

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

+ **FAO 182/2014**

Reserved on: 22.03.2023

Pronounced on: 02.05.2023

IN THE MATTER OF:

SURESH CHOUDHARY & ANR Appellants
Through: Mr.A.K.Chaudhary, Advocate

versus

UNION OF INDIA Respondent
Through: Mr.Niraj Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of present appeal filed under Section 23 of Railway Claims Tribunal Act (hereinafter referred to as the Act) 1987, the appellants have assailed the order dated 04.03.2014 passed by Railway Claims Tribunal, Principal Bench, Delhi whereby the claim application filed by the appellants seeking death compensation was dismissed.

2. The brief facts are that the appellants/claimants have sought compensation under section 16 of the Act on the death of their son *Ajay Chaudhary* (deceased). It was claimed that on 28.03.2011, the deceased along with his mother and brother boarded *Seemanchal Express* train No.12488 at *Anand Vihar Railway Terminal, Delhi* to go to *Purnia*. The said journey was performed after purchasing valid reserved journey tickets. It was claimed that when the train was passing *Arthala Phatak*

(between *Sahibabad* and *Ghaziabad*), the deceased was standing at the gate of the compartment and on account of a severe jerk and jolt, fell from the moving train and suffered fatal injuries.

3. Learned counsel for the appellants contended that though the Tribunal has held the deceased to be a *bona fide* passenger but erred in denying the claim by observing that the death did not occur on account of an ‘untoward incident’.

4. Learned counsel for the respondent, on the other hand, defended the impugned order.

5. Suffice to note that since the journey tickets have been recovered, the issue as to whether the deceased was a *bona fide* passenger, was held in favour of the appellants. While observing that the incident is not covered under the definition of an ‘untoward incident’, the Tribunal placed reliance on the testimony of the one *Indal Lal* (RW-1), TTE who was on duty in the *Seemanchal Express* train on 28.03.2011.

6. A perusal of the testimony of *Indal Lal* would show that he stated that after the train had left *Anand Vihar* railway station it halted at a place between *Sahibabad* and *Ghaziabad* due to some technical problem. He further stated that while he was checking passengers for their tickets, he came to know that one passenger had suffered injuries. When he enquired, he found a boy lying on the other track. One more person was with the injured at the spot. The injured was taken by the said person for treatment. In enquiry, he was told that the injured suffered injuries from hit by a passing train. The injured was also accompanied by his mother who despite the accident, proceeded with the journey.

7. Though the Tribunal had found the mother’s conduct in continuing with the journey strange, but on a careful analysis, the conduct appears to

be justified as the witness had also stated that the mother was crying but had to continue with the journey as they were carrying lot of luggage. The witness in his cross-examination admitted that he had not seen the incident himself and was only told by the other passengers. The testimony of this witness has to be analyzed in view of the other evidence which came on record.

In these facts, testimony of *Arjun Chaudhary*, brother of the deceased, gains significance. He deposed that he alongwith his mother and brother undertook the said journey in *Seemanchal Express* on 28.03.2011 and when the train was passing through Village *Arthala Phatak*, his brother was washing his hands in the basin installed at the gate of the compartment and on account of heavy jerk and jolt, he fell from the moving train. He stated that when the incident took place, he was sitting at his seat.

8. From above, it is apparent that there is no eye witness to the incident, however, the testimony of the brother would show that the incident occurred when the deceased had gone to wash his hands and fell from the moving train. The testimony of brother establishes that the incident occurred on account of fall and not 'hit' as stated by *Indal lal* which anyway was hearsay.

9. In view of the above, this Court is of the opinion that the Tribunal erred in concluding that the incident is not covered under 'untoward incident' as defined under Section 123 (c) of the Railway Act.

10. Accordingly, the appeal is allowed and impugned order is set aside. The matter is remanded back to the Tribunal for awarding the amount of compensation in terms of the Act and for which purpose it shall be listed at the first instance before the Tribunal on 22.05.2023.

11. Miscellaneous applications, if any are disposed of.
12. A copy of this order along with the records, if any, be sent to the Tribunal.

(MANOJ KUMAR OHRI)
JUDGE

MAY 02, 2023/v

