



2025:DHC:1799



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 19<sup>th</sup> March, 2025**+ **FAO 113/2023****KAVITA & ANR.** .....Appellants

Through: Mr. Yash Harshvardhan, Mr. Ketan Bhutani, Mr. Sumit Singh, Ms. Anukriti Tiwari, Mr. Sumit and Mr. Pradeep Singh Negi, Advs.

versus

**UNION OF INDIA** ....Respondent

Through: Mr. Jivesh Kr. Tiwari, SPC with Ms. Samiksha, Adv.

**CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)**

1. The appellants have preferred the present appeal under Section 23 of the Railways Claims Tribunal Act, 1987 ["**Act**"] assailing impugned order dated 03.06.2022 passed by the learned Railway Claims Tribunal, Delhi Bench ["**Tribunal**"] whereby their claim application filed under Section 16 of the Act read with Section 124-A of the Railway Act, 1989 seeking compensation on account of death of their son, namely Rohit Singh, was dismissed.

2. Briefly stated, it was the case of the appellants that their son had gone to Gurugram on 14.05.2018 to search for a job and had informed his father on 16.05.2018 that he had got a job and would be returning back to their native place at Rewari on 17.05.2018. It was claimed that their son



fell from a running train near Khalilpur Railway Station at KM 79/7-8 and his ticket was lost in the incident. The claim was contested by the respondent/Railways *inter alia* raising objections to the effect that the deceased was not a *bonafide* passenger and was a trespasser on railway premises. The Tribunal framed the following issues for adjudication on 28.12.2021:

- “1. Whether the deceased was a bona-fide passenger in the train in question at the time of incident?
2. Whether there was any untoward incident as is defined under the provisions of Section 123(c) read with Section 124A of the Railways Act, 1989?
3. Whether the applicant(s) is/are dependent(s) of the deceased under the provisions of Section 123(b) of the Railways Act, 1989?
4. Whether the applicant(s) is/are entitled for any compensation and interest as prayed for in the application?”

3. Suffice it to state that the Tribunal after appreciating the oral and documentary evidence on the record came to the conclusion that the appellants had failed to show that the deceased was a *bonafide* passenger; and that he was not a victim of any ‘untoward incident’, and therefore, issues No. 1 and 2 were decided against the appellants and the claim petition was dismissed.

4. Having heard the learned counsels for the parties and on perusal of the record, this Court has no hesitation in holding that the impugned order passed by the Tribunal cannot be sustained in law. The reasons are not far to seek. It would be expedient to reproduce the findings recorded by the Tribunal *vide* issues No.1 and 2, which go as under:

**“Issue Nos. 1 and 2:-**

6. These issues are taken up together as they are interconnected. The claimants have stated that the deceased had



gone from Rewari to Gurugram on 14.05.2018 in search of a job. He had informed his father on 16.05.2018 that he had got a job and he would return back to Rewari on 17.05.2018. Counsel for the Applicant argued that during his journey from Gurugram to Rewari the deceased accidentally fell from a train and died as a result thereof. His ticket was lost in the incident and the police identified him through his Aadhaar Card. Respondent Counsel, on the other hand, argued that there was no evidence of any train travel, purchase of ticket or fall from train of the deceased and all the records and evidence of the case point to the fact that the deceased was not a bonafide passenger and that he was run over by some train.

7. After hearing arguments and perusal of records it is seen that a memo was issued by Station Superintendent Rewari on 17.05.2018 at 14:50 hrs. to the GRP/RPF stating that Keyman Harish had given information that one person is lying dead between Rewari and Khalilpur Railway Stations between the Up and Down lines. A joint memo prepared by GRP Rewari and filed by claimants, Ex. A-4, and also filed at page 138 of DRM Report, has recorded that on receipt of information from Station Superintendent Rewari the GRP reached the accident spot and found that a dead body of a male was lying at KM 79/2-5. His body was badly mutilated and his clothes were torn and parts of his body were scattered around the Railway track. Some educational certificates and Aadhaar Card of the deceased were found at the spot, which helped to identify him as Rohit son of Gajender Singh. It is specifically recorded in this joint report that no ticket or travel authority was recovered from the deceased. In its final report, Ex. A-12, the police has concluded that the cause of death is "*Rail Durghatana*" and the same is recorded in the Post-Mortem Report also. The Post-Mortem Report has recorded that the entire body was badly crushed and the cause of death is crush injuries, which can be caused due to Railway accident. A *Naksha* attached to the Police Death Report shows that the upper part of the body was found outside the Up Line, marked 'A', while other parts of the body were found at different locations marked 'B' and 'C', and his bag was at 'D' and skin was scattered around.

8. An analysis of all these facts shows that the applicants have not been able to file any evidence which can indicate that the deceased was a bonafide passenger and had fallen from a train. No ticket was recovered even though Aadhaar Card and educational certificates of the deceased were found. No one has seen the deceased purchase a ticket, board any train or fall from it. The train on which the deceased was said to be travelling has not been identified. The Police Death Report and the Post-Mortem Report



have recorded "*Rail Durghatana*" as cause of death . However, "*Rail Durghatana*" is an omnibus phrase, which does not necessarily point to an accidental fall but could also indicate that the person was hit or run over by a train. In fact, the condition of the body which was badly crushed and mutilated and parts of the body had been found scattered at different places shows that the deceased was run over by a train. The place of occurrence is between Rewari and Khalilpur at KM 79/7-8 which is admittedly only about 4 KMs from Rewari Station and, therefore, near the station of residence of the deceased. The entire circumstances of the case and the evidences on record clearly show that the deceased was hit and run over by a train as the serious and grievous injuries recorded in the Post-Mortem and the mutilation of the body cannot occur from a fall from a train but are consistent with a case of run over by a train. The claimant himself was not an eyewitness and the evidence on record shows that his affidavit is not correct and has been filed only to extract compensation from the Railways.

9. In the light of all these facts and analysing the matter in totality, it is held that the deceased was neither a bonafide passenger nor a victim of any untoward incident and, therefore, issue numbers 1 and 2 are both decided against the claimants.”

5. **First things first**, it is brought out from the memo issued by the Station Superintendent, Rewari on 17.05.2018 at about 14:50 hours to the GRP/RPF that he had been given information by Keyman Harish that one person was lying dead between Rewari and Khalilpur Railway Stations between the Up and Down lines. This led to preparation of a joint memo by the GRP, Rewari (Ex.A-4) that recorded the remarks to the effect that a dead body of a male was lying at KM 79/2-5, which was badly mutilated and his clothes were torn and parts of his body were scattered around the Railway track. It was recorded that the educational certificates and Aadhar Card of the deceased were found at the spot, on the basis of which the identity of the deceased was established as Rohit s/o Gajender Singh. In the final report (Ex.A-12) it was concluded by the police that the cause of death was '*rail durghatna*' and the *post mortem* recorded the same as well.



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6. It is also pertinent to mention that in the *Naksha*/Site Plan attached to the Police Death Report, the upper part of the body was found outside the Up Line, marked 'A' while other parts of the body were found at different locations marked 'B' and 'C' besides his bag at point 'D' with skin scattered around. Although the appellant No.2/Gajender Singh was not an eye witness to the accident, it was his categorial statement on an affidavit that his son had gone to Gurugram on 16.05.2018 seeking a job in a company located thereat and on being informed of the incident, the appellant reached Civil Hospital, Rewari where the dead body of his son was handed over to him after the *post mortem*. On being questioned, he testified that his son had gone along with his friend and both had bought tickets for coming back to their native place and his son had called him before boarding the train to tell the appellant that he had secured a job and would be coming back to his native place at Rewari after boarding the train at 11.30-12 p.m. The said statement of the appellant No.2/claimant Gajender Singh was not challenged in any manner.

7. The fact of the present case speaks for itself insofar as the body of the deceased was badly mutilated which is clearly suggestive of him falling from a running train and getting crushed alive under the wheels of the running train. In the said scenario, it cannot be denied that it was not a case of 'untoward incident' within the meaning of Section 123(c) (2)<sup>1</sup> of the Railway Act, 1989. As regards the issue of their being found no valid ticket on the body of the deceased or around it, given the manner in which the deceased fell down and considering that his body parts were scattered all around, the possibility of a ticket having been lost due to the sheer impact

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<sup>1</sup> (2) the accidental falling of any passenger from a train carrying passengers



of the incident cannot be ruled out.

8. Learned counsel for the appellants in this regard relied on the decision passed by the Madhya Pradesh High Court in the case of **Mrs. Shanti v. Union of India**<sup>2</sup> wherein a similar situation had arisen where the deceased had died from falling off a running train and it was held to be a case of ‘untoward incident’. It would be expedient to reproduce the relevant operative portion of the aforesaid decision which go as under:

“11. In the said context, it is to be examined that the case of deceased passenger carrying in train and died due to accident and fall in any of the exception; or with the ticket to establish that he was a bona fide passenger, the burden lies on whom. As per Section 101 of the Evidence Act, the burden of proof places on a person whoever desires in any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, whether the said principle may be made applicable in the case of a railway accident, where passenger has died and the claimants have come to know about his death from the horses mouth and on receiving intimation, after enquiry should have reached on spot and found the dead body. In such a case it cannot be presumed from the claimants to search the ticket from the clothes of the deceased, and its belongings in place of going to fulfil the legal formalities to find out the dead body. It may be observed that the family members or the dependents would first identify the body and shall go for ritual or cremation of dead body without searching the ticket except making such averments. In such circumstances, it can safely be observed that it would be extremely difficult or impossible to the family members to prove that the deceased was possessing a valid ticket because it is beyond to their reach and control. It can safely be understood that the claimants may not be in a position to prove that the deceased had purchased a valid ticket and was a bona fide passenger. Since the railway administration appoints a ticket collector and also having a vigilance team to search the ticketless passenger and can take recourse of the penal provisions as specified under Sections 137, 138, 139 and 179 of the Railways Act. In such circumstances since the railway administration having a mechanism to find out the passengers travelling without valid ticket or pass adopting the recourse as permissible. In such circumstances, presumption can be

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<sup>2</sup> Misc. Appeal No. 617 of 2008 dated 24.07.2012



drawn in favour of the citizen of abiding the law while having journey through train with valid ticket being bona fide passenger. At this juncture the principle of common law can be noted that "every man is innocent till proved guilty". In the said sequel of facts it can safely be presumed that the ticket collector would have examined whether the deceased possess a valid ticket or not, however, the railway administration can easily prove that the deceased was not a bona fide passenger as the proof lies with them. At this stage, looking to the facts of the present case, it is apparent that the deceased was going from Betul to Amla which is a journey by passenger train of approximately 45 minutes. During such period, if a person has travelled without ticket the ticket collector checking the train must have checked the ticket of the deceased and if he was found without ticket must have collected the fare as specified under Section 138 or penalized as per Section 137 of the Railways Act. In such circumstances, the burden of proof shifts on the railway administration to lead evidence for proving that the deceased was not a bona fide passenger. The said material may be available with the railway administration which is not produced in this case. In the said context, it can safely be held that the burden of proof shifts on the railway administration in the railway accident claim cases.”

9. This Court is also of the view that in the peculiar facts and circumstances of the case where, the nature of injuries suffered by the deceased would bring out a case of ‘untoward incident’, it would be sheer travesty of justice if the defence of the Railways is accepted that the deceased was not travelling with a valid railway ticket. At the cost of repetition, considering the manner in which the deceased died, it cannot be ruled out that the railway ticket might have fallen out of the pocket or might have got lost in the process when the deceased fell from the running train. No evidence has been led on behalf of the respondent/Railways that any Ticket Checker was present or that he found the deceased travelling without a ticket. It was not even expected on the part of the Police to first locate the railway ticket and then take care of the body for performing the necessary legal process. In all probability, the deceased was a *bonafide*



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passenger travelling by train and he fell out of the running train, consequently sustaining fatal injuries that have been described above. There is no defence taken by the respondent/Railways that it was a case of suicide or that the deceased was rash and negligent in any manner, and therefore, it is not reflected that the case of the deceased falls under any of the exceptions specified under Section 124A of the RA Act.

10. In view of the foregoing discussion, the present appeal is allowed and the impugned order dated 03.06.2022 is hereby set-aside. The appellants are awarded a total compensation of Rs. 8,00,000/- (Rupees Eight Lacs Only) along with interest @ 12% per annum from the date of incident i.e. 17.05.2018 till realization. The amount of compensation be apportioned 3:1 in favour of the appellants i.e. 3/4 to the mother and 1/4 to the father, along with accrued interest.

11. The parties are left to bear their own costs.

**DHARMESH SHARMA, J.**

**MARCH 19, 2025/***Sadiq*