

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)

M.A. No.213 of 2023

1. Ram Pati Ram son of Shri Munrik Ram aged about 51 years

2. Lalita Devi Wife of Ram Pati Ram aged about 46 years

Both residents of Village/Mohalla-Hathbor Bigha Post and P.S.- Amba,
District Aurangabad (Jharkhand) Appellants

Versus

Union of India through the General Manager, East Central Railway,
Hajipur Post office and Police Station Hajipur, District Vaishali (Bihar)

.... Respondent

PRESENT

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellants	: Mrs. Chaitali C. Sinha, Advocate Mrs. Chainika, Advocate
For the Respondent/UOI	: Mr. Anil Kumar, ASGI Mr. Abhijeet Kr. Singh, CGC

J U D G M E N T

CAV On 22nd October 2024

Pronounced on 19 November 2024

The instant miscellaneous appeal has been directed against the order dated 17.09.2019 passed by the Member/Technical, Railway Claims Tribunal, Ranchi Bench in Case No. OA(IIU)/RNC/102/2017 (Check List No.2908170016) whereby the claim petition of the appellants has been dismissed.

2. The brief facts leading to this Miscellaneous Appeal are that the claim petition was filed on behalf of claimants with these averments

that the son of the claimants namely Akhilesh Kumar 20 years old had boarded in second class coach of the Train No. 13308 Dn. Ganga-Sutlaj Express after having purchased second class express ticket for Dehri-on-Sone Station to Dhanbad Junction for the purpose of joining the labour work. On 29.06.2017 while the train was moving at Anugraha Narayan Road Station the deceased who was standing at the gate of the bogie on account of the jostling being made by the other passengers accidentally fell down from the moving train at K.M./Pole No. 538/02 of Dn. Line of platform no.2 of Anugraha Narayan Road Station as a result of which he sustained serious injuries and died on the spot. After having got the information about the incident over the mobile phone the grandfather of the deceased reached at the place of incident alongwith other family members and identified the dead body of deceased Akhilesh Kumar. After the postmortem of deceased the dead body was handed over for cremation and in regard to the said accident U.D. Case No. 39 of 2017 had been registered at Rail P.S. Sonnagar on 29.06.2017. After investigation it was found that the death was caused due to the accidental fall of the deceased from the moving train. It is further averred that the deceased was travelling as a bona fide passenger with a valid second class express ticket from Dehri-on-Sone Station to Dhanbad Junction. His ticket might have lost due to the untoward incident. As such both the appellants are the parents of the deceased and the total amount of compensation of Rs. 8,00,000/- with 12% per annum interest was claimed.

3. On behalf of opposite party-Union of India the averment made in the claim petitions were denied and stated that as per Station Manager

Report dated 29.06.2017 of Anugraha Narayan Road Station Brajesh Kumar Choudhary informed to SEB that one person had run over by 13308 express train. The investigating officer of the case in final form submitted before the court of SDM that deceased had fallen down from the running train on the basis of the information collected by him. The investigating officer has also stated that the deceased was having a ticket as per statement made by the family members; but it was not a case of untoward incident as defined under section 123(C)(2) r/w 124/A of the Railway Act rather it was a case of self-inflicted injury of the deceased and railway administration is protected under the exception of section 124/A of Railway Act and the claim petition was liable to be dismissed. Deceased was not a bona fide passenger as he was not having any ticket. No ticket was recovered while conducting the inquest of deceased. In view of the above prayed to dismiss the claim petition.

4. The learned Tribunal has framed following issues:

- (I) whether the deceased was a *bonafide* passenger, as alleged?
- (II) Whether the deceased had died due to alleged untoward incident?
- (III) Whether the applicants or other dependents of the deceased are entitled to get compensation?
- (IV) Relief?

5. On behalf of the claimants in oral evidence examined **AW1- Rama Pati Ram, AW2- Banshi Ram @ Banshi Dhar Ram** and also filed the other relevant documents.

6. On behalf of respondent no oral evidence was adduced and in documentary evidence filed the DRM report alongwith relevant documents marked as Exhibit-R1 to R5.

7. The learned Tribunal after hearing the rival submission of learned counsel for both parties passed the judgment by dismissing the claim petition vide order dated 17.09.2019.

8. Aggrieved from the impugned award dated 17.09.2019, this miscellaneous appeal has been directed on behalf of the claimants.

9. I have heard the learned counsel of parties and perused the material on record.

10. The claimants have challenged this impugned judgment on the ground that the learned Tribunal had wrongly held the deceased to be not a bone fide passenger. While from the evidence on record it is well proved that the deceased was travelling with a valid second-class ticket which might have lost on accident. This fact has been proved by the claimants by adducing in oral evidence AW2- Banshi Ram @ Banshi Dhar Ram and also AW1 Rama Pati Ram, the father of the deceased who has also deposed in his examination-in-chief by way of affidavit. On behalf of the Union of India-respondent no contrary evidence has been adduced to rebut the oral and documentary evidence of the claimants.

11. On behalf of Union of India the learned counsel vehemently opposed the contentions made by the learned counsel for the appellants and contended that the deceased was not travelling as a bona fide passenger as he was not having the ticket. While conducting inquest of the deceased the Adhar card and his mobile phone was recovered as such there

was no occasion in regard to recovery of the ticket having purchased the same. The learned Tribunal has rightly dismissed the claim petition.

12. **Admittedly the death of the deceased son of the claimants was caused on account of falling from the moving Train No. 13308 Dn. Ganga-Sutlaj Express at Anugraha Narayan Road Station. From the DRM report itself, the death of the passenger was on account of untoward incident and was not a self-inflicted injuries.**

12.1 The only points of determination which are to be decided by this Court:

(I) Whether the deceased was a bona fide passenger?

(II) Whether the claimants are entitled to get the compensation?

12.2 **Point of Determination No.I:-**

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.”

12.3 On this point of determination on behalf of claimants in oral evidence examined **AW1 Rama Pati Ram**, the father of the deceased. This witness in his examination-in-chief has stated that deceased Akhilesh Kumar was his unmarried son. On 28.06.2017 after purchasing a valid second class express ticket from Dehri-on-Sone Station to Dhanbad Jn, his son had boarded in a second class general bogie at the midnight in Train no. 13308 Dn. Ganga Sutlaj Express at Dehri-on-Sone Station for going to Dhanbad. On 29.06.2017 while the said train was moving at Anugraha Narayan Road Station his son who was standing at the gate of the very bogie due to the heavy rush of the passengers accidentally fell down from the moving train near K.M./Pole No.538/02 of Dn. line of platform no.2 of Anugraha Narayan Road Station on account of intense jostling amongst the passengers at the gate of bogie. The grandfather of the deceased had received the information in regard to the said untoward incident and all the family members reached to the indicated place and dead body was identified to be of Akhilesh Kumar. After postmortem report, he was cremated. The U.D. Case No. 39 of 2017 was registered at the Rail P.S. Sonnagar on 29.06.2017. **Rail police investigated the factum of incident and found proved that the death was caused on account of the untoward incident by falling from the running train.** The deponent and his wife Lalita Devi both are the dependents of the deceased. The very said ticket of the deceased might have lost during the untoward incident.

This witness has stated that he had not seen the untoward incident being caused by the running train. He came to know in regard to the incident from the mobile phone given by the police. **He knew that his son never travelled without a ticket. Whenever he boarded in a train he always purchased the ticket. His son was doing labour in Dhanbad.**

12.4 **CW2- Banshi Dhar Ram** in his examination-in-chief in the affidavit has deposed that the deceased was the unmarried son of his relative Rama Pati Ram. **Deceased had purchased a second class ticket at Dehri-on-Sone for Dhanbad Jn in the midnight of 28.06.2017 in his presence.** On 29.06.2017 he came to know about the incident and reached to the place of incident identified the dead body of Akhilesh Kumar who had died on account of falling from the moving Train No.13308 Dn. near K.M./Pole No. 538/02 of down line of Platform No.2 Anugraha Narayan Road Station on account of the intense jostling amongst the passengers at the gate of the bogie. The U.D. Case No. 39 of 2017 was registered on 29.06.2017 at Rail P.S. Sonnagar. **Police investigated the factum of the occurrence and found proved that the death was on account of untoward incident by accidental falling from the moving train. Deceased had purchased the ticket in his presence.**

This witness in cross-examination says he had reached to the Station at 08:30 O'clock at the platform no.1. **The deceased was standing in a queue to purchase the ticket. Deceased was his nephew and he asked him where he was going. He told that he was going to Dhanbad. He had seen him standing in the line to purchase the ticket.**

12.5 On behalf of claimants in documentary evidence has been

adduced as Annexure No.1 of the petition, the photo copy of the report of Brajesh Kumar Choudhary addressed to GRP Station Sone Nagar in regard to death of a man of 20 years old falling from the running Train no. 13308 express. On this information, the U.D. Case No. 39 of 2017 was registered on 29.06.2017 and ASI Jai Prakash Singh was investigating the same. Annexure no.3 is the photo copy of the identification of deceased to be the son of Rama Pati Ram. **Annuxure no.2 is the inquest report of the deceased in which cause of death is shown on account of falling from the running train. Witness of the inquest report are Mukesh Kumar and Gautam Kumar.** Date of information is 29.06.2017 at 06:30 O'clock in Sone Nagar Police Station on which U.D. Case No. 39 of 2017 was registered. The place of occurrence is shown railway Station Anugraha Narayan Road Station Platform No.2 below the Pole No. 538/02 Dn. Line 29.06.2017 at 05:30. **Annexure no.4 is the final report. Annexure No.5 is the postmortem report of deceased. Annexure no.6 is the final report given by the IO. In which it has been stated that the death of deceased was caused from the falling from running train.** It was also stated by the relative of the deceased that the deceased had purchased the ticket and boarded in the train from Dehri-on-Sone for Dhanbad where he was doing labour. Annexure No.7 is the certificate in regard to the family members of the deceased.

12.6 On behalf of the respondent no one adduced in oral evidence and in documentary evidence filed the DRM report in one sheet, RPF inquiry report in four sheets, statement of duty guard in one sheet and Station Managers' report is one sheet.

12.7 In DRM'S comment which is one sheet it is found that **conclusion of the investigation of GRP is death of deceased Akhilesh Kumar took place on 29.06.2017 at unknown time at the Anugraha Narayan Road Station KM/Pole No. 531/02 Dn. line and it was caused on account of falling from the running Train no. 13308 Dn. Ganga Sutlaj Express.**

12.8 RPF inquiry report which is in four sheets Exhibit-R-2 to R-5. From the very perusal of the same it is found the cause of accident is shown accidental fall from the train. Time of occurrence is shown 5 O'clock. Deceased is shown Akhilesh Kumar. Place of occurrence is shown Anugraha Narayan Railway Station. **In the conclusion of the same it has been stated that the death of deceased was caused on account of falling from the running train.** No ticket was recovered while the other articles of deceased i.e. mobile phone and the Adhar Card was recovered. In this way, he was not a bona fide passenger. Exhibit-5 is the statement of Brij Raj Singh, Guard who has stated that during his duty period on 29.06.2017 he had received no information in regard to any untoward incident.

12.9 **From the oral and documentary evidence on record admittedly the untoward incident took place of the son of deceased namely Akhilesh Kumar on account of falling of the running Train no. 13308 at Anugraha Narayan Road Railway Station on 29.06.2017.**

12.10 As per DRM report and the investigator report, ticket was not recovered alongwith the dead body of deceased while the Adhar Card and mobile phone are alleged to have been recovered. Merely the learned

Tribunal has held since no ticket was recovered while conducting inquest of the deceased, the deceased was travelling without a ticket and was not bona fide passengers.

12.11 On behalf of the claimants the father of deceased **AW1- Rama Pati Ram** had deposed in his affidavit in examination-in-chief that **his son had boarded at Dehri-on-Sone Station after having purchased the ticket. He was to go to Dhanbad.** In cross-examination of this witness no contrary contradiction could be drawn by the counsel of opposite party.

12.12 AW2- Banshi Dhar Ram is the witness who is also the relative of the deceased has stated that **on 28.06.2017 he had also gone to the Dehri-On-Sone Station and he had seen deceased Akhilesh Kumar who was his relative standing in a queue to purchase the ticket, on being asked by him where he was going it was told by the deceased Akhilesh Kumar that he was going to Dhanbad for doing labour.** This statement of witness AW2 is consistent in cross-examination of this witness. No contrary conclusion could be drawn by the opposite party in cross-examination from this witness.

12.13 As such from the oral and documentary evidence adduced on behalf of both the parties the **death of the deceased Akhilesh Kumar was caused on account of falling of the moving train at Anugraha Narayan Road Railway Station on 29.06.2017 by Train no. 13308. The deceased was also boarding in the train with a valid ticket which might have been lost on account of the untoward incident.**

12.14 The learned Tribunal has held that in claim petition it has not been pleaded that the deceased was boarding in the train with a valid

license and for the first time claimant had deposed this fact has committed error that the evidence could not be adduced beyond pleadings; **while it is the settled law that the strict rules of the Evidence Act and the strict rules of Civil Procedure Code are not applicable in the accident claim cases.**

12.15 Even if the fact of boarding of the deceased in a train with a valid ticket which has been deposed by the claimant AW1 Rama Pati Ram in his affidavit, same being not be rebutted will be admissible in evidence. Not only the fact of boarding the deceased with a ticket is proved by the evidence of claimant AW1 Rama Pati Ram but it is also proved by the testimony of AW2 Banshi Dhar Ram who has categorically stated that he has seen the deceased purchasing ticket standing in a queue as he had also gone to the railway station at Dehri-on-Sone on 28.06.2017 and he had also asked the deceased where he was going it was told him that he was going to Dhanbad.

12.16 Therefore, there being no other contrary evidence adduced on behalf of the opposite party, this very fact is well proved that the deceased was a bona fide passenger.

13. 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.

13.1 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.”

13.2 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.....”

13.3 In the case his hand the investigation which was conducted by the Investigating Officer in U.D. Case No.39 of 2017. It was held that the untoward incident took place on account of falling of the deceased from the running train. On behalf of the claimants the burden of proof has been discharged by filing the affidavit to this effect that the deceased was travelling with a valid ticket and as such would be held to be a bona fide passenger who had fell down from the running train on account of jostling of the passenger. Further this fact is also proved from the testimony of the eye witness AW2 Banshi Dhar Ram who had seen the deceased purchasing ticket at Dehri-on-Sone standing in a queue where he had also asked him as to where he was going and it was replied by him, he was going to Dhanbad. This eye witness is the remote relative of deceased. As such the presumption in favour of the claimants in regard to being the deceased bona fide passengers will be raised. **The burden of proof is shifted upon the respondent to rebut this presumption; but no contrary evidence had been adduced on behalf of the respondent/opposite party.**

13.4 Accordingly this point of determination is decided in favour of the appellants and against the respondent.

14. **Point of Determination no.II:** In view of Notification No. G.H.R.S 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”.

14.1 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 Devi 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.”

14.2 Since the untoward incident took place on 29.06.2017 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.

14.3 Accordingly, the point of determination no.2 is also decided in favour of the appellants and against the respondent.

15. In view of the aforesaid analysis of the evidence on record, this appeal is hereby **allowed** and the **judgment dated 17.09.2019** passed by the Hon'ble Member/Technical, Railway Claims Tribunal, Ranchi Bench in Case No.OA(IIU)/RNC/102 /2017 (Checklist no.2908170016) is **set aside**.

16. The respondent is directed to pay the aforesaid amount of Rs. 8 lacs alongwith interest as stated in para 14.2 of this judgment in the bank account of the claimant details of which has been furnished by the claimants alongwith the claim petition within one month from the date of production/receipt of a copy of this judgment.

(Subhash Chand, J.)