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

% **Judgment reserved on : 17 November 2023**
Judgment pronounced on : 05 December 2023

+ **FAO 51/2022**

JETHULI DEVI & ORS. Appellants

Through: **Mr. Shyam Singh Sisodia, Adv.**

versus

UNION OF INDIA Respondent

Through: **Ms. Jatinder Kaur, SPC**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This is an appeal filed in terms of Section 23 of The Railway Claims Tribunal Act, 1987¹ by the appellants/claimants assailing the impugned order dated 28.12.2019 passed by Mr.M.M. Parikh, learned Member (Judicial), RCT, Principal bench, Delhi², in claim application bearing No. OA-IIu/213/2016, whereby the claim for compensation filed under Section 13 of the RCT Act was dismissed.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the appellants/claimants that in the intervening night/morning falling of 10th/11th May, 2016, the deceased Prem Singh Machhal aged 49 years was travelling from Kathgodam to Dehradun by Kathgodam - Dehradun Express Train

¹ RCT Act

² RCT



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(14119), having a valid general second class journey ticket. It was claimed that when the train passed through Raivala Railway Station, the deceased who was using the toilet and washing his hands at the sink near the door, all of a sudden suffered a heavy jolt and push from the fellow passengers as a result of which he fell down from the running train, receiving serious injuries on his body and dying instantaneously at the spot. Needless to state that the appellants/claimants are the legal heirs of the deceased viz., wife and two children.

3. During the proceedings before the learned RCT, the respondent/railways contested the claim for compensation on the ground that deceased was neither a *bonafide* passenger³ as no ticket was found on his body nor he fell out of the running train and died consequent to injuries sustained and there was no ‘untoward incident’⁴.

4. Learned RCT framed the following issues :

- “1. Whether the deceased was a bonafide passenger in the train in question at the time of accident ?
2. Whether there was any untoward incident as is defined under the provisions of Section 123 (c) of the RCT Act, 1989 ?
3. Whether the applicants are dependents of the deceased ?
4. Whether the applicants are entitled for any relief and interest as prayed for in the application ?
5. Relief, if any?”

5. Learned RCT on appreciating the evidence on the record came to the conclusion that there was led no cogent or reliable evidence that

³ Section 2(29) of the Railways Act, 1989, a passenger means a person travelling with a valid pass or ticket.

⁴ Section 2 (n) of the RCT Act read with Section 123(C) of the Railways Act, 1989 (the accidental falling of any passenger from a train carrying passengers)



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deceased was a *bonafide* passenger since no evidence was led that he purchased any railway ticket; and that merely because the dead body was lying on the railway tracks, in the absence of any reliable evidence, would not lead to a conclusion that deceased died due to an 'untoward' incident. Learned RCT relied on decision of the Supreme Court in the case of **Kamrunnissa v Union of India**⁵ and thus holding that the deceased did not fall within the category or meaning of Section 123(c) read with Section 124.A of the Railways Act, 1989, claim for compensation was dismissed.

6. The appellants/claimants in the present appeal allude to the aspect that no investigation was conducted and submitted as per The Railway Passengers (Manner of Investigation of Untoward Incidents Rules), 2003 and also the report of the in-charge of the police chowki *prima facie* opined that the deceased died due to injuries sustained by falling from the train. In support of their claim, reliance has been placed on decision in **Union of India v. Prabhakaran Vijay Kumar & Ors.**⁶; **Jameela & Ors. v. Union of India**⁷; **Hemlata & Ors. v. Union of India**⁸; and **Union of India v. Jogeshwar Prasad & Anr.**⁹

ANALYSIS & DECISION:

7. Having heard the learned counsel for the parties and on perusal of the material on the record, in order to decide the present appeal, it would be expedient to reproduce the reasons given by the learned

⁵ (2019) 12 SCC 391

⁶ (2008) 9 SCC 527

⁷ (2010) 12 SCC 443

⁸ 2017 SCC Online Del 10484

⁹ (2010) SCC Online All 2749



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RCT while conjointly deciding the issues No. 1 & 2, which read as under:

“9. On behalf of the Applicants regarding the bonafide passenger of the deceased, in the application it has been mentioned that the journey ticket has been lost. From the side of the Applicant on the date of alleged incident, no evidence has been submitted to purchase the ticket from Kathgodam to Dehradun by the deceased. In the investigation report it has been mentioned that at the time of incident apart from the wearing clothes one Blue Colour Bag inside of which the medical papers and wearing clothes of the deceased recovered but no mention of recovery of the journey ticket. So far as the statement of the applicant that the journey ticket of the deceased has been lost. In this regard in my opinion in the Investigation report the wearing clothes of the deceased were intact and his bag also found at the place of incident, therefore, the statement of journey ticket lost is without basis. In such situation without any evidence, merely on the statement of applicant it not proved that the deceased had purchased the journey ticket which has been lost in the incident. In the Investigation report it has been specifically stated that the deceased was not the bonafide passenger because no journey ticket has been recovered. Investigation report which prepared after getting thoroughly conducted Investigation and submitted by the Respondent cannot be incorrectly said ordinarily.

10. Regarding untoward incident, it has been mentioned in the application form by the Applicants that on 10/11-05.2016 the deceased was travelling in Second Class from Kathgodam to Dehradun in the Kathgodam-Dehradun Express having purchased the Journey ticket, the deceased while washing his hands in the washbasin fell down from the Train and died due to the injuries received in the untoward incident. In support his statement, the Applicant filed Panchayatnama and the Postmortem report of the deceased. From the side of the Applicant in support of the application Smt.Jethauli Devi has filed her Affidavit in Evidence and examined herself as AW-1 and she was cross examined by the Advocate of the Respondent. AW-1 Smt.Jethauli Devi is not an Eye Witness to the incident/accident. She in her Cross examination depose that she was not with the deceased at the time of incident. I do not know any such person who has seen the occurrence. From the cross-examination of AW-1 it is apparent that the applicants have no cogent evidence to support the fact that the deceased was travelling in the Train at the time of untoward incident. Whatever the AW-1 has stated in her cross examination the same are the



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hearsay and is not her personal knowledge. The Applicant has failed to produce any cogent evidence to support the claim application.

11. The Respondent has produced the comprehensive investigation report along with the Statement of the persons. On the part of the Respondent, in the investigation report it is the conclusion of the report that on the basis of available evidence, documents and statement of the witnesses, on 11.05.2016 neither deceased Sh.Prem Singh found to be dead, travelling, falling down. And hitting from Kathgodown-Dehradun Express(14119) nor any ticket found from the deceased. Apart from this, documents annexed with the Investigation report and perusal of the same the Train in question was passed over from the place of incident at 5.30 a.m. but the information of the same has been furnished by the Gateman at 7.30 a.m. In the Investigation report and annexed documents, the body of the deceased was found to be near Railway Pathak bye-pass. In the Register of Station Registration Dehradun Dated-11.05.2016 it has been mentioned that the Gateman Sh.Lalit Kumar of Gate No.39A has informed that a person is lying in unconscious condition in between Kilometer No.71/11-7/12. In the information given by the Gateman there is no mention that the deceased had fallen from any Train. It is not proved that a person has been died in the untoward incident merely on the basis of the dead body found near the Railway Line. In this context the Hon'ble Supreme Court of India has held that if the body was found cut into pieces, a judgment of Kamrunnissa V/s Union of India, by Hon'ble Supreme Court has held that finding of dead body on the railway track into cut position with no evidence of travel, compensation cannot be granted. In this case the dead body of the deceased was found lying on Railway Lines and no ticket was recovered.

12. So, in these circumstances, it has been provided in Section 191 of The Railway Act 1989, Proof of entries in records and documents: Entries made in the records or other documents of a railway administration shall be admitted in evidence in all proceedings by or against the railway administration and all such entries may be proved either by the production of the records or other documents of the railway administration containing such entries or by the production of a copy of the entries certified by the officer having custody of the records or other documents under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents of the railway administration in his possession? The Applicant has not produced any evidence or documents against the assertion of the Respondent. Therefore, facts stated in the documents of the Respondent cannot be said to be wrong. The



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Respondent has proved their facts on the basis of the documents and evidence.

13. In the light of aforesaid facts and circumstances the incident occurred with the deceased does not fall within the meaning/Category of Section 123(c) read with Section 124.A of the Act. Therefore, the Respondent found wholly not to be liable to pay the Compensation for the death of the deceased and accordingly, the Issues No. 1 and 2 are decided.”

8. On a careful perusal of the aforesaid reasoning, this Court is unable to persuade itself to find any blemish on facts and law on the part of the learned RCT in passing the impugned order dated 18.12.2019. Evidently, the body of the deceased was found near Railway Fatak (*sic. Railway crossing*) bypass in between K.M. No. 71/11-7/12 by the gateman at 7.30 a.m. whereas it is borne out from the record that Kathgodam Dehradun Express had passed through the site at 5.30 a.m on the fateful day. Evidently, there was found no railway ticket on the body of the deceased while at the same time, seizure memo of the articles of the deceased bring out that all the belongings including a bag containing some documents and money was found and seized from the spot, which did not contain any journey ticket or railway ticket.

9. It is but obvious that AW-1 Smt. Jethuli Devi was not an eye witness to the incident and her testimony was ‘hearsay’ and of little value. While on the other hand, a comprehensive investigation was done at the instance of the respondent/railways and the Station Register dated 11.05.2016 which recorded the version of the gateman Mr. Lalit Kumar at the earliest point of time that a person was lying unconscious on the track and there was no information that victim had fallen from any train.



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10. In the case of *Union of India Vs. Rina Devi*¹⁰, it was held by the Supreme Court that “*mere presence of a body on the railway premises will not be conclusive to hold that injured/deceased was a bonafide passenger for which claim for compensation could be maintained*”. The decision in the cases of *Prabhakaran Vijay Kumar, Jamila and Hemlata (supra)* relied upon the learned counsel for the appellants/claimant do not help their cause since the said cases were one where the deceased or the victim was found to be a *bonafide* passenger and even otherwise found to be travelling on the train, except that there was an issue raised about negligence on the part of the victim that resulted in his falling from the running train. It was in the said context that it was held that in view of Section 124.A of the Railways Act, 1989, the question of ‘contributory negligence’ on the part of the passenger resulting in injuries or death does not merit any attention, and thus, holding that the Railways was liable to pay compensation to the claimants in terms of the ‘*doctrine of strict, liability*’ is wrong.

11. In view of the above discussion, the impugned order dated 28.12.2019 passed by the learned RCT does not suffer from any kind of illegality, perversity or incorrect approach in law. Hence, the present appeal is dismissed.

DHARMESH SHARMA, J.

DECEMBER 05, 2023

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¹⁰ (2019) 3 SCC 572