



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

% **Judgment reserved on : 29 November 2023**
Judgment pronounced on : 04 January 2024

+ **FAO 57/2021 and CM APPL. 5340/2021**

UNION OF INDIA Appellant

Through: **Mr. Vineet Dhanda, CGSC**

versus

POONAM & ORS. Respondents

Through: **Mr. Dhyam Singh Sisodia, Adv.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide a statutory appeal preferred by the appellant/Railways under Section 23 of the Railway Claims Tribunal Act, 1987¹ assailing the judgment/order dated 06.10.2020 passed by the learned Railway Claims Tribunal, Principal Bench,² whereby statutory compensation of Rs.8,00,000/- with interest @ 9 % has been awarded to the respondents/claimants from the date of accident. The claim petition was filed by respondent No.1, young widow of the deceased along with her parents-in-law viz., respondent Nos. 2 and 3 being the father and the mother of the deceased.

FACTUAL MATRIX:

2. It was the case of the respondents/claimants that on 28.04.2017, the deceased, namely Shiloo aged about 25 years was travelling from

¹ The Act



Tundla to Aligarh having a valid second-class ordinary ticket and when the train reached near the level crossing at Pala, Sahibabad, there was a sudden jerk in the momentum of the train and due to the jostling of the crowd, deceased Shiloo fell down from the train and sustained grievous injuries resulting in his death.

3. The appellant/Railways in the claim petition, who were arrayed as respondent, in its written statement contested the claim stating that the deceased was not a *bonafide* passenger and rather Sh. Vinod Kumar i.e. uncle(tau) of the deceased had reported to PS Sasani Gate, Aligarh State of Uttar Pradesh within the jurisdiction of which accident occurred that the deceased along with his relative had gone to attend a marriage function in the family at Pala, Sahibabaad and he died on being run over by some train.

4. The learned RCT on consideration of the pleadings framed the following issues:-

- “(i) Whether the applicants/claimants are dependants of the deceased?
- (ii). Whether the deceased was a bona fide passenger in the train in question at the time of incident?
- (iii). Whether deceased died in an untoward incident as alleged and defined under the Provision of Section 123(c) of Railways Act, 1989?
- (iv). Relief, if any?”

5. Learned RCT decided Issue No.1 in favour of the claimants. As regards, Issue Nos. 2 and 3, learned RCT believed the version of the appellant No.1-wife that the deceased was travelling with a valid general ticket which had been seized by the police official of PS Sasani Gate, Aligarh; and therefore it was held that deceased was a *bonafide* passenger. Coming to the issue as to whether the deceased

² RCTPB



died consequent to an ‘untoward incident’ as defined under Section 123 (c) of The Railways Act, 1989, the learned RCT relied on the information given to PS Sasani Gate, Aligarh recorded at 23:30 hours in the panchnama dated 29.04.2017 starting at 00:00 hours and continue till 06 hours that suggested that the deceased died due to falling from a running train and considering the nature of injuries sustained by the deceased as reflected in the post mortem, a finding was given that deceased died due an ‘untoward incident’; and accordingly allowed the claim petition.

6. The appellant/Railways are in appeal and it is vehemently submitted that the deceased did not die due to “untoward incident” but in all probability he was guilty of his own negligence as he was struck by a train while he was crossing the railway tracks at Pala, Sahibabad.

ANALYSIS AND DECISION

7. Having given my thoughtful consideration to the submissions advanced by learned counsels for the parties and on meticulous perusal of the record, I am afraid the impugned order passed by the learned RCT cannot be sustained on facts and law. Firstly, it would be pertinent to refer to the reasoning accorded by the learned RCT in deciding Issue Nos. 2 and 3 in favour of the claimants, which read as under:-

“Issue No.2 & 3

“Since both the issues are inter-related they have been taken together for the sake of convenience. Although the applicant has mentioned in her claim application that the journey ticket is in the possession of PS Sasani Gate, Aligarh but nowhere it has been disclosed by the Counsel for the Applicant. During the argument, counsel for the applicant submitted that the police officials did not handover the journey ticket to the applicant. As per Panchnama, journey ticket was not recovered. The applicant has filed her



affidavit mentioning that applicant was travelling with a valid journey ticket. Now a decision has to be taken with regard to bonafide of the passenger.

I have relied upon the Judgment of Hon'ble Supreme Court of India in Civil Appeal No. 1945 of 2018 (ACJ 1441) Union of India v/s Rina Devi 17.4 of which states as under:

"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 bonafide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the fact that he was a bonafide 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 from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

The affidavit in this case filed by the applicant has discharged her initial burden of the relevant facts and the respondent has not led any evidence contrary to this to prove that the deceased was travelling without ticket. In view of this issue number 2 is decided in favour of the applicants

Regarding untoward incident as stated above the respondent has vehemently submitted that the death of late Shiloo was a result of run over by some train. In support of this respondent has relied upon the statement of Vinod Kumar mentioning him as *मृतक* of the deceased that he gave an application to PS Sasani Gate, Aligarh mentioning that deceased and his relatives had come to Pala Sahibabad for attending marriage ceremony of their nephew, Roop Kishore and the death of the Shiloo was as a result of run over. However, it is noted that no document has been filed in support of this conclusion drawn by the respondent. It is further noted that the entire DRM report is made on the basis of findings of the Investigating Officer Post Commander RPF post, Aligarh which is based on the submission of Vinod Kumar. The Panchnama is dated 28.04.2017 wherein it is noted that information was given to PS Sasani Gate, Aligarh by RT through Charli (द्वारा RT द्वारा Charli) at 23:30 hours and the Panchnama commenced on 29.04.2017 at 00:00 hours and continued all 6:00 hours and cause of the death mentioned is "Injuries due to entangling with the train" (ट्रेन की चपेट में आकर) and the nature of the injuries mentioned are left leg broken at knee and thigh, left hand broken at wrist and right leg broken from



thigh, abrasion on palm and head injury. The Post mortem report also mentions crush injury 20*21 inch in left side head and face underline bones fractured of skull, abrasion on right shoulder joint, lacerated wound is present in right side chest, multiple abrasion and left leg and both legs fractured etc. From the injuries probability of deceased sustaining these injuries as a result of fall from a running train cannot be ruled out. The respondent has not submitted any document to support their proposition that the deceased died as a result of run over by a train. In case of run over of a train the loco pilot or the guard of the train is expected to notice and report to the adjoining railway station but in this case no such action has been reported and evidence produced by Respondent in spite of the fact that Tundla to Aligarh is one of the busiest sections. The circumstantial evidence suggest that the fatal injury of the deceased was as a result of falling from a train and therefore issue number 3 is decided in favour of the applicant and the accidental falling in this case fall within the Provisions of Section 123(c) of Railways Act, 1989”

8. A careful perusal of the aforesaid reasoning *vis-a-vis*, the digital LCR³ would show that learned RCT failed in its duty to consider the fact that the incident was recorded on 28.04.2017 at 23:30 hrs and the inquest that continued for about 6 hours in terms of Section 174 of the Code of Criminal Procedure would show that it was recorded in the presence of Panchas (witnesses) including one Vinod Kumar, S/o Sh. Udai Ram Singh, elder uncle of the deceased that the victim had been struck by the train. To be precise, it was recorded in Hindi that “ट्रेन की चपेट में आकर आयी चोटों के कारण”. In fact DD No. 58 recorded at Sasani Gate at 13:30 hours on 28.04.2017 also relayed the information that one unknown person had been struck by train at Pala Fatak i.e., the railway crossing.

9. Further, the DRM dated 22.02.2019 although done almost after a year and ten months would also show that during the enquiry the



widow of the deceased had stated that her husband along with his Tau Vinod Kumar and other members of the family had gone to Sahibabad in the wedding of nephew Roop Kishore and he was struck by train “मृत्यु ट्रेन से टकरा जाने के कारण हो गई” .

10. It stares on the face of the record that no railway ticket was found from the possession or jamatalashi of the deceased. Evidently, the wife of the deceased was not an eye-witness to the incident but the family member of the deceased including Vinod Kumar and others who had gone to attend the wedding in the family. The post mortem report also brings out that the deceased had suffered a crush injury 20x21 inches left side of the head and his skull was impacted with blunt impact, abrasions on the right shoulder joint, lacerated wound on the right side chest, multiple abrasion on the left upper limbs as well as lower limbs and left leg and both legs fractured that would raise an inference that the deceased died as a result of being hit by a running train while he was probably crossing the railway tracks. Merely because the DRM report was made belatedly on 01.07.2019, does not create any substantive legal right in favour of the respondents/claimants.

11. In view of the foregoing reasons, unfortunate as it may appear, although a life was lost, there was no fault on the part of the Railways, and therefore, the impugned order dated 06.10.2020 cannot be sustained in law, and the same is hereby set-aside. If the amount of compensation has been deposited with the Railway Claims Tribunal, the same be returned to the appellant/Union of India with accrued

³ Lower Court Record



interest, if any. In the event, the amount of compensation has been released to the respondents/claimants, learned RCT shall initiate appropriate proceedings for recovery or refund of the said amount of compensation. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JANUARY 04, 2024

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