



2024 DRC 646



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

% **Judgment reserved on: 13th December, 2023**
Judgment pronounced on: 30th January, 2024

+ **FAO 391/2014**

PREMWATI

..... Appellant

Through: Mr. Manoj Sharma, Adv.

versus

UNION OF INDIA

..... Respondent

Through: Mrs. Aakanksha Kaul, Mr.
Satya Sabharwal and Mr. Aman
Sahai, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The present appeal is filed by the appellant/claimant in terms of Section 23¹ of the Railway Claims Tribunal Act, 1987², assailing the Impugned Order dated 08.01.2014 passed by the Railway Claims Tribunal, Principal Bench, Delhi³, whereby the claim application No. O.A.(Ilu) No. 440/2011⁴, filed under Section 16 of the RCT Act, was dismissed.

FACTUAL BACKGROUND :

2. Briefly stated, it was the case of the appellant/claimant that on 18.08.2011, her husband Lala Ram was travelling from Faridabad

¹23. Appeals.—(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.

(2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the order appealed against.

² RCT Act

³ RCT

⁴ Claim application



2024: DRC: 646



New Town Railway Station to Hazrat Nizamuddin station after purchasing a journey ticket bearing No. 796551390 and having boarded a local EMU train at New Town Faridabad; and that the compartment of the train was heavily crowded and the deceased was standing at the entrance gate of the compartment of the train. When the train reached KM No.1505/27-26, the deceased on account of a sudden jerk and jolt, fell down from the train and died. The claimant filed a claim petition on 27.09.2011, seeking statutory compensation of Rs. 8,00,000/- from the respondent railways.

3. During the course of proceedings before the RCT, the respondent railways filed their Written Statements contesting the claim and denying their liability to pay the compensation on the ground that the deceased was not a *Bonafide*⁵ passenger and his death was not due to any accidental fall amounting to an 'untoward Incident'⁶. The respondent further contended that the injuries sustained by the applicant were due to his own criminal act and were covered under self-inflicted injuries.

PROCEEDINGS BEFORE THE RCT AND IMPUGNED ORDER:

4. On the basis of pleadings, learned RCT framed the following issues :

- i. 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 ?

⁵ Section 2(29) of the Railways Act, 1989, a passenger means a person travelling with a valid pass or ticket.

⁶ 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)



2024: DRC: 646



- ii. Whether the respondent proves that the claim application is not covered under the ambit of Sections 123, 124 and 124-A of the Railways Act ?
- iii. Whether the applicants proves that the deceased was a bonafide passenger on the train in question on the relevant day ?
- iv. Whether the applicant proves that she is the dependent of the deceased within the meaning of Section 123(b) of the Railways Act?
- v. To what order/relief ?

5. The learned RCT while appreciating the evidence on record observed that since the deceased was having a valid journey ticket for travel, he becomes a passenger within the meaning of the said expression contained in the explanation to Section 124A⁷ of the Railways Act. Further, regarding Issue Nos. 1 & 2, the RCT relied on the statements made by the Station Master, Faridabad New Town, during evidence (RW-1), which affirms the fact that the EMU train No. 64061 arrived at Faridabad much later at 18:18 Hours and left the station at 18:19 Hours, whereas the Station Master reported the incident to the GRP (Government Railway Police) and the RPF (Railway Protection Force) at 18:10 Hours on 18.08.2011, almost ten minutes before when the train actually reached the station. The aforesaid report stated that one male dead body was lying near Up Main line, out of the track at KM 1505/27-25. The germane observations of the RCT in this regard are reproduced as under:

⁷ Section 124A - Compensation on account of untoward incidents.

Explanation. – For the purposes of this section, “passenger” includes –

- (a) a railway servant on duty : and
- (b) a person who has purchased a valid ticket for traveling , by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.



2024: DRG: 646



“9. Thus, as can be seen from the evidence of RW-1, who is none else than the Station Master of Faridabad New Town coupled with the entries in the official records maintained by him under Ex. R-1 to R-3, the dead body was found even by 18.10 hours and the same was reported to the Station master who, in turn, gave a message to the RPF and the GRP at 18.10 hours. As seen from the evidence of RW-1 coupled with the TSR Ex.R-1, the EMU train No. 64061 arrived at New Town Faridabad much later at 18.18 hours and left at 18.19 hours. This circumstance of arrival of the train much later after the noticing of the dead body at the spot and making necessary entries relevant thereto in the official records would clearly falsify the claim of the applicant that the deceased was travelling by the said EMU train No. 64061 and he had an accidental fall from the said train itself.”

6. The learned RCT observed that the injuries in the post-mortem are indicative of the fact that the deceased was hit by another train and he did not die due to any accidental fall. The RCT *vide* Para 10 & 11 of the impugned order observed :

“10. It is further noticed in Ex. A- 13 that there were grease marks present on various places on face and the body, which is indicative of the deceased coming in close contact with the engine. If really, it was a case of fall from the train, the deceased would have fallen away from the track and the question of his sustaining any grease marks may not arise.

The injuries noted in the post-mortem report include several multiple fractures all over the body, which is indicative more of hit by the train than of a fall from the train. A local passenger train, which has just started of from the railway station and has not crossed the railway premises, cannot be expected to run at such high speed so as to cause, so many multiple fracture injuries all over the body even if there was any fall from the train. Going by the nature of the injuries and the opinion recorded by the Doctor who conducted the post-mortem under Ex. A-13, the possibility of the deceased having been hit by speeding train appears to be more probable than the plea of an accidental fall from the compartment of a train.”

“11. In the DRM's report, a conclusion is reached to the effect that the deceased must have been run over by some train while he was trying to cross the track instead of taking the foot-over bridge to reach the platform. The said conclusion is based on the investigation made by the RPF authorities and the report of the



2024: DRC: 646



Inspector/RPF is also to the same effect. The possibility of the deceased getting run over by some speeding train while trying to cross the track in his bid to reach the platform instead of going by the foot-over bridge appears to be more plausible in view of the evidence available on record and in the absence of any material to establish that the deceased had, in fact, any accidental fall from any train.”

7. The learned RCT concluded its finding by stating that the case cited by the applicant **Ghanashyam Patra and Others v. Union of India and Another – 2013(2) T.A.C. 274**, wherein, the Orissa High Court allowed the appeal filed by the claimants against the order of the tribunal, was not relevant to the present case as the oral evidence of RW-1 along with the documentary evidence of Ex. R1-R3, clearly falsify the claims of the applicant. Further, the RCT held that the person claiming the compensation has to prove that the death of the deceased was on account of an untoward incident. The relevant observations are as under:

“13. Section 124-A of the Railways', Act contemplates payment of compensation on account of untoward incident. The expression 'untoward incident' is defined under Section 123(c) as meaning inter alia (2) the accidental falling of any passenger from a train carrying passengers. Before claiming compensation under Section 124-A of the Act, the applicant has to necessarily establish that the death of the deceased was on account of an untoward incident i.e. due to accidental falling from a train. The burden squarely lies on the applicant to show that the deceased had, in fact, an accidental fall from the train which resulted in his death. The evidence adduced by the applicant and the material placed / on record by her as discussed supra, does not disclose that it was a case of accidental fall from any train. . On the other hand, the material on record would show that it could have been a case of run over by some train while the deceased was trying to cross the track in a bid to reach the platform instead of going by the foot-over bridge. Under those circumstances, it must be held that the death of the deceased was not due to any untoward incident within the meaning of Section 124-A read with Section 123(c) of the Railways Act. The issues are answered accordingly.”



8. Accordingly, holding Issue Nos. 1 & 2 against the claimant, the claim petition was dismissed *vide* impugned order dated 08.01.2014. The appellant /claimant in the present appeal allude to the aspect that there were some grease marks on the face of the deceased, which clearly establishes the fact that the deceased fell down from the train. Had it been the case of a run over by another train, the body parts of the deceased would have been scattered all around. Further, the appellant contests the fact that respondents did not lead any evidence by producing any witness despite being given several opportunities.

ANALYSIS AND DECISION:

9. I have given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar. I have gone through the relevant records of this case as also the case-laws cited at the Bar.

10. At the outset, I find that the present appeal is devoid of any merits. Unfortunately, as it may appear, the facts established on the record during the course of inquiry clearly raise a strong inference that the deceased did not die due to an accidental fall from the train. RW-1 examined on behalf of the respondent/Railways clearly brought to the fore that the EMU train number 64061 had arrived at Faridabad much later at 18:18 hrs. and left the station at 18:19 hrs. whereas, the body of the deceased was discovered at KM 1505/25-27 at about 18:10 hrs and AW-1, wife/widow of the deceased was not an eye-witness to the incident. Indeed, it is shown that the deceased possessed a valid railway ticket, which was recovered during the *jamatalashi* by the



2024: DRC: 646



police. However, what spheres on the face of the record is that as per the postmortem report, the deceased died due to a shock and haemorrhage consequent to the injuries sustained on vital parts of the body. The injuries sustained by the deceased were not probably due to a fall from the train. The postmortem report brings out that the deceased had suffered ante-mortem injuries in the nature of parietal bone on the left side of his head, fracture of humerus right side at three places above the elbow, so much so that two large grease-stained abrasions were found on the back on the left side besides fracture of multiple ribs on both sides on further dissection, laceration of pleurae at multiple sites with laceration of both lungs, besides rupture of right lobe of liver with collection of liquid blood in abdominal cavity and a fracture of femur on right side at two places, one in the shaft of the humerus and the other just above the knee. The nature of such injuries exemplify the fact or either support the version of RW-1 that although he had no personal knowledge of the accident, yet there was an inference that the deceased had probably been hit or run over by a train. It goes without saying that the dead body was found lying on the railway track just near the foot-over bridge that goes on to suggest that the deceased was trying to cross the railway line on foot by skidding over the track and not using the foot over bridge. These conclusions were drawn by the RPF authorities as well as arrived at in the DRM report. Before parting with the appeal, reference can be made to **Union of India v. Rina Devi**⁸, where the Supreme Court observed as follows:

⁸ (2019) 3 SCC 572



2024: DRC: 646



“We thus hold that mere presence of a body on the railway premises will not be conclusive to hold that injured or deceased was a bonafide passenger for which claim for compensation could be maintained.”

11. In view of the afore-going discussions, this Court does not find any illegality, perversity or incorrect approach adopted by learned RCT in dismissing the claim.

12. Accordingly, the present appeal is dismissed.

DHARMESH SHARMA, J.

JANUARY 30, 2024

ck