

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

FAO 111/2021

Date of Decision : 01.11.2022

IN THE MATTER OF:

SMT. RAJ BALA AND ORS

..... Appellants

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

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Jivesh Kr. Tiwari, Advocate with
Ms. Samiksha, Advocate

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 (hereinafter, referred to as the 'Act'), the appellants/claimants have assailed the order dated 18.08.2020 passed by the Railway Claims Tribunal, Delhi in Case No.OA/II(u)/DLI/13/2019 *titled as Smt. Raj Bala & Ors. v. Union of India.*

2. The appellants, who are statedly the wife and sons of the deceased/*Ram Kumar*, had preferred the claim petition under Section 16 of the Act. In the evidence by way of affidavit filed by appellant No.1 before the Tribunal, it was claimed that the deceased was employed as a Trackman and posted at the Old Delhi Railway Station, Northern Railway. He had a privilege pass bearing

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No.887956 and on 29.05.2018, he, alongwith one *Ravi Kumar*, undertook a train journey from *Sadar Bazar* to *Nangloi* by Sirsa Express Train. When the train reached near *Nangloi* Railway Station, the deceased fell down from the train and the same resulted in grievous injuries all over his body. He was immediately taken to Sonia Hospital, where an MLC was prepared. The deceased died during treatment and later, his postmortem was conducted at *Aruna Asaf Ali Hospital, Delhi*.

3. Learned counsel for the appellants contended that the Tribunal erred in dismissing the claim petition on the ground that the deceased was not a *bonafide passenger* and suffered injuries on account of his own negligence. It was further contended that while arriving at the aforesaid conclusion, the Tribunal failed to appreciate that the deceased was issued a Privilege Pass bearing No.887956 authorizing him to travel from *Kanya Kumari* to *Mata Vaishno Devi Katra*. Reportedly, the said pass was valid from 12.04.2018 to 11.09.2018 and verified in the report of the DRM proceedings. Learned counsel also drew the attention of the Court to an endorsement made on the said pass indicating not only the train number but also travel date as well as the boarding Station (*Sadar Bazar*). He further submitted that the incident resulting in death of the deceased was an 'untoward incident' as defined under Section 123 (c) read with Section 124(A) of the Railways Act, 1989.

It was also contended that the reliance placed on the statement of *Ravi Kumar*, a co-passenger of the deceased and an employee of the respondent, made during the DRM proceedings is misplaced, as another statement of *Ravi Kumar*, was recorded on the day of the accident by GRP, which is contrary to the statement recorded during DRM proceedings.

4. Per contra, learned counsel for the respondent supported the impugned order and submitted that the injuries suffered by the deceased were on account of his own negligence, inasmuch as it is borne out of the DRM proceedings that the deceased attempted to deboard from a running train before it could reach *Nangloi* Railway Station.

5. I have heard the learned counsels for the parties and perused the entire material placed on record.

6. In the impugned order, the Tribunal concluded that the deceased was neither a *bonafide passenger* nor suffered injuries in an *untoward incident*. Concededly, there is no dispute as to the incident taking place on 29.05.2018 while the deceased was travelling in the aforesaid train. The only dispute is with respect to the mode and manner of the accident having taken place.

7. It is noted that the privilege pass of the deceased, though not recovered at the time of the incident, was subsequently seized during *Jamatalashi* on 30.05.2018. The same was exhibited in the proceedings before the Tribunal as *Ex.A4* and the *Jamatalashi Memo* was exhibited as *Ex.A7*. Even as per the DRM report, there has been no challenge to the validity or genuineness of the privilege pass or to the endorsement made thereon with respect to the date of travel, the boarding station and the train number.

8. It is also borne out from the record that at the time of incident, accidental chain pulling was done and in terms of the statements of the guard and the Station Master, a passenger had suffered injuries.

9. Insofar as the aspect of self-inflicted injuries is concerned, the law is settled in view of the decision in Union of India v. Rina Devi reported as (2019) 3 SCC 572, 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. From a perusal of the material placed on record as well as the proceedings conducted before the Tribunal, it is evident that the deceased, a Trackman, was employed with the respondent. He was issued a privilege pass on which he was authorized to undertake a train journey from 12.04.2018 to 11.09.2018. The incident in question took place on 29.05.2018, that is during the subsistence of that privilege pass. The privilege pass has been verified and there has been no challenge to the endorsement of the travel on the said date. Thus, the train journey undertaken by the deceased was authorized in terms of the endorsement made on the privilege pass. Accordingly, this Court is of the opinion that the deceased was a *bonafide passenger* on train No.14085 on 29.05.2018.

11. Notably, in the statement made before the GRP, recorded vide DD No.17A, co-passenger/*Ravi Kumar* stated that he was travelling with the deceased on 29.05.2018 in Sirsa Train. It was further stated that the train was crowded and as it began to slow down before arriving at *Nangloi* Railway Station, the train took a sudden jerk due to which the deceased fell down from running train (“*Ram Kumar s/o Hari Singh chalti train se gir gaya*”) and suffered injuries. In the said statement, it was also mentioned that the deceased

was taken to Sonia Hospital, Delhi, where after check-up, he was declared dead. The subsequent statement made by *Ravi Kumar* in the DRM proceedings was after a long delay and needs to be rejected.

12. In view of the statement of co-passenger/*Ravi Kumar* recorded before the GRP and the details of the incident recorded in the memos prepared on 29.05.2018, this Court is of the opinion that the Tribunal ought not to have returned a finding that the death was not attributable to an untoward incident based on statement made by *Ravi Kumar* during the DRM proceedings.

13. Considering the aforesaid, the appeal stands 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 claimants in terms of the above decision, for which purpose the matter be listed before the Tribunal on 15.11.2022.

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

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 01, 2022