

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

FAO 8/2021

Date of Decision: 17.11.2022

IN THE MATTER OF:

SH. CHANDER BHAN

..... Appellant

Through: Mr. Satish Kumar and Mr. S.K.
Tyagi, Advocates

versus

UNION OF INDIA THROUGH GENERAL MANAGER

.....Respondent

Through: Ms. Pratima N. Lakra, CGSC

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987, the appellant/claimant has assailed the order dated 11.03.2020 passed by the Railway Claims Tribunal, Principal Bench, New Delhi in Case No.OA/II(u)/GZB/2017/217, whereby the claim application filed by him on account of death of his son was dismissed.

2. Learned counsel for the appellant, while assailing the impugned order, has contended that the deceased died on account of an '*untoward incident*' as defined under Section 123(c) of the Railways Act and in this regard, the Tribunal failed to take into account the DRM report placed on record by the respondent, wherein it is recorded that the incident occurred due to fall from the train.

3. Learned CGSC for the respondent, on the other hand, has supported the impugned order by contending that as no ticket was recovered from the body of the deceased, he was not a *bonafide* passenger. It is further contended that the train journey, as claimed by the appellant to have been undertaken by the deceased, was not established on record and a reference has been made to the post-mortem report.
4. I have heard learned counsels for the parties and gone through the entire material placed on the record.
5. The facts of the case, as stated in the claim application, are that the appellant's son *Sanjay Kumar* (deceased), after purchasing a second-class ticket, had undertaken a train journey from *New Delhi* to *Gorakhpur* by *Gorakdham Express* Train on 02.02.2017. While on board, *Sanjay Kumar* accidentally fell between *Bhadan* and *Balrai* Railway Stations and died on the spot. His body was discovered on 03.02.2017 and the appellant was informed about the death of the deceased by the Railway Police.
6. A perusal of the record would show that the body of the deceased was discovered on the railway tracks. There is neither any material on record nor any contention has been raised disputing that the spot where the body of the deceased was discovered does not fall on the train route which he had statedly undertaken.
7. In fact, during the course of proceedings before the Tribunal, the DRM Report was placed on record. A reading of the same would show that based on the material collected, it was opined therein that the deceased had fallen from the train. While concluding so, it was also

stated that the death had occurred on account of self-negligence of the deceased.

8. At this stage, this Court deems it expedient to refer to the decision of the Supreme Court in Union of India v. Rina Devi reported as **(2019) 3 SCC 572**, wherein it has been held that liability under Section 124-A of the Railways Act, 1989 is a strict, no-fault liability and the only exceptions are as provided in the said Section itself. Relevant excerpt from the decision in Rina Devi (Supra) is reproduced hereinbelow:

“20. From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and 124-A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the Railway Administration in the case of an accident or in the case of an ‘untoward incident’. Only exceptions are those provided under proviso to Section 124-A. In Prabhakaran Vijaya Kumar it was held that Section 124-A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela .”

9. Coming to the other aspect as to whether the deceased can be described as a *bonafide* passenger, it is relevant to note that he had reportedly undertaken the fateful journey from the place of his work i.e., *New Delhi* to his home town i.e., *Gorakhpur* via *Gorakdham Express*. The deceased was otherwise a resident of *Faridabad* where he was residing with his father (the appellant herein). The place of discovery of body of the deceased is far away from *Delhi*, *Faridabad* or *Gorakhpur*. Further, as noted above, the body was discovered on the railway line going from *New Delhi* to *Gorakhpur*.

10. In Rina Devi (Supra), the Supreme Court had considered the aspect that when a ticket is not found, however a circumstance like in the

present case appears, the factum of no ticket having been found on the body of the deceased cannot be held against the claimant.

11. Considering the issues involved, it is deemed apposite to also refer to the decision in Sh. Prempal Singh & Anr. v. Union of India, **FAO No. 211/2014**, where it has been opined thus:

“7. The reasoning in the impugned order that because the deceased was cut into halves: one part found inside the railway tracks and the other outside, the death could not have been caused due to accidental falling from a moving train, is flawed. The impossibility of a passenger being so crushed after a fall from a moving train has not been conclusively established in law, so as to obviate all such claims for compensation. It is possible that the deceased while standing near the overcrowded passenger compartment door, slipped down while holding on to the door- railing, and frantically tried to recover and re-board the train – with his legs flailing violently, and in the valiant and violent melee his legs or his body could have unfortunately come under the wheels of the train leading to his being consumed in the fatal accident. As long as such possibility exists, the claim cannot be ousted or denied on technical assumptions. There is not a divine camera which could replay the actual manner of the fatality, but all factors lead to the inexorable conclusion that a bonafide passenger died in an untoward train accident. There is also no reason why the deceased would be walking the railway tracks in an odd place en-route his destination – his home. It is not that he lived near the site of the accident or that he had any regular business anywhere near the place of the accident. Thus the inference that he died while crossing the tracks, is unwarranted and untenable.”

12. In the present case, the initial burden cast on the claimant was discharged. As noted above, the only submission made by the respondent is that the deceased died on account of self negligence. Such a submission has no basis either in the form of any witness or report to that

effect. Rather, as noted above, the respondent's own DRM report states that the death had occurred on account of fall from the train. Accordingly, the submission is rejected.

13. In view of the foregoing discussion, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the Tribunal to determine the amount of compensation and interest to be awarded to the claimant. Let the parties appear before the Tribunal for the said purpose on 28.11.2022.

14. The appeal is disposed of in the above terms.

15. A copy of this judgment be communicated to the concerned Tribunal for information.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 17, 2022
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