

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

FMA 531 of 2012

SADHAN DALUI & ORS.

VS.

UNION OF INDIA

For the Appellants : Mr. Navin Mittal.

For the Union of India : Mr. Heranba Narayan Datta.

Hearing concluded on : 22.11.2024

Judgment on : 04.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present appeal has been preferred on being aggrieved by and dissatisfied with the order/award dated 06.10.2010 passed by the Hon'ble Member Technical of the Railway Claims Tribunal, Calcutta Bench at Kolkata in claim application no. A/699/2002 under Section 124(A) of the Railways Act, 1989, thereby dismissing the claim application. It is submitted by the appellant that the Tribunal passed the order under appeal without considering materials on record and without proper appreciation of the evidence brought before it.

2. The facts of the case is as follows:-

“.....Gita Dalui, wife of late Kashinath Dalui, for self and on behalf of Sadhan Dalui, Susil Dalui and Kartick Dalui applied as dependant for the grant of compensation due to death of her husband, Kashinath Dalui, in a railway accident on 17.6.2001. Her husband was about 70 years of age and was self-employed, earning about Rs.3,500/- per month. They reside at 126/3, Brindaban Mullick Lane, Ward No.43, Police Station – Bantra, District – Howrah. She has stated in her application that on 02.06.2001 at about 12 p.m. while Kashinath Dalui was travelling from Birshibpur to Ramrajatala railway station by a local train, suddenly Kashinath Dalui fell down from the said running train due to overcrowded pressure and sudden jerk of the train. As a result, Kashinath Dalui received multiple injuries on his person and he was immediately admitted into Howrah

General Hospital where he was undergoing treatment. He died on 17.06.2001. She also stated that Kashinath Dalui had a second class valid railway ticket from Birshibpur to Ramrajatala Railway stations bearing ticket no.11546 dated 02.6.2001 and was a bona fide passenger of the said train. Along with her claim application which she filed on 15.5.2002, she has submitted a Xerox copy of the death certificate issued by the Howrah Municipal Corporation, a Xerox copy of the disposal order accompanying corpses sent for cremation or burial issued by Howrah Police Morgue, a Xerox copy of Identity card issued by the Election Commission of India in favour of Kashinath Dalui and Gita Dalui. She has also prayed for in her claim application, a compensation of Rs.4 lakhs plus cost plus interest.

The respondent railway filed the written statement on 30.08.2004 stating that the application is not maintainable in law as well as in fact and it is not admitted that there was an 'untoward incident' as defined in Section 123(c) of the Railways Act at any railway station on 02.06.2001 which may come under the purview of Section 124A of the Railways (Amendment) Act, 1994. The railways have not admitted that the deceased accidentally fell down from any local EMU train at any railway station on 02.06.2001 as the specified number and name of the train involved and the place of occurrence of the alleged incident has not been disclosed anywhere in the application. The respondent railway has also stated that the applicant is put to strict proof that the cause of death of Late Kashinath Dalui was not due to any condition as stated in (a) to (e) of Section 124A of the Railways (Amendment) Act, 1994, that the deceased was a bona fide passenger and that she and the others stated in the application are the only dependants in terms of Section 123(b) of the Railways Act, 1989. The respondent further

stated that the applicant is put to strict proof about the negligence and misconduct on the part of the railway and that under no circumstances, the railway can be saddled with any liability and the applicant is not entitled to get any compensation in the case....”

3. On hearing the matter and considering the materials on record, the Tribunal dismissed the claim application, hence the present appeal.
4. Heard the learned counsel for the appellants and the learned counsel appearing for the Union of India. The learned counsel for the appellant has relied upon the following provisions of the Railways Act, 1989:-

Sections 123, 124 and 124-A of the Railways Act, 1989 and Rules 3 and 4 of the Railway Accidents and Untoward Incidents (Compensation) Rules, 1990.

5. The appellants have also relied upon the judgment of the Hon'ble Supreme Court in ***Doli Rani Saha vs. Union of India*** reported in **(2024) 8 SCR 391**, wherein the Court held as follows:-

*“.....13. From the recapitulation of the various judicial pronouncements leading to the present appeal, it can be seen that the primary issue is whether the deceased was travelling on the train in question. In **Rina Devi (supra)**, a two-Judge Bench of this Court considered the question of the party on which the burden of proof will lie in cases where the body of the deceased is found on railway premises. This Court held that the initial burden would be on the*

claimant, which could be discharged by filing an affidavit of the relevant facts. Once the claimant did so, the burden would then shift to the Railways. Significantly, it also held that the mere absence of a ticket would not negate the claim that the deceased was a bona fide passenger. The relevant extract from the ruling of the Court is reproduced below:

“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 supplied)

18. The decision in **Rina Devi (supra)** holds as follows on the aspect of compensation:

“....19. Accordingly, we conclude that compensation will be payable as applicable on the date of the accident with interest as may be considered reasonable from time to time on the same pattern as in accident claim cases. If the amount so calculated is less than the amount prescribed as on the date of the award of the Tribunal, the claimant will be entitled to higher of the two amounts. This order will not affect the awards which have already become final and where limitation for challenging such awards has expired, this order will not by

itself be a ground for condonation of delay. Seeming conflict in Rathi Menon [Rathi Menon v. Union of India, (2001) 3 SCC 714, para 30 : 2001 SCC (Cri) 1311] and Kalandi Charan Sahoo [Kalandi Charan Sahoo v. South-East Central Railways, (2019) 12 SCC 387 : 2017 SCC OnLine SC 1638] stands explained accordingly. The four-Judge Bench judgment in Pratap Narain Singh Deo [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] holds the field on the subject and squarely applies to the present situation. Compensation as applicable on the date of the accident has to be given with reasonable interest and to give effect to the mandate of beneficial legislation, if compensation as provided on the date of award of the Tribunal is higher than unrevised amount with interest, the higher of the two amounts has to be given.”

The decision in Rina Devi (supra) has subsequently been followed in Union of India v. Radha Yadav, : (2019) 3 SCC 410 and in Kamukayi and others v. Union of India and Others, 2023 SCC Online SC 642.

19. *In Rina Devi (supra), this Court held that the claimant would be entitled to interest from the date of the accident and, in case the amount so calculated is less than the amount prescribed as on the date of the grant of compensation, the claimant would be entitled to the higher of the two amounts. The principle which has been laid down in Rina Devi (supra) serves a salutary purpose. This was noticed in the decision in Radha Yadav (supra) where it was observed that “the idea is to afford the benefit of the amendment, to the extent possible”.*

20. *In 2003, the compensation payable for the death of a passenger was Rs 4,00,000, as provided under Schedule I of the Railway Accidents (Compensation) Rules 1990, as amended by the Railway*

Accidents and Untoward Incidents (Compensation) Amendment Rules 1997. The compensation payable for the death of a passenger as on date is Rs 8,00,000, which was enhanced by a notification bearing GSR 1165(E) dated 22 December 2016.

21. *Following the judgment in Rina Devi (supra), from which we see no reason to depart, we hold that the appellant is entitled to compensation quantified at Rs 8,00,000. The compensation shall be paid by the respondent to the appellant by 30 September 2024, failing which the amount awarded by this Court shall carry interest at the rate of six per cent per annum from the date of the order of this Court until payment.*

22. *The District Legal Services Authority, Kokrajhar shall provide all details, including the address of the appellant, so as to facilitate payment by the respondent in terms of the above directions. If the appellant has a bank account, including a Jan Dhan account, details shall be provided by the DLSA to the respondent so that the transfer of funds is made seamlessly to the appellant.....”*

6. Considering the materials on record including the judgment under appeal, it appears that the Tribunal relied upon the following documents :-

- i.** Original ticket no.11546
- ii.** Police report (duly authenticated by Notary Public)
- iii.** P.M. Report (duly authenticated by Notary Public)
- iv.** Original death certificate

- v. Original police intimation message
- vi. Original burning ghat receipt
- vii. Copy of identity card of the victim
- viii. Copy of identity card of the appellant, Sadhan Dalui

7. It appears from the said judgment under appeal, dismissing the claim case, that the Tribunal held as follows:

- 1) The place of accident/incident has not been properly stated.
- 2) That it has not been mentioned in the claim application / amended claim application that there was any person travelling with the victim who was a senior citizen of about 70 years or about any person who was an eye-witness to the incident.
- 3) That the circumstances under which the accident occurred has not been stated and post mortem report reveals death due to injury ante mortem in nature.
- 4) That during cross-examination, witness Sadhan Dalui, the victim's son, admitted that he did not report the incident to the station authority or GRP of either Santragachi or Ramrajatala Stations.

- 5) That being an interested party travelling with his father was an afterthought and as such the Tribunal did not rely upon his evidence.
- 6) There being no independent eye witness, the Tribunal decided that the death of the victim was not under Section 133 of the Railways Act, 1989.
- 7) The applicant indicated ticket no.11546 dated 02.06.2001 in his claim application. The Tribunal held that while being cross-examined Sadhan Dalui stated that the ticket of his father was handed over to him by the nurse of the hospital and they did not obtain his signature while handing over the same. Thus, the Tribunal held that the ticket was in the custody of the applicant at the time of incident when the victim was in hospital.
- 8) The Tribunal held that appellant did not indicate details at the time of filing of the claim application dated 15.05.2002. The Tribunal held that the ticket was to be seized from the belongings of the victim by the hospital authority and as the same was not done, the claim application was rejected.

8. From the materials on record including the evidence before the trial court the following is evident :-

- 1) The Victim was admitted to Howrah General Hospital on 02.06.2001 with injuries.
- 2) The Post Mortem Report shows the victim died on 17.06.2001 due to injuries sustained.
- 3) The ticket (Railway) of the victim was produced by the victim's son, on having received the same from the hospital.
- 4) O.P. Form no. 62 dated 18.06.2001 of the Superintendent of Police, Howrah, shows that message of the accident was also sent to **I/C Howrah (G.R.P.S).**
- 5) It is also noted in the said form that the ***“opinion of MO that the cause was Cardio Respiratory failure in a case of train accident”***
- 6) Report was also received from O/C Bantra P.S., District Howrah that *“on 17.06.2001, while Kashinath Dolui while he was travel by train **near Ram Rajatala met an Train Accident** and removed to District Hospital, Howrah, thereafter he expired.”*
- 7) The First Information of Report, Case of **unnatural death** sent to the Magistrate under Section 174 Cr.P.C. shows that Howrah P.S.U.D. case no. 220/01 was started on 17.06.2001 in respect of victim Kalipada.

- 8) The number of the ticket in the original claim application matched the copy of ticket filed was accepted by (Return) and the tribunal.
9. The contention of the Railway is that the present case is not covered under Section 123 (c) of the Railways Act and Section 124A of the Railways (Amendment) Act, 1994 and then denied the accident stating that there was no negligence and misconduct on the part of the railway.
10. **The issues framed by the Division Bench on 30.08.2004 are as follows :-**

1) Was the husband of the applicant a bona fide passenger?

The original ticket produced and the number of the ticket being the same as the number given in the claim application prima facie proves that the victim in this was a bonafide passenger of the Indian Railways.

2) Was his death caused in any untoward incident of accidental falling from a train carrying passengers?

The D.P. memo and its entries relating to the opinion of the M.O., injuries noted in the P.M. Report of O/C Bantra and the FIR of the U.D. Case all show that the death of the victim was due to accidental falling from a train carrying passengers (Untoward Incident).

3) Who are the dependants left by the deceased and are they entitled to any compensation under Section 124A of the Railways Act?

11. During pendency of the case, the wife of the victim/claimant died.
12. In the claim application, the applicants have stated that they are sons of the victim.
13. **The Voter I-Card of Applicant no.1 Sadhan Dalui shows the victim as his father.** The other claimants are not denied by him and their claim will be entertained when the compensation is disbursed on production documents of proof as to the relationship.
14. Considering the evidence on record as already discussed the evidence of Sadhan Dalui as eye witness is not very essential.
15. The findings of the tribunal at page 5 of the Judgment as to the ticket is totally in contradiction to findings noted in Para 1 and 2 of the judgment **wherein the ticket produced was accepted by the Hon'ble member (Technical) while allowing the petition for amendment.**
16. Thus the order under appeal passed by the Hon'ble Member Technical of the Railway Claims Tribunal, Calcutta Bench at Kolkata dated 06.10.2010 in claim application no. A/699/2002 under Section 124(A) of the Railways Act, 1989, **being not in accordance with law is set aside.**

- 17. The application being FMA 531 of 2012 is allowed.**
- 18.** The claimants are thus entitled to get compensation according to the amendment of the Railway Accident and Untoward Incident Compensation Rules, 1990 as amended with effect from 01.01.2017.
- 19.** Admittedly, the Claimants have not received any compensation as the claim application was dismissed by the Railway Tribunal.
- 20.** Thus, the Claimants are now entitled to the **total amount of compensation of Rs. 8, 00, 000/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**
- 21.** The Respondent shall deposit the total amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks from date, who shall then release the amount in favour of the claimants in equal proportion, upon satisfaction of their identity and payment of *ad-valorem* Court fees, if not already paid.
- 22.** All connected application, if any, stands disposed of.
- 23.** Interim order, if any, stands vacated.
- 24.** Copy of this Judgment be sent to the Learned Tribunal along with the court records, if received at once.

- 25.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]