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

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\+ **FAO 154/2023**

NISHA DEVI & ORS. .....Appellants
Through: Mr. Rajan Sood, Ms. Ashima Sood and Ms. Megha Sood, Advocates (M: 9311903346).

versus

UNION OF INDIA .....Respondent
Through: Mr. Vivek Sharma, Senior Panel Counsel with Mr. Aryan Dev Panday, Advocates (M: 9810418275).

**CORAM:**
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. The present appeal has been instituted against the judgment dated 13.12.2022 passed by the Railway Claims Tribunal, Principal Bench [hereafter referred to as the "Tribunal"] in Claim Application No. OA/II(u)/DLI/15/2021, titled "Nisha Devi & Ors. vs. Union of India".

2. Vide the aforesaid judgment, the appellant's claim seeking death compensation was rejected by the Tribunal.

3. Mr. Rajan Sood, learned counsel for the appellants, contended that the Tribunal fell into error while deciding the issues against the appellants. He submits that not only was the appellant/*Nisha Devi*'s husband a *bona fide*

passenger, but he also suffered a fatal injury in an "untoward incident" which occurred on account of the train journey undertaken by him.

4. Learned counsel for the respondent, on the other hand, has disputed the aforesaid submissions and, while referring to the statement of one *Kamlesh Singh* (Loco Pilot), stated that the deceased suffered a fatal accident while crossing the train tracks, and the same is a case of suicide and does not fall under the definition of an "untoward incident".

5. In the claim application filed by the wife of the deceased seeking death compensation, it was claimed that the deceased, *Ravi Kumar*, undertook a journey from *Lucknow* to *Shikohabad* by *Marudhar Express* (Train No. 14865). The deceased was aged 30 years and fell down near *Karaura Station*, resulting in grievous injuries which eventually proved to be fatal. The claim applicant tendered an affidavit and was examined as AW-1. The claim applicant also examined one *Dipesh Kumar* as AW-2, who deposed that he was the brother-in-law of the deceased. He further deposed that 15 days prior to the incident, he had gone to *Lucknow* and was working in a nursery. He further deposed that he had accompanied the deceased to Platform No. 5, and that the deceased had purchased a journey ticket from *Charbagh*. He stated that the *Marudhar Express* had arrived at Platform No. 5 and that the deceased had boarded a general compartment attached at the rear end of the train.

6. The respondent, on the other hand, while contesting the appellants' claim by filing its written statement, relied upon the DRM report and further examined *Kamlesh Singh*, Loco Pilot of the train bearing no. 12595 (*Hamsafar Express*). In his deposition, *Kamlesh Singh* deposed that he was

the Loco Pilot of Train No. 12595 and on 13.12.2019 when his train reached between *Karaura-Shikohabad* (1201/31-33 KM), one person suddenly appeared on the railway track. Though he continuously honked and applied the brake, the said person was run over. He further stated that the information of the incident was shared with Dy. Station Superintendent, *Kaurara*, as well as TLC, *Tundla*. He also recorded the details in the Driver Note Book.

7. Coming to the first issue as to whether the appellant was a *bona fide* passenger. It is an admitted fact that the deceased was not found in possession of any valid journey ticket. The issue as to whether or not a passenger whose journey ticket is not recovered can be considered a *bona fide* passenger has come up before the Courts in a number of cases. In this regard, this Court deems it expedient to refer to the judgment of the Supreme Court in Union of India Vs. Rina Devi[1], wherein it was held as under:

> *"29. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."*
>
> (emphasis added)

8. In the present case, the affidavit of *Dipesh Kumar* states that the deceased had undertaken the journey after purchasing a valid journey ticket.

[1] (2019) 3 SCC 572

In view of the above, this Court is of the view that, in terms of the decision in Rina Devi (*supra*), the appellant has discharged his initial burden with respect to the deceased having purchased the journey ticket, which was eventually lost and could not be recovered.

9. Coming to the next contention as to whether or not the death had occurred in an untoward incident. The respondent has relied on the DRM report and the testimony of *Kamlesh Singh* (Loco Pilot of Train No. 12595).

10. A perusal of the record shows that the first information of the incident was recorded in the Station Master Memo, wherein it was recorded that a man had been run over between 1201/31-33 KM. The *panchnama* was also prepared with the aforesaid information. Pertinently, though the accident occurred on 13.12.2019, the statement of *Kamlesh Singh* was recorded for the first time on 29.05.2021 in the DRM proceedings, i.e., after a period of more than one and a half years. Notably, it has come in the evidence of *Kamlesh Singh* that he had mentioned the incident in the Loco Pilot Book, a copy of which has been placed on record. A perusal of the same shows that it only records that a man has been run over, and is completely silent as to what has been stated by *Kamlesh Singh* in his statement recorded during DRM proceedings or in Court deposition. The DRM report itself was filed on 21.06.2021, i.e., much beyond the stipulated time period.

11. Learned counsel for the appellant claimed that the deceased was not a trespasser and, in this regard, referred to Section 147 of Railways Act, 1989, which reads as under:

> *"**147. Trespass and refusal to desist from trespass.—***
>
> *(1) If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses*

> *such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:*
>
> *Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of five hundred rupees.*
>
> *(2) Any person referred to in sub-section (1) may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid."*

It is submitted that if someone has a valid ticket and enters the railway track, then he does not become a trespasser. Notably, the said contention has found favour with Courts in Rahnuma & Ors. Vs. Union of India[2], C. Solaiappan & Anr. Vs. Union of India[3], and Ramaavatar @ Ramotar Prajapati and Ors. Vs. Union of India[4].

12. In a *catena* of decisions, the Supreme Court has repeatedly held that the provision pertaining to compensation in Railways Act is a beneficial piece of legislation and should accordingly receive a liberal and wider interpretation instead of a narrow and technical one. Further, the liability under Section 124A has been held to be strict. The aspect of belated filing of a DRM report has been commented upon by this Court in Vikrant & Ors. Vs. Union of India[5], the relevant extracts wherefrom are as under:

> *"11. The aspect of belated filing/preparation of DRM report had come up before the Supreme Court in Kalandi Charan Sahoo and Ors. v. General Manager, South-East Central Railway reported as MANU/SC/1811/2017 where, while holding the appellants entitled to compensation, it was observed as under:-*

[2] 2025:DHC:5335
[3] CMA No. 2814/2015 dated 08.03.2021 (Madras High Court)
[4] 2025:MPHC-JBP:56408
[5] 2022:DHC:004320

> *"2. Though Rule 7 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (hereinafter referred to as 'Rules') mandates the railway authorities to investigate into such an untoward incident. Admittedly, no such inquiry was conducted immediately after the incident. It is only when the Appellants filed the claim before the RCT on 27.2.2009 that investigation into the incident was ordered on 23.4.2009. ...*
> *3. ...Going by the aforesaid provisions and in the peculiar facts of this case, where no inquiry as mandated by the Rules was conducted immediately after the incident had occurred, we are of the view that the Appellants shall be entitled to compensation payable Under Section 124-A of the Railways Act, 1989.*

*12. This Court, in Bhola v. Union of India reported as MANU/DE/3000/2018, has held delay in initiation of DRM Inquiry to be fatal to the facts of the case, as what needs to be essentially gathered is what happened on the date of the accident. In the captioned case, it has been opined as follows:-*

> *"2. There is a delay of 14 months in submitting the DRM Report. It states that in his statement to the Police, the claimant had stated that he was travelling in 14312-Ala Hazarat Express whereas in the statement before the Railway authorities, he had stated that it was 13111-Lal Qila Express. The report recorded that the appellant Bhola had been injured in an accident near Lal Qila. Evidently, this recording of an accident near Lal Qila led to the confusion that the accident happened while travelling in Lal Qila Express. The appellant requested for an amendment of his claim petition, for correction of this error but his request was declined. The claim was disallowed on the ground that neither a ticket was found on the claimant at the time of the accident nor was the claim petition supported by a railway ticket to prove his being a bona fide passenger.*
> *xxx*
> *4. The claim petition was filed on 27.07.2014, the DRM Inquiry was initiated thereafter and a report was filed 7 months later. The delay in initiating an inquiry is fatal to the facts of the case because what essentially needs to be gathered is what happened on the date of accident. The medical reports and the police records show that an accident happened on 08.10.2012 and the cause of the accident was, the appellant having been fallen from a moving train. The DRM Report does not address any of these aspects. On the contrary it says that since no ticket was produced to support the claim of the appellant, of him being a bona fide passenger,*

*therefore by conjecture, he could have well suffered a self-inflicted injury while crossing the railway tracks. Reliance was placed upon the judgment of the Supreme Court in Kalandi Charan Sahoo and Anr. vs. General Manager, South-East Central Railways, Bilaspur in Civil Appeal No. 5608/2017. 5. The delay in intimation of the DRM Inquiry, the silence about the specifics of the accident makes the DRM Report of no consequence."*

*13. While referring to the decision in Kalandi Charan Sahoo (Supra), this Court in Union of India v. Mithlesh & Ors. reported as 2018 SCC OnLine Del 8424 has reiterated that a belated DRM report would be of no consequence. Relevant excerpt from the decision is reproduced hereunder:-*

*"3. The learned counsel for the respondents submits that the DRM Enquiry was initiated in 2016 for an accident which occurred three years earlier. The Court is of the view that the said DRM Report would be of no consequence since all the relevant material would have been obliterated by that time. It could at best be an empty formality. For a DRM report in a railway accident, the inquiry ought to have been initiated immediately and not later than a day or two of the information of the accident/untoward incident. Some form of inquiry which is started after three years of the untoward incident, can only rely on the records and extrapolate on the same. Such explanation can attempt to persuade but it would be of no evidentiary value. Reference is made to the decision of the Supreme Court dated 25.04.2017 in Civil Appeal No. 5608/2017, titled: Kalandi Charan Sahoo v. General Manager, South-East Central Railways, Bilaspur."*

*It is worthwhile to note that the decision in Mithlesh (Supra) was assailed by way of an SLP, however, the same was dismissed by the Supreme Court.*
*14. In view of the judicial dicta referred hereinabove, this Court is of the view that reliance sought to be placed by the respondent on DRM Report dated 25.11.2016 is of no avail."*

13. As regards negligence, the Supreme Court in Rina Devi (*supra*) has observed as under:

*"10. In its written submissions, the appellant has dealt with the issues of quantum of compensation, definition of passenger and strict liability. It has been submitted that the view taken in Kalandi Charan Sahoo (supra)*

*was a correct view. Reference has also been made to the view taken by the Railway Claims Tribunal, Bangalore Bench in its judgment dated 19th February, 2018 in Rahamath Ulla and Ors versus Union of India. As regards the definition of passenger and presumption to be drawn from the dead body found on the railway premises without any ticket, it is submitted that if no ticket is found from the body of the person, presumption of being a bona fide passenger could not be drawn. Contra view of the Patna High Court in Kaushalya Devi (supra) was erroneous and view of Delhi High Court in Gurcharan Singh versus Union of India and Andhra Pradesh High Court in Jetty Naga Lakshmi Parvathi versus Union of India was correct law. With regard to strict liability, it is submitted that a distinction has to be drawn between an 'untoward incident' and a 'run over'. It is submitted that in view of Kamrunissa (supra) claimants should be put to strict proof of liabililty. There are 38000 cases pending in Tribunals. Railway administration grants compensation in all genuine cases. If in spite of non recovery of ticket, the claimant is exempted from the burden of proof and the Railway is required to meet such claim, the liability of the Railway will increase disproportionately. At present, Railway was paying approximately Rs.350 crores as compensation. There are 68,000 kilometers of railway tracks which are porous/unmanned resulting in untoward incidents for which liability ought not to be fastened on the Railways without valid proof of its liability. Andhra Pradesh High Court in Union of India versus Kurukundu Balakrishnaiah rightly held that norms of evidence cannot be completely ignored."*

14. In Union of India vs. Prabhakaran Vijaya Kumar and Ors.[6], it was held that the liability under Section 124A of the Railways Act is, in principle, a strict liability. It was held that in such cases, no proof of fault on behalf of the Railways is required and contributory negligence was not found to not be an acceptable defence.

15. In the present case, the testimony of *Kamlesh Singh* (Loco Pilot) does not inspire confidence as firstly, his statement was recorded in the DRM proceedings after one and a half years, and since whatever has been said in the Court deposition is not reflected in the Loco Pilot Book. Accordingly,

[6] (2008) 9 SCC 527

this Court is of the considered opinion that the death of the deceased occurred in an "untoward incident". The post-mortem report also reflects that the death of the deceased occurred on account of a head injury.

16. In view of the aforesaid, the appellants are held to be entitled to compensation.

17. Accordingly, the matter shall be listed before the Railway Claims Tribunal on 30.01.2026 for the purpose of awarding compensation in terms of the Railway Accident Compensation Rules, 1990. The compensation granted thereof shall be remitted within a period of 8 weeks.

18. The present appeal is disposed of in the aforesaid terms.

**MANOJ KUMAR OHRI**
**(JUDGE)**

**JANUARY 15, 2026**
*pmc*