

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

+ **FAO No.68/2014**

Judgment reserved on :17.07.2018

Date of decision :19.03.2020

KEERATY & ORS

..... Appellants

Through: **Mr.Anshuman, Advocate.**

Versus

UNION OF INDIA

..... Respondent

Through: **None.**

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellants No.1 to 5, *namely*, Keeraty Datta, Puru Datta, Shilpi Datta, Vibhuti Datta and Lalima Datta of whom the appellant No.1, Keeraty Datta is the widow of the deceased Pawan Kumar Datta and the appellant No.2 Puru Datta, is the son of the deceased and the appellants No. 3 to 5, i.e., Shilpi Datta, Vibhuti Datta and Lalima Datta are the daughters of the deceased Pawan Kumar Datta, vide the present appeal assail the impugned judgment dated 14.11.2013 of the Railways Claims Tribunal, Principal Bench, Delhi in Claim Application No. OA(IIU)21/2012 whereby the claim made by the appellants No. 1 and 2 herein, i.e.the widow of the deceased and the

son of the deceased, seeking compensation of Rs.10 lacs under Section 125 of the Railways Act, 1989 for the death of the deceased Pawan Kumar Datta, the husband of Keeraty Datta and the father of Puru Datta, in an accident on 28.11.2011 whilst travelling through an EMU Train from Faridabad to Okhla Railway Station, by accidentally falling down from the running train near Faridabad was declined- it having been held vide the impugned judgment that the deceased Pawan Kumar Datta did not fall from the train but was run over by a freight train whilst trespassing the track and that in as much as a **‘run over’** does not fall within the ambit of untoward incident, in terms of Section 123(c)(2) of the Railways Act, 1989 and is rather a case of a negligent and wilful act in terms of Section 124A(b) of the Railways Act, 1989, with the impugned judgment having also disbelieved the tickets EX.A-7 recovered as per the jamatalashi of the deceased on the ground that the jamatalashi was not an authentic document and had been fudged/fabricated for the purpose of the claim in as much as the separate loose report EX.A-3, the jamatalashi stating that return tickets along with money (Rs.2520/-), a pair of spectacles and a gold ring were recovered from the deceased was not part of the Inquest papers submitted to the doctor at the time of the autopsy as it did not bear the signatures of the concerned doctor of the B.K. Hospital, Faridabad and it was held vide the impugned judgment that the photocopy of the tickets that had been filed as evidence had been procured clandestinely and were not acceptable and that the deceased was run over by another train and was not a passenger of any train much less a *bona fide* passenger and had no reason to buy a ticket.

2. The appellants submit therefore through the appeal that the deceased Pawan Kumar Datta s/o Late Sh.Mangal San Dutta, aged 57 years whose occupation was service was going the Okhla, New Delhi from Faridabad on an EMU Passenger Railway Train against a valid Railway Ticket bearing No. Q-33461168 and a return Railway Ticket bearing No. Q-33461169 in the morning of 28.11.2011 and when the said train reached at KM No. 1509/21-19, 3rd Line Yard, Faridabad, Railway Station, Haryana, there was a heavy rush in the compartment and the deceased who was standing near the gate due to a strong sudden jerk of the train, fell down from the moving train and was crushed by a Goods Train and suffered fatal injuries on his person in the said untoward railway accident. The appellants submit that the matter was reported to the GRP Faridabad, Haryana Vide DD No. 18 dated 28.11.2011 and the post mortem of the body of the deceased was conducted at the B.K.Hospital, Faridabad, Haryana vide the Post Mortem No. 42/ADS/BKH/2011 dated 28.11.2011. The appellants submit that the deceased had valid tickets for the to and fro journey at the time of the incident from Faridabad to Okhla and from Okhla to Faridabad which railway tickets were recovered from his personal search/jamatalashi by the police and that the deceased was aged 57 years and had a monthly salary of Rs.12,000/-. The appellants submit that the contention raised by the Union of India that the deceased did not die in an untoward incident and did not die due to falling from a running train and died due to his own act whilst trespassing the Railway track and thus was knocked down by a speedy train was erroneous in as much as the deceased was a *bona fide* passenger of the

train with tickets having been recovered for the to and fro journey from his jamatalashi and merely because there is no signature of the attending doctor of the B.K.Hospital Faridabad, on the documents produced by GRP Faridabad, the same cannot be considered as forged and fabricated or procured only for filing the claim petition.

3. On behalf of the appellants it has further been submitted that though the tickets as per EX.A-7, the photocopy thereof reveal that they were purchased at 7:50 a.m. on 28.11.2011, the same cannot be disbelieved as has been so done by the Railway Claims Tribunal for the deceased was residing at New Colony, Railway Road, Faridabad at a walking distance of hardly two minutes from the Railway Ticket Counter, Faridabad, and at 9:45 hrs there was great rush at the window, he had purchased the tickets including the return ticket to and from Okhla Railway Station and that the Railway Claims Tribunal ought not to have drawn an adverse inference on the purchasing of the tickets in advance.

4. The appellants have further submitted that even the post mortem report dated 28.11.2011 opines to the effect:

“C. Opinion

1. Remarks of the Medical officer/Board (Opinion as to cause and manner of death): IN MY OPINION THE CASUE OF DEATH IN THIS CASE IS SHOCK AND HAEMORRAHAGE DUE TO INJURY TO VITAL ORGAN I.E., LUNGS WHICH IS ANTE MORTEM IN NATURE AND SUFFICIENT TO CAUSE DEATH IN ORDINARY COURSE OF NATURE. THE

*POSSIBILITY OF RAILWAY ACCIDENT CANNOT
BE RULED OUT.*

2. Probable time since death

(a) Between injury and death

VARIABLE

(b) Between death and

Post-mortem examination

WITHIN 24 HRS.”

with it having also given the probable time between the death and the post mortem examination being within 24 hours.

5. The appellants have further submitted that the testimonies of the witnesses i.e., the appellant No.1 and her son-in-law Ankur Sharma do not deviate from the factum of the untoward accident having taken place and of the deceased having fallen down from the train which had been boarded by him and having then been run over by the Goods Train. The appellants submit that there is nothing to substantiate the observations in the impugned judgment that the accident was self created or self inflicted by the deceased.

6. To similar effect were the submissions made on behalf of the appellants through the present appeal.

7. The Union of India chose not to be represented on 29.11.2017 on which date, in the interest of justice no adverse orders were passed with the matter having been re-notified for final disposal on 1.3.2018. On 1.3.2018 also there was no appearance on behalf of the respondent Union of India and the Court Notice through the counsel was directed to be issued, returnable for 17.7.2018 and as observed vide order dated 17.7.2018 despite the Court Notice issued to the learned Standing Counsel for the Union of India, Northern Railway which was duly

served on the learned counsel for the Union of India, there was none present despite service of the said Court Notice and thus the arguments were allowed to be addressed on behalf of the appellant. In the interest of justice, however, the records of the learned Railway Claims Tribunal, Principal Bench, Delhi have been perused and the written statement that has been filed on behalf of the Union of India on the records before the learned Railways Claims Tribunal as well as the evidence recorded has been perused.

8. The submissions made through the written statement of the Union of India on behalf of the Northern Railways dated 27.2.2012 state to the effect that the deceased sustained injuries due to his own criminal acts of omission and commission and negligence and the said injuries were self inflicted injuries for which criminal act and negligence of the deceased, the respondent could not be burdened and that the incident did not fall within the purview of an ‘untoward incident’.

9. Significantly, the written statement that was submitted by the respondent before the Railway Claims Tribunal does not specifically deny paragraph 7 of the claim petition in as much as para 7 of the claim petition reads to the effect:

*“7. Class of travel ticket
number to the extent known*

*The deceased was having valid
ticket no. Q-33461168 and Q-
33461169”*

and rather para 7 in response in the written statement is to the effect:-

“7. That the contents of Para No. 7 are wrong and denied. The applicant be put to strict proof that the alleged ticket belongs to the alleged deceased.”

10. The jamatalashi of the corpse EX.AW-1/3 placed before the Railway Claims Tribunal dated 28.11.2011 of the GRP, Faridabad states categorically to the effect that Rs.2520/- in cash, two mobile phones, two railway tickets i.e. from Faridabad to Okhla and Okhla to Faridabad, a pair of spectacles and a gold ring were retrieved in the jamatalashi of the corpse of the deceased and the articles except the tickets had been released to Sh. Sunil S/o Uday Ram Sharma. The said documents placed as EX.AW1/3 on the records of the Railway Claims Tribunal as issued by the SPIO-cum-Superintendent of Police (Railways) (HR) Ambala Cantt. vide No. 358/12 were issued on 26.1.2012 under the RTI Act,2005. There appears thus absolutely no reason to disbelieve the documents EX.AW1/3 as has been done by the learned Railway Claims Tribunal. In the circumstances, merely because the deceased was found in the centre of the middle (3rd line) in between platform No.1 and 2 i.e. into the centre of the nearby track on which a freight train was coming on 28.11.2011, the observations of the learned Railway Claims Tribunal that as the minimum gap between the two running lines in a yard is around 10 feet and that it was thus unlikely that a man would fall that far from a train which had just commenced its journey cannot be accepted.

11. Furthermore, though there are discrepancies in the testimonies of the appellant No.1 and her son-in-law Ankur Sharma in relation to the aspect as to whether Ankur Sharma had accompanied the deceased

on to the train, it cannot be overlooked that Ankur Sharma had stated that he had purchased his tickets separately.

12. In the circumstances, where the train tickets were found on the corpse of the deceased in his jamatalashi as brought forth through the documents of jamatalashi as produced before the Railway Claims Tribunal having been obtained by the appellants apparently under the RTI Act, 2005, there is no reason to disbelieve the claim of the appellants that the deceased was a *bona fide* passenger on the EMU Passenger Railway Train travelling from Faridabad to Okhla railway station on 28.11.2011 for the time of the incident as per the investigation conducted is shown to be 10:20 a.m. and it has not been sought to be contended by the respondent that the EMU Passenger Train from Faridabad to Okhla was not in motion on the railway track at the 3rd Line Yard Faridabad Railway station at the time of occurrence. Furthermore, though the respondent has sought to submit that as per the investigation conducted that an outsider had reported that the deceased had been run over whilst trespassing the railway track, the respondent before the Railway Claims Tribunal had not chosen to cross-examine Smt. Keeraty Datta, the widow of the deceased and Ankur Sharma, the son-in-law of the deceased to contend to that effect. Furthermore, the observations of the Hon'ble High Court of Allahabad vide the verdict dated 16.10.2018 in ***Union of India v. Nand Lal Chaley*** [I(2015) ACC 533(All.)] undoubtedly has persuasive value to bring forth that where a person is held to be a *bonafide* passenger with a valid train ticket, the onus of proof was

shifted to the Railways to show that the death was not on account of an untoward incident.

13. In the circumstances, it is held that the deceased had suffered an **“untoward incident”** in terms of Chapter XIII Section 123(c)(2) of the Railways Act, 1989 which provides to the effect:-

CHAPTER XIII

LIABILITY OF RAILWAY ADMINISTRATION FOR DEATH AND INJURY TO PASSENGERS DUE TO ACCIDENTS

123. Definitions.--In this Chapter, unless the context otherwise requires,—

(a) "accident" means an accident of the nature described in section 124;

(b) "dependant" means any of the following relatives of a deceased passenger, namely :-

(i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent,

(ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

(iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;

(iv) the paternal grand parent wholly dependant on the deceased passenger.

¹*[(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 tile commission of robbery or dacoity; or
(iii) the indulging in rioting, shoot-out or arson, by any person in or 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 passenger]
(emphasis supplied),

14. Section 124 and Section 124A of the Railways Act, 1989 read to the effect:-

“124. Extent of liability.— *When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, 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 has suffered a loss to maintain an action and recover damages in respect thereof · the railway administration shall, not withstanding 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 a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods*

owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.— For the purposes of this section "passenger" includes a railway servant on duty.

² **[124A. Compensation on account of untoward incidents.**—*When in the course of working a railway 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 any thing 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.]”*

and thus, in terms thereof, there is a strict liability imposed on the Railway Administration, in as much as Section 124 A of the Railways Act, 1989 prescribes for a **no fault liability**, and in terms thereof compensation cannot be denied on the ground that the deceased was negligent and that it is wholly irrelevant to say as to who was at fault, the vehicle or the deceased, when a *bona fide* passenger of a train becomes a victim of an untoward incident so long as the person was within the railway premises or in the train.

15. In the circumstances, in the instant case as observed herein above, the deceased having been held to be a *bona fide* passenger of an EMU Passenger Train travelling from Faridabad to Okhla on 28.11.2011 at the time 10:20 a.m. when the untoward incident occurred, the legal heirs of the deceased—are held entitled to compensation in terms of the verdict of this Court in ***Hemlata & Ors. V. Union of India*** [IV (2017) ACC(Del.)] and ***Sharda Devi & Anr. V. Union of India***, FAO No. 399/2014, decided on 9.8.2018 as held by this Court in ***Rajesh Kumar Verma & Anr. V. Union of India***; FAO No. 33/2015.

16. As on the date of the accident, the amount of compensation payable was Rs.4,00,000/- lacs in terms of the Compensation Rules

1990, which were later amended in 2016, the appeal is allowed with the impugned judgment of the Railway Claims Tribunal, Principal Bench, Delhi being set aside with compensation to the tune of Rs.4 lacs with interest @ 9% per annum w.e.f. from the date of demise of the deceased i.e., 28.11.2011 till the date of its realization thereof being granted to the appellants No. 1 to 5, *namely*, Keeraty Datta, Puru Datta, Shilpi Datta, Vibhuti Datta and Lalima Datta.

17. The appeal is disposed of accordingly.

ANU MALHOTRA, J.

MARCH 19th, 2020/SV



सत्यमेव जयते