

# IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)

**M.A. No.224 of 2020**

1. Rita Devi, aged about 35 years, wife of late Anurodh Singh @ Anurudh Kumar Singh

2. Anisha Kumari Singh, aged about 17 years, daughter of late Anurodh Singh @ Anurudh Kumar Singh

3. Tanisha Kumari Singh, aged about 14 years, daughter of late Anurodh Singh @ Anurudh Kumar Singh

Serial Nos. 2 and 3 are minor daughters of deceased and appellant no.1, and represented through her mother and natural guardian, i.e. through appellant no.1.

All are Resident of Village- Karmatanr, PO Jawahar Nagar, PS Birni, District Giridih (Jharkhand) ..... Appellants

Versus

Union of India through the General Manager, North Central Railway, Allahabad, PO & PS Allahabad, District Allahabad. .... Respondents

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**PRESENT**

**CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND**

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| For the Appellants     | : Mr. Vijay Shanker Jha, Advocate |
| For the Respondent/VOI | : Mrs. Nitu Sinha, CGC            |

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**J U D G M E N T**

**CAV On 20<sup>th</sup> February 2024**

**Pronounced on 15th March 2024**

The instant miscellaneous appeal has been directed against the order dated 12.02.2020 passed by the Member (Judicial) Railway Claims Tribunal, Chandigarh at Ranchi whereby the claim petition of the appellant has been dismissed.

2. The brief facts leading to this Miscellaneous Appeal are that the claim petition was filed on behalf of claimants Rita Devi and others with these averments that on 13.07.2017 at 9:30 PM the husband of claimant no.1 Rita Devi and father of claimant 2 and 3 and son of claimant no.4 late Anurodh Singh @ Anurudh Kumar Singh (deceased) had boarded Purshotam Express at Delhi Railway Station for Hazaribag Road (Saria) in presence of Rahul Rai, the brother-in-law of deceased. Deceased had purchased a general ticket of amount Rs.285/- in presence of Rahul Rai and boarded in train with help of Rahul Rai thereafter Rahul Rai came back to his residence.

2.1 On 14.07.2017 at 8 O'clock in the morning Rahul Rai received the information from his father over the mobile phone that Anurudh Kumar Singh had fallen down from the running train at near Kanpur Railway Station. Rahul Rai also reached to Kanpur Railway Station at 8:30 PM on very day and contacted to GRP from where he was informed that the dead body of Anurudh Kumar Singh was sent to Kanpur Hospital for postmortem. Rahul Rai reached to hospital. He further went to GRP and asked whereabouts of the luggage, ticket and money of the deceased. GRP informed him that they found only Rs.30/- in purse and a mobile phone, the same was handed over to Rahul Rai.

2.2 On next day 15.07.2017 Rahul Rai and 10 other persons reached to Kanpur Hospital and received the dead body of deceased Anurudh Kumar Singh. The inquest of the dead body of Anurudh Kumar Singh was prepared and in the inquest report of deceased the second class general ticket was shown lost in accident. In the column for details of loss

of any luggage on account of the accident/incident to the train was mentioned Rs.10,000/- and a journey ticket. Deceased on his death left his wife, two daughters and his father who are claimants in this claim petition. Deceased was private driver and 37 years old. As such the compensation of Rs.8 lac @ 12% interest thereon was claimed.

3. On behalf of Union of India represented by General Manager, North Central Railway, Allahabad, the written statement was filed in which the averments made in the claim petitions were denied and in additional plea it is stated that deceased Anurudh Kumar Singh accidentally fell down from Purshotam Express on 15.07.2017 he was having no ticket on the alleged date of journey. The onus to prove that the deceased was having a ticket lies upon the claimant. In inquest report, it is also stated that no ticket was found at the time of preparing inquest report as such the deceased was not a *bonafide* passenger on the alleged date of accident in the said train. At the time of inquest of the deceased police has not seized any ticket and there being no deficiency in service on the part of the opposite party, the applicants/claimants are not entitled to get the compensation. In view of the above prayed for dismissal of the claim petition.

4. The learned Tribunal has framed following issues:

(I) Whether the case comes under jurisdiction of Ranchi Bench?

(II) whether the deceased was a *bonafide* passenger, as alleged?

(III) Whether the deceased had died due to alleged untoward

incident?

(IV) Whether the applicants or other dependents of the deceased are entitled to get compensation?

(V) Relief?

5. On behalf of claimants in documentary evidence filed the attested copy of the letter dated 16.07.2017, attested copy of Station Call dated 15.07.2017, attested copy of *Panchayatnama* Report (inquest report) dated 15.07.2017, attested copy of the postmortem report dated 16.07.2017 alongwith typed copy, photo copy of disposal slip dated 15.07.2017, original copy of the family pedigree of deceased, cremation certificate of deceased, photo copy of Aadhaar Card of the applicants and photo copy of Bank Passbook of the applicants/claimants.

6. On behalf of claimants in oral evidence examined **AW1- Rita Devi** and **AW2- Rahul Rai**.

7. On behalf of respondent no oral evidence was adduced. In documentary evidence filed the inquiry report, report of untoward incident Form No.1 and Form No.2, report of Security Commissioner/RPF, Allahabad.

8. The learned Tribunal, after hearing the rival submission of the parties, passed the impugned judgment whereby the claim petition of the claimants was dismissed.

9. Aggrieved from the impugned judgment the instant miscellaneous petition has been directed on behalf of the claimants/appellants on the grounds that the respondent-Railway has not produced any oral evidence but has only furnished inquiry report of the

DRM. The learned Tribunal has disposed of the issue no.2 and 3 against the claimants/appellants without appreciating the evidence on record and dismissed the claim petition of the applicant/claimant on the very ground that the deceased was not having ticket. The respondent-Railway has failed to prove the exception under section 124 A wherein ambit of the exception enumerated that onus lies upon the Railway. The learned Tribunal has failed to appreciate the evidence on record in proper prospective. In view of the above prayed to allow this appeal and to set aside the impugned judgment passed by the learned Tribunal.

10. I have heard the learned counsel for the parties and perused the material on record.

11. For disposal of this miscellaneous appeal following **point of determination** is being framed:

**(I) Whether the deceased was bonafide passenger on the alleged date of journey and his death was caused on account of “untoward incident”?**

11.1 **AW1- Rita Devi** in her examination-in-chief has deposed that on 13.07.2017 at 9:30 O'clock of night her husband had boarded Purshotam Express from Delhi to Hazaribag Road after having the journey ticket. Her brother Rahul Rai had gone to Delhi Station to see off him. Her husband had purchased ticket in presence of her brother Rahul Rai. Her brother had also apprised her that her brother-in-law (*Jija*) had boarded in a train and he had also handed over to him Rs.10,000/-. Her husband has also told her that the train had departed from Delhi and he had taken ticket and Rs.10,000/- has been paid to him by Rahul Rai. On next day

14.07.2017 her husband had told her over her phone that he had fallen from the train and his leg had been amputated. Hearing his cry she also became unconscious. She further came to know from her relative and the villagers of nearby place of occurrence that her injured husband had been sent to Kanpur with another train. On 15.07.2017 after postmortem the dead body of her husband was handed over. In cross-examination this witness says how the occurrence took place she is not aware. Her husband told her over the mobile phone on 14<sup>th</sup> that his leg had been amputated. Her husband was seen purchasing ticket by her brother Rahul Rai. Her husband had left Delhi for Hazaribag Road.

11.2        **AW2- Rahul Rai** in his examination-in-chief says deceased was his *Jija*. On 13.07.2017 at 9:30 O'clock in night he had gone to Delhi Railway Station to see off his *Jija*, He had also purchased the platform ticket. His Jijaji has purchased ticket for Hazaribag Road (Saria) and paid Rs. 285/-. He had also handed over to his *Jija* Rs.10,000/- and his *Jija* boarded in the train Purshotam Express in general compartment. He had also told over the phone to his sister that he had given Rs.10,000/- to his *Jija*. Deceased was private driver. He used to drive tanker or the car etc. On 14.07.2017 at 8:00 O'clock in the morning he received information that his *jija* had met train accident. He also apprised over the phone to his sister Rita Devi. On 14.07.2017 at 8:40 in the night he reached to Kanpur Railway Police and he came to know that the dead body was in the hospital and same will be handed over in the morning next day. Railway Police, Kanpur has also registered the case 1993 of 2017. In cross-examination this witness says he had also purchased the platform ticket

when he came out from the station he throw the same in dustbin. This suggestion was given on behalf of opposite party that the said accident was caused on account of negligence on the part of the deceased.

11.3 The inquest report and postmortem report of the deceased is also on record. In the **inquest report** of deceased it is mentioned that the cause of death is shown on account of the sustaining injuries in train accident. At the platform nos.6/7 Railway Station Kanpur Central, the dead body was found. In the inquest report while making the search of deceased the belongings which were received from there are shown: character certificate dated 06.06.2015, one voter card, driving license, ATM card of Bank of India, one card of Indian Oil Corporation Limited and one mobile phone of white and black colour all contained in a purse and three note of Rs.10/- each total Rs.30/- and as per opinion of the witness of the inquest report, cause of death is shown on account of the injuries sustained in train accident.

11.4 In the **postmortem report**, the cause of death of deceased Anurudh Kumar Singh is shown heamorrhage and shock causes result of ante-mortem injury.

11.5 On behalf of claimant in documentary evidence also adduced the Station Call from North Central Railway, Kanpur in which it is also stated that Anurudh Kumar Singh had died in the hospital on 15.07.2017 and left foot was amputated.

12. On behalf of the opposite party in documentary evidence has been adduced the inquiry report in which it is stated that this inquiry report was submitted by Mr. P.K. Ojha, Commander, RPF, Kanpur Central

addressing to Senior Superintendent of RPF, North Central Railway, Allahabad. **Though this report has not been proved on behalf of opposite party, yet from the perusal of this very report it is found that Rahul Rai has also told to the inquiry officer that he had come to see off the deceased at the Railway Station and Anurudh Kumar Singh had purchased ticket from the ticket counter to Hazaribagh. In column no.6 wherein details of the occurrence in briefs are mentioned.** It is also mentioned that **gateman of gate no.98 had told to the villagers that KM No.1073/11 the one foot of a person had been amputated and he was alive** and after having given the same information the injured was sent to Kanpur for treatment and the injured subsequently was declared dead. It is also mentioned therein in search one purse, one mobile phone and Rs.30/- was recovered from the search of deceased.

13. **Admittedly the deceased had met a train accident and from the evidence on record it is also well proved that deceased had boarded from Delhi to Kanpur Central, Kanpur Railway Station. As per evidence on record this accident was caused on account of falling of deceased from the running train near Kanpur Central Railway Station and his first time he was seen by the gateman of gate no.98 who told to the villagers that deceased was alive at that time and his one leg had amputated and in alive condition he was sent to hospital. This fact is also mentioned in the inquiry report which was conducted by the official of Railway Department.**

14. As such the testimony of **claimant no.1 AW1 Rita Devi** is also being corroborated with this inquiry report of Railway Official

wherein she has stated that her husband after having met an accident had told to her over the mobile phone that he had met a train accident and his one leg has been amputated. Further the **AW-1 Rita Devi** has also stated that her husband while having boarded in the train at Delhi Station for Hazaribag had also told her that he had purchased ticket and Rs.10,000/- had been paid to him by his brother-in-law Rahul Rai and **AW-1 Rita Devi** has also stated that her brother Rahul Rai had told her that he had come to see off his *Jija* at Delhi Railway Station and who had boarded in Purshotam Express after having purchased ticket and he had also handed over him Rs.10,000/-.

14.1 The testimony of this witness AW-1 Rita Devi though in regard to purchasing the ticket is also admissible so far as the disclosure made to her in regard to purchasing ticket by the deceased. Further her testimony becomes admissible in evidence because **AW-2 Rahul Rai** has been examined and he has categorically narrated that in his presence deceased had purchased ticket and boarded in Purshotam Express.

14.2 This fact is well proved on behalf of the plaintiffs/claimants that deceased had boarded in Purshotam Express on 13.07.2017 at 9:30 PM at Delhi Railway Station for Hazaribag and the alleged accident was caused near by Kanpur Central Railway Station.

14.3 Though the ticket which the deceased had purchased as per testimony of AW1 Rita Devi and AW2 Rohit Rai, the same was not found from the personal search of deceased at the time of conducting inquest and postmortem of deceased; yet this possibility cannot be ruled out that the ticket and Rs.10,000/- might have been lost in accident which were not

recovered from the belongings of deceased.

15. From the evidence oral and documentary adduced on behalf of the petitioner on this very point and also the inquiry report conducted by the Railway Official it is also found that deceased had met an accident on account of falling from the train. As such under section 123(c) untoward incident is also covered in Sub-clause (2) of Section 123 herein it is mentioned accidental falling of any passenger from a train carrying passenger amounts to untoward incident.

16. Herein it would be pertinent to give certain statutory provisions of **Railway Act, 1989** which is enumerated hereinbelow:

*“Section 123. (a) “accident” means an accident of the nature described in Section 124;*

*Section 123 (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, cloakroom 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.]*

*Section 124-A. 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 for 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 purposes 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.”*

17. The evidence which has been adduced on behalf of the petitioners/claimants that the deceased had boarded in the train after having purchased ticket is un-rebutted. No contrary evidence has been adduced on behalf of opposite party and the testimony of the witnesses was not shaken in cross-examination by the defense counsel on behalf of opposite party. The deceased who had boarded from Delhi to Hazaribag and this accident was caused at near Kanpur Central Railway Station. Certainly amid the journey period the TT might have examined the ticket all the passengers who were boarding in the very compartment. Had the deceased been travelling without a ticket, he would not have come from Delhi to Kanpur Central Railway Station.

18. The Hon'ble Apex Court in ***“Union of India v. Rina Devi”*** (2019) 3 SCC 572 held:

*“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.”*

18.1 The Hon'ble Apex Court in ***“Jameela And Others v. Union of India”*** (2010) 12 SCC 443 held:

*“7. We are of the considered view that the High Court gravely erred in holding that the applicants were not entitled to any compensation under Section 124-A of the Act, because the deceased had died by falling down from the train because of his own negligence. First, the case of the Railways that the deceased M. Hafeez was standing at the open door of the train compartment in a negligent manner from where he fell down is entirely based on speculation. There is admittedly no eyewitness to the fall of the deceased from the train and, therefore, there is absolutely no evidence to support the case of the Railways that the accident took place in the manner suggested by it. Secondly, even if it were to be assumed that the deceased fell from the train to his death due to his own negligence it will not have any effect on the compensation payable under Section 124-A of the Act.*

*11. Coming back to the case in hand, it is not the case of the Railways that the death of M. Hafeez was a case of suicide or a result of self-inflicted injury. It is also not the case that he died due to his own criminal act or he was in a state of intoxication*

*or he was insane, or he died due to any natural cause or disease. His falling down from the train was, thus, clearly accidental.*

*12. The manner in which the accident is sought to be reconstructed by the Railways, that the deceased was standing at the open door of the train compartment from where he fell down, is called by the Railways itself as negligence. Now negligence of this kind which is not very uncommon on Indian trains is not the same thing as a criminal act mentioned in clause (c) to the proviso to Section 124-A. A criminal act envisaged under clause (c) must have an element of malicious intent or mens rea. Standing at the open doors of the compartment of a running train may be a negligent act, even a rash act but, without anything else, it is certainly not a criminal act. Thus, the case of the Railways must fail even after assuming everything in its favour.”*

18.2      The Hon'ble Apex Court in **“Union of India v. Prabhakaran Vijaya Kumar And Others” (2008) 9 SCC 527** held:

*“10. We are of the opinion that it will not legally make any difference whether the deceased was actually inside the train when she fell down or whether she was only trying to get into the train when she fell down. In our opinion in either case it amounts to an “accidental falling of a passenger from a train carrying passengers”. Hence, it is an “untoward incident” as defined in Section 123(c) of the Railways Act.*

*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. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be*

*preferred vide Kunal Singh v. Union of India(SCC para 9), B.D. Shetty v. Ceat Ltd. (SCC para 12) and Transport Corpn. of India v. ESI Corpn.*

12. *It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. v. Workmen(AIR para 7), Jeewanlal Ltd. v. Appellate Authority (AIR para 11), Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd.(AIR para 13), S.M. Nilajkar v. Telecom District Manager (SCC para 12).*

13. 14. *In our opinion, if we adopt a restrictive meaning to the expression “accidental falling of a passenger from a train carrying passengers” in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression “accidental falling of a passenger from a train carrying passengers” includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression.”*

19. **Therefore this fact is proved on the preponderance of probabilities that his ticket might have lost while he met the train accident and taking into consideration the un-rebutted evidence adduced on the behalf of the claimants, the deceased was a bonafide**

**passenger and in view of section 124 A of the Railway Act 1989 unless the contrary evidence is on record.**

20. In view of the finding recorded hereinabove this point of determination has been decided in favour of the appellant/claimant and against the opposite party and the finding recorded by the learned Tribunal on issue no.2 and 3 the same is found perverse.

21. Since the learned Tribunal had dismissed the claim petition after having given finding against the claimants while disposing issue no.2 and 3 and did not give any finding on the remaining issue no.4 and 5 which relate to entitlement of the dependents of the deceased to compensation. Consequently the matter deserves to be remitted back to the learned Tribunal to record his finding on the issue no.4 and 5 which are in regard to the entitlement of compensation of the claimants.

22. This **Miscellaneous Appeal** is hereby **allowed** and the impugned judgment passed by the learned **Tribunal** in OA (Ilu) No.123 of 2018 is hereby **set aside**. The matter is remitted back to the learned Tribunal to pass the judgment afresh after recording finding on issue no.4 and 5 as framed by the learned Tribunal, giving opportunity of hearing to both parties.

23. Let the record of learned court below be sent back alongwith copy of the judgment.

**(Subhash Chand, J.)**