

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

+ **FAO 101/2021**

Date of Decision: 11.10.2022

IN THE MATTER OF:

MEERA DEVI

..... Appellant

Through: Mr. Rajan Sood, Ms. Ashima Sood
and Ms. Megha Sood, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Gaurav Sharma, Sr. Panel
Counsel alongwith Mr. Raghav
Rajmalani, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

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 has assailed order dated 20.12.2019 passed by the Railway Claims Tribunal, Principal Bench, Delhi in Case No. Review/GZB/2019/14/OA/GZB/132/17, whereby the review application filed by the appellant against judgment dated 16.05.2019 of the Circuit Bench was dismissed.

2. Briefly put, the claimant, being the daughter of the deceased/*Smt. Marg Shree*, had preferred a claim petition, stating that on 26.01.2017, her mother/*Smt. Marg Shree* had undertaken journey by a passenger train from *Tundla* to *Rajghat Narora* alongwith her sister-in-law/*Smt. Sumitra*

Devi, and died after accidentally falling from the train while alighting. The claim petition was dismissed on 16.05.2019 on the basis that the claimant failed to lead evidence in support of the claim. Subsequently, the claimant preferred a review petition against the judgment/order dated 16.05.2019, which was dismissed by way of the impugned order.

3. Mr. Rajan Sood, learned counsel for the appellant, has contended that the Tribunal, while passing the impugned order, failed to appreciate that the journey undertaken by the deceased was on a valid train ticket which was recovered on the date of the incident itself. In this regard, he has referred to the *Panchnama*, the Station Master Diary as well as the RPF records placed on record before the Tribunal.

Insofar as the finding with regard to *untoward incident* is concerned, it is contended that the Tribunal wrongly held the incident to be a negligent act on part of the deceased. Learned counsel has further submitted that findings returned by the Tribunal are in teeth of decision of the Supreme Court in Union of India v. Rina Devi reported as **(2019) 3 SCC 572**.

Lastly, it is contended that the Tribunal erroneously recorded that the claimant, at the time of filing of claim petition, not only failed to mention her relationship with the deceased but also did not provide details of any other legal heirs. In this regard, learned counsel has drawn attention of this Court to the affidavit filed on behalf of the claimant before the Tribunal.

4. Per contra, Mr. Gaurav Sharma, learned Senior Panel Counsel for the respondent, has supported the impugned order by submitting that no *Jamatalashi* memo was prepared and further, in terms of the statement of

co-passenger/*Smt. Sumitra Devi*, the deceased suffered fatal injuries on account of her own negligence.

5. I have heard the learned counsels for the parties and perused the records of the Tribunal.

6. As per facts emanating from the records, a *Panchnama* was prepared on the date of the incident, wherein it is clearly mentioned that a ticket number C39160398 was recovered. This ticket number also finds mention in the Station Master Diary. In the report dated 09.08.2017 prepared by the Deputy Superintendent, it has been mentioned that the said train ticket was recovered from the body of the deceased.

Further, the claimant had examined *Smt. Sumitra Devi*, sister-in-law of the deceased, who had accompanied her on the train journey on the fateful day. The witness stated that on 25.01.2017, she had travelled along with the deceased after purchasing train ticket for two people.

7. In view of the aforesaid, this Court is of the opinion that finding returned by the Tribunal to the effect that the deceased was not a *bonafide passenger* is perverse and liable to be set aside.

8. Coming to the next issue as to whether the incident was an '*untoward incident*', the Tribunal was of the view that in terms of the material placed on record the injuries suffered by the deceased were self-inflicted injuries and the incident occurred on account of callous act on part of the deceased herself.

9. To appreciate the contention, it is deemed expedient to advert to the decision in Rina Devi (Supra), where the Supreme Court has noted thus:-

“25. We are unable to uphold the above view as the concept of “self-inflicted injury” would require intention to inflict such injury and not mere negligence of any particular

degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on “no fault theory”. We may in this connection refer to the judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar laying down that plea of negligence of the victim cannot be allowed in claim based on “no fault theory” under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an “untoward incident” entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.”

(emphasis added)

10. In the present case, it is noted that *Smt. Sumitra Devi*, sister-in-law of the deceased, had testified that when the train reached *Rajghat Narora* station, her sister-in-law could not get down from the train and fell down while trying to de-board as the train had started moving. It was stated that as a result of the same, the deceased died on the spot. The witness was not cross-examined.

11. In view of the aforesaid decision of the Supreme Court, the findings of the Tribunal with regard to Issue No. 2 cannot be sustained.

12. As far as the issue of dependency of the claimant on the deceased is concerned, as pointed out by learned counsel for the appellant, the claimant had filed an affidavit clearly stating that the deceased was survived only by only one dependent-the claimant. Accordingly, the finding with respect to Issue No. 3 is also set aside.

13. In view of the foregoing discussion, the appeal is allowed and the impugned order as well as the judgment/order dated 16.05.2019 are set aside. The matter is remanded back to the concerned Bench, Railway Claims Tribunal to determine the amount of compensation and interest to

be awarded to the claimant. Let the matter be listed before the concerned Tribunal on 02.11.2022.

14. Appeal is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 11, 2022

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