

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
FAO 98/2022 & CM. APPL. No.19830/2022

Date of Decision: 08.02.2023

IN THE MATTER OF :

SHRI HUKUM SINGH & ANR. Appellants
Through: Mr.Shyam Singh Sisodia, Advocate

versus

UNION OF INDIA Respondent
Through: Ms.Uma Prasuna Bachu, Sr.Panel
Counsel with Mr.Tanveer Singh
Nanda, G.P.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of 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 judgment dated 22.10.2020 passed by the Railway Claims Tribunal, Principal Bench, Delhi in Claim Application No. OA/II(u)/GZB/61/2018 whereby the claim application filed on their behalf was dismissed.
2. The appellants claim that the Tribunal failed to appreciate that *Sh. Hemraj* (the deceased) was travelling on a valid journey ticket and the claim

was corroborated by statement of a co-passenger, namely, *Sh. Harswaroop* who also appeared as a witness in the proceedings before the Tribunal.

3. Issue notice.

4. Learned counsel for the respondent accepts notice and has supported the impugned order. She has contested the appeal by contending that the journey ticket was not verified and further as per the DRM Report, the deceased had suffered injuries on account of his own negligence.

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

6. Brief facts, in nutshell, are that in the proceedings before the Tribunal, it was claimed that *Sh. Hemraj* (claimants' son) undertook a train journey from *Palwal Railway Station* to *Tuglakabad Railway Station* by an EMU passenger train on 04.10.2017 after purchasing a valid journey ticket. *Hemraj* had travelled alongwith *Harswaroop* and six other labourers. It was stated that two tickets for four persons each were purchased at *Palwal Railway Station*. It was claimed that as the said train was overcrowded, the deceased was standing near the gate of the compartment of the train. When the train had reached *Badkhal Bridge* before the *Tuglakabad Railway Station*, on account of sudden jerk and push of other passengers, *Sh. Hemraj* fell from the train and died on the spot.

It is borne out from the record that Investigating Officer/*Dhramveer Singh*, ASI/RPF, Faridabad had reached the spot and met *Sh. Harswaroop*, who gave details of the incident. The DSCR Register of RPF Post dated 04.10.2017 alongwith the DRM Report was placed on record, as per which, *Constable Ajit Singh* also reached the site of incident and found a male dead body at KM 1511/04. The DSCR Register further mentions that

Harswaroop was present at the spot and gave two journey tickets for four persons each bearing Nos. 91536925 and 91536926. It was stated that the deceased and *Harswaroop* were travelling to *Delhi* alongwith six other persons. The statement of *Harswaroop* was recorded to the aforesaid extent. *Harswaroop* has also appeared as a witness in the proceedings before the Tribunal and reiterated his above statement.

7. The Tribunal despite noticing the aforesaid dismissed the claim application only on the ground that the journey tickets were not verified.

Apparently, the journey tickets could not be verified as the same were never seized by two Investigating Officer(s) despite the fact that they had reached the spot and noted the ticket numbers in the DSCR Register. By no stretch of imagination, the non-seizure of tickets can be attributed to *Harswaroop* as he was the one who was present at the spot of incident and had handed over two journey tickets for four persons each bearing Nos. 91536925 and 91536926.

8. A submission was made that the deceased had suffered injuries on account of his own negligence. Insofar as the aspect of self-inflicted injuries is concerned, the law is settled in view of the decision in Union of India v. Rina Devi reported as (2019) 3 SCC 572, where the Supreme Court has noted thus:

“25. We are unable to uphold the above view as the concept of ‘self-inflicted injury’ would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory negligence which cannot be done in the case of liability based on ‘no fault theory’. We may in this connection refer to judgment of this Court in United India Insurance Co. Ltd. versus Sunil Kumar laying down that plea of negligence

of the victim cannot be allowed in claim based on 'no fault theory' under Section 163A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an 'untoward incident' entitling a victim to the compensation and will not fall under the proviso to Section 124A merely on the plea of negligence of the victim as a contributing factor."

(emphasis added)

9. Concededly, no dispute was raised apropos the fact that dead body of the deceased was found near the railway track at *Badkhal Bridge* i.e., before the *Tuglakabad Railway Station*.

10. Based on the foregoing discussion, this Court is of the considered opinion that the deceased was in fact, a *bona fide* passenger and the accident during which he suffered injuries was an '*untoward incident*' as defined under Section 123(c) of the Railways Act, 1989.

11. Consequently, the appellants succeed and the appeal is allowed. The impugned order is set aside and 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 27.02.2023. Let the compensation amount be paid to the appellants/claimants within two weeks thereafter.

12. The appeal is disposed of in the above terms. Pending application stands disposed of as having become infructuous.

13. A copy of this judgment be communicated to the concerned Tribunal for information.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 8, 2023/v