



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

% **Judgment reserved on : 06 November 2023**
Judgment pronounced on: 17 November 2023

+ **FAO 503/2017**

RUKMANI

..... Appellant

Through: **Mr. Ravi Sabharwal, Adv**

versus

UNION OF INDIA

..... Respondent

Through: **Mr. J. K. Tripathi, Adv.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. This judgement shall decide an appeal preferred by the appellant, who is wife of the deceased. The deceased is alleged to have died in an untoward accident involving a train, and the appeal is instituted under Section 23 of The Railways Act, 1989¹ directed against the judgment dated 29.05.2017 passed by the Ld. Presiding Officer, the Railway Claims Tribunal, Principal Bench ('RCT') in OA (Ilu) No. 2001-2016, whereby the claim petition was dismissed.

2. Briefly stating, a claim petition was filed by the appellant seeking compensation of Rs.8 lakhs with interest from the date of accident involving the death of one Moti Chand, husband of the

¹ The Act



appellant, arising out of a train accident on 19.10.2016. The incident happened between 6:00 a.m. to 7:20 a.m. within the jurisdiction of PS Saini, District Kaushambi, State of UP. It is pertinent to mention that the learned RCT framed the issues, which are as under:-

- “1) Whether the deceased was a bona fide passenger on 19.5.16 on board the train in question at the relevant time of the incident?
- 2) Whether the death of the deceased was on account of an accidental amounting to an untoward incident, as claimed in the claim application?
- 3) Whether the applicants are the dependants of the deceased within the meaning of Section 123 (b) of the Railways Act, 1989?
- 4) To what amount of compensation, if any, are the applicants entitled?
- 5) Relief, if any?”

3. Although the claim of the appellant/wife was supported by AW-2 Ram Bahadur S/o Bhrigurasan aged about 38 years, learned RCT did not find his version to be inspiring confidence, and therefore, found that the burden of proving that the deceased was a *bona fide* passenger had not been discharged. As regards Issue No.2, it was found that the nature of injuries opined in the *post mortem* report did commensurate with the accidental fall from the train, and therefore, the death of the victim did result on account of an “untoward incident”. Issue No.3 was answered in favour of the claimant. However, in light of the decision on Issue No. 1, the claim petition was dismissed.

GROUND FOR CHALLENGE

4. The impugned judgment dated 29.05.2017 passed by the learned RCT has been assailed in the present appeal *inter alia* on the grounds that:



(a) it was not disputed anywhere that the deceased was travelling by train; and

(b) that the findings in the initial police report as well as inquest report conducted at the spot confirmed the fact that the deceased had an accidental fall from a running train;

(c) that the injuries that were reflected on the body of the deceased in the post-mortem too showed that the deceased had fallen from a running train; and

(d) that the learned RCT completely mis-appreciated the categorical testimony of AW-2, who stated, that the deceased was offered a berth which he declined and instead purchased his ticket for travelling in general compartment as he would have to pay the fine.

5. Notice of the present appeal has been issued to the respondent. No reply is filed. However, the appeal is opposed.

ANALYSIS AND DECISION

6. Having heard the learned counsels for the parties and on perusal of the record, at the outset the impugned judgment dated 29.05.2017 cannot be sustained in law.

7. Succinctly, it can be stated that, the learned RCT did not believe the version of AW-2 on the ground that although he testified that his father had returned the bag / luggage of the deceased to the family of the deceased on the next day of the accident, there was a patent contradiction as the claimant / appellant in her claim petition had *inter alia* made an averment that the luggage of her husband was missing. Learned RCT further opined that it was very unlikely that AW-2 saw the witness buying a ticket and no ticket was found on the person of



the deceased.

8. A careful perusal of the testimony of AW-1 / appellant shows that the deceased was travelling to Delhi from Meharva in the general compartment in Licchavi Express. Further, a purposeful analysis of the testimony of AW-2 corroborates with that of AW-1. It was deposed by AW-2 that on 18.05.2016 he was returning to Delhi from Meharva by Licchavi Express with his parents; that he had confirmed tickets in Boggy No. S-9 and S-1 respectively; and that he occupied berth no. 34 in Boggy No. S-9 whereas his parents were supposed to be in Boggy S-1 but his mother cancelled her journey for certain reasons. AW-2 further testified that when he reached the Meharva Station with his father at about 9:30 am, after 10-15 minutes, he met the deceased Moti Chand and while having a conversation with him it transpired to him, that he did not have a confirmed ticket and that although AW-2 offered to buy a ticket for him after paying the requisite fine, he declined and instead purchased a rail ticket for travelling in the general compartment for himself but handed over his luggage i.e., one small bag to him.

9. It is uncontroverted testimony of AW-2 that he had tea with the deceased when the train halted for 20 to 30 minutes at Allahabad Railway Station. He then also testified that when the train reached Delhi, he alongwith his father waited for Moti Chand for a while but since the latter did not turn up, they left the Railway Station to reach home. AW-2 further testified that on the very next day, when his father went to the residence of the deceased Moti Chand to return his bag, he was apprised that Moti Chand had met with an accident, which



resulted in his death. The aforementioned testimony appears to be natural, striking to common sense and logical and this Court is unable to persuade itself to hold it not truthful.

10. There is more to the story than to meet the eyes. It is significant to note that the body of the deceased was found near railway gate No.18 between KM 879/25 and 879/27 near UP line between Meethapur Samara and Sarayu, which comes in the jurisdiction of PS Saini and DD entry no. 10 with regard to a dead body lying on track was recorded on 19.05.2016 at 7.20 a.m. and the inquest was conducted at around 8.30 a.m. The report opined that death of the deceased occurred due to an accidental fall from the train.

11. A careful perusal of testimony of AW-2 would show that there was no challenge to his deposition recorded before the Tribunal that he was travelling along with his parents in a reserved compartment and there was a vacant berth which was offered to the deceased at Meharva Station but then the testimony of AW-2 that the deceased did not opt for the same as it would have entailed payment of some fine and instead purchased a ticket for the general compartment was not challenged in the cross-examination. No evidence was led by the respondent to show that AW-2 had no reserved booking so as to hold his version untruthful. Further, there was no challenge to his version that the train had a halt at Allahabad Railway Station for about 20-30 minutes and he even had tea with the deceased. There was no challenge in the cross-examination of AW-2 that the deceased opted to travel in the general compartment after buying a ticket. There was no suggestion to AW-2 in his cross-examination that he had any apparent



motive or interest to depose falsely in favour of the family of the deceased. At the cost of repetition, his version that when they reached Delhi and he did not find Moti Chand, appears to be inspiring confidence.

12. The observations made by the learned RCT about blatant contradiction as regards the version of AW-2 that the bag of the deceased was returned on the following day, while on the other hand the appellant/claimant *inter alia* making an averment in the claim petition that luggage was lost, cannot be held to be so decisive so as to defeat her claim. AW-1 was an illiterate lady hailing from a remote village in District Sivan, State of Bihar. It is pertinent to mention that as a matter of fact no luggage was found with the body of the deceased as is mentioned in the DD Entry No. 10 and evidently such inadvertent mistake occurred on the part of the counsel for the appellant who in his anxiety to draft the claim petition overlooked such fact. Be that as it may, the aforesaid contradiction was not prodded about in her cross examination either, and therefore, it would not be fair to hold her testimony tainted in any manner.

13. Further, it is clearly brought out from the post-mortem of the deceased conducted on 20.05.2016 that he had sustained skull injuries in the sense that the brain matter had come out; and it was also brought out that there was a fracture on the right arm as well as left forearm as also a fracture on the wrist joint. There were also crush injuries due to which gastrointestinal parts had oozed out and were visible; and there were fractures on both legs including a fracture in the middle of the thigh bone. Further, there found were multiple



abrasions present on both front & back chest region besides fractured ribs and indisputably the nature of injuries were commensurating from accidental fall from a train. Lastly, and most pertinently, there is nothing in the post mortem that the deceased had consumed alcohol. Therefore, there is no case of the respondent that the deceased was blameworthy in any manner or to say guilty of contributory negligence.

FINAL DECISION

14. In view of the aforesaid discussions, this Court finds that the appellant /claimant has been succeeded in proving by preponderance of probabilities that her deceased husband was a *bonafide* passenger travelling in general compartment of Lichhavi Express within the ambit of Section 2 (29) of The Act² and that he met with an ‘untoward incident’ as defined under section 2 (n) read with clause (c) of Section 123 of The Act³. Mere fact that the rail ticket was not recovered from the dead body is hardly of any consequence as deposition of AW-2 is manifestly truthful, that the ticket was purchased and the deceased travelled in the general compartment. It is probable that the rail ticket might have fallen out of the pockets probably on account of the impact of jerks due to the momentum of the body on its fall on the rail tracks. Reference can be invited to the decision in **Union of India vs Rina Devi**⁴, wherein it was reiterated that if a dead body is found in the precincts of the Railway Station, there is a presumption that the

² “passenger” means a person travelling with a valid pass or ticket;

³ “untoward incident” shall have the meaning assigned to it in clause (c) of Section 123 of the Railways Act, 1989 (24 of 1989).

⁴ (2019) 3 SCC 572



deceased was a 'bonafide passenger'. In the instant case, the dead body was found at a place where the deceased could not have otherwise been, unless he was travelling in the train.

15. In view of the foregoing discussion, the impugned order dated 29.05.2017 passed by the learned RCT cannot be sustained in law for being perverse, based on erroneous appreciation of evidence on the record and suffering from patent illegality. The same is set aside and the appeal is accordingly allowed and the appellant is awarded a compensation of Rs. 8 lakhs with interest @ 9% per annum from the date of the incident i.e., 19.10.2016 till this date.

16. It is further directed that the amount of compensation be deposited with the Registrar, RCT within a period of four weeks from today, failing which the appellant shall be entitled to an interest @ 9% per annum on the claim amount from the date of this judgment till realization.

17. The instant appeal is disposed of accordingly.

DHARMESH SHARMA, J.

NOVEMBER 17, 2023

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