



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 11 December 2023**
Judgment pronounced on : 25 January 2024

+ **FAO 77/2015**

SURESH KUMAR SHARMA & ANR Appellants
Through: **Mr. Anshuman Bal, Adv.**

versus

UNION OF INDIA THR GM Respondent
Through: **Mr. Rahul Singh, Mr. Nishant Shokeen, Ms. Vartika Singh, Ms. Sumita Singh and Mr. Sahil Nindawat, 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 order dated 26.11.2014 passed by the learned Presiding Officer, Railway Claims Tribunal, Principal Bench, Delhi² in OA (Ilu) 103/11³, whereby the claim for compensation filed under Section 16 of the RCT Act was dismissed.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the appellants / claimants that on 01.01.2011, the deceased Nishant Sharma @ Nishant Sarswat was travelling from Brijwasan to Taj Nagar by 2MNR train having a valid ticket bearing no. 05887 at the time of accident. The deceased was standing near the gate and when train reached KM No. 52/4-5 between

¹ RCT Act

² RCT

³ Claim Application



Raj Nagar, partly Haryana, due to heavy rush and sudden jerk, he fell down from the train and another train crushed the deceased and he died on the spot. The Post mortem was conducted at a government hospital in Gurgaon (DD no. 14) on 01.01.2011, which was registered by the police. The deceased being unmarried, died leaving behind his parents. Hence, the claimants are claiming a sum of Rs. 4,00,000/- from the respondent railways.

3. During the course of arguments before the learned RCT, the respondent Northern Railway filed Written Statements disputing the claim and their liability to pay compensation and further contending that the deceased was not a *bonafide* passenger⁴ on board the train and his death was not on account of any untoward incident⁵ as alleged but was due to self-inflicted injuries while crossing the railway track.

4. Following issues were framed by the learned RCT:

- i. Whether the claim application is maintainable in regard to the jurisdiction of this bench?
- ii. Whether the applicant proves that the death of the deceased had occurred as a result of an untoward incident, as alleged in the claim application?
- iii. Whether the respondent proves that the claim is not covered under the ambit of Section 123, 124 and 124-A of the Railways Act?
- iv. Whether the applicant proves that the deceased was a bona fide passenger on the train in question on the relevant day?
- v. Whether the applicant proves that he is the dependant of the deceased within the meaning of Section 123(b) of the Railways Act
- vi. To what order / relief ?”

⁴ Section 2(29) of the Railways Act, 1989, a passenger means a person travelling with a valid pass or ticket.

⁵ Section 2(n) of the RCT Act read with Section 123(C) of the Railways Act, 1989 (accidental falling of any passenger from a train carrying passengers)



5. The learned RCT while answering regarding Issue nos. 2, 3 and 4 after appreciating the evidence on record observed that during *Jamatalashi* of the deceased, only an ID card and Rs. 121/- were found and that neither any journey ticket was recovered from the deceased nor police record of the investigation mentioned anything about the journey ticket and thus, held that the deceased was not a *bonafide* passenger. The relevant extract of the impugned order is reproduced below :

“13. In the absence of any supporting evidence, the self serving statement of the applicant regarding the deceased having a journey ticket and being a bonafide passenger on board the 2MNR train cannot be accepted. Even assuming that the deceased did travel by 2MNR train, to be eligible for claiming compensation, the applicant has to show that the death of the deceased was due to an untoward incident within the ambit of Section 123 (c) of the Railways Act which includes accidental falling of any passenger from a train carrying passengers. The evidence on record does not show that the death of the deceased was due to any accidental fall from a train. On the contrary his death was due to getting hit by the engine of the train while he was walking along the track. Thus, viewed from any angle, the applicant has failed to show that the death of the deceased was due to an untoward incident.”

6. The learned RCT, relying on the statements made by Harsh Gupta, the loco pilot observed as under :

“10. The statement of the loco pilot, who is an eye witness to the incident, shows that the death of the deceased was due to getting hit by the train engine when the deceased was walking along the track and not due to getting run over after fall from train, as alleged.”

7. It was further observed that evidence led by PW-2 Sh. Shailesh Chaubey, who stated that he was with the deceased during the incident was not inspiring any confidence since there was no mention of his name even in the crucial documents submitted by the appellant during the inquiry including the death report and the *post mortem* report.



8. The appellants/claimants in the present appeal allude to the aspect that the statement of PW-2 Sh. Shaliesh Chaubey, the eye witness, was not considered regarding the fact that the deceased was a *bonafide* passenger with a valid ticket. In support of their claim, reliance has been placed on **Union of India v. Prabhakaran Vijaya Kumar & Ors.**⁶ Further, appellants are of the view that the tribunal relied only on the railway reports and no evidence was led by the respondents. Hence, the appellants / claimants have filed the present appeal before this court.

ANALYSIS & DECISION:

9. Having heard learned counsels for the parties and on perusal of the record, at the outset, I find that the present appeal is bereft of any merits. The reasons for such decision in the appeal are not far to seek.

10. **First things first**, AW-1, who is the father of the claimant, brings out that he was not an eye witness to the accident and for the first time in his cross-examination, he stated that he had been told about the accident by a friend of his deceased son. AW-2/Sh. Shaliesh Chaubey, although deposed that he was with the deceased being his class-mate and travelling with him on the train when deceased fell out of the gate due to the over-crowded train and run over by another train coming from Rewari side, learned RCT has rightly held that his evidence is not inspiring any confidence. His deposition that he had gone to the Station Master at Taj Nagar when the train stopped to give information, was not recorded anywhere in the records of the Railways. The death report Ex.AW-1/5, post-mortem report Ex.AW-

⁶ (2008) 9 SCC 527



1/6 and the final report Ex.AW-1/8 make no mention of the fact that Sh. Shaliesh Chaubey has been an eye witness to the accident. There is no mention of him in the DRM report Ex.R-1 either. In other words, the learned RCT rightly held that the presence of Sh. Shaliesh Chaubey had not been registered anywhere in the documents which were soon prepared after death of the deceased.

11. Incidentally, the DRM report dated 12.11.2012 Ex.R-1 records that the death was due to deceased getting run over by a train and it is categorically brought out in the GRP Report dated 01.11.2014 and the DRM report Ex.R-1 as well as the report of the Inspector RPF that the deceased was hit/run over by Train No. 12216 while he was unauthorisedly walking along the railway track. The statement of Harsh Gupta, the loco pilot of the train No. 12216, Garib Rath Express, was categorical that one person was walking on the left side of the track at Taj Nagar Halt and even after repeatedly blowing the engine whistle, the person did not move away and was hit by the left side of the engine throwing him on the track. The DRM report took into account the death report, *post mortem* report, site plan of the place of occurrence and the report of the SHO besides that of other witnesses in reaching the conclusion that the deceased had not fallen from any running train, but was hit by the above-noted train when he was inattentively walking on the tracks. Further, it was categorical version of Mahinder Singh, Boarding Clerk that the deceased had been hit by a train, which is recorded as “अभी जो गाड़ी पास हुई उससे टकराकर दूर जा गिरा”. The proceedings before the learned RCT are summary in



nature and the objection that loco pilot was not examined by the learned RCT cannot be sustained in law.

12. Last but not the least, no rail ticket was found from the body of the deceased. The *Jamatalashi* of the deceased, which was taken soon after the accident shows that his bag containing books and mobile phone were recovered from the site and there was no recovery of any journey ticket. Version of AW-2 that that train ticket was taken out of the jacket of the deceased is not fathomable.

13. In view of the foregoing discussions, it is difficult to discern that deceased was travelling as a *bonafide* passenger on any train and that he fell out of the running train as claimed by the appellants.

14. The appeal is accordingly dismissed.

DHARMESH SHARMA, J.

JANUARY 25, 2024

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