

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

+ **FAO 337/2017**

Reserved on : 18.10.2022

Date of decision : 17.11.2022

IN THE MATTER OF:

SMT. KALI DEVI MEENA & ORS.

..... Appellants

Through: Mr. Shyam Singh Sisodia,
Advocate.

Versus

UNION OF INDIA

..... Respondent

Through: Ms. Pratima N. Lakra, CGSC for
UI with Ms. Vrinda Barat,
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 have assailed the order dated 13.04.2017 passed by the Railway Claims Tribunal, Principal Bench, Delhi whereby the claim petition filed by the appellants was dismissed.

2. In the claim petition, it was stated that the appellant/claimant No.1 (*Smt. Kali Devi Meena*) was the wife of *Sh. Jagdish Narayan Meena* (the deceased), while the other claimants were the daughters of the deceased. It was claimed that on 20.10.2015, the deceased alongwith his son, namely, *Sh. Rang Lal Meena* was travelling from *Dausa, Rajasthan* to *Delhi Cantt.* by *Ashram Express train*. The deceased undertook the

journey after purchasing a joint valid journey ticket bearing No. 31351671. It was further claimed that when the train reached near *Delhi Cantt. Railway Station*, *Sh. Jagdish Narayan Meena* fell from the moving train on account of sudden & heavy jerk resulting in grievous injuries. *Sh. Jagdish Narayan Meena* was admitted in *DDU Hospital, New Delhi* after which he was taken to *Maharaja Agrasen Hospital, New Delhi* wherein he succumbed to his injuries on the same date.

3. Learned counsel for the appellants submitted that the impugned order is entirely premised on the DRM Report, as per which, the accident occurred while the deceased was urinating on the railway lines and was statedly run over by a passing train bearing No. 12985. It was contended that the DRM Report dated 27.01.2017 was prepared after nearly 15 months of the accident. It was further contended that the conclusion reached in DRM Report is primarily based on the statements of the Loco Pilot and Guard of the passing train, which had hit the deceased but the said statements are contrary to the material placed on record. It was also submitted that, despite the prayer made by the appellants, as noted in the impugned order itself, the aforesaid two persons were not summoned by the Tribunal.

4. *Per contra*, learned counsel for the respondent submitted that in view of the DRM report, the incident is not covered under the definition of an '*untoward incident*'.

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

6. A perusal of the record would reveal that in the claim application, it has been claimed that on the fateful day i.e., 20.10.2015, the deceased alongwith his son, *Sh. Rang Lal Meena* travelled from *Dausa, Rajasthan*

to *Delhi Cantt.* on a valid joint journey ticket bearing No. 31351671. It was further claimed that when the said train had reached *Delhi Cantt. Railway Station*, the deceased while trying to deboard the train fell as the train had suddenly started moving resulting in a sudden and heavy jerk, on the account of which *Sh. Jagdish Narayan Meena* sustained grievous injuries and died on the same day.

7. It is worthwhile to note that the journey ticket was recovered from the son of the deceased, who was his co-passenger. The Tribunal held the deceased to be a *bona fide* passenger but limited its conclusion till the point of time he arrived at the *Delhi Cantt. Railway Station*.

8. The Tribunal also held the death not to be on account of an '*untoward incident*'. In this regard, reliance was placed on the statement of the Guard of the passing train, who stated that a person got injured while attempting to climb on to the platform from offside, collided and fell on platform No.2. Additionally, it was observed that the information about the incident was given after considerable delay as, on 20.10.2015, the *Ashram Express* train statedly had arrived at the platform in *Delhi Cantt. Railway Station* at 09:30 a.m. and left at 09:45 a.m., whereas the information about the incident was given only at 10:00 am.

9. From the material placed on record, it is apparent that there are different versions of the incident. *Sh. Rang Lal Meena*, stated that his father received injuries when he was trying to get down from the train. The first information about the incident came to be recorded vide DD No. 19A on 20.10.2015. *W/ASI Jamna Devi* conducted an inquiry in pursuance of DD-19A and submitted a Report vide DD-24A. It has come in the inquiry that *W/ASI Jamna Devi* met *Sh. Rang Lal Meena* (son of the deceased) who stated that he was travelling with his father from

Dausa, Rajasthan to Delhi Cantt. and produced the journey ticket. He also stated that while alighting on *Delhi Cantt. Railway Station*, his father fell from the train and suffered injuries. He was taken by the PCR to *DDU Hospital* for initial treatment and thereafter was shifted to *Maharaja Agrasen Hospital*. In the post-mortem report, the cause of death is noted as fall from the train.

10. The other version of the incident surfaces in the statement of Driver/*Loco Pilot* of the passing train which was recorded in the DRM proceedings. The Loco Pilot stated that the deceased was injured while he was urinating in between the railway lines. Interestingly, the Guard of the passing train stated that a person got injured while he was attempting to climb up and fell from platform No.2.

11. A perusal of the DRM proceedings would show that the statements of one *Vedpal*, the Loco Pilot and *Shiv Kumar*, the Guard of the passing train were recorded, however, both the statements are undated. The DRM proceedings itself were conducted belatedly and the Report was filed nearly 15 months after the incident.

12. The aspect of belated filing/preparation of DRM report had come up before the Supreme Court in Kalandi Charan Sahoo and Ors. v. General Manager, South-East Central Railway reported as (2019) 12 SCC 387 wherein while holding the appellants entitled to compensation, it was observed as under:-

“3. Though Rule 7 of the Railway Passengers (Manner of Investigation of Untoward Incidents) Rules, 2003 (hereinafter referred to as 'Rules') mandates the railway authorities to investigate into such an untoward incident. Admittedly, no such inquiry was conducted immediately after the incident. It is only when the Appellants filed the claim before the RCT on 27.2.2009 that investigation into the incident was ordered on 23.4.2009. ...

5. ...Going by the aforesaid provisions and in the peculiar facts of this case, where no inquiry as mandated by the Rules was conducted immediately after the incident had occurred, we are of the view that the Appellants shall be entitled to compensation payable Under Section 124-A of the Railways Act, 1989.”

13. This Court, in Bhola v. Union of India reported as **(2018) SCC Online Del 13486**, has held delay in initiation of DRM Inquiry to be fatal to the facts of the case, as what needs to be essentially gathered is what happened on the date of the accident. In the captioned case, it has been opined as follows:-

“2. There is a delay of 14 months in submitting the DRM Report. It states that in his statement to the Police, the claimant had stated that he was travelling in 14312-Ala Hazarat Express whereas in the statement before the Railway authorities, he had stated that it was 13111-Lal Qila Express. The report recorded that the appellant Bhola had been injured in an accident near Lal Qila. Evidently, this recording of an accident near Lal Qila led to the confusion that the accident happened while travelling in Lal Qila Express. The appellant requested for an amendment of his claim petition, for correction of this error but his request was declined. The claim was disallowed on the ground that neither a ticket was found on the claimant at the time of the accident nor was the claim petition supported by a railway ticket to prove his being a bona fide passenger.

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4. The claim petition was filed on 27.07.2014, the DRM Inquiry was initiated thereafter and a report was filed 7 months later. The delay in initiating an inquiry is fatal to the facts of the case because what essentially needs to be gathered is what happened on the date of accident. The medical reports and the police records show that an accident happened on 08.10.2012 and the cause of the accident was,

the appellant having been fallen from a moving train. The DRM Report does not address any of these aspects. On the contrary it says that since no ticket was produced to support the claim of the appellant, of him being a bona fide passenger, therefore by conjecture, he could have well suffered a self-inflicted injury while crossing the railway tracks. Reliance was placed upon the judgment of the Supreme Court in Kalandi Charan Sahoo and Anr. vs. General Manager, South-East Central Railways, Bilaspur in Civil Appeal No. 5608/2017.

5. The delay in intimation of the DRM Inquiry, the silence about the specifics of the accident makes the DRM Report of no consequence.”

14. In alike facts and circumstances in Vikrant & Ors. v. Union of India, reported as **2022 SCC OnLine Del 3439** wherein reliance was sought to be placed on the DRM Report which was filed after a period of about 05 months, this Court while setting aside the impugned order observed that such a Report is of no avail.

15. Adverting to the facts of the present case, note is also taken of the fact that despite the specific prayer made by the appellants before the Tribunal to summon the Loco Pilot and the Guard of the passing train. This Court is of the opinion that Tribunal erred in placing reliance on the DRM report. In the circumstances noted hereinabove, the alleged delay in reporting the incident is also of no consequence.

16. Based on the foregoing discussion, this Court is of the conclusive opinion that not only was the deceased a *bona fide* passenger, but also the incident was an ‘*untoward incident*’ as defined under Section 123(c) of the Act.

17. Consequently, the appeal is allowed and the impugned order is set aside. The matter is directed to be listed before the Tribunal at the first

instance on 21.11.2022 to determine the amount of compensation to be awarded. Miscellaneous application, if any, is disposed of.

18. A copy of this judgment be forwarded to the concerned Tribunal for information. Record of the case be also sent back.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 17, 2022/v

