

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

FAO 207/2017

Date of Decision : 16.05.2023

IN THE MATTER OF:

KARAN SINGH AND ANR.

..... Appellants

Through: None

Versus

UNION OF INDIA

..... Respondent

Through: Mr.Rajkumar, Adv.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

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 order dated 07.02.2017 passed by the Railway Claims Tribunal, Principal Bench, Delhi in Claim Application No. OA (II u) 142/2015 whereby the claim application filed on behalf of the appellants was dismissed.

2. On the last date of hearing, noticing the continued absence of the appellants and their counsel, default notices were issued. Despite being served, the appellants remain unrepresented.

3. The Court with the assistance of learned counsel for the respondent, has gone through the entire material placed on record, which reveals that the claim application was filed before the Appellate Tribunal, thereby claiming that on 25.06.2014, the appellants' son undertook a train journey from *Amroha* to *Delhi* via *Sitapur City Delhi passenger train No. 54075* after purchasing a valid journey ticket. It was further claimed that on account of sudden jerk, he fell from the moving train at *Amroha*. Though, the body was found lying on the railway track, upon search no journey ticket was recovered. Later, the appellants filed an application seeking amendment to the claim application wherein it was stated that the deceased had boarded the subject train from *Amroha* instead of *Gajraula*. The said application was allowed.

4. Learned counsel for the respondent submits that though the appellant No.1 had examined himself in support of the claim petition, he was not an eye witness to the incident.

5. In an application seeking compensation, when no journey ticket is recovered, the deceased/claimants are required to discharge the burden cast upon them in support of the claim that the deceased was a *bonafide* passenger. At this juncture, this Court takes notes of the decision of the Supreme Court in Union of India v. Rina Devi reported as **(2019) 3 SCC 572**. The relevant extract from Rina Devi (Supra) is reproduced as under:

"29. We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will

be on the claimant which can be discharged by filing an affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

(emphasis added)

6. A perusal of testimony of the appellant No.1 would show that though in examination-in-chief, he deposed that the journey ticket was purchased by the deceased himself but however, in the cross-examination, he improved upon his stand by stating that it was the appellant who had purchased the journey ticket and then handed it over to the deceased. In his further cross-examination, he further improved upon the case by stating that he had also seen the deceased boarding the train.

7. In view of the above, the testimony of appellant No. 1 in respect of purchasing of journey ticket, is not satisfactory. The appellants failed to discharge the initial burden by filing an affidavit of the relevant facts for which reason, the judgment passed by the Tribunal is not interfered with and is upheld.

8. The present appeal is dismissed alongwith pending applications.

(MANOJ KUMAR OHRI)
JUDGE

MAY 16, 2023
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