

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

FAO 259/2021, CM. APPLs. 41866/2021 & 36797/2022

Reserved on : 10.11.2022

Date of Decision : 16.11.2022

IN THE MATTER OF:

UNION OF INDIA

..... Appellant

Through: Ms.Uma Prasuna Bachu, Advocate

Versus

KALLAN SINGH & ANR.

..... Respondents

Through: Mr.D.Sabharwal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

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/respondent has challenged the order dated 07.04.2021 passed by the Railway Claims Tribunal, Principal Bench, Delhi whereby the claim petition filed by the respondents/claimants was allowed and they were held entitled to compensation.

2. Brief facts, as available on the record of the case, are that it in the claim petition it was stated that on 23.06.2019, *Sh. Akshay Kumar* (the deceased/son of the respondents) after purchasing a joint ticket travelled from *Ballabhgarh* to *New Delhi Railway Station* in an EMU train. *Sh.*

Akshay Kumar alongwith his friend *Hemant Singh @ Sonu* boarded an EMU train. It was claimed that the train was over crowded for which reason both were standing near the gate of the compartment. When the train arrived near *Mujesar* level crossing, *Sh. Akshay Kumar* fell from the moving train and died on the spot. It was claimed that journey ticket was lost in the incident. *Hemant Singh @ Sonu*, who had undertaken journey alongwith the deceased was witness to the incident stated that when the deceased fell, he had asked other passengers to pull the emergency chain. *Sh. Akshay Kumar* was taken to *Civil Hospital, Faridabad* where he was declared brought dead.

3. Learned counsel for the appellant submitted that as per the DRM Report dated 27.02.2020, the cause of death was stated to be that *Sh. Akshay Kumar* was probably hit by an oncoming train while crossing railway lines. It was that contended the Tribunal while passing the impugned order failed to appreciate the aforesaid Report since no ticket was found from the person of the deceased.

4. Learned counsel for the respondents, on the other hand, has submitted that on 23.06.2019, the deceased had travelled with co-passenger namely, *Hemant Singh @ Sonu*, who had also appeared in the proceedings before the Tribunal and fully supported the averments made in the claim petition.

5. Insofar as the issue relating to journey ticket not been found is concerned, this Court deems it expedient to refer to the judgment of the Supreme Court in Union of India v. Rina Devi reported as **(2019) 3 SCC 572**, wherein it was held as under:

"29. We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured

or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly.”

(emphasis added)

6. In the present case, the respondents/claimants have stated on affidavit that the deceased had undertaken the journey after purchasing ticket for himself and his friend *Hemant Singh @ Sonu*. In the proceedings, *Hemant Singh @ Sonu* appeared and stated that on 23.06.2019 he had undertaken the train journey from *Ballabgarh* to *New Delhi* on a joint journey ticket. He further stated that he was witness to the incident of the deceased falling from the moving train on account of train compartment being over crowded.

7. This Court is of the opinion that in view of the dicta of the aforesaid judgment in Rina Devi (Supra), the respondents have discharged their initial burden with respect to deceased having purchased the journey ticket which was eventually lost.

8. The only contention raised by the learned counsel for the appellant that the deceased was not travelling in the EMU train and as per the DRM report had received the fatal injuries while crossing the railway line, is contrary to the material placed on record and categorical statement of *Hemant Singh @ Sonu*. The statement of *Hemant Singh @ Sonu* finds support from the DRM Report wherein it was mentioned that the EMU train

had stopped on account of the ACP i.e., Accident Chain Pulling. Additionally, *Mahesh Kumar*, the Guard of EMU Train No. 64017 as well as the Driver had also stated that the train had stopped on account of the ACP. The initial enquiry done at the spot of the incident also revealed that as per the Station Master Memo as well as DCR Register of RPF Post, Faridabad, the dead body was found lying between Up and Dn (up and down) main line in *Faridabad Yard*. The dead body was identified by *Hemant Singh @ Sonu*. To the similar extent is the statement given by *Pramod Kumar*, Gate Man at *Mujesar Fatak* to the Investigating Officer. In view of the aforesaid, the conclusion reached in the DRM report about probable cause of death of the deceased is fallacious and contrary to the record.

9. Consequently, this Court is of the opinion that no ground is made out to interfere with the finding recorded in the impugned order and the same is upheld. The appeal being devoid of merit, is dismissed. Pending applications are disposed of as infructuous.

10. Let the compensation amount be released to the respondents/claimants forthwith alongwith interest accrued thereupon, if not already done.

11. A copy of this judgment be forwarded to the concerned Tribunal for information.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 16, 2022

v