



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

%

Judgment reserved on:01.08.2024

Judgment delivered on:05.09.2024

+ FAO 484/2013

SMT BHATERI & ORS

.....Petitioner

versus

UNION OF INDIA

.....Respondent

Memo of Appearance

For the Petitioner: Mr. Prateek K. Chadha, Mr. Vijay Kumar Wadhwa, Mr. Arush Malhotra, Mr. SreekarAechuri and Mr. Arjun Nayyar, Advocates.

For the Respondent: Mr. Gigi George, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. It needs to be assessed whether Shri Rajbir was a *bonafide* passenger and died on account of an untoward incident or not.

2. The appellants herein are his legal representatives. They had filed a claim petition under Section 16 Railway Claims Tribunal Act, 1987, and have taken exception to the order passed by the Railway Claims Tribunal (herein after referred to as Tribunal) whereby such claim has been rejected.

3. As per the appellants, Shri Rajbir was a government servant, employed with Indian Postal Department, STG Division, New Delhi. He was a resident of Sonipat and on 05.11.2011, after performing his duties, he boarded HNK train No. 64461(Hazrat Nizamuddin to Kurukshetra) from platform No. 3 of Tilak Bridge Railway Station to



reach his native place i.e. Sonipat, Haryana. There was heavy rush in the train and, therefore, he could not get inside the train and remained stationed near the gate along with the other passengers. When the train had barely crossed platform No. 3, due to sudden jerk, he got imbalanced and fell down after colliding with one electric pillar.

4. The above said incident was witnessed by RPF (Railway Protection Force) Constable Shri Chander Pal (AW-2) who was on duty at said platform at the relevant time.

5. The said passenger died on account of such accident and his autopsy was got conducted on 06.11.2011.

6. According to the appellants, they were entirely dependent on the earnings of the deceased and after his unfortunate death, they were facing starvation and were even struggling to make their both ends meet.

7. It was in the above said backdrop of the facts that the claim was lodged by them.

8. Smt. Bhateri (widow of Shri Rajbir) (AW-1) entered into witness box and submitted her affidavit. She also examined Shri Chandra Pal, RPF Constable (AW-2).

9. The record of the Tribunal would indicate that one Head Guard Shri Naresh Kumar was also examined by the respondents.

10. Fact remains that the claim was rejected while observing that there was nothing to indicate that the deceased was a *bonafide* passenger.



11. Undoubtedly, there was no recovery of any train ticket or pass from the person of the deceased. It is also admitted fact that his widow is not a witness to the occurrence in question and her affidavit is based on hearsay facts.

12. Learned Tribunal took note of various statutory provisions contained under Indian Evidence Act, in context of discharge of burden of proof and was also mindful of the enactment in question and its objective but keeping in mind the facts proved during the trial, it came to the conclusion that the deceased was not a *bonafide* passenger.

13. The relevant paras of said order are extracted as under:-

“10. The question which then arises for consideration is whether nonrecovery of a ticket or a pass from the person of the deceased would lead to any inference that he was travelling without ticket or any valid travel authority, and therefore, not a bonafide passenger. Section 2(29) of the Railways Act defines 'passenger' as meaning a person travelling with a valid pass or ticket. Under Section 124-A of the Railways Act, 1989, the Railways would be liable to pay compensation only for loss occasioned by the death or injury to a person as a result of an untoward incident. Explanation to Section 124-A of the Railways Act, 1989 amplifies the scope of the expression passenger by stating that for the purpose of this Section, passenger includes 1) a Railway servant on duty, 2) a person, who has purchased a valid ticket for travel by a train carrying passengers on any date or a valid platform ticket and becomes a victim of an untoward incident. Thus, apart from the definitive definition of the expression 'passenger' contained in Section 2 (29), the inclusive definition of the said expression contained in Explanation to Section 124-A of the Railways Act, 1989 also makes it clear that it is only a person, who has purchased a valid ticket for travel by train would become a passenger. The inclusive definition contained in the Explanation includes a person, who has a valid platform ticket also. Thus, before rendering the Railways liable for payment of compensation, it is necessary to establish that the victim of the untoward incident was in a fact a passenger i.e. a person, who was travelling with a valid ticket or a pass.



11. In the present case, the specific plea of the applicants is that the deceased purchased a ticket and the same was lost. As observed supra, the applicants cannot have any personal knowledge of either the purchase or loss of the ticket by the deceased, as he was admittedly travelling alone and not accompanied by any of the family members. The evidence on record shows that no ticket or pass was recovered from the person of the deceased though certain other similar items like visiting cards and identity cards were recovered. It is, therefore, not a case where there is an evidence of purchase and loss of the ticket, but it is only a case where the evidence on record shows that no ticket or pass was recovered from the person of the deceased.

.....

.....

16. Notwithstanding the above statutory provisions contained in the Indian Evidence Act relating to the burden of proof, one cannot lose sight of the ground realities and the incapability and impracticability of the legal heirs of the deceased, who is a victim of an untoward incident, to establish that the deceased was a bonafide passenger with a valid ticket in the pursuit of their claim for compensation. In giving effect to the benevolent provisions relating to payment of compensation contained in the Railways Act, which is in the nature of a social support and welfare measure, it is true that the rigors of law cannot be permitted to defeat the very objective of the said provisions. It may be that the legal heirs and dependents of the deceased, victim of an untoward incident, may not always be in apposition to establish the fact they assert, namely that the deceased was having a valid railway ticket. At the same time, it cannot also be generalized that any victim of an untoward incident or his legal heirs, as the case may be, would be entitled for compensation simply because the body was found lying near the railway tracks. Just as it is not always possible for the legal heirs of the deceased victim to establish that the deceased was having a valid ticket, it may not be possible for the Railways also to show that the deceased was issued with a ticket especially when the victim was travelling in an unreserved and general compartment, in the absence of any record maintained with regard to the issue of such tickets with reference to the names of the passengers. When such is the situation, and in the light of the attending circumstances, the Tribunal has to make an objective assessment of the material available on record in deciding the question as to whether or not the deceased was a bonafide passenger, in a summary proceeding like the present one



and necessarily keeping in view the constraints coming in the way of the applicants in establishing the fact, which they assert.

17. In the present case, admittedly no ticket was recovered from the person of the deceased though certain other papers were recovered. If really the deceased had purchased a ticket, it would have normally been available on the person of the deceased along with other papers. It is not the case of the applicants that the deceased was carrying any bag or luggage and he kept the ticket in the bag and it was lost. According to the applicants, the deceased was returning from place of work on completion of duty. It is not their case that the deceased was a regular commuter on a monthly season ticket. Under those circumstances, simply because deceased is said to have fallen from the train, it cannot be said that he was a bonafide passenger with a valid ticket. That he was a bonafide passenger is a fact to be established, based on the evidence in as much as, there cannot be any presumption that every person travelling in a train particularly in an unreserved and general compartment holds a valid ticket.

.....
.....

20. No doubt mere absence of the ticket by itself may not lead to any conclusion that the victim was not a bonafide passenger and there may be certain situations, where the ticket gets lost in the aftermath of the incident. Hence, it would depend upon the facts and circumstances of a given case, but no generalization can be made to the effect that every victim of an untoward Incident is a bonafide passenger. The fact that the dead body was found in the Railway precincts and it was sent for postmortem by the Railway police does not lead to any inference that the deceased was a bonafide passenger with a valid ticket. Under these circumstances, on the basis of the material available on record, it must be held that the deceased is not shown to be a bonafide passenger with a valid ticket in terms of Section 2 (29) read with Section 124-A of the Railways Act, 1989. Consequently, It is held that the applicants are not entitled to any compensation as claimed by them. The Issue No. 3 is answered accordingly."

14. There are two important aspects which need to be evaluated.

15. Firstly, whether the deceased was travelling in the above said train at the relevant time or not or whether he had been run over by the



train on account of his own rashness and negligence while trying to board a moving train. Secondly, whether the non-recovery of any ticket or pass from his person can be said to be fatal in context of the present case.

16. In this regard, the report given by the respondent is very important. Such report, which is under the signatures of Senior Division Safety Commissioner, Railway Protection Force, East Delhi Northern Railways is of paramount importance as it gives us a glimpse of what had happened on that fateful day.

17. In context of the claim in question, inquiry was conducted and such inquiry report contains certain vital aspects which have not been taken care of by the Tribunal in the desired manner. Such report indicates that the spot witness was same RPF Constable Shri Chander Pal and on the basis of the analysis of his statement, the inquiry concluded that when he was on duty on 05.11.2011 from 04:00 p.m. to 12:00 night at Tilak Bridge station, public told him that at about 6:30 p.m. at platform No. 3/4, one person had fallen down from train No. HNK 64461. He was also told that said person had fallen down while in the process of boarding a running train and that he died instantaneously.

18. As per the final conclusion also, the Senior Divisional Protection Commissioner concluded that when the deceased was boarding the train, he could not get in properly and fell down after hitting some object. It also categorically, mentioned in such inquiry report that the incident had taken place because the deceased had fallen down while in the process of boarding the aforesaid train and the incident was corroborated by the Duty Constable Chander Pal.



19. Thus, Constable Chander Pal seems to be a very material witness in the context of the relevant case.

20. Before taking note of his statement, it will be appropriate to see as to what he stated to SI Dalip Singh of PS, New Delhi Railway Station who had recorded his statement, immediately, after the accident in question. Such statement has been proved as AW-1/10 and in his such statement Constable Chander Pal, curiously enough, claimed that *he himself had seen the accident. He claimed that there was lot of rush in train when the train reached at platform No. 3 and said person (deceased Rajbir Singh) could not get inside the train on account of huge rush in the train. He further claimed that on account of jerk in the train, said person fell down and, in the process, hit one pole. He also claimed that the name of deceased was ascertained as Rajbir and he died in a short while. In his such statement, he also claimed that several papers had fallen out from the pocket of the deceased and got spread to some distance and that on account of blow of wind, these got scattered here and there.*

21. Beneath such statement, name of said Constable Chander Pal seems to be mentioned and such statement was attested by SI Dalip Singh who also signed in token of attestation.

22. It seems that though statement had been made by Constable Chander Pal, which was recorded and counter-signed by SI Dalip Singh, Constable Chander Pal himself did not sign his said statement.

23. The question is that whether such omission in signing the statement would make such statement of Constable Chander Pal totally



suspect.

24. The appellants are, obviously, in no position to comment the manner in which the accident had taken place and also whether the deceased was having a ticket with him at the relevant time or not. However, this Court cannot turn blind eye to the documents which were prepared by the Railway Authorities, with the help of concerned police agency, then and there.

25. The appellants themselves examined Constable Chander Pal in the witness box. However, his testimony has created some flutter but not enough to deflate the Claim Petition.

26. When Constable Chander Pal was examined as AW-2, he claimed that he was informed about the incident by the passengers. He also claimed that he saw some papers lying near that person who had fallen down from the train, who did not seem to be alive. The officials of GRP (Government Railway Police) also reached and with the help of those papers, the name of the deceased was ascertained as Rajbir. However, in his further testimony he claimed that his statement was not recorded by GRP (Government Railway Police). He was shown statement AW-1/10 but he claimed that it was not bearing his signature. He claimed that he had made one statement before the Railway Protection Force and proved his such statement as Ex.AW-2/1.

27. Though, the above witness had been called by the claimants and, evidently, his testimony was not in synchronization with his earlier statement and in such a situation, either the Tribunal should have intervened or should have permitted some leading questions to be put to



Constable Chander Pal to have the complete clarity. It was quite obvious that despite the fact that he was called as witness by the claimant, it looked as if he was deposing in favour of the Railways. Curiously, his such version was not even acceptable to the Railways as the counsel for the *Railways suggested to him that he was deposing falsely on account of his being an employee of Railways.*

28. I have already taken note of the above said inquiry conducted by Railways.

29. Such inquiry report dated 27.04.2012 clearly shows Constable Chander Pal as spot witness and also indicates that the passenger had died while he was in the process of boarding a train.

30. It is also clear that the body was found lying very close to the platform and from no angle, it can be said to be a case where the death was on account of trespassing the railway track. It is beyond my comprehension as to why when the written statement was filed by Union of India before the Tribunal, it blatantly denied each and every fact. It was mentioned in such written statement that the claim was not maintainable for want of jurisdiction without even bothering to elaborate as to how the concerned Tribunal did not have any jurisdiction. It was denied that any accident had taken place at said platform on 05.11.2011. It was also denied that the deceased was a Government Employee. It was also denied that incident was witnessed by Constable Chander Pal. It was also denied that one paper slip containing mobile No. of the relative of the deceased was found by the police and, thereby, the police was able to contact his relatives. So much so, it was also denied that any post-mortem of the deceased was



conducted on 06.11.2011. While denying each and every averment made in the Claim Petition, it was also claimed that a concocted and fabricated story was made to extract money from Railways and that he had met with accident due to his own act of negligence.

31. Would someone explain and elucidate as to how the Railways were able to make such a statement in their written statement when according to them there was no eye witness of the alleged incident?

32. After the unfortunate death in question, the police reached at the spot immediately, and prepared number of documents. The official of New Delhi Railway Station, Police Station started inquest proceedings after registering DD No. 20-A and SI Dalip Singh was handed over such investigation. He reached the spot immediately on receiving the information through Police Control Room and recorded statement of Constable Chander Pal, besides recording statements of other relatives of the deceased. He got the post-mortem, conducted and after post-mortem the dead body was handed over to the concerned relatives, for last rites.

33. The death report (Ex.AW-1/16) depicts the place where the body was found lying, which is virtually at the tip of platform No. 3/4.

34. There was no reason to have disputed the initial statement, allegedly, made by Constable Chander Pal, merely, on account of the fact that it was not bearing his signatures. Since the statement was recorded by SI Dalip Singh and since he was the one who was entrusted with the investigation, if Union of India was having any suspicion or reservation with respect to the veracity of such statement, the most ideal



scenario would have been to summon SI Dalip Singh to have complete reassurance in this regard. Nothing of that sort was contemplated.

35. As already noticed above, the report submitted by Railways is very categoric and it is quite obvious that Rajbir had boarded the aforesaid train but on account of rush or may be on account of some jerk, he lost his balance and fell down and, eventually, died.

36. Shri Rajbir was a Government Employee and it also cannot be believed that while returning from his work, he would be totally empty-handed. The aforesaid inquiry report, though records that said passenger had fallen down from the train, there is no detail with respect to anything being recovered from person of the deceased.

37. As already noticed that there are two statements of Constable Chander Pal. Even if his second statement dated 07.04.2012 is believed, he learnt through some passengers that Sh. Rajbir had fallen down from a running train. As noticed already, in his first statement, he had elaborated in detail the manner in which the accident had taken place, of which he also claimed himself to be an eye witness. He also claimed that the various papers, which seemed belonging to the said passenger, had spread to a considerable distance on account of blowing of the wind.

38. In such a situation, it is not difficult to imagine that the ticket might have also got lost in the process.

39. Be that as it may, the report received from DRM Office which has been placed on record by the respondent herein clearly indicates that the incident had taken place when the said passenger was trying to



board the train from platform No. 3/4 of Tilak Bridge Railway Station and such incident was even confirmed by the Duty Constable Chander Pal. In such a situation, it cannot be said that the accident had happened because Rajbir was crossing the railway track on foot.

40. Undoubtedly, RW-1 Shri Naresh Kumar claimed that as per their record and as per his knowledge, the train in question was not involved in any accident but as noticed already, the DRM report, on which even the respondents seem to have relied upon, portrays a different picture. Quite possibly, because of the fact that the train had left the Tilak Bridge Station, the incident might not have come to the knowledge of the Loco Pilot of the said train but that would not mean that the accident had not taken place at all, particularly, when the dead body was found lying near the platform.

41. There is nothing to indicate that the injuries were self-inflicted or on account of negligence on the part of the deceased.

42. This principle is of strict liability and even in *Union of India Vs. Rina Devi* [(2019) 3 SCC 572], the Hon'ble Supreme Court, after taking note of the various judicial precedents, came to the conclusion that any injury in the course of boarding or deboarding the train would fall under untoward incident "entitling any victim to compensation" and would not fall under the proviso to Section 124A of Railways Act merely on the plea of negligence of the victim as a contributing factor.

43. Para-25 of said judgment reads as under: -

"25. We are unable to uphold the above view as the concept of "self-inflicted injury" would require intention to inflict such injury and not mere negligence of any particular degree. Doing so would amount to invoking the principle of contributory



negligence which cannot be done in the case of liability based on “no fault theory”. We may in this connection refer to the judgment of this Court in United India Insurance Co. Ltd. v. Sunil Kumar [United India Insurance Co. Ltd. v. Sunil Kumar, (2019) 12 SCC 398 : 2017 SCC OnLine SC 1443 : (2017) 13 Scale 652] laying down that plea of negligence of the victim cannot be allowed in claim based on “no fault theory” under Section 163-A of the Motor Vehicles Act, 1988. Accordingly, we hold that death or injury in the course of boarding or de-boarding a train will be an “untoward incident” entitling a victim to the compensation and will not fall under the proviso to Section 124-A merely on the plea of negligence of the victim as a contributing factor.”

44. Learned counsel for appellant has relied upon *Bhola v. Union of India* [2018 SCC OnLine Del 13486], *Union of India v. G. Jayalakshmi* [2012 SCC OnLine Mad 761], *Union of India v. Rina Devi* [(2019) 3 SCC 572], *Union of India v. V. Santhabai* [2010 SCC OnLine AP 646], *Leelavathamma v. Union of India* [2004 SCC OnLine Kar 14], *Jameela v. Union of India* [(2010) 12 SCC 443], *Union of India v. Prabhakaran Vijaya Kumar* 6[(2008) 9 SCC 527], *Union of India v. Bundiya Devi* [2010 SCC OnLine All 3456], *Sharjabai v. Union of India* [2019 SCC OnLine Bom 1767].

45. As noticed already, as per the documents placed on record by Railways, mishap had taken place when the deceased was attempting to board a train from the platform itself. In such a situation, it cannot be said to be a case of self-inflicted injuries or for that matter case of contributing negligence. The kind of rush which is generally experienced in such trains which have halt at the stations in NCR region is not unknown. At times, because of the fact that the passengers are using the same door for boarding and deboarding, some miss the train while some may not be able to even get down from the train.



46. Be that as it may, in view of present factual matrix, the incident in question is held as “untoward incident” as defined under Section 123 (c) of Railways Act, 1989.

47. The last aspect is with respect to the fact whether deceased can be said to be a *bonafide* passenger or not.

48. A *bonafide* passenger would be the one who has purchased a valid ticket for journey or is travelling with a valid pass. As per Section 2 (29) of Railways Act, a “passenger” means a person travelling with a valid pass or ticket. The Court cannot be oblivious of the manner in which incident had taken place.

49. Undoubtedly, as per established norms and various judicial pronouncements, initial onus is always on the claimant to show that any such victim was a *bonafide* passenger. However, in the case in hand, the claimant was in no position to have uttered even a word about a fact which was exclusively within the personal knowledge of the victim alone. No other family member or friend of the victim/deceased was travelling with him on the fateful day. He was all alone and in such a situation, claimant or any other family member is in no position to confirm about purchase of ticket.

50. It is not difficult to imagine that in such type of incident/mishap, resulting in death, the ticket can get easily lost in the process. Even in *Rina Devi* (supra), it has been categorically held that mere absence of ticket with such injured or deceased would not negative the claim that he was a *bonafide* passenger. Claimant herein has discharged her initial burden and placed on record all the relevant facts and in such a



situation, while deciding the case, applying the yardstick of preponderance of probabilities, the deceased cannot be labelled as a passenger travelling without a ticket. Thus, the onus stands duly discharged and even in the absence of a ticket, keeping in mind the factual matrix of the present case and the manner in which the incident had taken place, possibility of the ticket getting lost in the process cannot be ruled out. Consequently, deceased is held as *bonafide* passenger.

51. In *Rukmani vs. Union of India* (2023 SCC OnLine Del 7380) also, this Court has observed that mere fact that Railway ticket was not recovered from the dead body was hardly of any consequences as the deposition of AW-2 was manifestly truthful that the ticket had been purchased and the deceased travelled in the general compartment. It was further held that it was probable that the rail ticket might have been fallen out of the pockets probably on account of the jerks due to the momentum of the body on its fall on the rail tracks and resultantly, deceased was presumed to be a *bonafide* passenger.

52. Moreover, as per version of Duty Constable, various papers belonging to victim had spread upto a considerable distance. This can explain non-recovery of ticket. The test is of preponderance of probabilities and the Railways Act is indeed a beneficial and welfare statute. The appreciation of evidence should be in consonance with the objective sought to be achieved by the Act and for the benefit of the person for whom the Act has been created. Therefore, the evaluation of evidence should also be little liberal and not very rigid and hyper-technical.



53. Accordingly, present appeal is allowed and the impugned order is set aside.

54. As a necessary corollary, matter is remanded back to the learned Railway Claims Tribunal for awarding compensation to the claimants in terms of prescribed Schedule within four weeks from receipt of this order.

55. Parties are directed to appear before the learned Tribunal on 20th September 2024.

56. Appeal stands disposed of in the above terms.

57. Copy of this order be communicated to the learned Tribunal for information and due compliance.

(MANOJ JAIN)
JUDGE

SEPTEMBER 05, 2024/sw