



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

% **Judgment reserved on : 06 December 2023**
Judgment pronounced on : 05 January 2024

+ **FAO 514/2019**

RAJENDRI DEVI & ORS Appellant
Through: **Mr. Rohit Nagar and Mr. Aniket Krishnatrey, Advs.**

versus

UNION OF INDIA & ANR Respondent
Through: **Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Adv.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide an appeal instituted in terms of Section 23 of The Railway Claims Tribunal Act, 1987¹ by the appellants/claimants assailing the impugned judgment dated 14.08.2019 passed by the Railway Claims Tribunal, Principal Bench, Delhi², whereby the claim of the appellants seeking compensation of Rs. 8,00,000/ along with 18% interest p.a. was dismissed.

FACTUAL BACKGROUND:

2. The appellants/ claimants are the wife, a major son and a major daughter of the deceased. It was the claim of the appellants/claimants that on 12.09.2018, the deceased was travelling from Shahdara to

¹ RCT Act

² RCT



Khurja junction and was having a valid MST³ pass bearing no. P-03238245 and ID No. P-03238244 valid from 24.08.2018 up to 23.09.2018 permitting travel from Khurja junction to Shakur-basti and vice-a-versa. It was claimed that on 12.09.2018 the deceased boarded the train from Shahadara for his onward journey to Khurja after performing his duties and that he was standing near the gate of the train compartment, and due to heavy rush inside the train compartment, the deceased accidentally fell down from the running train and received serious/grievous injuries to which he succumbed thereafter.

3. The respondent/Railways contested the claim and denied any liability. It was the defence of the respondent/ Railways that the alleged accident as per the appellants/ claimants had taken place on 12.09.2018 at around 22.50 hours but the post mortem that was conducted on the body on 13.09.2018 at 2.35 pm, revealed that the time of death was about 3 to 4 days prior; and therefore, the death had not taken place on 12.09.2018.

4. Learned RCT based on the pleadings of the parties framed the following issues:

“i) Whether the deceased was a bona-fide passenger of the train in question at the relevant time of the incident?

ii) Whether the death of the deceased was on account of an accident fall from the train in question amounting to an untoward incident as defined under Section 123 (c) read with Section 124-A of the Railways Act, 1989?

³ Monthly Season Ticket



- iii) Whether the applicants are the dependents of the deceased within the meaning of Section 123(b) of the Railways Act, 1989?
- iv) To what amount of compensation, if any, are the applicants entitled?
- v) Relief, if any?"

5. Suffice to state that although the learned RCT held that the deceased was found in possession of a valid MST and decided Issue No. 1 in favour of the appellants/claimants, at the same time it held that there was no evidence to show that the deceased was actually travelling in a train and died as a result of an 'untoward incident', because neither any train name nor any number had been mentioned in the claim petition, nor even the approximate time of boarding any train from Shahdara station had been specified. It was found that there was no eye-witness either who would have seen the deceased falling down from any train at the site of incident. Hence, learned RCT found it difficult to believe that the death of the deceased occurred as a result of any 'untoward incident' in the form of accidental fall from any running train as defined under section 123 (c) of Railways Act, 1989. Issue No. 2 was thus concluded against the applicant. Though Issues No. 3 & 4 were decided in favour of the appellants/claimants, the claim was dismissed for the findings recorded on Issue No. 2.

GROUND OF APPEAL:

6. The impugned judgment is assailed on the grounds that the deceased had been travelling with a valid railway monthly pass and the deceased ought to have been considered as a *bonafide passenger* in absence of the contrary being proven by the respondent. Heavy reliance is placed on the decision in the case of **Union of India v. Parbhakaran**



Vijaya Kumar & Ors.⁴ whereby it was observed that “*the welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions*”. Reliance is also placed on decision in the case of **Jameela & Ors. v. Union of India**⁵ to the effect so as to “*bring the case under the exception of Sec 124 A Railway Act, 1989, the contents of mens rea are not essential*”.

ANALYSIS AND REASONS FOR DECISION:

7. Having heard the learned counsels for the rival parties at the Bar and on perusal of the digitized LCR made available, this Court has no hesitation to hold that the impugned judgment dated 14.08.2019 cannot be sustained in law.

8. First thing first, it would be expedient to reproduce the issues that were framed by the learned RCT based on the pleading of the parties :

- i. Whether the deceased was a bona-fide passenger of the train in question at the relevant time of the incident?
- ii. Whether the death of the deceased was on account of an accident fall from the train in question amounting to an untoward incident as defined under Section 123 (c) read with Section 124-A of the Railways Act, 1989?
- iii. Whether the applicants are the dependents of the deceased within the meaning of Section 123(b) of the Railways Act, 1989?
- iv. To what amount of compensation, if any, are the applicants entitled?
 - v) Relief, if any?

⁴ 2009 (I) ACC 270

⁵ (2010) 12 SCC 443



9. Further, it would be relevant to extract the reasons that have been given by the learned RCT in finding Issue Nos. 1 & 2 against the appellants/ claimants, which read as under:

3. Since issues no. 1 and 2 are interconnected, they are taken up together for further discussion. Ex. A-5, shows that the memo dated 12.09.2018, was issued by Station Master, Block Hut addressed to Station Master, Gangraul mentioning that train no.64102 passenger arrived on down line at 21:55 hrs and that on duty porter, Sh. Vikas Kumar informed at 22:00 hrs that an unknown dead body was lying in severed condition at km 1380/08 and 1380/10 near Gangraul railway station. Accordingly, Station Master Vikarm Singh Meena informed railway control room at Tundia to get a memo issued to RPF and GRP. It is further stated that the GRP arrived at 23:30 hrs by train no. 18108 UP. A memo dated 12.09.2018 issued at 22:45 hrs (Ex. A-2) is seen to have been issued to GRP, Khurja station mentioning that one person was run over on down line at Gangraul station. Entry no. 22 is seen to have been recorded by GRP at 22:50 hrs In its rojnamcha (Ex. A-6) which says that one person was run over at down line at Gangraul station. Thus, the initial information as available with the railway and police authorities mentioned categorically that the deceased was run over. It is pertinent to note that the deceased was a resident of Khurja junction, Arniya Mansoorpur Khurja, District-Bulandshahr, UP -203131. There is no evidence to show that deceased was actually travelling in a train because neither any train name or no. has been mentioned in the claim petition nor even the approximate time of boarding any train from Shahdara station has been specified. Further there is no eye-witness who would have seen the deceased falling down from any train at the site of incident. We have therefore difficulty in believing that the death of the deceased occurred as a result of any untoward incident In the form of accidental mil from any running train as defined under Section 123 (c) of Railways Act, 1989. Issue no. 2 is, therefore, answered accordingly in negative and against the applicants.

4. The inquest proceedings have been conducted by GRP (Ex. A-1) at site, it is specified therein that amongst other articles recovered from the dead body of the deceased at site, an MST pass bearing no. P-03238245 and ID No. P-03238244 valid from 24.08.2018 up to 23.09.2018 from Khurja junction to Shakurbasti was also recovered. However, since there is no evidence that the deceased was travelling by any train as brought out in the discussion on issue no. 2, mere presence of MST along with ID card cannot be



construed to establish that the deceased was a bona fide passenger of any train at the site of the incident. We, therefore, answer issue 1 in negative against the applicants.

10. A careful perusal of the aforesaid reasoning would evidently show that although the learned RCT found that the deceased was holding a valid MST, it was not convinced that the deceased died due to an 'untoward incident'⁶ as provided under Chapter XIII of Section 123 (c) (2) of the Railways Act, 1989. It is borne out from the record that the information about the dead body lying in a severed condition at KM 1380/08 and 1380/10 near Gangraul Railway Station had been notified by one Vikas Kumar, A Duty Porter at 22:00 hours and on information given by the Station Master to the Railway Control Room, the GRP arrived at 23:30 hrs by train no. 18108 UP. A memo dated 12.09.2018 was issued at 22:45 hrs by the GRP, Khurja Station mentioning that one person had been run over on down line at Gangraul Station. The initial *rojnamcha* recorded by the GRP at 22:50 (Ex. A-6) also indicate that one person was run over at down line at Gangraul Station.

11. Further, a careful perusal of the post-mortem report No. 1228/18 conducted at Mortuary Aligarh at 12:45 hours reveals that the head as also the right portion of the shoulder was amputated i.e., right upper part of chest and neck and right shoulder region with separation of right arm and head from the trunk; and there were found fractures of underlying bones and exposure of underlying tissue and blood vessels. There were found crush injuries on the left shoulder region,

⁶ Section 2 (n) of the RCT Act r/w Section 123 (c)(2) of the Railways Act, 1989 (accidental falling of any passenger from a train carrying passengers)



with separation of left arm and fracture of underlying bone and exposure of underlying tissue and blood vessels. There were found crush injuries on the left lower leg with deep lacerated lower leg just below left knee part and fracture of oncology bones and exposure of underlying tissue and blood vessels.

12. A careful perusal of the nature of injuries sustained by the deceased does not rule out that he had not fallen off a running train. It is in evidence that the deceased used to commute from Khurja junction to Shakurbasti and *vice versa*. There is no convincing evidence to suggest that he had instead been run over by a train, which is fortified from the initial report in Proforma-I that indicates that the incident was reported on 12.09.2018 at 22:45 hours on arrival of the passenger train 64102 and Duty Porter Vikas Kumar reported that a dead body was lying on the railway tracks. Statement of Vikas Kumar was recorded by the IO SI Pradeep Yadav on 28.11.2018 in which he made a statement that the incident had not occurred in his presence but he was informed by some passengers that somebody had fallen from the running train and was lying dead at KM 1380/08 and 1380/10 near Gangraul Railway Station. As per the inquest report conducted on 13.09.2018 at 2:10 p.m., the Panchnama opinion was that the deceased had died due to injuries sustained in a train accident.

13. There is more to the story than meets the eye. There is a DRM report on the record (reference COS/accident/RCT/DLI/21/2018/dated 17.12.2018), the contents of which are as under:-

"In the summary or conclusion part, reports are mentioning that the deceased fell down from train while careless travelling on



footboard or doors. Apparently, this conclusion is drawn to prove that railways are not responsible for accident. However, legally court (Tribunal) considers its first part as admission by Railways i.e. deceased was travelling on train and second part i.e. careless travelling is considered as allegation for want of any independent witness in the report and not accepted. **If we go in to the report carefully it will be found that the conclusion of careless travelling was drawn without any independent witness or evidence (proof).** More often it is drawn based on witness given by some relative of deceased who cannot be considered as independent witness. It is, therefore, requested that enquiry officers may be advised to give findings based on available witness and records."

14. At the cost of repetition, the initial version is that the passengers travelling in the train had raised alarm and they informed the Duty Porter that an incident had occurred. Merely because the appellants/claimants were unable to testify about the details of the train and timings would not by itself raise any doubts in the claim made that the deceased had fallen from a running train. The initial report by the GRP clearly opined that the deceased had fallen from a running train and sustained injuries and succumbed to the same. It is very unlikely to come by direct evidence in such type of railway accident cases and the fact that the incident was reported by the passengers would bring this case within the **realm of *res gestae*** and a "relevant evidence" within the ambit of Section 6⁷ of the Indian Evidence Act, 1872.

⁷ Section 6 reads as follows: Section 6: Relevancy of facts forming part of same transaction: Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.



15. Furthermore, the nature of injuries reflected in the post mortem does invite an inference that the deceased died by falling from the train, and unlikely to have been caused on being hit by a running train. In so far as the expert opinion suggesting that death had occurred 3-4 days prior to the post-mortem is concerned, it is not conclusive in the face of the fact that there is no evidence on the record suggesting any foul play or homicide leading to the death of the deceased. It could not be that the dead body remained lying unnoticed for a day or two on a busy railway route. It is well ordained in law that unless the oral evidence is totally irreconcilable with the medical evidence, the oral evidence shall have primacy. This was held in the case titled as **Darbara Singh vs State of Punjab**⁸.

16. Further, this Court has no hesitation in discarding the post mortem report that very cryptically remarks “rigor mortis +ve”. Rigor mortis is stiffening of the muscle that normally sets in after two hours of the death and there is no remark that secondary relaxation had set in either. It would be apposite to refer to the following passage in Modi's Textbook⁹ which reads as under :

“Rigor mortis generally occurs whilst the body is cooling. It is in no way connected with the nervous system, and it develops even in paralysed limbs, provided that the paralysed muscle tissues have not suffered much in nutrition. It is retarded by perfusion with normal saline.

Owing to the setting in of rigor mortis, all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. A joint rendered stiff and rigid after death, if flexed forcibly by mechanical violence, will remain supple

⁸ (2012) 10 SCC 476

⁹ Modi's Textbook of Medical Jurisprudence and Toxicology, 21st Edn., at p. 171.



and flaccid, but will not return to its original position after the force is withdrawn; whereas a joint contracted during life in cases of hysteria or catalepsy will return to the same condition after the force is taken away.

Rigor mortis first appears in the involuntary muscles, and then in the voluntary muscles. In the heart it appears, as a rule, within an hour after death, and may be mistaken for hypertrophy, and its relaxation or dilatation, atrophy or degeneration. The left chambers are affected more than the right. Post-mortem delivery may occur owing to the contraction of the uterine muscular fibres.

In the voluntary muscles, rigor mortis follows a definite course. It first occurs in the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw, then in those of the front of the neck, face, chest and upper extremities, and lastly extends downwards to the muscles of the abdomen and lower extremities. Last to be affected, are the small muscles of the fingers and toes. It passes off in the same sequence. However, according to H.A. Shapiro this progress of rigor mortis from proximal to distal areas is only apparent, it actually starts in all the muscles simultaneously but one can distinguish the early developing and fully established stage, which gives an indication of the time factor.

Time of onset.— This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one to two hours after death.”

17. In view of the foregoing reasons, this Court is unable to sustain the reasoning adopted by learned RCT in deciding Issue Nos. 1 & 2 against the appellants / claimants. The appellants / claimants being the wife, major son and major daughter are the legal heirs of the deceased and entitled to be awarded compensation.

18. Accordingly, the present appeal is allowed. The impugned judgment dated 14.08.2019 is hereby set aside. The appellants are allowed statutory compensation of Rs. 8,00,000/- with interest @ 9% per annum from the date of accident i.e. 12.09.2018 till realization. The compensation amount be paid within two months from today



failing which the respondent / railway shall liable to pay compensation @ 12% per annum from the date of this judgment till realization.

DHARMESH SHARMA, J.

JANUARY 05, 2024/ss

Signature Not Verified

Digitally Signed By: PRADEEP
KUMAR VATS
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