

\$~15

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

+ **FAO 454/2017**

Date of decision: 17.05.2023

IN THE MATTER OF:

KRISHAN LAL & ORS. Appellants

Through: Mr.Anshuman Bal, Advocate

versus

UNION OF INDIA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The appellants have preferred the present appeal under Section 23 of The Railway Claims Tribunal Act, 1987 (hereinafter referred to as the 'Act') thereby seeking setting aside of the order dated 31.03.2016 passed by Railway Claims Tribunal, Principal Bench in case No. OA(IIu)71/2011 whereby their Claim Petition filed under Section 16 of the Act came to be dismissed.

2. Learned counsel for the appellants has contended that the Tribunal failed to appreciate that the journey ticket was recovered on the date of the incident and the said fact is also found mentioned in the *Panchnama* recorded by the staff of GRP on the date of the incident itself. He has submitted that the learned Tribunal erred in not appreciating the above fact

and rather based its decision only on the non-mentioning of the recovery of the journey ticket in other *Panchnama*/other reports.

3. The present appeal was filed in the year 2017 and the respondent has been duly served but has failed to appear despite many adjournments. Accordingly, this Court proceeds to consider the submissions made on behalf of the appellants.

4. A perusal of the appeal paper book would show that in the application filed before the Tribunal, the appellants had claimed that on 22.09.2010, *Neter Pal @ Pappu* (the deceased) undertook a train journey from *Aligarh* to *Delhi Shahdara* in AD5 train after purchasing a valid journey ticket bearing No.G39318705. When the train reached platform No.3 of *Aligarh Railway Station*, on account of sudden jerk, the deceased fell from the moving train and received serious injuries.

In the DRM Report, the respondent took a stand that injuries were self inflicted. The Tribunal also disbelieved the recovery of the ticket shown in the *Panchnama* on the ground that the same was not reflected in the other exhibits which had reflected only recovery of mobile phone and a cash of Rs.80/-. Though the Tribunal observed that the recovery of journey ticket was not mentioned in the post-mortem report and inquest report, this Court has failed to understand as to how the post-mortem and inquest reports would be relevant for establishing claim of recovery of a journey ticket especially when the official record of GRP mentioned the recovery. Notably, the *Panchnama* drawn by GRP showing the recovery of the journey ticket was placed on record before the Tribunal. The journey ticket bearing No.G39318705 not only finds mention in the said *Panchnama*, but also in the DRM Report. Despite knowing the ticket number, the respondent failed to file any verification report in this regard.

5. In the considered opinion of this Court and in light of the fact that the journey ticket was recovered on the same date, the deceased cannot be held to be not a *bona fide* passenger. Accordingly, the finding of the Tribunal on this aspect is set aside.

6. Coming to the next aspect as to whether the incident comes under the definition of an 'untoward incident' in terms of Section 123(c) of the Railways Act, 1989, it is seen that it was not disputed by the respondent that the body of the deceased was found at railway track of platform No.3 of *Aligarh Railway Station*.

7. The stand taken by the respondent in the DRM Report, that the accident took place on account of self inflicted injuries needs outright rejection in view of the decision of Supreme Court 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)

8. 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 the deceased suffered injuries was an '*untoward incident*'.

9. Consequently, the appeal is allowed and the impugned order is set aside. 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 12.07.2023. Let the compensation amount be paid to the appellants/claimants within two weeks thereafter.

10. The appeal is disposed of in the above terms.

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

(MANOJ KUMAR OHRI)
JUDGE

MAY 17, 2023/v