

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

FAO 587/2016

Reserved on : 11.11.2022

Pronounced on : 15.11.2022

IN THE MATTER OF:

RAJ KUMAR & ANR

..... Appellants

Through: Mr. D.S. Sabharwal, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Ms. Anushkaa Arora, Sr. Panel
Counsel, UOI with Mr. Aditya
Sharan, 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 appellants/claimants (parents of deceased, namely, *Sh. Siddharth*) have assailed the order dated 03.10.2016 passed by the Railway Claims Tribunal, Principal Bench, Delhi whereby the claim application was dismissed.

2. Mr. D.S. Sabharwal, learned counsel for the appellants submits that while passing the impugned order though the Tribunal has held the incident to be an untoward incident however, erred in arriving at a conclusion that

the deceased was not a *bona fide* passenger as no ticket was found from the person of deceased. While placing reliance on the decision of the Supreme Court in Union of India v. Rina Devi reported as (2019) 3 SCC 572, learned counsel submits that the appellants were able to discharge their initial burden by filing an affidavit alongwith the claim application wherein it was stated that the deceased had undertaken the journey after purchasing a valid journey ticket.

3. Learned counsel for the respondent, on the other hand, has supported the impugned order. She has also relied upon the decision in Rina Devi (Supra) to submit that the Tribunal rightly came to the conclusion that the deceased was not a *bona fide* passenger.

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

5. Briefly, facts of the case as noted by the Tribunal, are that after purchasing the journey ticket from *Allahabad* Railway Station for travel upto *New Delhi*, *Sh. Siddharth* (the deceased) boarded Train No. 12559 (*Shiv Ganga Express*) on 06.05.2015. It is stated that when the train was about to arrive at the *New Delhi* Railway Station, *Sh. Siddharth* who was standing near the gate of the compartment fell from the train near *Masjid* at *Shivaji Bridge* Railway Station on account of sudden and heavy jerk. *Sh. Siddharth* was removed to *Ram Manohar Lohia Hospital, Delhi* where he succumbed to his injuries.

6. Concededly, during search, no ticket was found on the person of the deceased. In support of the claim, only appellant No.1 (father of the deceased) was examined. He stated that he had not accompanied the deceased to the railway station. He also admitted that he has not gone to the railway station therefore, ticket was not purchased in his presence. In cross-examination, it was stated for the first time that mother of the deceased (appellant No.2) had accompanied the deceased and gave Rs.210/- for purchase of the ticket.

7. At this stage, reference may be made to the decision in Rina Devi (Supra), where 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)

8. Indeed, in view of the dicta of the Supreme Court in Rina Devi (Supra), in case of journey ticket having been lost, the initial burden can be discharged by placing evidence by way of an affidavit thereby stating the circumstances under which the ticket was purchased and the train journey

was undertaken. However, in the instant case, neither in the claim application nor in the affidavit the aforesaid fact was stated. In this view of the matter, this Court is of the opinion that the appellants have failed to discharge the burden cast upon them.

9. Consequently, the present appeal is dismissed and the impugned order is upheld. Pending application, if any, is disposed of as infructuous.

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

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 15, 2022

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