



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

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Judgment reserved on: 23.07.2024

Judgment delivered on: 12.08.2024

+ **FAO 176/2015 & CM APPL. 19953-19954/2023**

RENU DEVI & ORS

.....Appellant

VERSUS

UNION OF INDIA

.....Respondent

Memo of Appearance

For the Appellant: Mr. Ravi Sabharwal, Ms. Ruchi Sharma, Ms. Santosh Katiyar,
Advocates

For the Respondents: Ms. Pratima N. Lakra, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Appellants have taken exception to order dated 13.04.2015 passed by learned Railway Claims Tribunal, Principal Bench, Delhi whereby their claim petition has been dismissed.

FACTUAL MATRIX

2. One Krishan Shah was working as water supplier in the area of Palam, Delhi. On 15.02.2011, he went to Palam for supplying water. He was returning home by train i.e. Mandor Express. His brother Mr. Naresh Kumar went to Bijwasan Railway Station to meet and receive him. At about 10.00 PM, Mandor Express reached the platform but before the train could come to halt, Naresh saw someone falling down



from the train, on account of heavy rush of the passengers. Though other passengers, travelling in the train, had informed the Guard that a man had fallen down but the Guard did not pay any heed to such words and gave signal and resultantly, train left the platform.

3. When, Naresh rushed there, he learnt that the person fallen down from the train was none other than his brother Krishan Shah. The Station Master was informed about the incident which resulted in registration of DD No. 18A. Police also reached the spot for necessary investigation. Fact remains that the death of Krishan Shah was instantaneous.

PROCEEDINGS BEFORE TRIBUNAL

4. Wife and children of Krishan Shah (hereinafter referred to as deceased) filed claim petition before Railway Claim Tribunal under Section 16 of the Railway Claims Tribunal Act, 1987 and Section 124 & 124 A of Indian Railways Act, seeking compensation on account of said mishap.

5. Respondent Northern Railways filed written statement disputing the said claim, contending that they were not liable to pay compensation as deceased was not a 'bonafide passenger' and that he had not fallen down from any running train. It was contended that incident in question was though unfortunate but it did not come within the purview of 'untoward incident' as defined in the Railways Act.

6. On the basis of stands taken in the pleadings, following issues were framed: -



(i) *Whether the deceased was a victim of the alleged untoward incident and whether the alleged untoward is covered Under Section 123 (C) of the Railways Act 1989?*

(ii) *Whether the deceased was a bonafide passenger of Mandor Exp. on 16.03.2013 at the time of the alleged untoward incident?*

(iii) *Whether the claim application of the applicant is maintainable?*

(iv) *Whether the applicant is entitled to receive compensation, as claimed for?*

7. In order to substantiate her claim, Ms. Renu Devi (widow of deceased Krishan Shah) entered into witness box as AW1.

8. From the side of the Railways, DRM report was filed and no oral evidence was adduced.

9. Learned Tribunal came to the conclusion that deceased was not a bonafide passenger of the train and there was nothing to indicate that he had fallen down from any such train. It was observed that the claimants had failed to discharge the onus placed on them and the deceased appeared to have died in the circumstances other than suggesting a fall from a train of a bonafide passenger and resultantly, claim petition was dismissed.

10. This is how the appellants are present before this Court by filing appeal under Section 23 of Railways Act, 1989.

RIVAL CONTENTIONS

11. Contentions of the appellants are as under: -



- (i) It is a clear case of 'untoward incident' even as per the documents placed on record by the Railways and various eyewitnesses had specifically stated in their statements made to the police under Section 161 Cr.P.C. that they were present at the platform when they had seen deceased falling down from the train due to heavy rush of the passengers and Tribunal has not considered the said record.
- (ii) Claimants were required to show the preponderance of probability only which stood revealed in view of the testimony of AW1 and the record produced by Railways including the Divisional Railway Manager Report (DRM report). Thus, it was very clear that death was on account untoward incident.
- (iii) Mere non-recovery of ticket would not mean that the deceased was not a bonafide passenger. In this regard, reliance has been placed upon *Rukmani Vs. Union of India*¹.

12. All such contentions have been refuted and according to respondent, there is no error in the conclusion arrived at by the Tribunal and, in fact, the Tribunal has carefully scrutinized the evidence led before it and has come to the conclusion that it was not a case of untoward incident. It is argued that said Mr. Naresh Kumar (brother of deceased) has not even entered into witness box and there is no evidence suggesting

¹ 2023 SCC OnLine Del 7380



that deceased was travelling in the train, much less that he had fallen down from the train. Moreover, if deceased was a bonafide passenger, ticket would have been recovered from him but his *jamatalashi* has not revealed any possession of ticket and, therefore, there is no reason to interfere with the findings of learned Railway Claims Tribunal which are in full consonance with the evidence led before it.

13. Reliance has been placed upon *Union of India Vs. Rina Devi*², *Kalpana Devi and Ors. Vs. Union of India*³ and *Raj Kumar & Anr. Vs. Union of India*⁴.

ANALYSIS AND CONCLUSION

14. Before evaluating the aforesaid contentions and securitizing the evidence led before the Tribunal, it would be appropriate to see the relevant definitions given under Railways Act, 1989.

15. *Section 123 (c) Untoward incident means:*

(1)

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

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

17. Sections 124 & 124A of Railways Act, 1989 reads as under:

² (2019) 3 SCC 572

³ 2023 SCC OnLine Del 2086

⁴ 2022 SCC OnLine Del 3825



“124. Extent of liability. —

When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.

Explanation.--For the purposes of this section "passenger" includes a railway servant on duty.

Section 124A. Compensation on account of untoward incidents -

When in the course of working of railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the department of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only of loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to-

- (a) suicide or attempted suicide by him;*
- (b) self-inflicted injury;*
- (c) his own criminal act;*
- (d) any act omitted by him in a state of intoxication or insanity;*



(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.- For the purpose of this section, "passenger" includes-
(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling, by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

18. Let us see the averments made in the claim petition filed by Ms. Renu Devi (widow of deceased) and her three sons.

19. It is mentioned in the petition that deceased Krishan Shah used to work as water supplier in and around the area of Palam, Delhi and on 16.03.2013 he had gone to Palam for supplying water. At about 9.00 PM, Mr. Naresh Kumar, younger brother of deceased came to meet him at his residence and when he learnt that Krishan Shah was returning via Mandor Express, he went to Bijwasan Railway Station, which was not far away from the residence of deceased. At about 10.00 PM, Mandor Express entered the platform and came to halt and then Mr. Naresh Kumar saw a person falling down on account of rush of the passengers. After train left the platform, he rushed to the spot and learnt that it was his brother who had fallen down from the train. *It is also mentioned in the claim petition that all the personal belongings of the deceased like his daily earning, Railway journey ticket and Tiffin etc. were missing and were not recovered due to dark and lack of proper lights at the spot of accident.* DD No. 18A was registered and postmortem was got conducted at Aruna



Asaf Ali Hospital. Post mortem report No. 402/2013 was prepared. It was also mentioned in the claim petition that untoward incident occurred due to the accidental falling/slipping of the deceased from the passenger train while travelling in the train. It was also mentioned that deceased was travelling in general compartment while reiterating that Railway ticket and Tiffin were lost on account of the accident. It will be also pertinent to mention that Ms. Renu Devi (widow of deceased) entered into witness and submitted her affidavit reiterating the aforesaid averments made in the petition.

20. In her cross-examination, she did admit that her affidavit was based on hearsay as at the relevant time, she was in Bihar. According to her, their house of Bijwasan was situated at 10 minutes distance from the Railway Station. She also deposed that her husband was working as water supplier in Palam. She claimed that it was wrong to suggest that her husband was not valid passenger of Mandor Express. She also denied that her *devar* was not present at Bijwasan Railway Station and did not witness any such accident. She also denied that no personal search took place in the presence of Mr. Naresh Kumar.

21. Unfortunately, said Mr. Naresh Kumar, who had allegedly even witnessed the incident when he was present at Bijwasan Railway Station, has not graced the witness box.

22. However, irrespective of the above, there are two things which still need to be resolutely seen.



23. Firstly, whether deceased was travelling in the train in question and whether he fell down from the train in question or whether he was run over by the train on account of his own mistake and negligence. Secondly, if travelling, whether he was a bonafide passenger or not.

24. As noticed, learned Railway Claims Tribunal came to the conclusion that since the petitioners had failed to discharge the onus on them, the deceased appears to have died in the circumstances other than by fall from a train as a bonafide passenger and has been falsely portrayed as one by them and resultantly the claim petition has been dismissed.

25. Of course, the testimony of the claimant Ms. Renu Devi is hearsay in nature as she was in Bihar when the incident in question had taken place and after hearing the aforesaid unfortunate news, she rushed to Delhi.

26. It needs to be, however, highlighted that in her affidavit, she categorically claimed that incident had happened because of the accidental falling of her husband from Mandor Express train. She was also categoric in claiming that all the personal belongings of her deceased husband like his daily earning, Railway journey ticket, tiffin etc. were not recovered.

27. It would have been certainly better had she examined her *devar* Mr. Naresh Kumar, who is alleged to be the witness of the accident as well.

28. It goes without saying that it is the fundamental duty of any such claimant to prove the foundational facts but at the same time, it is also the duty of the opposite side to render assistance to the Tribunal and should



very fairly admit the basic facts, at least. Need I say, any fact admitted by one need not be proved by the other.

29. Respondent cannot deny that an unfortunate incident had taken place and a person has lost his life. It also cannot deny that such death is of Krishan Shah (husband of claimant no. 1). It also cannot run away from the fact that the death had taken place right at the platform itself. Despite that, it is astonishing and bewildering as to why Union of India has gone to the extent of claiming that it was a case of run over and that the injuries were self-inflicted, on account of his own criminal act and negligence.

30. During course of the trial before learned Tribunal, respondents themselves placed on record several documents in their evidence and the report of Senior Divisional Security Commissioner, RPF clinches the issue in this regard which goes on to show that the deceased was travelling in the train in question and died when he fell down while in the process of deboarding the train.

31. Such report dated 23.09.2013 is based on the extensive inquiry and investigation conducted by the Railway officials. Inquiry was conducted by Station Superintendent, Bijwasan, Station Master Bijwasan and HC Jagdish who was posted at Bijwasan Railway Station only. It is very clear that as per the initial investigation, one person was crushed by Mandor Express (मण्डोर एक्सप्रेस की चपेट में एक व्यक्ति आ गया). However, after



comprehensive inquiry and investigation, conclusion, given by the Railway themselves, was as under: -

“....मृतक अवैध तरीके से रेल में यात्रा करते समय अपनी स्वयं की लापरवाही से गाडी सं० 12661 मण्डोर एक्स० से उतरने के प्रयास में गिरकर उक्त घटना का शिकार हुआ है, इस घटना में रेलवे प्रशासन की कोई जबाबदेही नहीं बनती है।”

32. Thus, as per the aforesaid conclusion, even the Railway admitted that deceased was travelling in Mandor Express and met with an accident on account of his own negligence.

33. It, in no uncertain terms, goes on to specify that the deceased was travelling in the train and, therefore, to that extent, the findings of the learned Tribunal that it was not case of fall from train needs to be rejected and set aside.

34. I reiterate that these documents were placed on record by the respondent and thus it cannot dispute the authenticity of these document or disown the same and as noticed above, their own conclusion was to the effect that the deceased was travelling in the train, *albeit* not in valid manner and, therefore, in such a situation, even if the widow of such passenger, whose testimony to the above extent is hearsay, does not cause any dent to the case of prosecution.

35. It would have been certainly better had Union of India displayed enough of transparency and would have, at least, admitted before the



learned Tribunal that the accident had taken place when deceased was attempting to disembark from the train.

36. Fact remains that it is still required to be evaluated whether he was a bonafide passenger or not and whether injuries could be labeled as self-inflicted.

37. As per categorical case of the petitioner, deceased was water supplier in Palam area and that day also, he had gone for such work and the incident took place when he was disembarking the train at the platform itself.

38. According to AW1 Ms. Renu Devi, personal belongings of her deceased husband including daily earning, Railway journey ticket etc. were missing and were not recovered and it is also in synchronization with the case of Union of India as their own documents also go on to show that there was no recovery when the personal search of the deceased was conducted. This is apparent from the Ex. R-5 (statement of Ct. Jagdish Singh).

39. In such a situation, when there was nothing to identify as to who had died, it is not comprehensible as to how respondent was able to decipher that dead body was of Krishan Shah. Normally, in such a situation, when a person meets such kind of unfortunate death, it is not possible to reach the family of the deceased intimating them about the accident as there is nothing to unravel about the address of such person and his family.



40. In the above background, version of the claimant becomes believable and probable one. According to them, Mr. Naresh Kumar (brother of deceased) was present at the platform to receive him and he even saw the accident taking place. It was only because of the aforesaid fact that Mr. Naresh Kumar was present at the spot same night, it was concluded by the Railways that the deceased was Krishan Shah. Else, without anything being recovered from his possession, Railways were in no position to confirm the name and address of the deceased. As per DD No. 3B dated 17.03.2013, Naresh was met at the spot and he identified the deceased. This re-confirms his presence at the spot.

41. Though, in first blush, such version of Mr. Naresh Kumar may look to be an exaggerated one, yet it also supplies the reason as to how the identity of deceased was eventually confirmed same night. Therefore, in such a peculiar backdrop, learned Tribunal should not have rejected such version of Mr. Naresh Kumar. Moreover, if the aforesaid version is excluded, respondent is in no position to apprise the Court as to on what basis they were able to ascertain the name of the deceased when there was no recovery from his personal search.

42. Now only two things are to be further ascertained.

43. Firstly, whether deceased was a bonafide passenger or not. Secondly, whether the injuries are self-inflicted or not.

44. Let me first consider whether the injuries can be said to be self-inflicted or not.



45. This principle is of strict liability and even in *Union of India Vs. Rina Devi* (supra), 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.

46. 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.

47. As noticed already, as per the documents placed on record by Railways, mishap had taken place when the deceased was attempting to alight down at the platform itself. He first fell on the platform and from there, he fell on to the tracks which resulted in his death as he was run over by the same train. 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 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.

48. 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.

49. The final hurdle is with respect to the fact whether deceased can be said to be a bonafide passenger or not.

50. 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.

51. The Court cannot be oblivious of the manner in which incident had taken place.

52. Deceased had fallen down when he was attempting to deboard the train at platform itself which merely had a halt of two minutes at the aforesaid Bijwasan Railway Station and possibly on account of huge rush, which is generally there in such type of trains when it travels through the stations within the metro city like Delhi, he was not getting enough time to alight down and in the process, on account of rush or jerk, he fell down



and, therefore, there is a strong possibility that in such a situation, some of his belongings might have remained inside the moving train or might have lost in the process. Since the train had immediately left the platform, nobody perhaps even thought about the same.

53. 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 needs to be complemented. 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 night. 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.

54. Relevant columns and the corresponding answers of the claim petition are as under: -

<i>Class of travel, and Ticket/ Pass number to the extent known.</i>	:	<i>General Compartment</i>
<i>Details of the loss of any luggage on account of accident</i>	:	<i>Yes. The railway ticket & Tiffin etc. were lost</i>

55. Thus, claimant had done whatever it could have done. It was fair estimation which cannot be said to be fanciful in the given scenario.



56. Of course, Mr. Naresh Kumar could have easily entered into the witness box but his non-examination does not seem to be fatal as even he was in no position to comment or depose about purchase of ticket.

57. It is not difficult to imagine that in such type of incident/mishap, any claimant may rather be in no position to prove the factum of purchase of ticket because in such type of incident 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 labeled 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.

58. In *Rukmani Vs. Union of India* (supra) 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.

59. Respondent has relied upon *Kalpana Devi and Ors. Vs. Union of India* (supra). However, in that case, situation was totally different as it was not possible to come to conclusion that the deceased had accidentally fallen from a moving train. Here, even as per the documents placed on record by respondent, it is apparent to naked eyes that the incident had taken place when the deceased was deboarding from train which started moving after a halt of hardly one or two minutes. Moreover, it also needs to be stressed here that in the above case of *Kalpana Devi (supra)*, the dead bodies were found at such a spot, making it difficult to believe that they had accidentally fallen from a moving train. Here, it is bang at the platform.

60. In *Raj Kumar & Anr. Vs. Union of India* (supra) issue was precisely the same and it was to be adjudicated whether the deceased could be said to be a bonafide passenger or not when no ticket was found from his possession. Fact, however, remains that in that case, no facts were found to be mentioned either in the claim petition or in the affidavit about said aspect and, therefore, this Court held that claimant had failed to discharge the burden cast upon them.



61. I have already noted the peculiar factual matrix of the case in hand and if all the facts and circumstances are read in conjunction, it would lay bare that the deceased was travelling in Mandor Express and when the train reached Bijwasan Railway Station and halted for a minute or two at the platform, on account of sudden rush and jerk, deceased fell down from the train and was, eventually, run over by the same train which had started leaving the platform. There could not have been any witness for the purpose of proving that he had purchased any ticket as no other family member or friend of the deceased was accompanying him. However, the manner in which the accident had taken place and also the fact that none of his belongings were ever recovered after the accident, there is, quite clearly, a possibility that such ticket might have got lost in the process. 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 object of the Act and for the benefit of the person for whom the Act has been created. Need I reiterate, therefore, the evaluation of evidence should also be little liberal and not very rigid and hyper-technical. Of course, the requisite facts need to be proved by any such claimant but at the same time, any such claimant need not be asked to prove the facts which are undisputed and virtually acknowledged.

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



63. 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.
64. Parties are directed to appear before the learned Tribunal on 12.09.2024.
65. Appeal stands disposed of in the above terms.
66. Miscellaneous applications, if any, also stand disposed of.
67. Copy of this order be communicated to the learned Tribunal for information and due compliance.

(MANOJ JAIN)
JUDGE

AUGUST 12, 2024/dr