

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No.143 of 2024

- 1.Kavita Devi @ Kabbo Devi wife of Late Shambhu Sahni aged about 46 years.
 - 2.Archana Kumari D/o Late Shambhu Sahni aged about 23 years.
 - 3.Raja Kumar Sahni s/o Late Shambhu Sahni aged about 16 years.
 - 4.Sanoj Kumar Sahni s/o Late Shambhu Sahni aged about 10 years.
 - 5.Chhedi Sahni s/o Late Suguru Sahni aged about 73 years father of Late Shambhu Sahni
 - 6.Titiya Devi W/o Chhedi Sahni aged about 71 years mother of Late Shambu Sahni
- Appellants 3 and 4 being minor are being represented through their mother, their natural guardian (Appellant no.1).
All appellants r/o village/Mohalla-Kachahriya P.O. & P.S. Buddhuchak, District Bhagalpur (Bihar). Appellants

Versus

Union of India through General Manager, Eastern Railway, Kolkata, P.O. and P.S. Garden Reach and District Kolkata (West Bengal).
.... Respondent

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellants : Mrs. Chaitali Chatterjee Sinha, Advocate
Mrs. Chainika, Advocate
For the Respondent : Mr. Ravi Prakash, C.G.C.

C.A.V. on 26.09.2024

Pronounced on 01.10.2024

1. The present miscellaneous appeal has been preferred against the judgment dated 19th June, 2019 passed by the Railway Claims Tribunal, Ranchi Bench in Case No.OA(IIU) RNC/105/2017 whereby and whereunder the learned Tribunal has dismissed the claim application of the appellants seeking compensation amounting to Rs.8 lakhs along with interest (from the date of filing of the application i.e., 18th August, 2017) on account of death of the deceased treating him not be a bona fide passenger and the incident as not be an 'untoward incident' as defined under Section 123(c)(2) of the Railways Act, 1989.
2. The brief facts giving rise to this miscellaneous appeal are that a claim petition under Railway Claim Tribunal Act, 1987 was filed by Kavita @ Kabbo Devi (the wife of the deceased) with these averments that on 7th June, 2017 deceased Shambhu Sahni after purchasing valid 2nd Class ticket for Sahibganj Junction to Pirpainti Station boarded in a 2nd class bogie of Howrah Gaya express train at Sahebaganj station to

come to Pirpainti Station. The said ticket was purchased by the brother of the deceased, namely, Yamuna Sahni and handed over to the deceased. When the train was approaching Pirpainti station, the deceased reached near the gate to alight at the station. Other people who had also to alight at the said station gathered near the door as a result of which there was intense jostling amongst the passengers. While the train was running between Ammapali Halt and Pirpainti station, the deceased, who was standing inside the bogie lost his balance and fell down from the running train accidentally between K.M./Pole No. 253/01 and 253/00. The deceased sustained grievous injuries and died on the spot as a result thereof. After getting information from someone about the incident during search of the deceased, the wife of the deceased reached there along with the family members and identified the dead body of the deceased as Shambhu Sahni. After postmortem the dead body was handed over and cremation was done. In this regard an U.D. Case No.29 of 2017 dated 7th June, 2017 had been registered at Rail P.S. Bhagalpur. The rail police investigated the matter and found that the factum of incident to be true.

3. On behalf of the Union of India through the General Manager, Eastern Railway, Kolkata, the written statement was filed, wherein the averment made in the claim petition were denied and it is stated that on 7th June, 2017 no incident/un-toward incident had taken place between Ammapali Halt & Pirpainti Stations, hence, not reported by any co-passenger or other person about any untoward incident etc. to the concerned Station Manager, but on reporting by the Driver of the Train no.13133 UP at Pirpainti Railway Station about an unknown dead body lying between KM 253/03-02 (Pirpainti-Mirzachauki) between UP & DN lines, then, the Dy. CYM/ Area Controller, Eastern Railway, Bhagalpur had given a Memo dated 07.06.2017 at 06:15 HRS. to O/c GRP BGP & O/c RPF/ BGP for their immediate and proper actions. This fact is clearly evident from the perusal of the Memo dated 07.06.2017 at 06:15 HRS of the Dy. CYM/ Area Controller, Eastern Railway, Bhagalpur as annexed with the claim application as Annexure-1. Actually, the deceased died due to injuries sustained during his

crossing the Railway track and dashed by any unknown train, hence, it is a run over case.

- 3.1 From perusal of the document annexed with the claim application it reveals clearly that I.O. of U.D. case had not registered the UD case on the first information given by the Dy. CYM/ Area Controller, Eastern Railway Bhagalpur by his memo to him about the said dead body lying on the track, but I.O. has waited for arriving the relatives of the deceased at the spot for her fard beyan and thereafter registered the said UD case as per the afterthought and concocted version of the informant. The I.O. of UD case has also nowhere written in his final report that he had taken the statement of witness or eyewitness of the alleged untoward incident in the case diary. He has even not ascertained the train from which the deceased was said to be fallen down. Therefore, it is clear that the I.O. has submitted his final report only on the basis of conjectures and surmises and without any cogent evidence of the alleged train journey of the deceased and had fallen down from the train. On perusal of the inquest report, it is evident that at the time of preparation of the inquest report, I.O. had not found any journey ticket from the possession of the deceased. Therefore, it is proved that the deceased had not purchased any journey ticket of a train and was also not travelling on any train on 07.06.2017. The claimants have willingly suppressed the material facts and have not annexed the necessary documents viz. F.I.R., death certificate of the deceased, proper dependency certificate issued from the competent authority and bank account of all beneficiaries/applicants etc. Hence, prayed to dismiss the claim petition.
4. On behalf of the claimant **in oral evidence** examined **Kavita Devi @ Kabbo Devi** and **in documentary evidence** certified copy of memo dated 7th June, 2017, certified copy of inquest report dated 7th June, 2017, certified copy of fard beyan of Kavita Devi dated 7th June, 2017, certified copy of postmortem report dated 8th June, 2017 and certified copy of final report dated 8th June, 2017, original family certificate dated 9th June, 2017, Xerox copy of Voter I card of the applicant no.1, Xerox copy of joint bank account (pass book) of the applicant no.1 and passport size photograph of the applicant affixed on the claim

application.

5. On behalf of the respondent in documentary evidence filed DRM's Note Sheet dated 5th September, 2018, whereby the inquiry report of the inquiry officer duly accepted/approved by DRM Malda on 5th September, 2018, Original enquiry report of the Investigating Officer of the case namely Rabindra Nath Saha, SI/RPF/Kahalgaoon dated 28th August, 2018 submitted to the DSC/RPF/MLDT, memo of Dy. SM/Pirpainti to SI/RPF/POST/Kahalgaoon dated 25th August, 2018, statement of Kabita Devi (the applicant) w/o Late Shambhu Sahani, recorded by E.O. during his enquiry of the case on 19th August, 2018 and certified copy of abstract copy of station diary of Pirpainti Railway Station of 7th June, 2017.
6. The learned Tribunal after hearing the rival submissions of the learned counsel for the parties **dismissed the claim petition vide judgment dated 19th June, 2019** on the ground that the deceased was not the bona fide passenger on the date of incident.
7. Aggrieved with the aforesaid judgment, the instant miscellaneous appeal has been preferred on behalf of the claimants.
8. I have heard the learned counsel for the parties and perused the materials available on record.
9. For disposal of this miscellaneous petition, the following **points of determination** are being framed.
 - i. Whether the deceased (the husband of the appellant no.1) was bona fide passenger on the alleged date of incident or not ?
 - ii. Whether the applicants or dependents of the deceased are entitled to get compensation ? If yes, then the quantum of compensation.

10. **Point of Determination No.1:-**

Prior to re-evaluate the evidence on record, it would be pertinent to reproduce the **Sections 123, 124 and 124(a) of the Railways Act, 1989** which reads as under :

123. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) "accident" means an accident of the nature described in section 124;

(b) "dependant" means any of the following relatives of a deceased passenger, namely:—

- (i) the wife, husband, son and daughter, and in case the deceased passenger is unmarried or is a minor, his parent;
- (ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;
- (iii) a minor child of a pre-deceased daughter, if wholly dependant on the deceased passenger;
- (iv) the paternal grand parent wholly dependant on the deceased passenger;
- (c) "untoward incident" means—
 - (1) (i) the commission of a terrorist act within the meaning of sub-section (1) of section (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or
 - (ii) the making of a violent attack or the commission of robbery or dacoity; or
 - (iii) the indulging in rioting, shoot-out or arson, by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
 - (2) the accidental falling of any passenger from a train carrying passengers.

124. Extent of liability.—When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.—For the purposes of this section "passenger" includes a railway servant on duty.

[124A. Compensation on account of untoward incidents.—When in the course of working a railway an untoward incident occurs, then whether or not there

has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to—

- (a) suicide or attempted suicide by him;
- (b) self-inflicted injury;
- (c) his own criminal act;
- (d) any act committed by him in a state of intoxication or insanity;
- (e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.—For the purpose of this section, “passenger” includes—

- i. a railway servant on duty; and
- ii. a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.”

10.1 On behalf of the claimant in oral evidence **Kavita @ Kabbo Devi** has been examined. She in her examination-in-chief on affidavit has deposed that on 7th June, 2017 her husband boarded in a 2nd Class bogie of Howrah Gaya Express train at Sahibganj Junction for coming to Pirpainti Station after having a valid 2nd Class express ticket for Sahibganj Jn. to Pirpainti Station. The said valid ticket was purchased by the brother of the deceased, namely, Yamuna Sahni and handed over the same to the deceased. When the train was approaching Pirpainti Station, the husband of the claimant no.1 reached near the gate of bogie in order to get down at Pripainti station. A good number of Pirpainti bound passengers also reached near the gate of the bogie for getting down at Pripainti Station, causing heavy rush of the passengers gathered near the gate of the bogie and there started jostling amongst the passengers. The said train was running between

Ammapali Halt and Pripainti Stations and the deceased was also standing near the gate inside the bogie accidentally fell down from the running train between K.M./Pole No.253/01 and 253/00 due to intense jostling amongst the passengers as a result of which her husband sustained grievous injuries and succumbed to injuries. After having received the information in regard to the incident she went to the place of accident and found the dead body of her husband. The dead body was handed over to her after postmortem. In this regard U.D. Case No.29 of 2017 was registered on 7th June, 2017 at Rail P.S. Bhagalpur. It is further deposed in the affidavit that her husband after his death left the applicant no.1 Kavita @ Kabbo Devi, wife, one daughter Archana Kumari 17 years old, two sons 10 years and four years old respectively, 67 years old father and 65 years old mother on the date of accident. She also deposed that the valid ticket of her deceased husband was lost during the said untoward incident. The documents enclosed with the claim petition are also true and contents of the same she also verifies. Her husband was the bona fide passenger, hence, the amount of Rs.8,00,000/- (Eight Lakhs) was claimed as compensation under Extraordinary Gazette No.877 dated 22nd December, 2016 along with interest of 12% per annum from the date of application till realization.

In cross-examination, this witness has stated that her husband was labour in Guwahati and she did not see her husband purchasing ticket and also falling down from the train. She has no personal knowledge of the untoward incident. She came to know in regard to the fact of purchasing ticket from her brother-in-law Yamuna Sahani. The police got her thumb impression on the plain papers. This witness denied the suggestion that her husband was not the bona fide passenger and the said untoward incident took place while crossing the railway track not from falling from the train.

- 10.2 From perusal of Annexure-1, the certified copy of the memo dated 7th June, 2017, it is found that one unknown dead body was found lying at KM. 253/03-02 Pripainti-Mirzachowki (PPT-MZC) in between UP and DN lines and the driver of Train No.13133 UP reported and requested for quick action. On the report of the driver of the said train number,

the Dy. CYM/Area Controller informed the Pirpainti Station Master.

- 10.3 Annexure-2 is the fard beyan of Kavita Devi which was recorded by the I.O., in which Kavita Devi has stated that on 6th June, 2017 her husband and her brother-in-law, namely, Yamuna Sahni both went to Sahebganj Gangapar Manihari. On 7th June, 2017, her brother-in-law Yamuna Sahni at 2 o' clock in the night informed that he after having purchased the ticket handed over the same to his brother Sambhu Sahni and had made him to sit in Howrah Gaya Express from Sahebgang to Pirpainti. Her brother-in-law had informed on phone in this regard that he had made his elder brother sit in the train and again went to Sahebganj Gangapar Manihari. When her husband did not come back to the house, the search was made of him and it came to know that a dead body was lying between Ammapali Halt and Pirpainti. The body was cut by the train and same was identified to be of her husband Samhu Sahni. They informed to the police of Bhagalpur GRP and they took the body to the Pirpainti railway station.
- 10.4 In the inquest report of the deceased, the cause of death is shown on account of falling from the train. The age of the deceased is shown 45 years. In postmortem report of the deceased, the cause of death is shown shock and hemorrhage on account of ante mortem injuries caused by hard and blunt object.
- 10.5 Annexure-6 is the family certificate in regard to the dependents of the deceased Sambhu Sahni and Annexure-9 is the photocopy of passbook of the joint Bank Account in the name of Kabbo Devi and Shambhu Sahni.
- 10.6 From perusal of note sheet of IC/Assistant Security Commissioner/RPF, Eastern Railway/Malda dated 3rd September, 2018, it is found that on 7th June, 2017, the deceased was travelling by the Train No.13023 UP unsafely standing on footstep of a coach as a result of which, **he fell down from the train near Ammapali Halt Railway Station "at K.M. No.253/00-01 and succumbed to injuries."** On 7th June, 2017 during inquest report prepared by the I.O., no any railway ticket was recovered from the possession of the deceased which proves that he was not the bona fide passenger of Railway.
- 10.7 From perusal of the inquiry report submitted by Rabindra Nath Saha,

SI/RPF/Kahalgaon, Investigating Officer of the case, it is found that during **"inquiry it came to the light that the deceased was trying to unsafely travelling on train's coach gate which is punishable offence i.e., travelling on step or footboard of any carriage and was also travelling without ticket or any travelling authority as per inquest report."** In the memo dated 25th August, 2018 of Deputy Station Manager, Pirpainti Station addressed to the SI/RPF/Post/KLG it is mentioned that no guard and driver of any train had reported as per station diary and no record is available at station.

- 10.8 The statement of claimant Kavita Devi was also recorded by the I.O. and same is also filed on behalf of the respondent.
11. **From the evidence adduced on behalf of both the parties, it is the admitted fact that untoward incident took place on 7th June, 2017 on account of falling of the deceased from the gate of running train as the Investigating Officer of the case has also come to the conclusion after completing the enquiry and also filed the final report on the ground that the deceased was not bona fide passenger.**
12. **The claimant Kavita Devi has been examined as A.W.1 before the learned Tribunal and the statement given by her to the Investigating Officer and the also before the learned Tribunal. No contradictory conclusion could be drawn from the witness in cross-examination.**
13. Though in the written statement filed on behalf of the respondent, this defense as taken that the deceased had died while crossing the railway track; **but from the documentary evidence adduced on behalf of the respondent, it is found that the said untoward incident took place by falling of the deceased from the running train in between Sahebganj to Pirpainti Station.**
14. **As such, this fact is well proved that the deceased was bona fide passenger. Even if the ticket was not recovered from his person while preparing the inquest report of the deceased. Mere filing of the affidavit on behalf of the claimant is sufficient to raise the presumption that the deceased was**

bona fide passenger. Neither oral nor any documentary evidence has been adduced on behalf of the respondent to show that the deceased was not bona fide passenger. Initial burden having been discharged on behalf of the appellants, the burden of proof is shifted upon the respondent to prove the fact that the deceased was not bona fide passenger.

15. From the evidence adduced on behalf of the respondent, the presumption in regard to bona fide passenger raised in favour of the appellants is not found rebutted.

15.1 The Hon'ble Apex Court in the case of ***Union of India versus Rina Devi*** reported in ***(2019) 3 SCC 572*** at paragraphs 20 and 29 has held as under :

"20.From the judgments cited at the Bar we do not see any conflict on the applicability of the principle of strict liability. Sections 124 and Section 124A provide that compensation is payable whether or not there has been wrongful act, neglect or fault on the part of the railway administration in the case of an accident or in the case of an 'untoward incident'. Only exceptions are those provided under proviso to Section 124A. In Prabhakaran Vijaya Kumar (supra) it was held that Section 124A lays down strict liability or no fault liability in case of railway accidents. Where principle of strict liability applies, proof of negligence is not required. This principle has been reiterated in Jameela (supra).

29.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."

15.2 The Hon'ble Apex Court in the case of ***Union of India versus Prabhakaran Vijaya Kumar and Others*** reported in ***(2008) 9 SCC 527*** at paragraph 11 has held as under :

"11.No doubt, it is possible that two interpretations can be given to the expression 'accidental falling of a passenger from a train carrying passengers', the first being that it only applies when a person has actually

got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. **Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one....."**

16. In the case in hand as per investigation conducted by the Investigating Officer in U.D. Case No.29 of 2017, the said untoward incident took place on account of falling of the deceased from the running train and the burden of proof have been discharged on behalf of the claimant by filing the affidavit to this effect stating therein that the deceased after having purchased the ticket was travelling as a bona fide passenger, who fell down from the running train on account of jostling by the passengers, who had also come on the gate of the train to get down. The presumption in favour of the appellants in regard to being the bona fide passenger will be raised. On behalf of the respondent the burden of proof which shifted on it, has not rebutted and the presumption of being not bona fide passenger by not adducing the cogent evidence.
17. **Accordingly, the point of determination no.1 is decided in favour of the appellants and against the respondent.**
18. **Point of Determination no.2 :** In view of Notification No. G.S.R. 1165(E) dated 22nd December, 2016 with effect from 1st January, 2017 Rule 3(2) of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 the words "rupees four lakh", has been substituted with the words "rupees eight lakh".
- 18.1 The Hon'ble Apex Court in the case of ***Union of India vs. Radha Yadav*** reported in ***2019 (3) SCC 410*** at paragraph 11 has held as under :

"11.The issue raised in the matter does not really require any elaboration as in our view, the judgment of this Court in Rina Devi³ is very clear. What this Court has laid down is that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the

date of the award, the claimant would be entitled to higher of these two amounts. Therefore, if the liability had arisen before the amendment was brought in, the basic figure would be as per the Schedule as was in existence before the amendment and on such basic figure reasonable rate of interest would be calculated. If there be any difference between the amount so calculated and the amount prescribed in the Schedule as on the date of the award, the higher of two figures would be the measure of compensation. For instance, in case of a death in an accident which occurred before amendment, the basic figure would be Rs. 4,00,000. If, after applying reasonable rate of interest, the final figure were to be less than Rs. 8,00,000, which was brought in by way of amendment, the claimant would be entitled to Rs. 8,00,000. If, however, the amount of original compensation with rate of interest were to exceed the sum of Rs. 8,00,000 the compensation would be in terms of figure in excess of Rs. 8,00,000. The idea is to afford the benefit of the amendment, to the extent possible. Thus, according to us, the matter is crystal clear. The issue does not need any further clarification or elaboration."

19. Since in this case, untoward incident has taken place on 7th June, 2017 after enforcement of the Notification No. G.S.R. 1165(E) dated 22nd December, 2016, the claimants are entitled to compensation of Rs.8 lacs along with interest of 9% per annum from the date of filing of the claim petition up to the date of order and from the date of order up to the date of actual payment 6% per annum.
20. Accordingly, the point of determination no.2 is also decided in favour of the appellants and against the respondent.
21. In view of the aforesaid analysis of the evidence on record, this appeal is hereby **allowed**.
22. Accordingly, the **judgment dated 19th June, 2019** passed by the Railway Claims Tribunal Ranchi Bench in Case No.OA(IIU)/RNC/105 /2017 is hereby **set aside**.
23. The respondent is directed to pay the aforesaid amount in the bank account of Kavita Devi @ Kabbo Devi wife of Late Shambhu Sahni within one month from the date of production/receipt of a copy of this order.

(Subhash Chand, J.)

Rohit/AFR