



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

% **Judgment reserved on : 06 December 2023**

Judgment pronounced on : 05 January 2024

+ **FAO 498/2019**

OMKAR & ANR

..... Appellants

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

versus

UNION OF INDIA

..... Respondent

Through: **Ms. Nidhi Raman, CGSC with
Mr. Zubin Singh, Mr.
Debarchan De and Mr. Sachin
Dubey, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This is an appeal filed in terms of Section 23 of The Railway Claims Tribunal Act, 1987¹ by the appellants/claimants assailing the impugned judgment dated 19.09.2019 passed by the Railway Claims Tribunal, Principal bench, Delhi², whereby their claim for compensation was declined.

FACTUAL BACKGROUND:

2. Appellant Omkar along with his wife Sarojini Devi, filed a claim petition claiming compensation for the death of their son Sumit Kumar in a Railway accident. The dead body of Sumit Kumar was found on the railway lines/tracks going towards Aligarh on 04.12.2017 at 4:52 PM. The dead body was found at a distance of

¹ RCT Act



about 13/14 kms from Ghaziabad Railway Station, State of Uttar Pradesh, from where the railway tracks enables the trains to take a turn towards Hapur, State of Uttar Pradesh. The Respondent/Railways contested the claim primarily on the grounds that no rail ticket was found from the possession of the deceased and no accident was reported by/from any train by the Railways' staff or the Railway Police Protection Force (RPF).

3. The RCT vide impugned judgment dated 19.09.2019, found that although the dead body was found on the railway tracks, no Loco pilot, Guard or any person from the public reported before 04.12.2017 at 4:52 PM that any dead body was lying on the railway tracks and that particulars of the train, which left Ghaziabad Railway Station towards Shahjahanpur, had neither been disclosed in the petition nor any evidence to this effect emerged from the record of the present case, and thus, it was difficult to hold that the deceased was a 'bonafide passenger' on any train and it was difficult to discern that he died due to an 'untoward incident'.

GROUND FOR APPEAL

4. The impugned judgment is assailed *inter alia* on the grounds that the learned RCT failed to appreciate that Section 124-A of the Act lays down the Principle of Strict liability or no-fault liability as held in the Case titled **Union of India Vs. Prabhakaran Vijay Kumar & Others**³ and it failed to consider that presumption shall always be in favour of the passenger with regard to the bonafide passenger as

² RCT

³ 2009 (I) ACC 270



reported in the case titled **Ashutosh Dwevidi v. Union of India**⁴; and that negligence of passenger does not have effect on liability of Railways and the claimants are entitled to Compensation with interest as Reported in the case titled **Jameela & Others v. Union of India**⁵.

5. The impugned judgment is also assailed contending that the proximity between purchase of ticket and performance of journey excludes any ground on which deceased could be excluded from definition of 'Passenger' for purpose of Section 124-A of the Act as Reported in the case titled **Union of India v. Deena**⁶; and that Section 13 of the Railway Act 1980 statutorily mandates duties upon the Railways for erections of fences, screens, Gates and Bars at all railway crossing etc. and on failure of the same, the Railways is liable to compensate the victim as reported in **Union of India v. United India Insurance Co. Ltd.**⁷; and lastly that Section 124-A read with Section 2 (29) of the Railways Act 24 of 1989 does not prescribe that a victim must hold a valid ticket to travel as a passenger in the particular Train as Reported in the case of titled **Smt.Vinodamma S v. Union of India**⁸.

ANALYSIS AND DECISION

6. Having heard the learned counsels for the rival parties at the Bar and on meticulous perusal of the record, at the outset, I find that the instant appeal is bereft of any merits.

⁴ 2009 (V) RCR (Civil) 579

⁵ (2010) 12 SCC 443

⁶ (2013) AGO 399(DB)

⁷ 1998(1) RCR (Civil) 354

⁸ AIR 2010 (Karnataka) 174



7. The reasons for such verdict are not far to seek. It is relevant to state that learned RCT based on the pleadings of the parties, framed the following issues on 24.09.2018:

01. Whether the deceased was a bona fide passenger in the train in question at the time of accident?
02. Whether the deceased had died in an untoward incident while travelling in the train within meaning of Sec 123 (c) of the Railways Act?
03. Whether the respondents are protected under the exemption clause of Sec. 124 (A) of Railways Act and are not liable to pay any compensation?
04. Whether the applicants are the sole heir of the deceased?
05. Relief, if any?

8. Now, a careful perusal of the impugned judgment would show that learned RCT had found that after the discovery of the dead body on the Railway Track, Panchnama was prepared and the initial cause of death in the opinion of the Investigating Officer was recorded as “राय उपनिरीक्षक:-मुझ एसआई की राय पंचो की राय से मेल खाती है की म्रतक नाम पता अज्ञात की म्रत्यु रेल की चपेट में आने से गंभीर चोटों के कारण हुए है”।

9. At the cost of repetition, the dead body of the deceased was found at a distance of 13-14 km from the Ghaziabad Railway Station. It is pertinent to mention here that as per the post-mortem report the head and face of the deceased were lacerated and imputed at the upper portion of the neck. It was further opined in the post-mortem report that death had occurred 1 to 1 ½ days i.e. 24 to 36 hours at the time of post-mortem conducted on 05.12.2017 at 1:00 p.m. The said timings of the death belies that the accident had happened in the intervening night of 3/4 December, 2017 as was propounded by the appellants/claimants.



10. In the light of the aforesaid established facts on the record, this Court finds that the findings recorded by the learned RCT that the testimony of AW-1 / appellant, father of the deceased, that he had purchased a rail ticket for his son and then left the Railway Station is neither fathomable nor believable. No rail ticket was found from the personal belongings of the deceased at the spot. There is no evidence to show as to which train the deceased had boarded and at what time. In other words, there was led no iota of evidence regarding the train from which the victim had fallen leading to his unfortunate death.

11. Thus, learned RCT rightly concluded that the initial burden of proving that a rail ticket was purchased and the deceased had boarded a particular train was upon the claimants, which they have miserably failed to discharge. The site plan of the place of occurrence also tells its own tale that the body of the deceased was found cut into two pieces from the neck on a railway track at a small distance from the railway crossing, which would raise an inference that the deceased was probably crossing the railway line on foot when he was hit by some passing train. The DRM Report dated 27.08.2018 also concluded that no incident had been reported during the day time by any loco driver, rail staff or any third person either.

12. In view of the aforesaid discussion, this Court is unable to persuade itself to find any illegality, perversity or incorrect approach adopted by learned RCT in rendering a finding that deceased was not a 'bonafide passenger' and it was difficult to infer that he had died because of an 'untoward incident'.



13. In view of the foregoing reasons, the present appeal is dismissed.

DHARMESH SHARMA, J.

JANUARY 05, 2024/ss/

Signature Not Verified

Digitally Signed By: PRAKASH
KUMAR VATS
Signing Date: 10/01/2024
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