench. The injured has stated that someone called 100 no. and she was taken to the hospital by PCR van. In her cross examination she has also confirmed his son was not present at the time of the incident and as per her own statement ticket was kept in a purse Claim which was lost in the incident if the purse is lost how should she hand over the reserved ticket available with her there is and pleading of loss of any purse or any luggage at the time of the incident. In Statutory Enquiry it is also brought on the report that her son traveled up to Kishanganj and from there he came back to attend his injured mother at Hindu Rao Hospital. On page no. 17 filed by the claimant themselves the copy of the statement recorded during investigation proceedings. Wherein she has clearly stated that she has handed over the journey ticket to the police. The statement of Kuldeep is also enclosed by the claimant themselves along with the claim application. He has stated that he detrained from the train first and then his mother detained whereas as per statement given by the injured before the court referred to above she has stated at the time of incident his son was not present. As regards journey ticket is concerned from Rohtak to Vivekanandpuri halt (Sarai Rohilla) applicant could not substantiate their pleadings about loss of the ticket because the injured herself has first given statement that her purse is lost in the incident which is not pleaded in their claim application. Then she has stated in her statement before the Bench that ticket was kept in pocket then what is the truth with regard to the loss of ticket. There is lots of controversy between the statement made by the claimant as well as her son Kuldeep. Kuldeep was not produced by the applicant injured for examination before the Court. Purchase of ticket and loss of ticket is not proved hence, I hold that the injured was not a *bona fide* passenger; therefore, the claimants

> are not entitled to any compensation as per provisions of Railway Act, 1989 being not a *bonafide* passenger. As per admission of injured in her statement that she was trying to alight from the train when train was in moving condition, hence incidence as described is not an untoward incident, it is covered under exception of Section 124-A of Railway Act, 1989. Hence both the issues are decided against the applicants."

12. Needless to state, in view of the abovementioned findings, issues no. 3, 4 and 5 were decided against the appellant/claimant.

13. On a careful perusal of the aforesaid reasons given by the learned RCT, this Court has no hesitation in holding that the same cannot be sustained in law. It is borne out from the record that AW-1 i.e. the claimant/injured lady categorically deposed that she had purchased two tickets for Rs. 40/- for herself and her son for travelling to the desired destination, which were kept in her purse and the same was lost after the accident. The said testimony cannot be said to be untruthful merely for the fact that the rail tickets for the onward journey were kept by her son.

14. The observations by the learned RCT that if the reservation ticket for the onward journey was produced, how could the relevant ticket be lost, is too technical and perverse finding, if not unconscionable considering the manner in which the accident had occurred. Learned RCT committed grave illegality in overlooking the unimpeached testimony of the son of the claimant injured lady AW-2/Mr. Kuldeep to the effect that he had already got down at the platform when the train halted and there was overcrowding and as her mother was in the process

of alighting/ deboarding, the train suddenly started moving and due to the pushing and jostling around by the commuters, she fell down.

15. Therefore, not much can be read into the testimony of AW-1 that her son was not present at the time of accident or the time when she fell down. In all probabilities, the appellant/claimant/injured had a valid railway ticket which was kept in her purse which was lost and there is no doubt that it was a case of 'untoward incident' as she fell down while alighting from the train in the manner explained by her.

16. That being the case, the DRM report dated 05.11.2018 to the effect that she fell down due to her own criminal negligence or that the injuries were self-inflicted, cannot be accepted. There was no question of having any criminal intent so as to exonerate the liability of the Railways under Section 124A of the Act. It was not even a case of sheer negligence as the lady probably got baffled due to the overcrowding and the train had moved while her son had already descended on the platform, therefore, the accident and resultant injuries were suffered by the appellant/injured lady due to the 'untoward incident'.

17. Reference in this regard can be made to the decision in the case of **Sukhdev Kamlani v. Union of India**[1], wherein it was held as follows:

> "**4**… 8. Coming back to the case in hand, it is not the case of the Railways that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due 'to his own criminal act or he was in a state of intoxication or he was insane,

[1] 2011 SCC OnLine Del 3307

or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.

9. The manner in which the accident is sought to be reconstructed by the Railways, the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. **Now negligence of this kind which is not very uncommon of Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or *mens rea.* Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour." (underlining added)**

A reference to para 5 of *Jameela's* case shows that in the said case there was no eye witness of the fall of the deceased from the train and therefore there was no evidence to support the case of the Railways that the accident took place on account of negligence of the deceased. Further, in para 8, the Supreme Court has clarified that in that case, it was not the case of the Railways that the death of the deceased was as a result of self-inflicted injury. It was further noted that it was not the case of the Railways that the deceased died due to his own criminal act. Whatever doubt is there is clarified in para 9 which lays down that once there is a criminal negligence as differentiated from a rash act, the Railways will not be responsible.

**5. It is trite that there is a quite clearer differentiation between negligence and criminal negligence. A simple act of negligence or a rash act would not take the case out of the expression "untoward incident".** However, it is not the law, and cannot be the law, that a person deliberately out of criminal negligence leans out of a train and when he is hit by a pole, then, the Railways can be held to be responsible.

**6.** The reliance on the case of *Smt. Vidyawati* (Supra) is misplaced because in Para 9 of the said judgment it is clearly recorded that no evidence was led by the Railways in the case that anybody had seen the passenger travelling in the train negligently so as to bring his conduct in the exceptions provided for under Section 124A of the Act. Since the stand of the Railways in *Smt. Vidyawati's* case that the deceased was travelling by hanging to the door of the train and

> was struck or hit by the pole and then fell down from the train was not believed, therefore, the ratio of *Jameela's* (supra) case was applied in *Smt. Vidyawati's* (supra) case to hold that a mere act of negligence cannot deny compensation. **(bold emphasis supplied)**

18. In view of the foregoing discussion, this Court finds that the impugned order dated 13.02.2020 passed by the learned RCT cannot be sustained in law. It is evident that the appellant/claimant/injured was a *bonafide* passenger and she fell down not because of her negligence but due to the attending circumstances as she failed to timely deboard the train due to overcrowding which had moved and she probably lost her balance and got injured, suffering permanent disability. The findings given by the learned RCT that the injuries were self-inflicted are perverse and cannot be sustained in law. There was neither any negligence nor any kind of rashness or recklessness on the part of the claimant injured lady.

19. Accordingly, the present appeal is allowed and the appellant is made entitled to a statutory compensation of Rs. 8,00,000/- (Rupees Eight Lacs Only) payable with an interest of 12% per annum from the date of accident i.e. 02.01.2018 till realization.

20. The present appeal stands disposed of.

**DHARMESH SHARMA, J.**

**APRIL 17, 2025**
*Sadiq*