

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

FAO 115/2021

Date of Decision: 16.11.2022

IN THE MATTER OF:

SMT. KUSUM DEVI

..... Appellant

Through: Mr. Sanchit Vashisthe, Advocate

Versus

UNION OF INDIA

.....Respondent

Through: Mr. Jitesh Vikram Srivastava and
Mr. Prajesh Vikram Srivastava, Advocates

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 (hereinafter, referred to as '*the Act*'), the appellant/claimant (wife of deceased, namely, *Sh. Subodh Kumar*) has assailed the order dated 05.03.2020 passed by the Railway Claims Tribunal, Principal Bench, Delhi whereby the claim application filed by her, was dismissed.

2. Learned counsel for the appellant has contended that the Tribunal failed to appreciate that even if, no train ticket was found, the deceased was a *bona fide* passenger as in the claim application, it was stated that *Sh. Subodh Kumar* had undertaken a train journey on 11.01.2018 from *Saharanpur* to *Ambala* after purchasing a valid journey ticket which however, was lost at the time of the accident. In this regard, he has placed reliance on the decision in Union of India v. Rina Devi reported as

(2019) 3 SCC 572. On the aspect, whether the accident can be termed as an '*untoward incident*', learned counsel submitted that the body of the deceased was found on the railway track and as per the post-mortem report, the injuries occurred on account of a train accident.

3. *Per contra*, learned counsel for the respondent, has supported the impugned order. He submits that the Tribunal rightly arrived at a conclusion that the deceased was neither a *bona fide* passenger nor the death had occurred due to an '*untoward incident*'.

4. I have heard learned counsels for the parties and also gone through the record of the Tribunal.

5. In the claim application, it was averred that the claimant is the wife of the deceased, *Sh. Subodh Kumar*. It was claimed that on 11.01.2018, *Sh. Subodh Kumar* purchased a valid journey ticket for travel from *Saharanpur* railway station to *Ambala*. It was stated that when the train had reached near *Pilkhani Bridge, Saharanpur*, *Sh. Subodh Kumar* fell from the moving train and his belongings including the journey ticket was lost in the accident. In the proceedings before the Tribunal, the appellant admitted that she has neither seen her husband (*Sh. Subodh Kumar*) purchasing a journey ticket nor was an eye witness to the incident.

6. A perusal of the record would show that initially on 11.01.2018, an information was given by one *Sunil Kumar*, the guard of goods train, that an unidentified body was lying on the railway track. An inquiry was conducted. As per *Panchnama*, it was opined that the accident did not occur on account of fall from the moving train. No material has come on record to indicate that the deceased had fallen from the moving train. Coupled with the fact that no journey ticket was found and in view of the

DRM report, this Court is of the opinion that the appellant has failed to discharge the initial burden cast upon her in terms of the decision of the Supreme Court in Rina Devi (Supra).

7. In alike facts and circumstances in Raj Kumar and Another v. Union of India reported as **2022 SCC OnLine Del 3825**, this Court after taking note of the decision in Rina Devi (Supra) observed that in case of journey ticket having been lost, the initial burden can be discharged by placing reliance by way of an affidavit thereby stating the circumstances under which the ticket was purchased and the train journey was undertaken. While finding that the appellants therein have failed to discharge the initial burden cast upon them, the impugned order was upheld and the appeal was dismissed.

8. Consequently, the present appeal is dismissed and the impugned order is upheld.

9. A copy of this order be forwarded to the concerned Tribunal for information.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 16, 2022

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