

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

FAO 390/2014

Reserved on : 21.11.2022

Date of Decision : 24.11.2022

IN THE MATTER OF:

SABILA BEGUM & ORS.

..... Appellants

Through: Mr. Yogesh Swaroop, Advocate

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Shrey Sharawat, Sr. Panel Counsel

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 appellants/claimants have challenged the order dated 27.09.2013 passed by the Railway Claims Tribunal, Principal Bench, Delhi whereby the claim petition filed by them was dismissed.

2. Learned counsel for the appellants has contended that the Tribunal while passing the impugned order failed to appreciate that a valid journey ticket was recovered in the *Jamatalashi* from the person of *Wazid Khan* (the deceased), whose body was found lying on the railway track.

3. Learned counsel for the respondent, on the other hand, has supported the impugned order by submitting that the Tribunal rightly concluded that the

injuries suffered by the deceased were 'self-inflicted' as the accident had took place when the deceased tried to de-board from a moving train.

4. I have heard learned counsels for the parties and gone through the entire material placed on record.

5. Brief facts as narrated in the claim petition are that on 23.04.2012, the deceased purchased a second class super fast journey ticket bearing No. 37060754 for travel from *Bangalore City* Railway Station to *New Delhi* Railway Station. It was claimed that when the train had reached between *Faridabad* Railway Station and *New Town* Railway Station, the deceased fell from the moving train and died on the spot.

6. Admittedly, the journey ticket was recovered as reflected in the *Jamatalashi* report (*Ex. A-12*). In the proceedings before the Tribunal, relevant railway record was produced. It appears from the record that one *Bishamber Singh*, Loco Pilot of Train No. 12285 (*Durento Express*) reported that an unidentified person was lying on the railway line (Dn Main) at KM 1507/16-18. On inquiry, the police identified the deceased from his belongings that were lying next to him.

7. The only reason for rejection of the claim petition was that the Investigating Officer had not finally concluded as to in what manner the deceased fell from the moving train. The Tribunal was of the view that as the belongings of the deceased were also found along with the body, the incident could not have occurred on account of fall. Accordingly, it was held to be not an '*untoward incident*' as defined under Section 123(c) of the Act.

8. The issue involved in the instant case stands squarely covered by the decision of the Supreme Court in Union of India v. Rina Devi reported as (2019) 3 SCC 572, wherein it was held that liability under Section 124-A of the Act is a strict, no-fault liability and the only exceptions are those provided

under proviso to said Section itself. Relevant excerpt from the captioned decision reads as under:

“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 [Union of India v. Prabhakaran Vijaya Kumar, (2008) 9 SCC 527 : (2008) 3 SCC (Cri) 813] 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 [Jameela v. Union of India, (2010) 12 SCC 443 : (2010) 4 SCC (Civ) 644].”

9. Keeping in the view the aforesaid discussion as well as the dicta of the Supreme Court in Rina Devi (Supra), this Court is of the considered opinion that the Tribunal erred in arriving at a conclusion that merely because the belongings of the deceased were found along with his body, the incident could not be termed as an ‘untoward incident’.

10. Consequently, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the Tribunal for awarding the amount of compensation in terms of the Act. The matter shall be listed at the first instance before the Tribunal on 01.12.2022.

11. Miscellaneous application, if any, is disposed of.

12. A copy of this judgment alongwith the records, if any, be sent to the concerned Tribunal.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 24, 2022