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

% *Judgment delivered on: 15th May, 2019*

+ **FAO No. 519/2016 & C.M.Nos.41305-06/2016**

GANESH JHA & ANR. Appellants

Through: Mr. D. Sabharwal, Advocate.

Versus

UNION OF INDIA Respondent

Through: Ms. Perna Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This appeal impugns the judgment dated 12.02.2014 passed by the Railway Claims Tribunal, dismissing the appellants' claim under section 125 of the Railways Act, 1989 (in short 'the Act') for compensation of Rs. 8,00,000/- for the death of their son due to a rail accident.
2. It is the appellants' case that: i) on 06/07.07.2012, Roshan Kumar - the deceased, while travelling from Sitamarhi (Bihar) to Anand Vihar (Delhi) by Lichhivi Express, fell from the crowded compartment near Balrai Station and died on the spot, ii) the deceased had purchased a IInd class rail ticket, iii) he was travelling with his brother namely, Vikash and another companions, iv) the younger brother informed the parents about the incident, and v) reached Balrai Railway Station with them to identify the body.

3. The respondent refuted the claim on the grounds that: i) the alleged incident did not come under the category of ‘untoward incident’, as defined under section 123 (C) (2) of the Act, ii) as per the memo, issued at 06.25 hours by SM/Jaswant Nagar dated 08.07.2012, a person was found dead near LC gate no 38C at Km 1180/10-11, iii) the police recovered a school identity card from the person of the deceased, iv) according to the police the school authorities were advised to inform the family and v) the Panchnama confirms that the family of the deceased was informed through the police.

4. The grounds of the appeal are that: i) the deceased being a *bona fide* passenger on the said train is an admitted fact, ii) the DRM report concluded that the death was on account of an ‘untoward incident’, iii) the deceased was travelling on a valid ticket bearing no. 07866789, copy of which is already part of the record, and iv) some contradictions in the statements cannot be the reason for the dismissal of the claim petition.

5. The issues framed by the learned Tribunal were:

“(1) Whether the death of the deceased has occurred as a result of an untoward incident, as defined under section 123 (C)(2) of the Railways Act, 1989 and as alleged in the claim petition?”

(2) Whether the deceased was a bonafide passenger of the train in question on the relevant day?

(3) Whether the application of Shri Ganesh Jha is maintainable?

(4) To what order/relief?”

6. The impugned order found the appellants' case baseless because: i) it finds it odd that a group of persons traveling with the deceased, including a person who called herself his sister viz. Neetu, did not raise an alarm and no other person reached out to pull the chain to stop the train when the deceased fell in the midnight of 6th and 7th July, 2012 when the train was passing through Balrai Railway Station. He died on the spot. Neetu had deposed that she was accompanied by deceased Roshan, alongwith her brother Vikash and a friend Ravi Kumar. She also stated that the deceased fell due to jostling of passengers inside the crowded compartment. One train ticket bearing no. 07866729 has been brought on record. A doubt is raised as to why the relatives of the deceased i.e. his co-passengers, were not able to show, as to why the body of the deceased was discovered by the police at 6.25 am the next day and the same remained unidentified till 12.50 hrs on the day thereafter especially when it is the case of the appellants that the deceased was not travelling alone. In her cross-examination, she had stated that she was also accompanied by two minor children, aged 9 and 7 years. The learned Tribunal found that no ticket had been purchased for the two minors and found her testimony not believable, because she stated to have entered the IInd Class General Coach from the middle of the compartment, whereas, according to the learned Tribunal the entrance for such coaches is not from the centre. It is not clear as to how the deceased's brother was able to inform the parents about the incident and also come along with them to identify the body, as he was first on his way to Delhi. Initially, it was stated that the deceased was travelling along with his younger brother and one another companion, but the name of the companion was not disclosed. Subsequently, Geeta Devi- mother of the deceased stated in her affidavit, that the deceased

was travelling with his younger brother and 2 other companions but the identity of the companions was not disclosed. She later on contradicted her own statement by saying that the deceased was accompanied by his sister, brother and a friend. She also stated that she along with Vikash, the younger brother and other family members went to identify the body, but earlier it was stated that the brother along with his parents identified the body. In her deposition, she also stated that the deceased was studying in Municipal School, Sagarpur but the school identification card recovered by the police from the person of the deceased specifically mentions him to be studying in Class VII- B in Govt. Boys School No.2, Janakpuri, New Delhi.

7. The impugned order found that neither the brother nor the sister, who were allegedly travelling with deceased Roshan, saw the deceased having fallen from the train nor raised an alarm to stop the train, as this would have been the most normal reaction. The other persons travelling with deceased Roshan were Vikash and Ravi Kumar. Vikash got down at Tundla Railway Station in the afternoon of 08.07.2012. The learned Tribunal found it irregular that nobody could identify the body of Roshan upto 2.00 pm of 09.07.2012. The body was found near the LC Gate No.38C at 06.25 hours on 08.07.2012. The deceased was identified by the school identity card. Without going into the details of the incident and because no foul play was suspected, the panchnama closed the case as one of accidental fall from a train.

8. However, what emanates from the above is that that the Railways itself had recorded that the deceased had died due to fall from the train. This is supported by the statement of the claimants that the deceased was travelling alongwith his sister and two other adults, on a ticket bearing no. 07866729

meant for four adult passengers, would be sufficient evidence of their travelling together. As a sequitor, this Court would consider the deceased to have been travelling on a valid passenger ticket. While at some stages during recording of their evidence, the claimants and their witnesses have managed to contradict their own statements but the same are not of such nature as to render the evidence worthless and/or untrustworthy. In the present case, it already stands proven that the death of the deceased was due to his falling from the train. Nothing has been brought on record by the respondent to prove to the contrary. In order to reject the claim of the appellants, the respondents ought to have proven that the death of the deceased was not due to falling from the train and/or that he did not have a valid ticket.

9. It is not in dispute that the Railway Authorities had recovered the body of the deceased near railway tracks and it was concluded that it was on account of a fall from the running train. The fatality on account of a rail accident is, therefore, confirmed. All that has to be seen is whether the deceased had a valid train ticket or not. The claimants have produced a train ticket, which was valid for four adults; the deceased was stated to have been travelling alongwith three other persons i.e. his brother Vikash, his sister Neetu and one Ravi Kumar, a friend of Vikash. The genuineness of the passenger ticket is not in doubt. Neetu had stated that the deceased had fallen down from the train compartment because of jostling of passengers inside the crowded compartment. There is no witness or proof regarding this falling off from the train. The impugned order has reasoned that if the compartment was so crowded and that a person had fallen down, then somebody would have stopped the train or intimated the Railway Authorities in some way.

10. The accident is stated to have happened sometime around midnight. It is possible that people in the crowded compartment had dozed-off or not been alert when the deceased, one among the many, may have just slipped down from the train. It is also possible that his relatives did not see the deceased falling off from the train, but they only realized his absence later on, when they arrived at their destination.

11. The fact that his co-passengers or relatives did not or could not raise an alarm, would by itself not be a reason for declining the claim, because what has to be proved is that the injury/fatality occurred on account of a rail accident and that the victim had a valid train ticket. In this case, a valid passenger ticket bearing no.07866789 has been proved. Nothing has been brought on record to suspect the validity of the said ticket, or to conclude that it had been procured by the claimants fraudulently only to make out a claim for compensation.

12. The statement of Geeta Devi- the mother, that the deceased was studying in a government school in Sagarpur, when he was actually studying in a government school in Janakpuri, is not fatal to her testimony because both Sagarpur and Janakpuri are adjacent colonies and the mother in her innocence and/or lack of specific knowledge may have referred the same as Sagarpur. It is to be noted that according to the Memo of Parties and her supporting affidavit Geeta Devi is ordinarily a resident of Bihar, but was a resident of Sagarpur, Delhi at the time of filing the petition. She may have missed out on the finer details of colony boundaries, and assumed the school to be in Sagarpur.

13. On the issue of whether the said general compartment had an entrance from the middle as well, is an issue that would need empirical data, and Neetu's reply to the technical query of the Tribunal would not render her testimony unreliable. For the delay in the discovery of the body of the deceased by the Railway Authorities, no fault can be fastened on the claimants and they are not required to explain the same.

14. The delay or time taken in the relatives of the deceased i.e. his parents, the younger brother, etc. in reaching Balrai Station to identify the body is understandable and quite plausible, as the parents would have to come from Bihar and the younger brother from Delhi, where he had reached by the train from which the deceased had fallen. The shock, confusion, coordination and procurement/reservation of tickets or mode of transport, etc. would have consumed some time. Hence, the same cannot be considered as unexplained delay or otherwise be a ground for rejection of the claim.

15. The Legislature has specifically enacted section 123(c) and section 124-A of the Railways Act, 1989 which imposes a strict liability upon the railways. According to the abovementioned sections, the railways are to be held liable in case of an untoward incident which results in the death of a bonafide passenger.

16. Section 123(c) and Section 124-A of the Railways Act, 1989 are as under:

Section 123. Definitions:

.....

(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.]

Section 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, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and

to that extent only for 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 purposes 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.]*

(emphasis supplied)

17. The word “passenger” has also been defined under the Act as under:

Section 2(29): “passenger” means a person travelling with a valid pass or ticket;

18. The entire emphasis of the abovementioned provision of law is to give appropriate relief to a bonafide “passenger” for injury/fatality on account of an ‘untoward incident’. This Court is of the view that once a person is found

to be a bonafide passenger travelling on a valid train ticket and has suffered injuries or fatality, there should be a liberal and purposive interpretation of these sections. Even Explanation (ii) of Section 124-A of the Act states that a bonafide passenger includes a person who purchased a valid ticket to travel by train, which precisely, is the case of the appellants. To prove this, a valid train ticket bearing no. 07866789 had been annexed in the claim petition before the Tribunal.

19. The Court would refer with benefit to the dicta of the Supreme Court in ***Union of India vs. Rina Devi*** (2019) 3 SCC 572, which held, *inter alia*:

“26. Conflict of decisions has been pointed out on the subject. As noticed from the statutory provision, compensation is payable for death or injury of a “passenger”. In Raj Kumari [Raj Kumari v. Union of India, 1992 SCC OnLine MP 96 : 1993 ACJ 846] referring to the scheme of the Railways Act, 1890, it was observed that since travelling without ticket was punishable, the burden was on the Railway Administration to prove that passenger was not a bona fide passenger. The Railway Administration has special knowledge whether ticket was issued or not. The 1989 Act also has similar provisions being Sections 55 and 137. This view has led to an inference that any person dead or injured found on the railway premises has to be presumed to be a bona fide passenger so as to maintain a claim for compensation. However, the Delhi High Court in Gurcharan Singh [Gurcharan Singh v. Union of India, 2014 SCC OnLine Del 101 : 2015 ACJ 171] held that initial onus to prove death or injury to a bona fide passenger is always on the claimant. However, such onus can shift on the Railways if an affidavit of relevant facts is filed by the claimant. A negative onus cannot be placed on the Railways. Onus to prove that the deceased or injured was a bona fide passenger can be discharged even in absence of a ticket if relevant facts are shown that ticket was purchased but it was lost. The Delhi High Court observed as follows: (Gurcharan

Singh case [Gurcharan Singh v. Union of India, 2014 SCC OnLine Del 101 : 2015 ACJ 171] , SCC OnLine Del para 4)

*“4. ... (ii) In my opinion, the contention of the learned counsel for the appellant claimants is totally misconceived. The initial onus in my opinion always lies with the appellant 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 facts of 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 and the 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 the deceased may have died at a 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 a learned Single Judge of this Court in *Pyar Singh v. Union of India* [*Pyar Singh v. Union of India*, (2007) 8 AD Del 262] which holds that it is the claimant upon whom the initial onus lies to prove his case. I agree to this view and I am bound by this judgment and not by the ratio of the case of *Leelamma* [*Union of India v. Leelamma*, 2009 SCC OnLine Ker 903 : (2009) 1 KLT 914] .”*
(emphasis supplied)

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.”

20. Since the demise of the deceased by an ‘untoward incident’ stands proven, the appellants are entitled to receive compensation for the same. The appellants’ claim is allowed. In terms of the Notification dated 22.12.2016 amending the Railways Accidents and Untoward Incidents (Compensation) Rules, 1990, the compensation for human fatality is Rs. 8 lacs. Accordingly, Rs. 8 lacs shall be paid to the appellants by the Respondent/Railways.

21. In view of the judgment of the Supreme Court in ***Union of India vs. Rina Devi***, Civil Appeal No. 4945/2018 decided on 09.05.2018, interest can be awarded from the date of the accident itself when the liability of the Railways arises, upto the date of payment. Accordingly, interest @ 9% per annum is awarded from the date of the accident i.e. 7th July, 2012 on Rs. 4 lacs (the earlier compensation amount for fatality) and an interest @9% on Rs. 8 lacs (the revised compensation amount for a fatality) from 22.12.2016. Let the same amounts be paid to the appellants in three months from receipt of this order.

22. The appeal is allowed in the above terms.

NAJMI WAZIRI, J.

MAY 15, 2019

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