



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

% **Judgment reserved on : 11 December 2023**
Judgment pronounced on : 04 January 2024

+ **FAO 363/2014**

BHURA

..... Appellant

Through: **Mr. Kapil Kishor Kaushik and**
Mr. Kunal Sharma, Advs.

versus

UNION OF INDIA

..... Respondent

Through: **Mr. Sushil Kumar Pandey, Sr.**
Panel Counsel with Ms. Neha
Yadav, Adv.

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 appellant/claimant assailing the impugned order dated 21.05.2014 passed by the Railway Claims Tribunal, Principal bench, Delhi², whereby the claim application bearing No. O.A. (Ilu) No. 414/ 2011, filed under Section 16 of the RCT Act was dismissed.

FACTUAL BACKGROUND:

2. Briefly stated, it was the case of the appellant/ claimant that in the intervening night of 17/18th May, 2011, his son Sh. Gabroo, aged 22 years, was travelling from Raja ka Sahaspur to Delhi by the train and accidentally fell down from the running train near Shahdara

¹ RCT Act



Station due to a sudden jerk and jostling amongst the passengers inside the coach and sustained grievous injuries all over his body. He was rushed to GTB hospital but succumbed to injuries during the course of his treatment on 18.05.2011. Thus, the claimant being father of the deceased, filed a claim petition under section 125 of the Railways Act, 1989³, seeking a sum of Rs. 8,00,000/- as statutory compensation.

3. During the proceedings before the learned RCT, the appellant/claimant in support of his claim filed 23 documents, marked as A-01 to A-23 and was duly cross examined. On the other hand, the respondent had filed the Written Statements along with the inquiry report refuting the claims and stating that the alleged incident was not an ‘untoward Incident’⁴.

4. The following issues were framed by the learned RCT :

“(i) Whether the death of the deceased had occurred as a result of an untoward incident, as defined under section 123(c)(2) of the RA?

(ii) Whether the deceased was a bonafide passenger of train on the relevant day ?

(iii) Whether the application of Shri Bhura is maintainable ?

(iv) To what order / relief ?”

5. The learned RCT while adjudicating the matter observed that no other passenger saw Gabroo falling from the train and the train by which the deceased was travelling remains unidentified. It was further observed that the applicant has not filed any investigation report in regard to Gabroo’s death and only one page death report titled “unnatural death by

² RCT

³ RA



violence” dated 18.05.2011 (Ext. A-8) was filed as evidence, which does not substantiate that the deceased died after falling from the train.

6. Further, the deposition of the appellant that the deceased was travelling with a valid rail ticket was not believed, holding that the death certificate (Ext. A-16) clearly recorded that there were “no valuable things on the body”, and thus, the appellant was lying through his teeth and had filed fabricated and doctored documents. Hence, he was made not entitled to any compensation. Issue No.4 was also decided against the appellant holding that the deceased did not die in any ‘untoward incident’.

GROUND OF APPEAL:

7. The applicant / claimant in the instant appeal allude to the aspect that learned RCT for whimsical reasons overlooked the version of the eye witness that the deceased had fallen from a running train and the belongings of the deceased seized by the Police from the spot were handed over to the appellant containing a rail ticket. The decision of learned RCT is assailed as being based on reckless conjecture and surmises.

ANALYSIS AND DECISION:

8. Having given my thoughtful consideration to the submissions advanced by the learned counsel for the rival parties and on perusal of the record, although at first blush it appeared that there is no legal infirmity or perversity in the impugned order passed by the learned RCT, but on meticulous perusal of the record, I find that the impugned

⁴ 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)



order cannot be sustained in law.

9. In order to appreciate the factual and legal controversy in question, it would be expedient to reproduce the observations of the learned RCT while deciding issues No. 1 and 2, against the appellant, which read as under:-

10. **“Issue Nos. 01 & 02.**

06. The applicant claims that on the intervening night of 17/18.05.2011, his eighteen year old son, while travelling by train from Raja ka Sahaspur to Delhi, accidentally fell down from the running train near Shahdara station, due to a sudden jerk and jostling of passengers inside the coach and sustained grievous injury all over his body. According to the applicant, Gabroo was rushed to GTB Hospital, but succumbed to his injuries during the course of treatment on 18.05.2011.

07. No other passenger travelling by the so called over crowded compartment, saw Gabroo falling from the train. No one seems to have identified the train, because the applicant does not mention the name/no of the train by which Gabroo was travelling. As per Station Master's memo, addressed to GRP/DSA, dtd. 18.05.2011, time 04.00 Hrs., a man with a severed hand was found lying injured behind signal no. 11 in between Main and loop lone at Km 6/21. As per the applicant's own statement before the tribunal on 20.11.2013, he came to know about the incident at 08.00 AM of 18.05.2011. Further, Gabroo died without giving any statement to anyone because as per medical report, he was unfit to record any statement (Ext. A-14). Yet, the applicant give graphic details regarding Gabroo's journey from Raja Ka Sahaspur up to the location, where the deceased fell accidentally from the train. It is surprising that the applicant does not know the name of the train but knows that 'there was huge rush inside the train compartment', the deceased 'got enough standing space near the gate', 'he was well inside the train compartment', the train 'jerked violently', and 'due to this jerk Gabroo received a thrust from inside the train compartment and he fell down from the running train'. The question here is who provided Bhura with such details in regard to his son's last journey by train. Obviously, he is narrating his own version of the incident for the purpose of the claim. I therefore, give no credence to the claim made by the applicant vide Annex.I of his claim application, supported by his affidavit, dtd. 19.11.2013 (Ext. Aw-01).



08. The statement of Bhura before the Tribunal on 20.11.2013 (Ext. C-1) that he received the news of his son's injury at 08 AM on 18.05.2011 from police, does not appear to be true. The MLC No. B2546/11, dtd. 18.05.2011 (Ext. A-15), indicates that Gabroo was admitted in GTB Hospital, Shahdara, Delhi at 05.45 AM by ASI/Ramesh of PCR B-33 as unknown male of 22 years. The death certificate (Ext. A-16), supported by death summary (Ext.A-9), issued by Dr. Mahesh Kumar of GTB Hospital, both dtd. 19.05.2011, confirm that he died a 'unknown male 22 years' at 07.00 PM on 18.05.2011 and till then no one from the family has come to see Gabroo. The report of GRP/Shahdara, DDNo. 22, dtd. 18.05.2011 (Ext. A-3) confirms that at 08.25 PM the on duty constable Mahesh of GRP received the information on phone that the unknown male aged 22 years, who met with an accident in the morning and was admitted in GTB Hospital, expired during the course of treatment. In fact, presence of Bhura and the identification of his son, Gabroo get recorded only in the Post Mortem report (Ext. A-12), when the body was taken for autopsy at 2.00 PM of 19.05.2011. So the identification of Gabroo and the relay of information by police to Bhura at 8 AM on 18.05.2011 as claimed by the applicant is a lie told for the purpose of the claim.

09. GRP/ Shahdara, who received the news of injury sustained by an unidentified youth from Dy. SS/Shahdara at 4 Hrs of 18.05.2011 (Ext. R-13) took no action to assist the victim or to investigate the matter. DD No. 05, dtd. 18.05.2011 (Ext. A-1) confirms that at 05.05 hrs. SI Brahm Dev came to know from PGR Van about the unidentified man lying injured near platform no. 4. Interestingly, the applicant has not filed any investigation report of SI Brahma Dev, the IO in this case, in regard to Gabroo's death. Only a part (one page) of the death report-unnatural death by violence dtd. 18.05.2011 (Ext. A-8) has been filed as evidence, which does not clarify how it could be concluded that Gabroo died after falling from a train. The second part of the report seems to have been concealed for reasons best known to the applicant.

10. The applicant has filed DD No. 5, dtd. 19.05.2011 (Ext. A-5), which is said to be the statement of one Mohit Jain, a vendor of Shahdara Railway station. As per his statement, on 18.05.2011 at around 4AM, he saw a 22 year old person falling from a Delhi bound train near platform no. 04 of Shahdara station. According to him, the victim whose hand got amputated, was rushed to hospital by PCR Van. However, the report of Departmental Enquiry, conducted by Sr. DSC/New Delhi (Ext. R-2) claims that Mohit Jain, the so called eyewitness of GRP/Shahdara informed the IO that on 18.05.2011 SI Brahma Dev of GRP/Shahdara obtained his signature on a blank paper. According to him, he neither saw



anyone falling, from train nor informed the PCR Van at no. 100. I have reasons to believe the above claim of the respondent because police documents, connected to this case, prepared by SI/Brahm Dev raises serious doubts.

11. As per police report of GRP/Shahdara (Exts. A-2 & A-4) Gabroo was identified by police from the articles recovered from his person at 07.40 AM of 18.05.2011. However, DD No. 22 PP, dtd. 18.05.2011 of GRP/Shahdara (Ext. A-3) reveals that at 08.25 PM constable Mahesh No. 1477 received information that the 'unidentified' person has died in GTB Hospital. The medical reports in connection with the treatment of Gabroo i.e. the MLC report (Ext. A-15), the death summary (Ext. A-9) and the death certificate (Ext. A-16), prepared after his death at 7 PM, refer to the deceased as unidentified male aged 22 years. This confirms that SI Brahm Dev of GRP/Shahdara fabricated/manufactured documents to circulate the cock and bull story that Gabroo was identified from the diary, which was recovered from his person.

12. The applicant claims that the deceased was travelling with a general II class ticket bearing no. 28175 from Raja Ka Sahaspur to Delhi and this ticket was recovered from his person after the incident by the GRP. A printed card ticket bearing the above details have been filed as Ext. A-18. The Jama Talashi report i.e. DD No. 22 PP, dtd. 18.05.2011 (Ext. A-11) and DD No. 9 PP, dtd. 18.05.2011 filed by 'GRP/Shahdara state that at 07.40 Hrs Gabroo was identified after the recovery of a purse containing Rs. 120/-, as railway ticket bearing no. 28175 and a diary from his person. The Jama Talashi report (Ext. A-11), further states that all the items were returned to Bhura. However, as stated earlier, this information turns out to be a false, because as per DD No. 22 of the same police (Ext. A-3), supported by medical records of GTB Hospital (Ext. A-9, A-15 & A-16) Gabroo was not identified till his death at 07 PM of 18.05.2011. Moreover, the death certificate (Ext. A-16), clearly records 'no valuable things in the body', the report of the Departmental Enquiry (Ext. R-12) also shows that Ms. Jameelan the wife/mother of the applicant/deceased told the IO that GRP/Shahdara did not return any item belonging to the deceased to the family.

13. Thus, it stand proved that no ticket was recovered from the person of the deceased and the 'Jama Talashi' DD No. 22 PP, dtd. 18.05.2011 (Ext. A-11), is fabricated/manufactured document. The fact is that a rail ticket has been procured clandestinely and a story has been built that it was recovered from the person of the deceased.

14. In the light of the facts recorded above, I have no doubt in my mind that Gabroo was neither a bonafide rail passenger on



18.05.2011 nor did he die after falling from any train on that day at Shahdara station. Accordingly, the above issues are decided against the applicant.”

11. A careful perusal of the aforesaid reasoning would show that the learned RCT was swayed away by the fact that AW-1, the appellant in his evidence testified that he received the news of death of his son at 08.00 a.m. on 18.05.2011 whereas the entire Daily Diary (DD) entries, MLC Report and the death summary report record the aspect of victim/deceased remaining unidentified till about 8.25 p.m. on 18.05.2011. Secondly, learned RCT found that the death certificate (Ex/A-16) records ‘no valuable things on the body’ and the *jamatalashi* report DD No. 22 PP Railway Shahdara dated 18.05.2011, was a fabricated document.

12. I have no hesitation in holding that learned RCT miserably failed to appreciate the evidence on the record in right perspective and the conclusions drawn are absolutely unconscionable and flawed. **First things first**, on information by the PCR, there was recorded DD No.5 PP dated 18.05.2011 at PP Railway Shahdara at 5/5.05 a.m. about some ‘unknown person’ lying injured near Shahdara Railway Station Platform No.4. The MLC report of the deceased at Guru Teg Bahadur Hospital [“**GTB Hospital**”] records that victim was brought to the hospital by Police/PCR at around 5.30 a.m. in the morning with an alleged history of being involved in a train accident at 04:00 a.m., who was administered medical treatment at around 5.45 a.m. when he was found ‘unfit’ to make statement.

13. Pursuant to the aforesaid DD No. 5 PP, the Investigating Officer



visited the spot and on coming back recorded DD NO. 9 PP dated 18.05.2011 at 7.40 a.m. at PP Railway Shahdara to the effect that the unknown victim, who met with an accident near platform No.4, had been moved to GTB Hospital by the PCR and then the appellant went to GTB Hospital where the name of victim was found to be Gabroo @ Bablu S/o Bhura aged about 22 years resident of Village Sataran PS Bilari, District Muradabad, UP. As per the death summary of the deceased prepared at GTB Hospital, he died due to a 'cardiac arrest' at 07:00 p.m. It appears that the information was recorded *vide* DD No. 22 PP dated 18.05.2011 at 08.25 p.m. that the 'unknown victim' had died in the Hospital.

14. What is discernible is that the identity of the deceased had been ascertained by the HC Om Prakash from PP Railway Shahdara recorded in DD No. 9 PP in the morning that very day but in the Hospital record, the identity of the deceased was not recorded. It is pertinent to mention that the statement of one Mr. Mohit Jain was recorded by HC Om Prakash, who disclosed that he had seen the victim falling from the train who was coming from Ghaziabad to Delhi, as a result of which his hand got amputated and he sustained bodily injuries and was moved by the PCR to the Hospital. Since the identity of the deceased had been established by the HC Om Prakash at 7.40 a.m. on 18.05.2011, the deposition of AW-1/appellant that he had come to know about the death of his son at 08:00 a.m. cannot be questioned at all. Infact, the IO, SI Brahm Dev PP Shahdara, recorded the statement of one Abdul Sattar S/o Mr. Anwar Ahmad from village Noorpur Thana Memodar, District Ghaziabad, UP to the effect that he



came to know about the death of his nephew Gabroo in the morning of 18.05.2011, who had met with a train accident at Shahdara Railway Station.

15. In the aforesaid backdrop, when we come to DD No.3 PP dated 19.05.2011 at PP Railway Shahdara recorded at 12.30 a.m. on 19.05.2011 under Section 174 of the Cr.P.C., it records that the MLC report of the deceased bearing No. B-2546/11 pertaining to an unidentified male was received and after going to the site, some personal belongings of the deceased were recovered including viz., Rs. 130/-, one diary and one railway ticket No. 28175 for journey from Raja Ka Shahaspur to Delhi by SI Brahm Dev. It is then recorded vide DD No. 22 dated 18.05.2011 at PP Railway Shahdara that dead body of the deceased was identified by his father i.e., the appellant and *vide* memo (*fard hawalgi saman*) SI Brahm Dev handed over the personal belongings of the deceased to his father.

16. Thus, without further ado, the observations by the learned RCT that there was any fabrication or interpolation on the part of appellant/father is absolutely atrocious and completely unfathomable. It must be appreciated that the appellant, who was rural man, had no say in the preparation of the MLC report and/or the death summary of his deceased son. The hospital authorities in a routine recorded the name/detail of the deceased as 'unknown male'. It is but obvious that their primary duty was to save the life of the deceased and his name/details were not essential. Since the identify of the deceased had been ascertained by HC Om Prakash, which was recorded vide DD No. 9 PP dated 18.05.2011 at 07.40 a.m., the remarks in the Death



Summary that ‘nothing valuable things found on the body’ in common parlance would only convey that deceased was not having any valuables on his body in the sense of wrist watch, gold ring, chain or anything else.

17. Lastly, the *post mortem* report clearly brought out that the deceased had suffered heavy blunt impact on his head and his right arm was amputated from elbow, and it must be seen that he was in extreme pain and it was not expected of him that he could carry his own belongings to the Hospital. It manifests that the concern of the PCR at that time was to move the victim to the hospital. In all probabilities based on the aforesaid facts and circumstances, HC Om Prakash from PP Railway Shahdara was able to retrieve the belongings of the deceased in the ordinary discharge of his duties. There arise no question over the jamatalashi *vide* DD No. 22 dated 18.05.2011 at PP Railway Shahdara prepared by Sub Inspector Braham Dev. If the learned RCT had any doubts over the authenticity of the *fard hawalgi saman vide* DD No. 22, it could have very well summoned the concerned police official in exercise of his powers vested under Section 18(3) of the RCT Act. Anyways, any doubts over DD NO. 22 is misplaced and untenable.

18. In view of the foregoing discussion, it is brought out that a ticket was indeed recovered from the body of the deceased during the investigation of the matter in the ordinary course of business. Hence, the deceased was a *bonafide* passenger under Section 2(29) of the RCT Act.

All the aforesaid facts clearly lead to an inference that the victim had



been either hit by train or had fallen from the running train at the platform, and therefore, the deceased died in an ‘untoward incident’ within the meaning of Section 123(c) (2)⁵ of the RA.

FINAL ORDER:

19. In view of the foregoing discussion, the present appeal is allowed and the impugned order dated 21.05.2014 passed by learned RCT is hereby set aside. The appellant is made entitled to a statutory compensation of Rs.8,00,000/- with interest @ 9% per annum from the date of incident i.e. 18.05.2011 till the date of its realization. However, during the course of evidence it also comes out that the deceased was also survived by his mother, namely Mst. Jamilan. Accordingly, the compensation be apportioned in two equal halves i.e. 50:50 in favour of the appellant with interest. The amount be paid to the appellant and his wife i.e., the mother of the deceased within 45 days from today, failing which the respondent/Railway shall be liable to pay compensation with interest @ 12% till its realization.

DHARMESH SHARMA, J.

JANUARY 04, 2024

Sadique

⁵ (2) the accidental falling of any passenger from a train carrying passengers